

# **APPEALING FROM A REVIEW OFFICER'S DECISION**

Published by Alberta's Review and Assessment Offices

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Current version: March 24, 2020

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## About this publication

Any party to a review may appeal from the Review Officer's decision. This publication:

- Provides general information about these appeals (i.e., who hears them, the time limit for them, how they are heard and who can appear for them),
- Explains the three categories into which grounds for an appeal fall and how they are dealt with by the Court, and
- Provides step-by-step instructions on the procedures required to bring an appeal before the Court.

If you are reading a hard copy of this publication and you have access to the Internet, then you should read the electronic copy that is posted on the Review Office website at: <http://www.albertacourts.ca/gb/areas-of-law/reviews-assessments>. If you don't have access to the Internet and your hard copy of the publication is more than 4 months old (see the date on the cover page of the publication), then you should ask a friend to print an updated copy from the website. Procedures change from time to time and you will want use the most current version of this publication. The copy on our website is the most current version.

## General Information

Appeals from decisions of a Review Officer are governed by Rule 10.26 of the *Alberta Rules of Court*. Much of the information provided in this publication is based on the rule, which is reproduced in Appendix "A" to the publication. Although we have reproduced the rule for you, you needn't be familiar with it. This publication explains every requirement of the rule and provides additional information not found in the rule.

### Who hears appeals from the decision of a Review Officer?

Subrule 10.26(1) provides that a party to a review may appeal to "a judge". The "Definitions Appendix" to the *Alberta Rules of Court* makes it clear that "a judge", in this context, does not include a Master in Chambers. Moreover, subsection 3(1)(c) of the *Court of Queen's Bench Act* makes it clear that, for the Court of Queen's Bench, the titles "Judge" and "Justice" are synonymous. Therefore, an appeal from the decision of a Review Officer may be heard only by a Justice of the Court of Queen's Bench. Because "Judge" is the more familiar of the two titles, we will use it to refer to Justice of the Court of Queen's Bench.

## The time limit for an appeal

There is a one month time limit for an appeal from the decision of a review officer. The time limit begins on the day that the Review Officer makes her or his decision, not on the day that the Review Officer's certificate is filed or served. In most cases, the Review Officer's decision will be made at the end of a review (i.e., on the day that the review is heard). To comply with Rule 10.26's time limit requirement, the party wishing to appeal must file and serve a Notice of Appeal and other required documents on the opposing party prior to the same day of the immediately following month. EXAMPLE: The review is heard on June 10, 2019, and the Review Officer announces his or her decision on that date. In this example, the Notice of Appeal and other required documents must be filed and served on the opposing party prior to July 10, 2019.

Information on what other documents must be filed and served is provided later in this publication.

Missing the time limit might not be fatal to an appeal. If you have a good excuse for missing the time limit, then you may apply to a Master in Chambers to have the time limit extended. Information on how and when such an application may be made, including what documents must be filed for it, can be obtained from a clerk at a courthouse that deals with Court of Queen's Bench matters or from a Court Administration and Resolution Services (CARA) centre. Contact information for CARA centres can be found at or through: <https://www.alberta.ca/rcas.aspx#toc-0>.

## How are the appeals heard?

Appeals from a Review Officer's decision are initially scheduled to be heard on what is commonly known as "the ordinary chambers list". This list is prepared for morning hearings and consists of court applications and appeals that are expected be dealt with in less than 20 minutes. When you file your Notice of Appeal your appeal will be automatically placed on the ordinary chambers list for the date selected by you. Because the order in which applications and appeals will be heard on that date is not set until a day or two before the date and can be changed at any time, the time inserted in your Notice of Appeal will be 10:00 a.m. This is the time at which the Judge begins dealing with matters on the chambers list. Thus, you and your lawyer (or former lawyer) will have to be in the courtroom shortly before 10:00 a.m., even though your appeal might not be heard until later in the morning.

In most respects an appeal from a Review Officer's decision is dealt with in the same manner as a court application. However, an appeal from the decision of a Review Officer is "an appeal on the record of the proceedings before the Review Officer". This means that your arguments for the appeal must be based solely on the evidence and

documents that were presented to the Review Officer and on the transcript of the review proceedings, which should include the reasons for decision given by the Review Officer. If you attempt to introduce any new evidence, the lawyer may object, in which case the Judge may uphold the lawyer's objection or, in rare cases, allow you to introduce the new evidence. As a general rule, new evidence will be allowed only where the evidence was not, and could not have been discovered, by you until after the review. If you wish to introduce new evidence then you must file and serve an affidavit explaining why the evidence was not discovered until after the review and why it is important.

Information on how to present an appeal, as well as information on courtroom procedures and etiquette for an appeal, is provided later in this publication

### Who can appear?

Since an appeal from a Review Officer's decision is an appeal on the record, you may not bring witnesses and attempt to introduce evidence through them. Similarly, you should not bring family members or friends, except as observers. Any member of the public may observe court proceedings but they are not allowed sit at a counsel table with you. They must sit where the public sits.

If you, personally, were "the client" in the review, then you may represent yourself in the appeal. If the client was a corporation and you represented it at the review, then you will not be allowed to represent it for the appeal. This is due to several provisions in the *Law Society Act* (particularly sections 106 and 109) that prohibit non-lawyers from representing parties in civil or criminal proceedings before the Court of Queen's Bench. If you are unsure of your status as a "client" and you have a written retainer agreement, check it to see if it names you as a client. If there is no written retainer agreement, then check the lawyer's bills to see if they are addressed to you personally, to you and your corporation or only to the corporation. In the second case, you may represent yourself but not your corporation. However, since your corporation's interests and arguments would likely be the same as yours, this shouldn't matter. In the last case, the corporation will be the only client and it will have to retain a lawyer to represent it in the appeal.

The prohibition explained above applies equally to an application to extend the time for an appeal. Thus, if your corporation is the only client, then it will have to retain a lawyer for the extension application.

### Grounds for an appeal

Grounds for an appeal are based on errors that are made or believed to be made by the Review Officer. They fall into three categories, each of which is treated differently. This section explains the categories and how they would be treated in an appeal. Reading

the section should help you prepare for your appeal and more accurately predict your chances of success.

The first category consists of errors of jurisdiction, law or procedure. The standard that will be applied by a Judge when considering each alleged error in this category is “the standard of correctness”. The questions that may be determined by the Judge are:

1. Did the Review Officer decide an issue that she or he had no authority to decide?
2. Did the Review Officer fail to decide an issue that he or she had authority to decide and should have decided?
3. Did the Review Officer misunderstand the law related to an issue decided by her or him, or did the Review Officer apply the wrong law to the issue?
4. Did the Review Officer fail to follow the principles of procedural fairness in his or her conduct of the review?
5. Did the Review Officer otherwise fail to follow a procedure that he or she should have followed? or
6. Did the Review Officer employ a procedure that should not have been employed?

