



Appeals by Jodi Wyman

With virtually any court case, after the trial is finished and the Judge makes a decision one party is unhappy. They do however have the opportunity to challenge the Judge's decision by appealing.

In Manitoba the majority of litigation cases, such as family law or serious criminal matters or civil cases like personal injury or breach of contract, are heard by the Court of Queen's Bench. Appeals of decisions from Queen's Bench Judges are heard by the Manitoba Court of Appeal in Winnipeg. There is no special permission or threshold test required to take an appeal to the Court of Appeal.

Many clients struggle to understand how an appeal works. It is not a re-hearing of the case. The Court of Appeal does not hear any witnesses or listen to the evidence over again. They will rarely hear new information. The Judges, normally panels of three, review the lower Court Judge's decision and decide whether he or she made an error.

There is sometimes a sports analogy used to explain the difference. An appeal it is not a rematch. It is when the game officials review the videotape to see whether the ref made a bad call.

The Trial Judge is asked to make findings of fact and credibility about witnesses. Judges are allowed to make minor mistakes in understanding the evidence. The standard is not perfection. The Court of Appeal is supposed to only interfere if there was a clear error that affected the outcome of the case. The Court of Appeal may disagree with the Trial Judge's decision and they may feel they would have reached a different decision. But to overturn the decision, they have to find that no reasonable Judge would have made that decision.

If the Court of Appeal can understand how the Judge may have reached their decision, even if they disagree with it, it will not be overturned.

It is easier to appeal a case when the Judge made an error

in understanding the law. If so, the Judges at the appeal level can just disagree with the Trial Judge. It is a much stricter test of correctness.

If the Court of Appeal finds that the Trial Judge made errors, they can either substitute their own decision, or can send the matter back for a new trial. Those decisions are reviewed closely by the legal community, as principles of law that the Court of Appeal set out in their decisions have to be followed by lower courts in Manitoba.

The Court of Appeal is the highest court in Manitoba. To appeal a case further, the party has to go to the Supreme Court of Canada in Ottawa. With some exceptions, to go to the Supreme Court the appellant has to ask for permission, called "leave to appeal". The Supreme Court Judges review all the requests for leave that are submitted across Canada to see what cases may have "national importance". They decide what cases they want to hear each year. Often they are looking for an area of Canadian law that

should be updated or changed, or a law that needs to be struck down as unconstitutional, and then reviewed by the government.

In their appeals, the Supreme Court is also looking for clear errors in what the Trial Judge and/or Court of Appeal decided. They do not re-hear the case.

Considering the number of cases from all across Canada, obviously only a small percentage go to the Supreme Court of Canada. But, those cases are the ones that can dramatically change Canadian law.