

Applications to Restore a Struck Appeal Frequently Asked Questions

1. Why did my appeal get struck?

An appeal will be struck if the deadline to file the appeal record or the appellant's factum is missed. There may be other reasons that an appeal will be struck.

2. Is there a deadline to restore an appeal?

Yes. You must act as quickly as is reasonably possible, but in any event, a civil standard appeal or a criminal appeal must be restored within 6 months from the date that it was struck. A civil fast track appeal must be restored within 3 months from the date that it was struck. Do not wait until the last minute.

3. What happens if I miss the deadline to restore an appeal?

If you miss the deadline to restore an appeal, the appeal will be deemed to have been abandoned. Once an appeal is deemed to have been abandoned, you can still apply to restore it, but additional considerations and a more onerous test will apply.

4. If I file my application within the 3/6 month deadline, will that stop the appeal from being deemed abandoned?

No. It is not sufficient if you just file the application. The application must also be heard and granted before the 3/6 month deadline expires. Applications to restore an appeal must provide at least 10 days notice. That means that you will need to file your application as soon as possible and at least 2-3 weeks before the 3/6 month deadline and preferably, much sooner. Do not wait until the last minute.

5. What documents are required to file an application to restore an appeal?

An application to restore an appeal requires:

- (a) an application in [Form AP-3](#) (civil) or [Form CRA-F](#) (criminal),
- (b) a memorandum of argument (maximum 5 pages),
- (c) an affidavit in support of the application is optional but is usually necessary to explain, for example, the delay which caused the appeal to be struck.

Authorities are optional. The Court will keep 3 copies of all documents. This does not include the copies that you will require for yourself and for service.

6. Is there a cost to file an application to restore an appeal?

For all civil appeals, the cost to file an application to restore an appeal is:

- (a) \$200 for a first restoration;
- (b) \$500 for a second restoration;
- (c) \$1000 for a third and subsequent restoration.

Filing fee waivers do not apply to restoration fees.

For all criminal appeals, there is no cost to file an application to restore an appeal.

7. What if the respondent will consent to the appeal being restored? Does that change the process?

Yes. If the respondent will consent to the appeal being restored, you do not need to file an application. Instead, you can submit a letter to the case management officer enclosing the respondent's consent. The letter must include an explanation for why the original deadline was missed and a suggested deadline for the filing of any outstanding materials. The applicable restoration fee is still payable, and confirmation that the fee has been paid should be included in the letter that is sent to the Case Management Officer.

8. What is the test to restore an appeal?

The factors that the Court will consider in determining whether to restore an appeal include:

- (a) the reason given for the failure to comply with a deadline or other direction that led to the appeal being struck,
- (b) whether the appellant applied promptly to restore the appeal, and if not, the reason for the delay
- (c) whether the appellant has shown a lack of intention to proceed with the appeal,
- (d) whether the delay will unduly prejudice the respondent, and
- (e) the merits of the appeal.

If the appeal has been deemed abandoned, additional considerations and a more onerous test will apply.

The memorandums of argument filed by the parties should address these factors.

9. What is the deadline for a response to an application to restore an appeal?

A memorandum of argument in response to an application to restore an appeal (or a letter indicating that no response will be filed) must be filed and served at least 5 days before the scheduled hearing of the application (rule 14.41).