In applying the standard of correctness to these issues the Judge will give little or no deference to the Review Officer. Rather, the Judge will presume that he or she has greater knowledge and experience with respect to the issues and will answer the questions based on his or her own knowledge and experience. Because of this, appeals based on these grounds will usually have the best chance of success.

The following are some examples of grounds (or errors) that fall into this category and how they could be dealt with:

- (a) Pursuant to Subrule 10.18(1)(b) of the *Alberta Rules of Court* a Review Officer has no authority to interpret a provision in a retainer agreement that is subject to more than one reasonable interpretation. Under this subrule, the Review Officer must refer the issue to the Court for its interpretation. A Review Officer who interprets such a provision and makes an important decision based on it (rather than referring the issue to the Court) commits an error that provides a ground of appeal. Of course a Judge on appeal could find that the Review Officer nevertheless arrived at the correct decision, in which case the appeal would fail on this issue.
- (b) A Review Officer has authority to direct the production of any document that is relevant to the review and has not been filed or otherwise produced. If a client believes that the lawyer has such a document and asks the Review Officer to direct that it be produced, then the Review Officer should do so. A

Review Officer who refuses to do so commits an error that provides a ground of appeal. In such a case, the Judge on appeal would likely order that the document be produced. However, this would not guarantee the client's success on this issue. The client's success would depend upon whether or not the document, once produced, provides evidence that should have led to a reduction in fees or other charges that the Review Officer did not make. If it does, then the Judge would likely reduce the charges or direct that a new review be conducted with the document in mind. If it does not, then the appeal would likely fail on this issue.

- (c) Review Officers have authority to determine if a lawyer's bill (usually referred to as "an account") cannot be reviewed because of the expiry of a limitation period prescribed by the *Limitations Act*. This determination could depend on the application of the law to the facts in each case. A Review Officer who refuses to review a lawyer's account because of an erroneous determination caused by an error in applying the law to the facts, commits an appealable error. In this example the Judge hearing the appeal would confirm that an error was made and direct that the account be reviewed by the Review Officer. This would result in a new review hearing, which could prove favourable to the client.
- (d) Reviews must be conducted in accordance with the principles of procedural fairness. These are well known principles of administrative law. The most important of them is the right to be heard. This principle requires that both sides to a dispute be given the opportunity to present relevant evidence and make relevant arguments. A Review Officer who does not give a client an opportunity to present relevant evidence or make a relevant argument commits an error that provides a ground of appeal. However, the success of an appeal based on this ground will depend upon the Judge's finding that the evidence or argument is, in fact, relevant. In addition, the Judge must find that the Review Officer failed to allow the evidence or argument. Review Officers will often cut a party short where the party repeats the same evidence or argument several times. This does not constitute a breach of the right to be heard principle. Where there has been a breach, the Judge will consider the evidence or argument and either make a new decision on the reasonableness of the lawyer's charges or direct that there be a new review with the evidence or argument in mind.
- (e) Reviews may be conducted in a number of ways, depending on the circumstances of each case. However, the approach or procedure used by the Review Officer must be fair. If you believe that the procedure used in your

case was unfair, then you may appeal the Review Officer's decision on this ground. In considering this ground of appeal, the Judge will decide if the procedure was fair. If it was not, then the Judge may make a new decision on the reasonableness of the lawyer's charges or direct that there be a new review, using a procedure prescribed by the Judge.

The second category of grounds for an appeal consists of errors of fact. Review Officers often make findings of fact that affect their decisions on the reasonableness of a lawyer's charges. Where an erroneous finding of fact may have had this effect it will provide a ground of appeal. The questions that a Judge may determine for errors in this category are:

1. Did the Review Officer fail to consider important evidence, which if considered would have resulted in a different finding of fact?
2. Did the Review Officer misunderstand evidence, which if properly understood, would have resulted in a different finding of fact?
3. Where the credibility of the parties was an issue, did the Review Officer err in preferring the evidence of one party over the other and if so, did this result in an erroneous finding of fact?

The standard that will be applied by a Judge when considering these questions will be "the standard of deference". Under this standard, the Judge will presume that the Review Officer was in as good or a better position than the Judge to consider the parties' evidence, draw the correct conclusion from it or assess credibly. For this reason, a Judge will not lightly interfere with a Review Officer's finding of fact. To succeed with a ground of appeal in this category, an Appellant must persuade the Judge that the Review Officer's finding of fact was erroneous and that a correct finding would have affected the Review Officer's decision on the reasonableness of the lawyer's charges. If this can be successfully accomplished, then the Judge may either make a new decision on the reasonableness of the lawyer's charges or direct that there be a new review with the proper finding of fact in mind.

In considering a ground of appeal in this category, it should be remembered that an appeal from a Review Officer's decision is an appeal on the record. This being so, the Appellant must rely on the evidence that was before the Review Officer, as recorded in the transcript of the review proceedings or in a document that was presented to the Review Officer. New evidence may not be introduced except in exceptional circumstances and only with the permission of the Judge hearing the appeal.

The third and final category of grounds for an appeal consists of errors in the Review Officer's determination of what the lawyer should have charged for his or her fees,

disbursements and other charges. Grounds in this category are the most difficult to advance and are the least likely to be successful. This is because Review Officers are considered to have greater experience and expertise in these determinations than judges. For this reason the standard that will be applied by a Judge on appeal will be “the standard of great deference”. Under this standard, the Judge will not interfere with the Review Officer’s determination unless the determination is clearly (or manifestly) wrong. In other words, an appeal based solely on this ground is unlikely to be successful unless:

- (a) the Review Officer’s determination has the immediate appearance of being wrong; and
- (b) the Review Officer’s reasons for his or her determination (as evident from the transcript) do not reasonably justify the determination.

Where these conditions exist, the Judge will make his or her own determination of what the reasonable amounts should be for a lawyer’s fees, disbursements and other charges, and will substitute these for the amounts determined by the Review Officer.

Finally, it should be noted that appeals are not confined to a single ground or category of grounds. More than one ground in any or all the categories may be advanced and argued in an appeal.

## Procedures for bringing an appeal

The following are the steps that should or must be taken to bring an appeal before a Judge of the Court of Queen’s Bench of Alberta. Step 1 is optional. The remaining steps are mandatory.

### **Step 1 – Decide if you really want to appeal**

An appeal can be costly, time consuming and somewhat risky. Typically the biggest expense will be the cost of obtaining a transcript of the proceedings before the Review Officer. This cost will likely range from \$250 to \$400 but could be much more if the proceedings were longer than normal. There is also a \$50 fee for filing a Notice of Appeal. In addition, the Judge who hears the appeal could award costs against the losing party. Thus, if you appeal and lose the appeal, then the Judge could make an award of costs against you. Depending on the Judge’s perception of the merits of your appeal, the award could be higher than the cost of the transcript and, in some cases, much higher.

Before you make your decision, you might want to re-read the “Grounds for an Appeal” section of this publication to get a better sense of your likely chance of success on an



appeal. You might also want to contact Transcript Management Services to obtain an estimate of the cost of your transcript. Information about Transcript Management Services is provided below.

