

**Form 19: Application for an Appointment of Counsel**

The purpose of this form is to apply for representation by a lawyer (counsel) in cases where you cannot afford legal representation and you cannot have a fair hearing without a lawyer. Appointments of counsel in civil matters are very limited. You should be able to identify which legal rule you are relying on in support of your application. In limited circumstances, appointments of lawyers in civil cases are authorized by the Constitution of Canada.

On the form fill out the following:

The heading: Use the same heading as is used in the Notice of Appeal. (See guideline 1.)

The style of cause: Use the same style of cause as is used in the Notice of Appeal. (See guideline 1.)

The legal basis for the application: You should identify the legal rule on which your application is based. For example, if you are basing your application on the *Canadian Charter of Rights and Freedoms*, you should say so and why. When applying, you may want to review the following Supreme Court of Canada cases, which are available online:

*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46  
*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31

What the Court will consider: Rule 40 provides that in deciding your application the Court will consider facts (which should be sworn to in the attached affidavit) such as:

- (a) the complexity of the legal issues in the appeal,
- (b) the potential effect of the appeal on the development of the law,
- (c) your ability to provide written and oral submissions
- (d) the availability of legal aid or similar services,
- (e) whether you have sought the assistance of a lawyer, with or without compensation,
- (f) financial hardship that you would suffer if required to pay for a lawyer.

In providing information in the attached affidavit you should aim to present the Court with a complete picture of your ability to carry on the appeal without representation.

Date and sign the form. Attach the supporting affidavit.

When your application will be heard: When you are filing the application the Court registry will fill out the bottom portion of the form, which states the date and time when the application will be heard.

### The Affidavit

The purpose of the affidavit is to provide the Court with the facts in support of your application.

Note: the affidavit is sworn evidence equivalent to giving testimony in Court. By signing the affidavit and swearing or affirming that the contents of the affidavit and any attached exhibits are true you are giving testimony. You may be cross-examined by the other party on the content of the affidavit. It is an offence to knowingly give false information.

In the body of the affidavit set out the facts which support your application. Number the paragraphs. Each paragraph should address one fact.

You may adopt and expand upon any of the statements provided in the form. Do not adopt statements which do not apply to you.

Under point #1, “At the appeal I will be arguing the following points”, give an overview of what the appeal is about. Discuss the following in relation to your case:

- (a) the complexity of the legal issues in your appeal,
- (b) the potential effect of the appeal on the development of the law,
- (c) your ability to provide written and oral submissions (your familiarity with the Court’s process and education are relevant)
- (d) the availability of legal aid or similar services,
- (e) whether you have sought the assistance of a lawyer, with or without compensation,
- (f) financial hardship that you would suffer if required to pay for a lawyer.

Exhibits: You may also have documents that are relevant to your application. You should describe each document in a paragraph in your affidavit and give it an exhibit number. For example:

Attached as Exhibit A to this affidavit is a copy of a letter to me from ... dated ...

A copy of the document should be attached and labelled as Exhibit A. All exhibits must already be attached to the affidavit at the time it is sworn.

You must swear or affirm the affidavit in front of a Commissioner authorized to take affidavits. **Do not sign the affidavit until a Commissioner can observe you.** This person may be a lawyer, a notary public or other Commissioner. A court clerk who performs a registry function at the Court of Appeal is an authorized Commissioner.

Filing and serving the application: See rules 30 (time limits) and 28 (how to file and deliver a document).

As well, you will probably have to serve the Attorney General. A notice of at least 15 days before the application is set to be heard will be required unless the Court directs otherwise.

A Respondent may file materials in response to the application. Generally, these must be filed 2 days before the application is to be heard (rule 30(2)).