

NOVA SCOTIA COURT OF APPEAL

How to complete the forms for a stay motion.

This guide provides general information only. It may not tell you all you need to know. It does not explain the law. You should speak to a lawyer for legal advice about your situation.

The filing of a Notice of Appeal shall NOT operate as a stay of execution or enforcement of the judgment appealed from (*Civil Procedure Rule 90.41(1)*).

You may request a stay pending the hearing of your appeal before the Nova Scotia Court of Appeal.

Attached to this guide are the following documents:

- Notice of Motion
- Supporting Affidavit

What you must do in advance of making your motion:

- You must have filed a Notice of Appeal with the Nova Scotia Court of Appeal.

What is the basis for your motion?

At the very least you must set out the following information in your Affidavit in support of your motion for a stay of the lower court decision from which you are appealing:

- Why you believe your appeal has merit;
- Why you believe the lower court decision should be stayed until the hearing of the appeal before the Court of Appeal;
- What harm would be caused to you as the Appellant if the lower court decision is not stayed and in reverse what harm would be caused to the Respondent if the stay was granted by the Court of Appeal;
- in general, you must show why you will suffer harm that cannot be compensated for by money if the stay is refused by the Court of Appeal.

Steps

Follow these steps to file your motion for a stay of the lower court decision:

1. Read the attached forms and this information sheet and try to understand how to make the motion for a stay.
2. Complete and file with the court the Notice of Motion. The Notice of Motion is a fill in the blank form. It must also be served on the other parties.

Your motion will be heard in Court of Appeal Chambers which is held on Thursdays at 10:00 a.m. You must attend this court hearing. You must choose the Thursday you wish to have your application heard that allows 4 days calculated in accordance with **Civil Procedure Rule 94**. This means you do not count the day the motion is filed, nor the day it is heard - you count four days in between excluding Saturday, Sunday, and any other day the Prothonotary's office is closed. For example, your motion and supporting affidavit would have to be filed with the Registrar of the Court of Appeal and received by the other parties to the application no later than 4:30 p.m. on a Thursday for the following Thursday. In this example the 4 clear days are the Friday, Monday, Tuesday and Wednesday.

3. Complete and file with the court your supporting Affidavit at the same time as you file your Notice of Motion. The Affidavit must also be served on the other parties with the Notice of Motion. The attached Affidavit form is **NOT** a fill in the blank form. You must use your own sheet of paper and style it in the format provided. You must attach as exhibits to your Affidavit any documents to which you refer in the Affidavit.

Your Affidavit must be sworn before a Commissioner of Oaths or a lawyer. You must provide as much detail as possible in the Affidavit and include the information requested in the above section entitled: *What is the basis for your application?*

4. You must also, at the same time as you request a stay, make a motion to have the appeal set down for hearing.