## **Step 2 – Order a transcript of the review proceedings**

You cannot file a Notice of Appeal until you have obtained, or at least ordered, a transcript of the proceedings before the Review Officer. Court clerks will not allow you to file a Notice of Appeal without also filing the transcript or written confirmation that you have ordered it.

A transcript can only be ordered from Transcript Management Services (TMS) and this must be done online. The procedure for ordering a transcript and contact information for TMS can be found at: <https://www.alberta.ca/order-courtroom-transcript.aspx>.

When you use TMS's system to order a transcript you will be asked to select or enter certain information that TMS will require in order to access the audio recording of your review hearing. Unfortunately, the instructions and some of drop-down menu choices that you will be given are more applicable to hearings before a Judge or Master than they are to hearings before a Review Officer. Because of this, you may not know what to select or enter as you proceed through the online process. The information below should help you overcome this difficulty and deal with additional problems that you might encounter.

The webpage that appears when you click on the link provided above lists the information that you should gather in order to prepare for the online ordering process. This information corresponds with the information that you must enter once you have created an account and have logged into the system. The following explains what you must select or enter to obtain review hearing transcripts.

**Date to be transcribed:** This is the date on which your review was actually heard, as stated in the Review Officer's "Certificate of Review of Lawyer's Charges", a copy of which would have been given to you after your review. If you lost or misplaced your copy, you may contact the applicable Review Office to request a replacement.

**From and To:** This is the start and end time of your review hearing. If your hearing was not adjourned, then the start time should be the time shown in the "NOTICE TO RESPONDENT(S)" box on page 1 of your Form 42, *Appointment for Review*. If your review was adjourned and you can't remember the start time, then you might be able to get it from the applicable Review Office. In most cases the Review Office will have records from which the start time may be determined. However, Review Offices do not

keep records of end times. If you can't recall the end time, then you may have to estimate it, bearing in mind that most reviews take approximately 1 and ½ hours.

**Courtroom:** Courtroom information is selected from a drop-down menu. When you open the menu, you will see a list of courthouses. Because all reviews in Alberta are heard by the Review Officer in Calgary or Edmonton (with the parties attending in-person or by closed circuit television) and all are recorded at the Review Officer's location, you must select "Calgary Courts Centre" or "Edmonton Law Courts", depending on which Review Officer presided over your review hearing. After you have selected one of these you will see a list of courtroom numbers and other room identifiers. Scroll through this list and select "Review and Assessment (taxation)".

**Docket / Action Number:** This is the Court File Number for your review. You can find it at the top of the first page of your Form 42, *Appointment for Review*, or at the top of the first page of your copy of the Review Officer's certificate.

**Case Title:** Information for the case title can also be obtained from page 1 of your Form 42 or your copy of the Review Officer certificate. It consists of the names of the parties (spelled exactly as they are written on these documents) and should be expressed in the following format: "Name of Client(s) v. Name of Lawyer(s) or Law Firm" or "Name of Lawyer(s) or Law Firm v. Name of Client(s)". The party who requested the review (i.e., filed the Form 42 for it) should be one that is named first.

**Transcript Turnaround:** You may select any of the 4 turnaround options provided, bearing in mind that the cost of your transcript will increase with decreases in the turnaround times offered.

**Portion to Transcribe:** For appeals from a Review Officer's decision you should select "Full Hearing", if it is not already selected.

**Upload Documents:** TMS's system requests that you upload two documents in PDF format: a "commencing document" and a "supporting endorsement". TMS uses these documents to confirm or correct the information provided by you, as explained above.

The commencing document for a review is the Form 42, *Appointment for Review*. It is used by TMS to confirm or correct the "Docket / Action Number", the "Case Title" and possibly, also, the hearing date provided by you. Instead of uploading your Form 42, you may upload a copy of the Review Officer's certificate, which you would have received after your review – and we recommend that you do this. The certificate contains all of the confirming information that is contained in the Form 42, plus the actual date of your review hearing. If your review was adjourned from the date originally

set for it, then the date stated in your Form 42 will be incorrect, whereas the date stated in the certificate will be correct.

The supporting endorsement for a review hearing is the “clerk’s notes” (also called “FTR notes”). These are recorded by the Review Officer during the review. They are used by TMS to confirm or correct the hearing start and end times provided by you. As long as the times provided by you are reasonably accurate or reasonably estimated, you shouldn’t need to obtain and upload these notes. TMS should be able to locate the audio recording of your hearing without them. That said, if you want a copy of the notes, then you must obtain it from a clerk at the courthouse in the Judicial Centre in which your Form 42 was filed – and pay a fee for it. Review Offices do not keep copies of these notes, so Review Offices cannot provide them to you.

If you do not have access to a computer scanning device that can convert your copy of the Review Officer’s certificate to PDF format, then you may contact the applicable Review Office to request that a PDF version be emailed to you.

Once you have completed and submitted your online order, you will receive an e-mail confirmation of your order. A printed copy of this email may be filed in the clerk’s office to prove that you have ordered a transcript. If you file the confirmation, then the clerk should allow you to file your Notice of Appeal before the transcript you ordered can be made available to you.

### **Step 3 – Prepare a Notice of Appeal**

The form for a Notice of Appeal (Form 43) can be found on the Review Office website at: <https://www.alberta.ca/lawyers-fees-review.aspx>. It is available in MS Word and PDF formats. You should be able to save either version to your computer and complete it on your computer or print it and complete it by hand. An example of a completed Form 43 is provided in Appendix “B” to this publication. It and the following instructions should help you complete the form:

1. Insert the Court File Number and the name of the Judicial Centre. These should be identical to the Court File Number and Judicial Centre that appears on your Form 42, *Appointment for Review*.
2. Insert the names of the parties “APPELLANT(S) and “RESPONDENT(S). The names of the parties should be identical to the names used on page 1 of your Form 42, with you and any other clients being the Appellant or Appellants and the lawyer or law firm being the Respondent. Make sure that the names are spelled exactly as they are on your Form 42.

