

**Form 2: Application to the Court with Supporting Affidavit**

The purpose of this form is to provide a template for making an application to the Court. Applications are generally used for procedural issues or issues related to, but not part of, the appeal itself. Some examples of common applications are listed in rules 32-45.

Note: Application for Leave to Appeal

Leave to appeal is only required in limited circumstances (certain statutes and rules 33, 34, 42(4)). You must specify which statute or Rule requires you to obtain leave to appeal. Some of the statutes are:

The *Public Utilities Act*, RSNL 1990, c. P-47, s. 99(1)

The *Class Actions Act*, SNL 2001, c. C- 18.1, s. 36(2) and (3)

The *Family Law Act*, RSNL 1990, c. F-2, s. 59(2), if you are appealing an order made under that Act which has previously been appealed to the Supreme Court of Newfoundland and Labrador.

In most cases, an affidavit is not required in support of an application for leave to appeal.

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 Appellant applies for”: specify what you are asking for in the application. If the application is required (1) by statute, specify the relevant provision, or (2) by the *Rules*, give the number of the rule.

Subject matter of the application: Briefly state what the application is about by giving a concise statement of the relevant facts and the issues to be decided by the Court. You will also need to attach an affidavit (sworn or affirmed) in support of your application setting out the relevant facts (see below).

Date and sign the form.

Attach the supporting 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 that support your application. Number the paragraphs. Each paragraph should address one fact.

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.

Legal authorities: Along with your application you may choose to submit legal authorities that you want to bring to the Court's attention.

Note: Different filing requirements apply to applications for leave to appeal (see rule 33).

When the application will be heard: When you file the application, the Court registry will fill out the bottom portion of the form, which indicates the date and time when the application will be heard.

Filing and serving the application: See rules 30 (time limits) and 28 (how to file and deliver a document). Make sure you file and serve the materials at least 4 days before the application will be heard to give the other parties notice. Please review rule 30 carefully as different timelines may apply if materials in support of the application cannot practically be filed with the application. Different timelines also apply to applications for leave to appeal (see rule 33).

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)).