3. If there is only one Appellant, then remove or cross out the “(s)” that appears after “Appellant” wherever this term appears in the form.
4. If there is only one Respondent, then remove or cross out the “(s)” that appears after “Respondent” wherever this term appears in the form.
5. Insert your address for service and contact information. This should be the same as the address for service and contact information in your Form 42 unless you have changed your address and/or other contact information.
6. Insert the date and time of your appeal. If your appeal will be heard in Calgary or Edmonton, then you may pick any date (excluding weekends and holidays) that will allow for the filing and service of your appeal documents on the lawyer at least 15 days prior to the date selected. In this case you may also insert “10:00 a.m.” as the start time for your appeal. If your appeal will be heard in a Judicial Centre other than Calgary or Edmonton, then you should check with a court clerk in the courthouse at that location before you select the date and time of your appeal. This should be done to ensure that a Judge will be available to hear your appeal on the 10:00 a.m. chambers list for the selected date. If a Judge will not be available, then the clerk may provide you with several available dates. In either case you should select a date that will allow you to file and serve your documents on the lawyer at least 15 days prior to the selected date.
7. Insert the location of your appeal. The location should be the name of the courthouse in the Judicial Centre named in your Form 42, followed by a comma and the name of the city in which the courthouse is located. The name of the courthouse in Calgary is “Calgary Courts Centre”; the name in Edmonton and in Wetaskiwin is “The Law Courts”; and the name in every other city is “The Courthouse”. Some examples of correctly stated locations are: “The Calgary Courts Centre, Calgary”, “The Law Courts, Wetaskiwin” or “The Courthouse, Peace River”. There is no need to include the address of the courthouse, as the respondent to your appeal (lawyer or law firm) will know where it is.
8. Complete paragraph 2 of the form by listing non-court documents that were provided to the Review Officer for the review (e.g., letters, email messages, receipts, etc.). You do not need to list documents that were provided but were never referred to in the review. You should list all documents that were provided and referred to, even if they were provided by the lawyer, unless you were not given a copy before or during the review. You can add as many subparagraphs to paragraph 2 as you may need but if you have more than 12 documents, then you may describe the documents instead of listing them individually (e.g., “Documents provided to the Review Officer - email strings, letters and accounting records”).

9. Paragraph 5 of the form (“the decision of the review officer”) refers to the Certificate of Review that was given to you after your review.
10. You may provide written arguments for your appeal but are not required to do so. However, you are required to indicate, in paragraph 5 of your Notice of Appeal, whether or not written arguments are being filed. Do this by removing or crossing out “will” or “will not” in paragraph 5. If you decide to provide written arguments, then they must be filed with your Notice of Appeal, so you will have to prepare them before you file your Notice.
11. Your Form 43, *Notice of Appeal*, should now be ready for filing. Instructions for preparing and filing your other documents are provided in Steps 4 and 5, below.

#### **Step 4 – Gather and organize your appeal documents**

In addition to your Notice of Appeal you must file:

- (a) A copy of your Form 42, *Appointment for Review* (with no attachments).
- (b) Copies of the accounts that were reviewed.
- (c) A copy of the Review Officer’s certificate.
- (d) The transcript of the proceedings before the Review Officer. If the transcript has been ordered but is not yet available, then you must file written confirmation that the transcript has been ordered. In this case you will be required to file the transcript as soon as it is available and the clerk will likely give you a deadline for doing this.
- (e) Copies of non-court documents that were provided to the Review Officer for the review (see Step 3, Instruction 8, above). These documents are considered to be evidence and therefore form part of the record that may be reviewed by the Judge hearing the appeal.
- (f) Any written arguments that you wish to submit for the appeal.

Since your appeal will be an “appeal on the record”, no other documents (except for an Affidavit of Service) may be filed without the permission of the Judge who will be hearing the appeal. Should you wish to file additional documents other than an Affidavit of Service, you should: (a) make copies of them; provide a full set of the copies to the lawyer in advance of the appeal, together with a letter advising the lawyer that you will be asking the Judge for permission to refer to them; and bring a full set to the appeal for consideration by the Judge should the Judge grant permission. If permission is granted, then the documents may be referred to in the appeal and filed immediately after the

appeal. If permission is denied, then the documents may not be referred to and should not be filed.

The originals of some of the documents that you must file should already be in the court file (e.g., your Form 42 and the Review Officer's Certificate) but copies of them must nevertheless be filed with your Notice of Appeal. Moreover, all of the required documents should be organized into an "appeal package" that the clerk can provide to the Judge assigned to hear the appeal. This package is normally provided to the Judge prior to the appeal so that the Judge can prepare for the appeal without having to locate and retrieve the court file.

The best way to organize your documents into an appeal package is to put them in a tabbed binder that contains an index to the documents placed under each tab. The first document in the binder should be your Notice of Appeal. It should be inserted in the binder before the index, as it will serve as the "cover" for your appeal package - and as the document on which the clerk will place the court filing stamp for the package.

The index should be placed immediately after your Notice of Appeal and should be followed by the contents described in the index. The following is an example of a suitable index:

#### **Index to Documents for Appeal of Review Officer's Decision**

<b>Documents</b>	<b>TAB</b>
Form 42, Appointment for Review	1
Accounts reviewed	2
Review Officer's Certificate	3
Transcript of the proceedings before the Review Office	4
Documents provided to the Review Officer	5
Appellant's written arguments	6

There is no requirement that your documents be presented in a particular order, so you may change the order of your indexed documents should you wish to do so. You could, for example, place your written arguments (if you have any) under Tab 1 and move the

remaining documents down one tab each. You may also use lettered tabs instead of numbered tabs.

If you do not have a transcript before you file the package, then it should not be included in your index... or you could change that index item to “Confirmation that a transcript has been ordered”. Alternatively, you may file the confirmation separately. It is not a document that the Judge will require for the appeal. Once the transcript is ready, it will be filed separately and will be delivered to the Judge, either with the appeal package or alone (where the package has already been delivered).

If you do not have the resources to prepare a binder, then you should organize your documents as you would for a binder and clip them together with “butterfly” or other suitable paperclip. However, where there are many accounts you should first place them in an unsealed 8 ½” X 11” envelope marked “Accounts Reviewed”. This could also be done for the “Documents provided to the Review Officer”, but the envelope for these documents should, of course, be marked to properly identify its contents.

An index could be added to a paper-clipped appeal package, if desired. This could be done by placing numbers on the contents of the package (single documents and/or envelopes) and changing the “TAB” column title in the index to “Item No.”. Where this is done and the package includes an envelope, the description in the “Documents” column for the index should be “Envelope containing \_\_\_\_\_”. As in the case of an appeal package that is presented in a binder, your Notice of Appeal should be the first document in your package and should not be included in the index. It will serve as the “cover” of the package and will be the document on which the clerk places the filing stamp for the package.

Once you have organized your appeal package, you will need to copy it for filing.

### **Step 5 – File your documents**

Make two copies of your appeal package. If you organized your package in a binder, then your copies should be in binders (with the same index and tabs). If you organized it without a binder, then the copies should be organized so as to be identical to the original (i.e., same order, same makings and same use of envelopes if you used envelopes). Should you wish to do so, you may now replace the paperclips with staples capable of holding the documents together. While this is permitted, many Judges prefer paper-clipped packages, as the documents can be more easily separated for ease of reference before and during the appeal.

After you have copied your package take the original and the copies to the clerk for filing. The clerk will stamp each package with a filing stamp, retain the original and

send you to a cashier to pay a \$50 “application filing fee”. The fee may be paid by cash, debit, credit card, bank draft or money order. Personal cheques are not accepted. Immediately after you pay the fee the cashier will give you the stamped copies of your appeal package. One of them is for your use in the appeal and the other must be served on the lawyer.

If you did not file a transcript with your Notice of Appeal, then it must be filed as soon as it is made available to you by Transcript Management Services. There is no fee for filing a transcript after an appeal package has been filed.

### **Step 6 – Serve your documents**

Your appeal package should be served on the lawyer at least 15 days prior to the date of your appeal. This 15 day period is not expressly stated in the *Rules of Court* but a shorter service period could easily result in an adjournment of the appeal at the lawyer’s request. This is due to a time limit imposed on a respondent (in this case, the lawyer) who wishes to file written arguments for the appeal. Pursuant to subrule 10.26(5) the respondent must file and serve written arguments within 10 days after being served with the Appellant’s Notice of Appeal. This cannot be done if the Notice of Appeal is served less than 10 days prior to the appeal and even 15 days’ notice would give the lawyer little time to prepare, file and serve written arguments in time for the appeal. This being so, a lawyer who is not served at least 15 days before the appeal could ask for an adjournment, which would likely be granted by the Judge.

If the transcript of the proceedings before the Review Officer is not included in your appeal package, then a copy of it should be served on the lawyer as soon as practically possible. Serving it too close to the appeal could also result in an adjournment, as the lawyer will need to review the transcript prior to the appeal. The length of time that would be considered to be reasonable for a lawyer’s review of a transcript will depend on the length of the transcript and the lawyer’s desire to provide written arguments. Where the transcript is relatively short (e.g. they record proceedings that took 1 and ½ hours) and no written arguments are desired, 3 days might be considered to be reasonable. Where the transcript is lengthy (e.g. a full day of proceedings) and the lawyer wishes to provide written arguments that refer to points in the transcript, 15 or more days might be considered reasonable. The main takeaway from this is that all of the documents that are required to be served on the lawyer should be served as soon as practically possible, failing which your appeal may be adjourned.

Your appeal package and the transcript (if not included in your appeal package) may be served by:



- (a) Personally delivering them to the lawyer's office and leaving them with the lawyer, the lawyer's receptionist or someone else holding a position in the lawyer's office. This delivery may be done by you or by someone else on your behalf.
- (b) Mailing the documents to the lawyer's office by "recorded mail". This is a form of Canada Post mail delivery that requires a signature by the person receiving the documents. Once the envelope containing the documents has been signed for by someone in the lawyer's office, Canada Post will make a delivery receipt available to you, on-line. You will need to print this receipt for your Affidavit of Service.
- (c) Arranging to have the documents delivered to the lawyer's office by courier. If you use this method of service, then you should retain the courier's invoice or receipt, as you will need it for your Affidavit of Service.
- (d) Hiring a process server. Process servers are in the business of serving legal documents. They charge a fee that will likely exceed the cost of service by recorded mail but their fee will include the preparation of an Affidavit of Service, thus saving you the need to prepare one yourself (Step 7, below). You may want to get quotes from several process servers before deciding whether or not you might wish to use one.

### **Step 7 – Prepare and file an Affidavit of Service**

Judges make decisions and grant orders based on evidence given under oath. Since affidavits are sworn or affirmed before Commissioners for Oaths, they are considered to be evidence given under oath. A verbal statement by you that you served your lawyer with your appeal documents is not admissible. In the event that your lawyer does not show up for your appeal, you will need an Affidavit of Service proving that you served the lawyer. Unless you have an Affidavit of Service, your appeal may be adjourned to allow you to prepare and file one. If you have an Affidavit of Service, then the Judge may allow you to proceed with your appeal in the lawyer's absence.

If the lawyer shows up for your appeal, then an Affidavit of Service would not be required unless the lawyer denies having been properly served or disputes what was served and when it was served.

Because an Affidavit of Service should allow you to proceed with your appeal in the lawyer's absence and would provide admissible evidence for a dispute concerning service, you should prepare and file one. There is no fee for filing an Affidavit of Service.

A sample of an Affidavit of Service that is ready to be brought to a Commissioner for Oaths for swearing is provided in Appendix “C” to this publication. It and the following instructions should help you to prepare and file an Affidavit of Service.

1. Form 49 is the form used for an Affidavit of Service. A Form 49 that has been tailored for service of documents for an appeal from a Review Officer’s decision (“Form 49 – Affidavit of Service - Appeals”) can be found on the Review Office website at <https://www.alberta.ca/lawyers-fees-review.aspx>. It is available only in MS Word format. You may save it to your computer and complete it on your computer, or you may print it and complete it by hand.
2. Complete the top half of the first page of the affidavit exactly as you did for your Notice of Appeal.
3. If there is only one Appellant, then remove or cross out the “(s)” after “Appellant” wherever this term is used in the affidavit.
4. If there is only one Respondent, then remove or cross out the “(s)” that appears after “Respondent” wherever this term appear in the form.
5. In all but one case, you will be the person swearing or affirming the affidavit. The exception would apply where your documents were personally delivered to the lawyer’s office by someone else (e.g., a friend or relative). In this case, the affidavit must be sworn or affirmed by the person who delivered the documents, so his or her name should be inserted in the applicable blanks in the sentences preceding paragraph 1 of the affidavit.
6. Insert, in the first blank in paragraph 2, the date on which your appeal package was served. If it was served by recorded mail or courier, then you should be able find this date on the Canada Post receipt for the mail delivery or on the courier’s invoice or receipt.
7. Complete paragraph 2 by placing a checkmark in each box that corresponds to a document that was included in your appeal package. You will note that the Notice of Appeal is referred to before the list of “checkmark documents” and that it will be marked as Exhibit “A” to the affidavit. As previously stated, it serves as the “cover” to your appeal package. It is made an exhibit to show that the package that was served is a copy of the one that was filed, as the filing stamp on both will be identical. It should not be necessary to add all of the check-marked documents to the Exhibit “A”, as doing so would provide little useful information and would add unnecessary pages to the court file.

8. Make sure that you have checked all of the applicable checkmark boxes in paragraph 2. The only ones that might be left blank are for: (a) the transcript (if you are serving it later); (b) documents provided to the Review Officer (if none were provided); and (c) written arguments (if you decided not to prepare and submit written arguments). The checkmark boxes for all of the other documents should be checked, as these documents are required to be filed with your Notice of Appeal and must therefore be included in the appeal package that is served on the lawyer.
9. Next, check the appropriate box in paragraph 3 and fill in the Exhibit blank for it, if there is one. This blank should be filled in with the capital letter "B". You will note that there is no Exhibit blank for the third box (personal delivery). If your documents were personally delivered to the lawyer's office, then you would complete the text for this box by inserting the name (if known) and the position of the person with whom the documents were left (Examples: "Sally Smyth, the receptionist"; "a receptionist"; "Marco Fisher, a lawyer").
10. Photocopy the documents that will be attached as exhibits to the affidavit and paperclip them to the affidavit. Do not write on them. They will have to be marked as exhibits but this will be done by the commissioner for oaths.
11. Take your affidavit to a commissioner for oaths and have it sworn or affirmed. It is best not to sign the affidavit until you are before the commissioner for oaths. Most court clerks are commissioners for oaths, so you (or the person who personally delivered your appeal package to the lawyer's office) can swear or affirm the affidavit just before it is filed.
12. Once the affidavit is sworn or affirmed but before it is filed, make two copies of it. Thereafter, staple the original with its exhibits and the copies with their exhibits - and then present them to the clerk for filing. The clerk will keep the original and return the copies, with a filing stamp on each. One of the copies is for your use, if needed. The other should be given to the lawyer if she or he attends at your application. This copy needn't be served on the lawyer prior to your application.

A second Affidavit of Service might be required where the transcript of the proceedings before the Review Officer was not filed with your appeal package. It would be required only if the lawyer denies having received a copy of the transcript or disputes the date on which it was served on him. As this is unlikely to occur, you may forego the preparation of this affidavit. If it does occur and you do not have an affidavit, the worst that could happen is that your appeal might be adjourned to give the lawyer time to review the transcript. To shorten the period of an adjournment granted to a lawyer who denies having received a copy of the transcript, you may want to bring an extra copy of the

transcript with you so that it can be given to the lawyer during your appearance before the Judge.

Should you wish to prepare an Affidavit of Service for your service of the transcript, you may use the form used for service of your appeal package, but with the whole of paragraph 2 being replaced with:

“2. On \_\_\_\_\_, 20\_\_\_, I served, on the Respondent(s), a copy of the transcript of the proceedings before the Review Officer, the original of which was filed in this court file. Attached hereto and marked as Exhibit “A” to this affidavit is a copy of the first page of the transcript, bearing the clerk’s filing stamp.

In addition, you should modify paragraph 3 by changing “I served the documents by:” to “I served the copy of the transcript by:..”. There should be no need to modify the balance of the paragraph, as the methods of service are the same.

## Other useful information

Once you have filed and served your appeal documents, you should be ready to proceed with your appeal on the date set for it. Although the primary purpose of this publication is to provide you with the information you need to get to this stage, the following information may also be of interest or use to you.

### Adjournments

If you selected the date for your appeal without consulting the lawyer with respect to his or her availability, then you should expect that the lawyer might want an adjournment. Most lawyers have busy schedules that include commitments that are often scheduled months in advance. Where the date and time of your appeal conflicts with a commitment made by the lawyer before the lawyer learns of your appeal, someone from the lawyer’s office will likely contact you to request an adjournment.

You might also find yourself in need of an adjournment. Unforeseen circumstances like illness, family emergencies and unexpected employment requirements could make it impossible for you to attend the appeal on the date scheduled for it. In such a case you would need to contact the lawyer’s office to request an adjournment.

Any application that is scheduled to be heard in Judges’ Chambers (including an appeal from the decision of a Review Officer) may be adjourned by consent. The procedure for this is simple, quick and efficient. The party requesting the adjournment contacts the other party and the parties agree to a new date that is satisfactory to both. Thereafter,

either of the parties completes an on-line “Adjournment Confirmation” form. No other paperwork is required, but the party who submitted the on-line form should send an email message to the other party, confirming that appeal has been adjourned to the new date. The new date should be specified in the email message and both parties should mark it in their calendars. Where an appeal has been adjourned by consent and one of the parties fails to appear, the Court may rule against that party in the party’s absence. Thus, it is extremely important that the new date be confirmed in writing and that both parties attend before the Judge on that date.

Most lawyers who agree to an adjournment will also agree to complete and submit the Adjournment Confirmation form, even where the adjournment was requested by the client. However, should you wish or need to do it, you can find the form at: <https://www.albertacourts.ca/qb/court-operations-schedules/adjournment>. Most of the fields in the form are self-explanatory, but the following should answer any questions that you might have:

1. Your selection for the “Location” field should match the Judicial Centre shown on the first page of your Notice of Appeal. If the Judicial Centre is “Edmonton”, choose “Edmonton (Justice or Master)”. The choices for all of the other Judicial Centres display only the name of the City where the courthouse for the Judicial Centre is located.
2. “Action Number” is the same as “Court File Number”, as shown on the first page of your Notice of Appeal.
3. “Style of Cause” refers to the parties shown on the first page of your Notice of Appeal. It should be expressed, as in this example: John Brown v. Daley Downs LLP. The names should be in the same order as they appear in your Notice of Appeal and they should be identical to those in the Notice of Appeal (i.e., same spelling, initials etc.).
4. “Date Set” is the date originally set for your appeal, as shown on the first page of your Notice of Appeal.
5. For “Time Adjourned To”, select “10 AM”.
6. You must select the “Yes” radio button that appears after “Has the other party consented to moving the date?”
7. In the box that appears after “Law Firm” type “Self-represented”.
8. The fields for “Contact Name and Phone” and “Email” are for the person completing the form, so you would type your contact information in these fields.
9. For the “Set In” area of the form, choose the “Yes” radio button for “Justice Chambers” and the “No” button for every other option.

10. Click on the “Submit Adjournment Confirmation” button near the bottom of the screen to submit your completed form.

After you have submitted the form you may want to print a copy to prove that you have successfully adjourned the appeal. If you do, then you could email a copy to the lawyer to confirm the adjournment.

The Adjournment Confirmation form can only be used for consent adjournments and it must be submitted no later than 9:00 a.m. on the date originally set for your appeal. If it is not submitted by then, then either you or the lawyer will have to attend before the Judge to obtain the agreed upon adjournment. If no one appears, then the appeal may be struck from the Judge’s list and it may be difficult, if not impossible, to revive.

**IMPORTANT NOTE:** Do not submit an Adjournment Confirmation form unless the lawyer has consented to the adjournment. The form will be rejected if you answer “No” to the “Has the other party consented to moving the date?” Answering “Yes” without having obtained the lawyer’s consent could result in the dismissal of your appeal and a significant award of costs against you.

If you and the lawyer cannot agree to an adjournment, then both of you will have to appear or be represented before the Judge on the date of your appeal in order to present arguments as to whether or not the appeal should be adjourned. If you cannot attend, then you must arrange to have a lawyer attend on your behalf. Non-lawyers are not allowed to represent parties before the Court of Queen’s Bench. After the Judge hears arguments on the adjournment issue the Judge will decide whether or not the adjournment should be granted. Because the adjournment could be denied, the parties should be prepared to proceed with the appeal immediately after the Judge’s decision.

Contests over adjournments are usually decided in favour of the party requesting the adjournment. To obtain a different result the party opposing the adjournment would have to convince the Judge that the reason for the adjournment is disingenuous and that the party requesting it is simply trying to frustrate or delay the appeal. This would be difficult to do where the reason for the adjournment appears to be genuine and the party requesting it has made no previous adjournment requests. Thus, an adjournment that is requested under these circumstances should be consented to. Forcing a contest over an adjournment in these circumstances would be a waste of time and could result in an award of costs against the party who opposed the adjournment.

You should also be aware that the Judge may adjourn your review even where the parties wish to proceed. Applications on the Justices Chambers list (including appeals from the decision of a Review Officer) are expected to take no longer than 20 minutes. If it becomes apparent to the Judge that your appeal will likely exceed this time limit, then

the Judge may, and probably would, adjourn the appeal to be heard as a “special chambers application”. Special chambers applications are half-day hearings that normally commence at 2:00 p.m. Dates for them are not readily available, so an appeal that is adjourned to be heard in special chambers is unlikely to be heard less than 4 months from the date of the adjournment. In addition to this, written briefs would be required unless dispensed with by the Judge. In the event that your appeal is adjourned to be heard as a special chambers application, you may ask the Judge if she or he would be willing to dispense with the requirement for written briefs.

### Courtroom procedures and etiquette

You and the lawyer should be in the courtroom at least 5 minutes before the time shown on your Notice of Appeal. When the Judge is ready to hear your appeal, the Judge or the courtroom clerk will announce it by naming the parties (e.g., “McDonald and Dulope Jones LLP”). At this point, you and the lawyer should move from the audience to the counsel tables in front of the Judge. It does not matter which of the two counsel tables you move to. Once you get there remain standing and when it looks like the Judge is ready for you to speak, begin your presentation.

You should remain standing while you are presenting your appeal and you should sit when it is the lawyer’s turn to speak. You should not interrupt the lawyer or the Judge while either is speaking. If the Judge asks you a question during the lawyer’s presentation, you should stand to answer it and sit, again, when you have finished giving your answer.

After the lawyer has finished her or his presentation the Judge may give you an opportunity to respond. Here again, you should stand to speak and sit when you have finished speaking.

The Judge should be addressed as “My Lord”, “My Lady”, “Sir” or “Ma’am”, depending on the Judge’s gender. The lawyer should be addressed as “the Respondent”, “Counsel for the Respondent” where the respondent is a law firm, or by the lawyer’s title and last name (e.g., Mr. Krapko or Ms. Smith). Avoid addressing or referring to the lawyer by the lawyer’s first name.

When both sides have presented their cases, the Judge will make a decision and give his or her reasons for it. While the protocol for this stage of the appeal is somewhat uncertain, most Judges will allow the parties to remain seated, as they will want to take notes of the Judge’s decision and the reasons for it. In most cases the lawyer will know what the presiding Judge prefers and you should therefore follow the lawyer’s lead. If the lawyer stands, then you should also stand. If the lawyer remains seated, then you

should do likewise. If you do this and the lawyer was wrong, then the Judge will ask both of you to stand.

At the conclusion of the appeal, both parties should stand (if not already standing), thank the Judge and return to the audience or leave the courtroom. The lawyer may return to the audience if he or she has another matter or list. Unless you have another matter on the list, you may leave.

Additional information on basic courtroom procedures and etiquette can be found on the Alberta Justice website at: <https://www.alberta.ca/court-procedures.aspx> and at <https://www.alberta.ca/courtoom-etiquette.aspx>.

### Presenting your appeal

All matters on the Judges' chambers list are expected to be dealt with in less than 20 minutes. Thus, you should be prepared to present your appeal in less than 10 minutes, leaving 10 minutes for the lawyer's response and the Judge's decision. Because of this short time limit, you should bring a point-form outline of what you will say. The following general outline is suggested:

- Introduce yourself and the lawyer, if the lawyer is present.
- Tell the Judge that you are appealing the decision of a Review Officer.
- If the lawyer is not present, tell the Judge that you have filed an Affidavit of Service and briefly explain how and when you served your appeal documents. Do not waste time doing this if the lawyer is present.
- List or describe the grounds for your appeal.

EXAMPLE: Ma'am [or Sir], I have 2 grounds of appeal. First, the Review Officer incorrectly interpreted the retainer agreement that I signed and he had no jurisdiction to interpret it. Second, the Review Officer failed to consider an important document that, if considered, would have affected his decision.

- Briefly explain each ground, referring to your appeal materials where doing so would be of assistance to the Judge.

EXAMPLE: Ma'am [or Sir], a copy of the retainer agreement should be in the court file but I brought an extra copy if you need it. Paragraph 6 on page 2 says "I [referring to the lawyer who signed it, Mr. Talcom] will do all of the legal work on your file at my hourly rate of \$350." If you look page 6 of the time records provided by the lawyer [they are at TAB 5 of my



appeal binder] you will see that a more senior lawyer at the firm, Ms. Whitman, did a lot of the work on my file at an hourly rate of \$500. The total charged for her work was \$8,000. If Mr. Talcom had done the work it would have cost only \$5,600... so I was overcharged \$2,400. When I raised this with the Review Officer he said that paragraph 6 does not mean that Mr. Talcom would be the only lawyer who would do any work on the file. The Review Officer's statement and other comments made by him on this issue can be found on page 16 of the transcript, at TAB 4 of my binder. I submit that the Review Officer's interpretation of paragraph 6 is wrong. Also, it is my understanding that a Review Officer does not have jurisdiction to interpret a retainer agreement. Pursuant to Rule 10.18(1) he must refer this issue to the Court for its determination.

My next ground of appeal concerns a letter dated June 2, 2017.... [continue with brief explanation].

- Briefly summarize your arguments and tell the Judge what you asking the Court to do.

EXAMPLE: To summarize my arguments on the first ground, the Review Officer should not have interpreted paragraph 6 of the retainer agreement and his interpretation was wrong. Because of this the Review Officer allowed \$2,400 more, in fees, than he should have allowed and I am asking the Court to reduce the law firm's fees by this amount.

On the second ground, the Review Officer failed to consider a letter in which Mr. Talcom advised me that he would not charge me for his court appearance on May 15, 2017. I showed the letter to the Review Officer and he looked at it and put it aside. After that he never mentioned it or explained why he did not consider it. I was charged \$1,500 for the May 15 court appearance and I am asking the Court to further reduce the law firm's fees by that amount.

- When you have finished, let the Judge know that you have finished.

EXAMPLE: Unless you have any questions, Ma'am [or Sir], I have nothing further to add.

If you have read this publication's section on courtroom procedures and etiquette, then you will know that you should stand when you are speaking to the Judge or when the Judge is speaking to you. When you have finished presenting your appeal and the Judge has no questions for you, it is the lawyer's turn to respond. Thus, you should sit when you have finished your presentation. Courtroom etiquette requires that you sit whenever the opposing party is speaking or the Judge is speaking to the opposing party.

When the lawyer has finished presenting her or his arguments, the Judge may give you a chance to briefly respond or answer any questions that the Judge might have. After this the Judge will usually provide a verbal decision on your appeal and the reasons for it. However, the Judge could "reserve" and provide her or his decision at a later date. This is typically done when the Judge believes that a written decision is called for - but it might also be done where there is insufficient time for the Judge's verbal reasons. In the latter case the Judge will usually set a date and time for the provision her or his decision and the reasons for it.

### Recording the Judge's Decision

Be prepared to take notes of the Judge's decision and the reasons for it. The decision will have to be formalized by a written order that must be filed in the clerk's office within 3 months after the Judge has given her or his decision. If you lose the appeal, then the lawyer will likely prepare the order. If you win, then the lawyer will probably want you to prepare it. In either case, your notes should help you to ensure that the written order is accurate. Although the order will not contain the Judge's reasons for decision, an accurate recording of them could, in some cases, help the parties understand what was ordered.

There are specific procedures for the preparation and filing of orders. This publication does not deal with them. Information on, and assistance with, these procedures may be obtained from a Court Administration and Resolution Services (CARA) centre. Contact information for CARA centres can be found at: <https://www.alberta.ca/rcas.aspx#toc-0>.

## Conclusion

This publication was designed to provide general information on appeals from a Review Officer's decision, more specific information on the grounds for them, and detailed guidance on the procedures required to prepare, file and serve all required documents for the appeal. In addition, the publication provides useful information on adjournments, courtroom procedures and etiquette, and the presentation of an appeal.

If you have read only portions of the publication, you may have missed crucial information that could affect the hearing of your appeal. This may include, but is not limited to, information on the deadline for an appeal and information on the need for legal representation where the client-appellant is a corporation owned or controlled by you. Because issues such as these could result in a dismissal of your appeal, we recommend that you read the entire publication.

Information that is not covered in the publication should be obtained from other sources. Our Review Offices do not provide additional information on appeals. You should be able to get additional information from a CARA centre. Contact information for Alberta's CARA centres is provided in the paragraph immediately preceding these concluding remarks.

## Appendix "A"

### Alberta Rules of Court

#### Rule 10.26

#### Appeal from Review Officer's Decision

- 10.26(1)** A party to a review officer's decision under this Division may appeal the decision to a judge.
- (2)** The appeal from a review officer's decision is an appeal on the record of proceedings before the review officer.
- (3)** The record of proceedings is
- (a) Form 42 served under rule 10.13(2),
  - (b) the material the parties filed to support or oppose, or that was required for, the review,
  - (c) the transcript of the proceedings before the review officer, unless the judge waives this requirement, and
  - (d) the review officer's certificate.
- (4)** The appellant must file and serve on the respondent to the appeal, within one month after the date of the review officer's decision,
- (a) notice of the appeal in Form 43 including the date, time and place of the hearing,
  - (b) the record of proceedings described in subrule (3) or, if the transcript is not available at the time of filing, confirmation that the transcript of the proceedings has been ordered, and
  - (c) any further written argument.
- (5)** The respondent to the appeal must, within 10 days after service of the notice of appeal, file and serve on the appellant any written argument the respondent wishes to make.

Appendix "B"  
Sample Notice of Appeal

**Form 43**  
[Rule 10.26]

COURT FILE NUMBER	1703 11847
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	Edmonton
APPELLANTS	WINNIFRED POPOWICH and JOHN POPOWICH
RESPONDENT	SIMONS PEABODY LLP

Clerk's Stamp
---------------

DOCUMENT	<b>NOTICE OF APPEAL OF REVIEW OFFICER'S DECISION</b>
----------	--

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	19 Saddle Rock Road Edmonton, AB T52 6W7 780-933-4226 wpopo@hotmail.com
--	--

**NOTICE TO RESPONDENT(S): APPEAL HEARING**

This appeal is made against the Review Officer's decision that was in your favour. You are a respondent.

The appeal will be heard as shown below:
--

<b>Date:</b> December 8, 2020
-------------------------------

<b>Time:</b> 10:00 a.m.
-------------------------

<b>Where:</b> The Law Court, Edmonton
---------------------------------------

<b>Before Whom:</b> <b>A Justice of the Court of Queen's Bench of Alberta</b>
---

Go to the end of this document to see what else you can do and when you must do it.

**The record filed and served with this appeal consists of the following:**

1. The request to the Review Officer for the appointment (i.e., the Form 42 Appointment for Review).
2. The **following** materials filed by the parties in support of, opposed to or required for the review:
  - (a) 4 pages of emails exchanged between the Appellant and the Respondent
  - (b) A letter from Fredrick Farkel of Simons Davis and Peabody LLP to the Appellant dated August 3, 2017.
3. Transcript of the proceedings before the Review Officer.
4. The decision of the Review Officer (i.e., the Certificate signed by the Review Officer).

5. Written argument will not be filed in support of this appeal.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the Appellant(s) what is asked for, without you being present to object. You will be bound by any order that the Court makes. If you want to take part in this appeal, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. Within 10 days of the service of this notice of appeal, you must file and serve on the Appellant(s) any written argument you wish to make.

Appendix "C"  
Sample Affidavit of Service

Form 49

Rule 13.19

COURT FILE NUMBER            1713 89667

COURT                            COURT OF QUEEN'S BENCH OF  
ALBERTA

JUDICIAL CENTRE                Calgary

CLIENTS                         CARL RINGOTEL AND MARY-LYNN  
(APPELLANTS)                    RIGOTEL

LAWYER                         JEFFERY J. ABBINGTON Q.C.  
(RESPONDENT)

Clerk's Stamp
---------------

**AFFIDAVIT OF SERVICE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT            233 Massive Heights Blvd.  
Calgary, AB T3P 2P8  
403-994-2487  
Cringotel@google.ca

**Affidavit of** Carl Ringotel, sworn/affirmed on \_\_\_\_\_, 2017.

I, Carl Ringtel, of the City of Calgary, Alberta, MAKE OATH / AFFIRM AND SAY THAT:

1. I have personal knowledge of the facts stated in this affidavit.
2. On August 2, 2017, I served, on the Respondent, a package of documents for an appeal from the decision of the Review Officer shown in the Certificate of Review that was filed in this court file. The original of this package was also filed and consists of a Form 43, Notice of Appeal, a copy of which is attached as Exhibit "A" to this affidavit, plus copies of the following documents that were included in a binder with the Notice of Appeal:

The Form 42, *Appointment for Review of Retainer Agreement/Lawyer's Charges*, that began the review process,

The accounts that were reviewed by the Review Officer,

The Review Officer's Certificate of Review,

- The transcript of the proceedings before the Review Officer,
- Documents that were provided to the Review Officer for the Review,
- Written arguments for the appeal.

3. I served the documents by:

- Recorded mail, and attached as Exhibit "B" to this affidavit is a copy of a Canada Post receipt showing that the mail was received.
- Using a delivery service, and attached as Exhibit "\_\_\_\_" to this affidavit is a copy of an invoice [or receipt] showing that the delivery was made.
- Personally delivering the documents to the office of the Respondent(s) and leaving them with \_\_\_\_\_ at that office.

**SWORN (or AFFIRMED) BEFORE ME** this  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at  
\_\_\_\_\_, Alberta.

\_\_\_\_\_  
Carl Ringtel

\_\_\_\_\_  
A Commissioner of Oaths in and for the  
Province of Alberta  
Name:  
Expiry Date: