

**Practice Memorandum No. 1**

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**Hours of Sittings**

1. Regular Sittings

(a) 9:30 a.m. - 4:30 p.m. each day, with a noon time recess.

(b) These hours of sittings are subject to variation by the presiding judge according to the requirements of the particular case.

2. Summer Sittings

Any trial scheduled in the Supreme Court during July and August, will maintain the same hours as above.

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**Practice Memorandum No. 2**

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**Supreme Court****I. Chambers in Cape Breton District**

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|----|-----------|--|
| A. | Sydney    | Every Monday (For 1997: March 4, May 20, September 2, and October 14)            |
| B. | Arichat   | First Thursday each month (For 1997: January, and October - the second Thursday) |
| C. | Port Hood | First Friday each month (For 1997: January, May and October - the second Friday) |
| D. | Baddeck   | First Tuesday each month   |

Please check local prothonotaries for summer chambers dates and times.

**II Chambers in Central District**

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|----|-------------|---|
| A. | Antigonish  | Second Tuesday of every month (For 1997: November - the third Tuesday)  |
| B. | Guysborough | Second Wednesday of every month (For 1997: October - the fifth Wednesday)   |
| C. | Pictou      | Second and fourth Thursday of every month (For 1997: January, May and October - the third and fifth Thursday; December, second Thursday only) |
| D. | Amherst     | First and third Thursday of every month (For 1997: January, May and October - the second and fourth Thursday)                                 |
| E. | Truro       | First and third Tuesday of every month  |

Please check local prothonotaries for summer chambers dates and times.

**III Chambers in Southwestern District**

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|----|-------------|---|
| A. | Kentville   | First, third and fourth Tuesday of every month  |
| B. | Windsor     | First, third and fourth Wednesday of every month (For 1997: January, May and October second, fourth and fifth Wednesday)                  |
| C. | Shelburne   | First and third Thursday of every month (For 1997: January, May and October - second and fourth Thursday)                                 |
| D. | Annapolis   | Second and fourth Tuesday of every month (For 1997: November, second Monday)  |
| E. | Digby       | Second and fourth Wednesday of every month (For 1997: January and October - third and fifth Wednesday)                                    |
| F. | Yarmouth    | Second and fourth Thursday of every month (For 1997: January, May and October - third and fifth Thursday; December, second Thursday only) |
| G. | Liverpool   | Fourth Wednesday of every month   |
| H. | Bridgewater | Second and fourth Thursday of every month (For 1997: May - third and fifth Thursday; December - second Thursday only)                     |

Please check local prothonotaries for summer chambers dates and times

**IV. Chambers at Halifax District**

Note: Two Chambers Judges sit in Halifax: one deals with family/criminal matters; the second deals with all other civil chambers applications and is referred to as the General Chambers Judge.

- A. Hours of Sittings
1. Family Law Chambers
- (a) Day after Labour Day - June 30
    - (i) uncontested applications only on Monday and Friday at 9:30
    - (ii) uncontested and contested applications on Tuesday, Wednesday and Thursday at 9:30 a.m. (N.B. B. 4 - special time chambers)
    - (iii) undefended divorces on Friday at 9:30 a.m.
  - (b) July 1 - Labour Day - Two judges will preside over a combined family, general and criminal chambers with uncontested, contested and special time chambers Tuesday, Wednesday and Thursday of each week.
2. General Chambers
- (a) Day after Labour Day - June 30
    - (i) uncontested applications only on Monday and Friday at 9:30 a.m.
    - (ii) uncontested and contested applications on Tuesday, Wednesday, and Thursday at 9:30 a.m. (N.B. B. 4 - special time chambers)
  - (b) See 1(b) above.
3. Criminal Chambers
- (a) Day after Labour Day - June 30
    - (i) Appeals (F.M.A. or Provincial Court) alternate Mondays at 9:30 a.m., 11:00 a.m. and 2:00 p.m.
    - (ii) Crownside every Thursday at 9:00 a.m. (Sentences at 2:00 p.m. and 3:15 p.m. if required)

Note: When the Thursday is a holiday, Crownside will be held on Wednesday.

- (iv) Sentences from guilty pleas alternate Fridays at 9:30 a.m., 11:00 a.m., 2:00 p.m. and 3:15 p.m.
- (iv) Resolution Conferences alternate Fridays, all day, commencing at 9:30 a.m..

(b) See 1(b) above.

4. All Chambers

Contested applications set for regular 9:30 a.m. chambers must be shorter than one (1) hour in length. Matters which require more than one (1) hour must be scheduled in a special chambers time which may be obtained by calling the Chambers Co-ordinator (424-7963). (See also B. 4 below.)

B. The Following Apply to **All** Chambers Applications

1. Chambers Judge(s)

The Chambers Judge(s) can be reached through the Prothonotary's Office, the Law Courts, Halifax, Nova Scotia, telephone number 424-4900.

2. Urgent Cases

Chambers entries will be accepted up to twenty (20) minutes before the commencement of chambers at 9:30 a.m.

3. Emergency Chambers Applications in Halifax

An emergency application which cannot be accommodated in regular 9:30 chambers (general, criminal and family) will be dealt with as follows:

- (a) The applicant shall deliver or fax (424-0524) to the Prothonotary's Office a letter explaining the nature of the emergency, with accompanying documents wherever possible.
- (b) The Chambers Coordinator will deliver this written communication to the Chambers Judge who will determine the urgency of the matter.

- (c) If a request is deemed to be an emergency, a hearing time will be scheduled.

### 3.1 Emergency Applications in Judicial Districts other than Halifax

A party wishing to make an emergency application which cannot be accommodated in regular chambers will be dealt with as follows:

- (a) The applicant shall deliver or fax a letter to the local Prothonotary's Office explaining the nature of the emergency with accompanying documents whenever possible.
- (b) The Prothonotary shall deliver or fax the written communication to a justice of the court who will determine the urgency of the matter. (If a justice is not available in the district, then the Prothonotary shall forward the written communication by fax to the Prothonotary in Halifax for review by the Chambers Judge in Halifax.)
- (c) If a request is deemed to be an emergency, a hearing time will be scheduled.

### 4. Special Time Chambers

- (a) Counsel wishing to set down a contested application requiring more than one (1) hour should contact the Chambers Coordinator (424-7963) for a special chambers date.
- (b) **General** special time chambers are held at 11:00 a.m. and 2:00 p.m. on Tuesday, Wednesday and Thursday of each week.
- (c) **Family** special time chambers are held at 11:00 a.m. and 2:00 p.m. on Tuesday and Wednesday only.
- (d) If an application requires four (4) hours, it will be scheduled for 11:00 a.m. and be heard from 11:00 a.m. to 12:30 p.m., and 2:00 p.m. to 4:30 p.m.
- (e) If an application requires more than four (4) hours, it will be set down for hearing on the regular weekly list schedule.

(f) The types of applications requiring special time chambers include:

- certiorari,
- declarations,
- prohibitions,
- mandamus,
- bail review,
- review under the **Young Offenders Act**,
- charter applications,
- habeas corpus,
- injunctions,
- review of arbitrators' awards,
- expropriations,
- applications relating to:
  - Utility and Review Board;
  - Labour Relations Board;
  - Liquor License Board
  - Boards and tribunals in general;
  - Actions of municipal governments and their agents and agencies;
- applications to determine priorities between and among creditors,
- applications for discharge in bankruptcy.
- etc.

(g) Since dates for contested special chambers have been applied for and provided well in advance, the supreme Court Judges require that at least **four (4)** clear days before the chambers hearing, counsel exchange and deliver to the judge a brief containing a summary of the facts, issues and law.

#### 5. Out of Town Chambers Files to Halifax

Counsel shall request files in sufficient time to allow them to be transferred from prothonotary to prothonotary, as it is inappropriate for members of the bar to personally transport files from out of town chambers into Halifax.

#### 6. Adjournment or Settlement of Chambers Matters

(a) When a chambers application has been settled or the applicant is seeking an adjournment for any reason and where all parties agree, the Chambers Judge must be notified to remove the case from the docket by telephoning the Judge's secretary with a follow-up letter or fax to the Judge and the Prothonotary's Office/ Chambers

Coordinator.

- (b) Sending a fax only to the Prothonotary's Office is not sufficient notice.
- (c) Where all parties have not agreed to an adjournment, counsel must appear in court to make submissions or counsel may attempt to arrange a telephone conference with the Judge to present their request.
- (d) If a matter is adjourned without day, a new notice is required pursuant to C.P.R. 37.05(1) and (2).

#### **VI. Reminders to Counsel**

- A. Since filing of documents as provided in rule 37.08 will be strictly enforced, documents not filed in accordance with the noted deadlines will not be accepted by the Prothonotary's Office and will not be read by the trial judge, and may result in applications being adjourned.
- B. A chambers application document or cover sheet must be attached to any documents being filed for Chambers in Halifax.
- C. "Four (4) clear days" excludes Saturday, Sunday or a holiday which falls between the filing date and the hearing date.
- D. In an emergency, counsel should fax a letter requesting that the filing time be shortened.
- E. All chambers mail should be directed generally to the Prothonotary's Office, identified as a chambers matter.



<b>CHAMBERS APPLICATION DOCUMENT COVER SHEET</b>
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S.H. Number \_\_\_\_\_

Between: \_\_\_\_\_ (applicant)

and \_\_\_\_\_ (respondent)

This is an application for (cite nature of application) \_\_\_\_\_

These documents are being filed on behalf of the: (check one)

" Applications/Petitioner/Appellant " Respondent  
for a Chambers Application set down for: (check one)

" Monday " Tuesday " Wednesday " Thursday " Friday

Date: \_\_\_\_\_ Time: \_\_\_\_\_ a.m./p.m. (circle one)

This application is:

Choose (/) one:	Choose (/) one:
" Contested (under one hour)	" for General Chambers
" Contested (over one hour)	" for Family Chambers
" Uncontested Inter partes	" for Criminal Chambers
" Ex parte	" for the Prothonotary

These documents are filed by:

Name: \_\_\_\_\_

Law Firm: \_\_\_\_\_

Phone No.: \_\_\_\_\_ \*Year of Admission to the Bar \_\_\_\_\_

Direct Line Phone No.: \_\_\_\_\_

Signature: \_\_\_\_\_

\* Required to put applications in order of the seniority of counsel for each day's chambers  
/ Please ensure that this form is completed in full or documents will be returned. 11/94

**Practice Memorandum No. 3**

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**Robing**

All justices, barristers and court staff will gown for all occasions except while attending chambers dealing only with civil matters and while attending Crownside if the matter involves setting a case down for trial, or to enter plea for judge alone trials. [Amend. 5/10/96]

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**Practice Memorandum No. 4**

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**Substituted Service**

1. The discretion of the court will be exercised when it is satisfied on affidavit that:
  - (a) **all** reasonable efforts in the circumstances have been made to effect personal service: and
  - (b) an alternate method of substituted service is proposed that will likely result in the matter coming to the attention of the party sought to be served.
  
2. The order for substituted service should include:
  - (a) the alternate proposal, i.e., service on relative, etc.;
  - (b) service by ordinary mail, postage pre-paid and where appropriate, registered mail, addressed to the party to be served at the last known address; and
  - (c) in the case of foreclosure proceedings, in addition to the above, service at the address of the mortgaged premises if that address is different from the last known address of the party.
  
3. Counsel are referred to *Investors Group Co. v. Ulan (1991), 105 N.S.R. (2d) 161.*

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**Practice Memorandum No. 5**

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**Alternate Dispute Resolution Procedures**

1. The Judges of the Supreme Court wish to encourage greater use of alternative dispute resolution techniques with the objectives of reducing litigation costs and courtroom litigation time.
2. Judges will be available for a limited number of days each month in Halifax for either settlement conferences or mini-trials. In the districts, these settlement techniques can be arranged through the resident judge on an “as required” basis if time is available on the docket.
3. To encourage participation in these settlement techniques, and to avoid the parties being concerned that they might be prejudiced by a settlement conference or a mini-trial if the case goes to trial, the judge involved will not be the trial judge and will not communicate to the trial judge anything disclosed during the settlement procedure. There will be no record in the file of the alternate dispute resolution procedure or result other than matters dealing strictly with case management.
4. When a Notice of Trial is received indicating the trial will be five (5) days or more in length, the coordinators’ office will set a date for a settlement conference several weeks in advance of the date set for trial and will also send a letter to counsel informing them of the date of the conference, the memorandum requirements, and other information on the settlement process. **If any counsel so informed feels his or her case is not suitable for a settlement conference, he or she must advise the coordinator’s office.**
5. If all counsel on any case wish to arrange a settlement conference or a mini-trial, they shall advise the coordinators’ office who will arrange such a conference, subject to available judges.
6. **All parties must agree to participate in the settlement process before it can proceed.**
7. To allow the judge time to prepare for the settlement conference or mini-trial, each counsel will file a memorandum one (1) week prior to the settlement conference or mini-trial. This memorandum should include the following:
  - (a) a concise statement of the relief sought;
  - (b) a brief outline of the facts;

- (c) a statement of the issues;
- (d) each party's position with respect to these issues;
- (e) the law on which each party relies; and
- (f) any other information which counsel feels will assist the judge.

Counsel should submit with the memorandum:

- (a) extracts of relevant discovery transcripts;
  - (b) photocopies of the more important cases and authorities relied upon in the memorandum; and
  - (c) expert reports; if any.
8. Because discoveries are often extensive, counsel are asked to provide the judge **only** with the portions of the discoveries that he or she feels should be read in preparation for the settlement conference or mini-trial.

### Settlement Conferences

9. A party, or in the case of a corporation, a senior executive or a claims manager, etc., with full authority to settle, may attend a settlement conference, and, in any event, **must** be available to instruct counsel.

### Mini-Trials

10. Mini-trials are normally most valuable in complex and lengthy trials.
11. Mini-trials will be held in a closed courtroom before a judge and will not be recorded.
12. In addition to the memorandum, counsel will prepare and provide to the judge in advance:
- (a) a statement of as many agreed facts as possible; and
  - (b) the discovery questions that each will read in support of his or her case.
13. During the hearing, each counsel will make a statement of the evidence he or she would have adduced, had he or she called the respective witnesses who

have instructed them, and provide a copy of each statement to the judge conducting the mini-trial.

14. All counsel, in turn, will make an oral submission on the evidence and the authorities upon which they rely.
15. It is proposed that the judge give his or her opinion, in an abbreviated form, as soon as possible, if not immediately, after the conclusion of the hearing. The decision is not binding but is to serve as an indication of what a court might conclude. It is hoped that the decision and the knowledge of the respective position of the parties will serve as an encouragement to settle. The parties, **may** agree in writing among themselves to be bound by the decision.
16. A party, or in the case of a corporation, a senior executive, a claims manager, or an employee with full authority to settle, **must** attend throughout the mini-trial.

### **General**

17. Counsel are reminded of their ethical responsibility to factually relate the evidence they expect to advance at the trial without embellishment or withholding that which may not be of assistance to their client's case. The purpose of the settlement conference and mini-trial is to effect an early, inexpensive, and confidential settlement. This object can be frustrated unless there is a full and frank disclosure of the merits and weaknesses of the respective cases. These are settlement tools, not adversarial proceedings.

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**Practice Memorandum No. 6**

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**Execution Orders, Civil Procedure Rule 53.02 Form 53.02A**

Pursuant to Civil Procedure Rule 53.02, unless otherwise ordered by the Court, Execution Orders are to be in Form 53.02A. Before an Execution Order will be granted, the date of the judgment shall be inserted on Page 1 of the Order, together with the following amounts:

1. (a) **Judgment debt:** any sum of money or any costs, charges, or expenses, other than Judgment costs, made payable by or under any judgment, decree, rule or order of any court whatsoever in any civil proceeding, and the amount shall be inserted on the line provided;
- (b) **Judgment costs:** the costs granted on the entry of judgment shall be inserted on the line provided;
- (c) **Less any credits:** the total of all credits to be applied against the Judgment debt and Judgment costs shall be inserted on the line provided;
- (d) **Judgment Amount:** the Judgment amount shall be the total of the Judgment debt, Judgment costs, Less any credits and shall be inserted on the line provided;
- (e) **Solicitor's fees and disbursements on registering judgment and notice of Judgment, and on execution:** the Solicitor's fees and disbursements for registering the judgment and the notice of judgment and for obtaining the Execution Order shall be determined in accordance with the **Costs and Fees Act** and the **Personal Property Security Act General Regulations** and inserted on the line provided; [Amend. 29/5/98]
- (f) **Interest to date of Execution Order:** interest calculated to the date of the Execution Order shall be calculated and inserted on the line provided;
- (g) **Total Solicitor's fees and Interest:** the total of the Solicitor's fees and Interest to date of Execution Order shall be inserted on the line provided;
- (h) **Total Claim:** the total of the Judgment Amount and total of Solicitor's fees and Interest to date of Execution Order shall be inserted on the line provided.

- FOR OFFICE USE ONLY** the remaining sections of the form shall not be completed by the person preparing the Execution Order and will be completed, in due course, by court staff;
- (i) **Sheriff's fees:** the sheriff's fees, calculated in accordance with paragraph 2(b) hereunder will be inserted by court staff;
- (j) **Additional Interest:** court staff will calculate interest from the date of the date of the Execution Order to the date of return and/or satisfaction of the Execution Order and insert the amount on the line provided;
- (k) **Less additional credits:** court staff will calculate and insert on the line provided the amount of all payments or, other credits, received;
- (l) **Total Due:** court staff will calculate the amount, if any, remaining due as of the date of return of the Execution Order.
1. (a) The execution creditor, or the solicitor on behalf of the execution creditor, shall, on delivering the Execution Order to the Sheriff or any other person directed to act upon the Execution Order, calculate any interest due to the execution creditor on account of the judgment amount and solicitors' fees, after including allowance for any credits earned after the date of judgment and to which the judgment debtor is entitled to the date of the Execution Order.
- (b) The Sheriff, or any other person directed to act upon the Execution Order, shall calculate Sheriff's fees by reference to Schedule "B" of the **Costs and Fees Act**, R.S.N.S., 1989, c.104, as amended in N.S. Reg. 132/90 for determination of specific Sheriff's fees, to which will be added any applicable taxes.
- (c) The Sheriff, or any other person directed to act upon the Execution Order, shall, on return of the Order, calculate the amount of additional interest to the date of return of the Execution Order.
- (d) In calculating interest, the execution creditor, or their solicitor, and the Sheriff shall calculate simple interest, in accordance with the **Interest on Judgments Act**, R.S.N.S. 1985, c.233 on the principal balance outstanding from time to time, after allowing credits for any payments or any other form of credits to which the judgment debtor is entitled. Upon



receipt of any payment or other form of credit, the execution creditor, or their solicitor, or the Sheriff, as the case may be, shall calculate interest to the date of receipt of such payment or other form of credit. However, in allowing credits for any payments or other form of receipts, the execution creditor or the Sheriff may apply such payments, firstly to interest and secondly, to the principal balance.

- (e) The execution creditor, or the solicitor on behalf of the execution creditor, shall, on resubmitting the Execution Order to a Sheriff or any other person directed to act upon the Execution Order, or on a renewal of the Execution Order, calculate any further interest and any additional credits to the date of re-submission or renewal and the calculation, with the new TOTAL CLAIM, shall be inserted on the face of the Execution Order or on an annexed additional page and the court staff, on return of the Execution Order, shall calculate and insert any further Sheriff Fees, Additional Interest and further credits on the face of the Execution Order on the annexed additional page.

[Amend. 31/1/98]

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**Practice Memorandum No. 7**

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**Prejudgment Interest****1. Judicature Act**

Section 41 of the **Judicature Act**, R.S.N.S. 1985, c. 240, as amended, provides that in any proceeding for the recovery of any debt or damages the court shall include in the sum for which judgment is to be given, interest thereon at such rate as it thinks fit for a certain period. There are other provisions in the section with respect to the rate of interest and related matters.

**2. Evidence to Calculate Rate of Interest**

- (a) Counsel shall strive to agree upon a rate prior to the conclusion of the trial, which rate the court may, but is not bound to accept.
- (b) In the event counsel cannot agree upon a rate prior to the conclusion of the trial, counsel should place before the court evidence upon which the court may arrive at a rate of interest which is proper. Such evidence shall include the prevailing rates of interest for the relevant period of time, which, it is suggested, be in the form of a table prepared and introduced into evidence showing the average rates of interest for one (1) year or two (2) year term deposits or treasury bills. The table shall show the various rates existing during the relevant period and the calculation of the average rate.
- (c) In certain cases (e.g. those involving claims for non-pecuniary losses), counsel should place before the court evidence of the rate of inflation (i.e., the increase in the consumer price index) for the relevant period of time, which, it is suggested, be in a form similar to evidence regarding the prevailing rates of interest.
- (d) Wherever possible, such tables shall be introduced by agreement without the necessity of calling the person or persons who made the calculations.

**3. Rate Where No Evidence**

If counsel do not agree upon a rate and no evidence is presented, the court will set a rate with a view to doing reasonable justice to the parties.

- 4. Counsel are referred to *Bush v. Air Canada* (1992), 109 N.S.R. (2d) 91.

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**Practice Memorandum No. 8**

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**Notice of Objection****Civil Procedure Rule 57.30**

1. Civil Procedure rule 57.30(7) provides that applications to the court to vary or rescind an order for corollary relief or for leave to issue an execution order to enforce such an order may be made by filing the prescribed form with the Family Court. The “Notice of Report of Family Court Judge” (Form 57.30B) which is sent to the parties as provided by rule 57.30(9), contains a provision that, if any party affected wishes to object to the recommendations in the report, a notice of objection should be filed with the prothonotary before the expiration of the twenty (20) day period referred to in the notice.
2. Once a notice of objection has been filed, the following may help to avoid unnecessary delay and unnecessary appearances in court with the associated costs:
  - (a)
    - (i) Typewritten transcripts should not be ordered or provided without consultation with a Judge of the Supreme Court. This consultation may take the form of a pre-trial conference, which can be arranged informally and on short notice. The judge may order that the cost of the transcript be borne by the party requesting it, or be shared between the parties.
    - (ii) Evidence from the Family Court hearing is taped and if any party wishes to obtain cassettes containing a record of all or any part of the evidence, these are available at minor expense by making a request to the Family Court concerned.
  - (b) A notice of objection should set out at length and in sufficient detail the basis for the objection. If there is a dispute as to facts, an affidavit should be filed, setting out the position of the objector. The merits of the objection may be decided by the judge based upon the contents of the notice of objection and so the details provided should be sufficient to support the objection being made.
  - (c) As soon as notice of objection is received by the prothonotary the relevant file will be placed before a Judge of the Supreme Court. If that judge considers that the objection is without merit, either because the lack of merit appears on the face of the notice or the person objecting merely wishes to re-try or re-argue the issues dealt with by the Family Court Judge, the Judge of the Supreme Court may deal with the recommendation of the Family Court Judge without further notice to the

parties. The judge may also choose to meet with counsel to obtain further information regarding the need for a hearing. The judge may request a transcript of the Family Court Judge's decision.

- (d) When the judge decides that there should be a hearing, a notice will be sent by the Prothonotary's Office to the parties, or their solicitors when known, fixing a date and time when the report and recommendation of the Family Court Judge will be considered.
- (e) If a hearing is held, it will proceed on affidavit evidence as a chambers application, unless otherwise ordered by the court.

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**Practice Memorandum No. 9**

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**Change of Name on Divorce**

The **Change of Name Act**, R.S.N.S. 1989, c. 66, sets out the means of change of names in divorce proceedings of petitioners, respondents and children in the lawful custody of either of them.

1. Change of Name - Spouse
  - (a) When the request for change of name is only for a spouse, the affidavit pursuant to Civil Procedure Rules 57.18 and 57.19 could include a request for the person's name to be changed from A.B. to C.D. upon dissolution of the marriage.
  - (b) Where the request is made as set out in (a) above, the Divorce Judgment shall then contain paragraphs as follows:
    - (i) The petitioner's/respondent's name shall be changed from A.B. to C.D.;
    - (ii) Adequate particulars of the petitioner's/respondent's birth;
    - (iii) That unless appealed this judgment is to take effect on the thirty-first (31<sup>st</sup>) day after the date of pronouncement.
2. Children's Names
  - (a) The name of the child may be changed where the parties to the divorce consent to that change or when the court dispenses with consent for one for more of the reasons set out in s. 10 of the **Change of Name Act**. Where consent is available, the procedure recommended for undefended divorces should be followed and the consent filed with the application. The divorce judgment should recite that consent.
  - (b) When a consent of the parties is not available, an application on ten (10) days notice for the change of name of a child in the lawful custody of the applicant may be made separate from the divorce petition or answer. The application may be heard at the same time as the divorce hearing and the notice of application should specify the date of the hearing.
  - (c) The prothonotary will forward to the Director of Registration Services and Deputy Registrar General any order changing a name and a copy of the certificate of marriage which is required to be produced with the petition for divorce.

3. The application for change of name must comply with the provisions of s.7 of the **Change of Name Act**. Forms of applications or for inclusion in divorce pleadings will be available at the prothonotary's offices, if required.

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**Practice Memorandum No. 10**

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**Guardianship Application**

The following procedure applies to chambers applications under the **Incompetent Persons Act**, R.S.N.S. 1989, c 218:

1. Effective immediately this application requires only one (1) Chambers appearance.
2. The applicant shall provide at least 14 days notice of the application to the following:
  - (a) In all cases, the alleged incompetent, his or her spouse and the person or administrator of the institution having charge of the alleged incompetent, and
  - (b) Where the applicant is the spouse of the alleged incompetent to the children of the alleged incompetent;
  - (c) Where the applicant is the child of the alleged incompetent, to the other children of the alleged incompetent;
  - (d) Where the applicant is related to and not a child of the alleged incompetent, to the children of the alleged incompetent, if any, and, if not, to those who stand in the same or closer degree of kindred to the alleged incompetent as does the applicant;
  - (e) Where the applicant is not related to the alleged incompetent, to the children of the alleged incompetent, if any, and, if not, to those of the class in the closest degree of kindred to the alleged incompetent;
  - (f) If unable to determine who is required to be served with notice of the application, the applicant may apply ex-parte to the court for directions.
3. An application for the appointment of guardian shall be supported by the following documentation:
  - (a) Usual affidavit of the applicant;
  - (b) Affidavit of service of notice of the application; <sup>1</sup>
  - (c) Affidavits of two medical practitioners as to the current state of health of the alleged incompetent.

- (d) Draft order appointing guardian, which shall contain provision for:
- (i) the appointment of guardian;
  - (ii) except where the applicant is the Public Trustee, the face amount of the bond to be filed;<sup>2</sup>
  - (iii) the time period in which the guardian is to file an inventory of the assets (including real property) of the alleged incompetent;<sup>3</sup>
  - (iv) the powers and obligations of the guardian.

#### 4. Application to Sell or Mortgage Real Property

A guardian has no power to sell or mortgage real property unless specifically licensed to do so by the court. An application for a license to sell or mortgage real property shall be supported by the following documentation:

- (i) affidavit of the guardian setting out the circumstances which the guardian claims as justification for the sale or mortgage of the real property;<sup>4</sup>
- (ii) proof of value of the real property;<sup>5</sup>
- (iii) affidavit of service of notice of the application on the incompetent and the person or administrator of the institution having charge of the incompetent.<sup>6</sup>  
[Amend. 5/99]

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<sup>1</sup> Copies of all affidavits in support of the application and the draft order appointing the guardian should be served with the notice of hearing. The alleged incompetent and the person or administrator of the institution having charge of the alleged incompetent must be served personally. Other to whom notice is required to be given may be served in a manner provided by C.P.R. 10.12, including service by ordinary mail.

<sup>2</sup> The bond shall be in the face amount of the value of the alleged incompetent's personal property. If the bond filed is not a surety company bond it shall be a personal bond of the guardian, ordinarily with two sureties, accompanied by affidavits of justification, with each surety swearing to a net worth in excess of the face amount of the bond. If the value of the alleged incompetent's estate is unknown at the time of the application the amount and type of the bond should be left blank in the draft order to be determined by the court at the time of the application.

<sup>3</sup> Usually 3 months or such other time period as determined by the court.



- 4 The sale or mortgage of real property must be shown to be in the best interests of the incompetent.
- 5 One appraisal of the real property from a qualified real estate appraiser will usually suffice.
- 6 Notice must be served personally at least (10) days before the application date.

**Practice Memorandum No. 11**

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**Fees of Guardians and Trustees for the Care and Management of Trust and Guardianship Assets**

1. (a) As a rule of general application which will be followed in most cases, the annual remuneration of trustees and guardians is fixed at:
  - (i) five per cent (5%) of the gross income coming into the hands of the trustee or guardian; and
  - (ii) two-fifths ( $2/5$ ) of one per cent (1%) of capital.
- (b) Notwithstanding clause (1), the minimum annual remuneration is one hundred dollars (\$100).
2. (a) A judge has jurisdiction to fix the amount of appropriate compensation in any case without regard to the scale in paragraph 1 or any scale.
- (b) Examples of exceptions to paragraph 1:
  - (i) in a very large estate, the amount awarded may be in excess of the scale; and
  - (ii) in a very small estate, the minimum annual remuneration may be less than one hundred dollars (\$100).
3. Subject to any law or order of the court to the contrary, a trustee or guardian may exercise its discretion in applying any excess of remuneration over the percentage of gross income to be charged in whole or in part against capital or income.
4. Orders used on settlement of infants' claims for personal injuries, etc., shall give effect to the foregoing provisions.

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**Practice Memorandum No. 12**

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**Quieting Titles Act 1989, R.S.N.S., c. 382**

1. Commencement of Proceeding
  - (a) The proceeding is commenced by an Originating Notice (Action) and, unless the court otherwise orders, shall be tried in the county in which the land lies. (Reference: **Land Actions Venue Act**, R.S.N.S. 1989, c. 247) The claim for Certificate of Title may be joined with the claims referred to in s. 3(2) of the Act.
  - (b) Except when the Attorney General is the plaintiff, the Attorney General shall be a defendant but it is not necessary to give the Attorney General notice before commencing the action. All others who are known to have an interest in the lands should be nominated as defendants.
2. Pleadings
  - (a) Section 5 of the Act sets out the contents of the Statement of Claim and includes:
    - (i) a complete description of the land being claimed;
    - (ii) the names and owners and occupiers of lands adjoining the lands being claimed;
    - (iii) indication as to whether the plaintiff or another person is or claims to be in actual or constructive possession of the land;
    - (iv) the name of the person in whose name the land is assessed for local rates or taxes and a statement of the acreage upon which the assessment is based, if available; [Amend. 16/12/96]
    - (v) all property rights the plaintiff admits to exist other than the right that he or she claims, and all claims to property rights he or she knows but does not admit.
  - (b) The Statement of Claim shall be accompanied by:
    - (i) a complete abstract of title to the relevant lands, the form of which should conform with the directions in *Ratto et al. v. Rainbow Realty Ltd.* (1984), 68 N.S.R. (2d) 44. The abstract should bear the certificate of a solicitor of the Supreme Court of Nova Scotia or of the Registrar of Deeds for the registration district in which the land lies. It shall be

an abstract of all the records in the registry that affect or may affect the title to land;

- (ii) a plan of the land which conforms to the requirements of the **Registry Act**;
  - (iii) affidavits which verify every major particular in the Statement of Claim. Like all affidavits filed with the court, the contents should be confined to facts within the knowledge of the affiant or learned from identified sources with a statement of the belief of the affiant as to the truth of the information. (Reference: *Gordon et al. v. N.S. Teachers' Union* (1983), 59 N.S.R. (2d) 124 (S.C.A.D.) and s. 5(3) of the Act; *The Village Commissioners of Waverley v. The Honourable Greg Kerr* (1993), 123 N.S.F. (2d) 46.)
- (c) Section 7(3) of the Act stipulates that it is unnecessary, unless the court directs otherwise, for a defendant or the Attorney General to file a defence. If a defendant intends to contest a claim, the defendant should file an affidavit setting out the nature of the interest claimed and the facts in support of that interest.

### 3. Application for Directions

- (a) Section 7(2) requires the plaintiff to give to the Attorney General and all other parties two (2) clear days notice of an application for directions. Notwithstanding, the court would normally require at least four (4) clear days notice be given to the Attorney General, other parties and the court to permit a careful review of all documentation and issues before the hearing.
- (b) The application is commenced by an Originating Notice (Application Inter Partes). A pre-chambers memorandum, which carefully sets out the title problems, the facts and issues and any relevant law should be filed and served with the Originating Notice (Application Inter Partes). The memorandum should set out the basis of the plaintiff's claim, a list of land abutters and other persons with any possible interest in the application.
- (c) The solicitor retained by the Attorney General should carefully review the documents and attend at the hearing to confirm to the court that the requirements of the Act have been met and the order for directions provides for notice on all who are entitled to notice. Because of the complexity of some applications and time limitations of a Chambers Judge, substantial reliance must be placed on representations of all counsel.
- (d) An affidavit of the plaintiff's solicitor should be filed and served which sets out:

- (i) that the Originating Notice (Action) and the Originating Notice (Application Inter Partes) have been served on all defendants, including the Attorney General.
  - (ii) compliance with the Act with respect to the filing and service of all documents;
  - (iii) any steps taken to resolve the title problems, including all searches effected in registries.
- (e) The affidavit should have attached as exhibits copies of the documents referred in ss. 5 and 6 of the Act and copies of the correspondence from the right-of-way claims offices of the Department of Transportation and the Department of Natural Resources indicating the departments have no interest in the proceedings.

#### 4. Order for Directions

- (a) The names and addresses of all persons who are to be joined as defendants and those persons who are to be given notice of the right to intervene shall be set out in the order.
- (b) Generally, any person asserting an active claim to the land should be joined as a defendant and notice of the right to intervene should be given to other persons who appear to have an interest.
- (c) Service on defendants shall be by personal service unless otherwise ordered. All pleadings, affidavits and supporting documentation are to be served on defendants. Only the notice of the right to intervene and the Statement of Claim need be served on potential intervenors.
- (d) The order should require publication of the notice of application for the Certificate of Title in a newspaper once a week for four (4) consecutive weeks in Form 3 appended to the Act.
- (e) The order may contain a direction to the Attorney General or a barrister nominated by the Attorney General as contemplated by s.9(1) of the Act.
- (f) The order may contain such further direction as the court considers appropriate, including directions on matters set out in s. 9(5) of the Act.

#### 5. Application to be Added as a Defendant

Pursuant to s. 10 of the Act, any person who thinks he or she may be affected by the claim for a Certificate of Title may apply to be added as defendant. The

application may be made on the application for directions or at a separate application. Notwithstanding s. 10(2), the applicant shall give four (4) clear days notice to the plaintiff and the court of the application.

6. Certificate of Title Proceedings

- (a) If the plaintiff's claims are contested, the matter shall proceed to trial in accordance with the Civil Procedure rules.
- (b) Whether the application is contested or uncontested, the application should be accompanied by the affidavit of the claimant's solicitor verifying compliance with the order for directions and verifying service of the documents and publications of notices.
- (c) Except where otherwise directed by the court, the form of order shall be in the form attached hereto as Form "A". Reference is made to other forms appended to the Act.

7. Registration

Reference should be made to ss. 15 and 16 with respect to registration of certificates of title with the Registrar of Deeds and reference should be made to s. 20 with respect to registration under **Land Titles Act**, c. 47 of the Acts 1903-4.

8. Forms

The schedule to the Act contains the form for endorsement of claim, statement of claim, notice of right to intervene and certificate of title.

FORM "A"

19

S. \_\_\_ No. \_\_\_\_\_

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

JOHN SMITH

Plaintiff

- and -

THE ATTORNEY GENERAL OF NOVA SCOTIA, representing  
the Crown in the Right of the Province

Defendant

ORDER

BEFORE THE HONOURABLE JUSTICE \_\_\_\_\_

**UPON** the application of the Plaintiff for a Certificate of Title pursuant to Section 11 (4) of the **Quieting Titles Act**, R.S.N.S. 1989, Chapter 352;

**AND UPON HEARING** \_\_\_\_\_, on behalf of the Plaintiff and \_\_\_\_\_, solicitor for the Defendant Attorney General of Nova Scotia, consenting hereto;

**AND UPON READING** the affidavit of \_\_\_\_\_, on file herein, and all of the other affidavits and documents on file herein;

**AND UPON IT APPEARING** that the Plaintiff has complied with all the terms of the Order for Directions dated the \_\_\_\_ day of \_\_\_\_\_, 19\_\_;

**AND UPON IT APPEARING** that no other person has applied to this Honourable Court to be added as a Defendant;

**NOW UPON MOTION:**

**IT IS ORDERED** that a Certificate of Title to the land claimed in this proceeding be issued in favour of the Plaintiff in the form attached to this order as Schedule "A";

**AND IT IS FURTHER ORDERED** that the Defendant Attorney General of Nova Scotia shall be entitled to its costs to be taxed on a solicitor and client basis.

**DATED** at \_\_\_\_\_, Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
**PROTHONOTARY**

Consented to:

\_\_\_\_\_  
Solicitor for the Attorney General of Nova Scotia



# SUPREME COURT OF NOVA SCOTIA

## Practice Memorandum No. 13

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### Foreclosure Procedures

#### I. General

##### 1.1 Authority

Reference is made to the Civil Procedure Rules and, in particular, rule 5.13, 12.04 to 12.09 inclusive and rule 47.08 to 47.18 inclusive. See also the *Judicature Act*, R.S.N.S. 1989, c. 240, s. 42 regarding discontinuance of foreclosure proceedings.

##### 1.2 Purpose

The Judges of the Supreme Court have approved a simplified procedure which can be used in most proceedings for foreclosure.

##### 1.3 Subject

The subject of this Memorandum is the remedy of foreclosure, sale and possession. There are other well established foreclosure remedies, such as sales ordered in the course of a receivership. There are less established foreclosure remedies the Court has occasionally ordered, such as sale by completion of a mortgagor's agreement of purchase and sale. Some of the comments in this Memorandum may provide guidance in respect of other foreclosure remedies.

##### 1.4 Choice of Procedures

Counsel may choose to use either:

(a) The simplified procedure – using only the forms attached to this Practice Memorandum; or

(b) An alternative procedure – using the same forms, deviating as may be considered necessary, and submitting a memorandum explaining and justifying each and every deviation.

## **II. Applications for Foreclosure, Sale and Possession**

### 2.1 Authority

Reference is made to the Civil Procedure Rules 5.13, 12.04 to 12.09 inclusive, 47.08, 47.09, 47.12, 47.13 and 47.14.

### 2.2 The Simplified Procedure

(a) The simplified procedure is expected to be suitable for the majority of applications for foreclosure, sale and possession.

(b) The attached forms are mandatory if the simplified procedure is followed.

(c) The simplified procedure may be used where the only variation or amendment to the forms is the deletion of any reference to “guarantor”. Solicitors may, if appropriate, delete any reference to guarantor or insert “N/A” (not applicable).

### 2.3 The simplified procedure is unlikely to be suitable in applications involving:

(a) collateral mortgages;

(b) complex securities such as debentures;

(c) claims pursuant to guarantees that are not contained in the mortgage itself; and

(d) claims for less than foreclosure, sale and possession.

### 2.4 The Alternative Procedure

(a) The alternative procedure must be used where, apart from the exceptions permitted in the use of the simplified procedure, there is any variation or amendment in the forms.

(By way of example only, in applications for foreclosure, sale and possession, where the mortgage being foreclosed is subject to a prior mortgage, the Order will only be granted where the consent of the holders of all prior mortgages is filed, or the Court, on notice to the holders of the prior mortgages, waives the necessity for such consent. In such a circumstance, the forms applicable to the simplified procedure will have to be varied to incorporate the consent or the application to waive. To the

extent the forms are varied, there must be an accompanying memorandum filed explaining and justifying each deviation.)

(b) When the alternative procedure is used, a memorandum explaining and justifying all deviations from the standard forms must be filed. If a memorandum is not filed, the application will be refused.

(c) Claims for approval of protective disbursements and other charges will require an accompanying memorandum. The supporting documentation for recovery of protective disbursements and other charges, as set out in the Statement of Claim, must also be filed at the time of filing the application. Where the claim includes reimbursement for protective disbursements and other charges, the plaintiff's solicitor shall also disclose for inspection originals or true copies of all invoices or receipts relating to the claim and, upon the finalizing of the application, the plaintiff's solicitor shall retrieve from the file the invoices or receipts disclosed in the application. See section 3.7 for comments on recoverable protective disbursements, which comments apply equally to orders for foreclosure.

## 2.5 Documentation

The documentation required in all actions:

(a) The Originating Notice (Action) and Statement of Claim – may be in the attached form. The Originating Notice (Action) and Statement of Claim must be served and filed on or before the filing of the application for foreclosure. The sum to be inserted in paragraph 5(a) shall be the total outstanding as of the specified date minus the interest claimed in paragraph 4(b). If a mortgagor has made an assignment in bankruptcy, no claim for a deficiency should be made in the Statement of Claim against the bankrupt mortgagor.

(b) Affidavit of Service – must be filed on or before the filing of the application.

(c) Notice of Application – may be in the attached form. The notice must recite the Civil Procedure Rule on which the solicitor is relying in making the application.

(d) Affidavit by or on behalf of the mortgagee – may be in the form attached and may be signed by the mortgagee or by an authorized representative on behalf of the mortgagee. The statement of account attached as an exhibit must commence with the latest of either the date of the mortgage, or the last renewal, or the last assumption of the mortgage. The summary statement of account included with the statement must include all charges and payments contained in the statement of account and shall be unqualified, that is, it shall not contain any reference to “E & OE” or Errors and Omissions Excepted, or like meaning words. The affidavit shall set out the number of months the mortgage is in arrears as of the date of the affidavit and shall

also provide particulars of any payments or other arrangements made since the action was commenced.

(e) Affidavit of Solicitor – may be in the form attached. It must state that the period for filing a defence has expired. The certificate of title may be in the form attached but the certificate and particulars must date back to at least the date of the deed or conveyance to the original mortgagor and the certificate must be dated no more than fourteen days before the interlocutory notice. Where the plaintiff or the plaintiff’s solicitor has knowledge of any mortgage or other encumbrance in priority to the date of the deed or conveyance to the original mortgagor, the particulars shall include full disclosure of such mortgage or other encumbrance and the certificate shall be amended accordingly. If the parcel has been registered pursuant to the *Land Registration Act*, alternate clause 4 in the form attached is to be used. If a mortgagor has made an assignment in bankruptcy, a true copy of the assignment is to be exhibited to the solicitor’s affidavit.

(f) Order for Foreclosure – may be in the form attached. The order must incorporate by reference the standard procedure for sheriff’s sales in the form attached to this Practice Memorandum or with such variations or deviations, together with the accompanying memorandum, as the circumstances may require.

The Order should not provide for recovery of interest on an amount which already includes interest accrued after the date referred to in paragraph 5(a) of the Statement of Claim. Interest from that date to the date of the Order on the sum specified in paragraph 5(a) of the Statement of Claim is included in the amount settled in paragraph 1 of the Order, and should not be capitalized. To avoid recovery of “interest on interest” after the action is started, the Order paragraph 1 should provide:

IT IS ORDERED that the amount due to the plaintiff \_\_\_\_\_, on the mortgage being foreclosed is settled at the sum of \$ \_\_\_\_\_, with interest on \$ \_\_\_\_\_ [insert the sum upon which interest is claimed set out in paragraph 5(a) of the Statement of Claim] at the rate of \_\_\_\_\_ % per annum from \_\_\_\_\_, 20\_\_\_\_, to the earlier of the date of payment by the sheriff to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff, together with any other charges and protective disbursements as approved by the Court, and costs to be taxed.

The Order shall contain an abbreviated description of the lands which includes reference to the registration particulars of the mortgage being foreclosed. If available, the abbreviated description shall contain the civic number or the street or highway address of the lands, the PID number of the parcel and a statement whether the parcel has or has not been registered pursuant to the *Land Registration Act*. The abbreviated description, in any event, must contain sufficient particulars

to enable the public to identify and locate the lands being foreclosed and sold. The description shall also contain a brief description of any known prior mortgage or other encumbrance, rights-of-way and easements, that either benefit or encumber the lands being foreclosed.

## 2.6 Some Advice

(a) Sometimes the abstract shows prior encumbrances or other interests prior to the mortgage under foreclosure without these having been provided in the order for sale or in the advertisements. As it is the Court offering the title for sale, all title defects known to the Court must be brought to the attention of bidders. The order must make the sale subject to prior interests and the advertisement should mention such interests. As regards earlier mortgages not marked released but thought to have been repaid, the judge may require the order provide the sheriff shall not proceed without a recorded release. Where a life tenancy or a joint tenancy was determined by death, the judge may require production of a death certificate.

(b) Judges are of the view that residential properties are best advertised in local papers with good local circulation. Counsel are encouraged to investigate cost and circulation.

(c) In too many cases the summary cannot be reconciled with the accounting. For the affidavit of the mortgagee to be true and for the judge to have confidence in it, it must be possible to see where the summary figures came from in the detailed accounting. Further, it is necessary that the form of the summary follow that provided in the practice memorandum.

(d) All claims advanced on the application for an order for sale must be claimed in the Statement of Claim. Sometimes protective disbursements have not been claimed. Sometimes a higher rate of interest is advanced. The Court will require amendment and further service.

(e) Foreclosure proceedings will conform with the rules respecting parties. Where a mortgagor is bankrupt, the trustee is a proper defendant and it must be served in the usual way. Where the mortgagor is deceased, the proper party is the executor, administrator or court appointed representative, and the plaintiff must get a representative appointed if there is none. Also, where the equity has been conveyed, the mortgagor need not be a party unless a deficiency judgment is sought, but the new owner is not a subsequent encumbrancer within rule 5.13(2) and must be a defendant.

(f) Where more than one lot is mortgaged the order should clearly state which is to be sold or both. If both, whether together. If separate, in what order. Also, with separate sales the order should provide the sheriff with a clear direction for

calculating the credit towards the second sale.

## 2.7 Notice of Public Auction

The plaintiff shall give notice of public auction, in the form attached:

- (a) at least twenty (20) days before the public auction by ordinary mail, postage prepaid, to the defendant at the address of the mortgaged premises and also, when that address is different from the last-known address, at the last-known address;
- (b) at least twenty (20) days before the public auction by registered or certified mail to each subsequent encumbrancer appearing on the Certificate of a Solicitor at the last-known address of such encumbrancer or its solicitor; and
- (c) by advertising the public auction by two (2) insertions, the first insertion at least twenty (20) days prior to the sale and the second insertion not more than ten (10) days prior to the sale, in a newspaper sold within the county or counties in which the lands are located.

## 2.8 Sale Procedure

The sale by public auction shall be conducted in accordance with the prescribed Standard Procedure for Sheriff's Sales by Public Auction – Instructions to Sheriff, or as close thereto as is possible in the circumstances.

## 2.9 Post-Sale Procedure:

After the sale by public auction, the plaintiff shall apply to the prothonotary for an order confirming the sale. In support of the application, the plaintiff or the plaintiff's solicitor shall file an affidavit which may be in the form attached. The following items shall be exhibited to the affidavit:

- (a) a true copy of the plaintiff's certificate of taxation of costs;
- (b) the original or true copies of the tear sheets of the advertisements of public auction, showing the Notice of Sale, name of newspaper and dates of publication;
- (c) a true copy of confirmation of delivery of Notice of Public Auction to any subsequent encumbrancer, and a copy of the letter and Notice of Public Auction sent to the defendant by ordinary mail;
- (d) a Sheriff's Report in the form attached, certified by the sheriff, deputy sheriff or authorized person who conducted the sale;

(e) if the public auction was postponed, particulars of the postponement, and of any relevant Notice or advertisement.

#### 2.10 Costs

Reference is made to Civil Procedure Rule 63 - Tariff E. Counsel will submit to the taxing authority a Bill of Costs and substantiate each item claimed as a disbursement.

#### 2.11 Default Judgment

By virtue of rule 47.09(1), default judgment shall occur automatically, subject to later quantification, on the earlier of 20 days after the date of sale by public auction, or the date of payment to the sheriff. Judgment for any amount due shall not be subsequently entered before the proceeds of sale have been realized and any deficiency has been determined by the court. Therefore, a Certificate of Judgment cannot be issued by the prothonotary, nor recorded in the Registry of Deeds, until such amount has been determined.

### **III. Applications For Deficiency Judgment or Distribution of Surplus**

#### 3.1 Authority

Reference is made to Civil Procedure Rules 47.09(1), (2), 47.10(1), (2) and (3) and 47.11.

#### 3.2 Purpose

The plaintiff's claim crystallizes in the Order for Foreclosure, Sale and Possession. The order confirming sale confirms the provisions of the Order for Foreclosure, Sale and Possession were carried out. It cannot confirm or otherwise deal with any claim the plaintiff may have which accrued after the date of the Order for Foreclosure, Sale and Possession.

#### 3.3 General Provisions

(a) The originals or true copies of all invoices or receipts relating to the claim must be available in court for inspection. The plaintiff's solicitor shall file an accompanying memorandum explaining and justifying each item claimed.

(b) The amount will be determined by adjusting the mortgage debt as settled in the Order for Foreclosure, Sale and Possession. In addition to the amounts evidenced by the order and the Sheriff's Report, the Court will take into account interest to the date of default judgment, judgment interest after that date, taxation of costs, taxation of disbursements and protective disbursements after commencement of action except

those included in the amount settled by the Order for Foreclosure, Sale and Possession. Particulars of protective disbursements and taxable disbursements are to be set out in an affidavit and must include sufficient detail to show work done or material provided, the necessity of work or material, the necessity of other kinds of charges and the recoverability of the charges.

(c) Notice of all applications, together with all supporting documentation, shall be given to the mortgagor and, where there is a surplus, to all subsequent encumbrancers disclosed in the certificate attached to the affidavit of the solicitor upon the application for foreclosure, sale and possession, and on any subsequent encumbrancer disclosed in a sub-search to the date of filing of the Notice of Application. Such service shall be effective by registered or certified mail or as otherwise ordered by the Court.

### 3.4 Claim for Surplus

(a) Each subsequent encumbrancer intending to make a claim to all or any part of the surplus is required, in advance of the application, to file an affidavit in proof of its claim.

(b) The Court will order distribution of the surplus to encumbrancers according to their priorities.

### 3.5 Claim for Deficiency

(a) Applications for a deficiency judgment must be made within six months of the sheriff's sale on ten days notice. A deficiency occurs where "the amount realized is insufficient to pay the amount found to be due to a plaintiff for principal, interest and disbursements as authorized by the mortgage instruments and costs". Where the mortgagor has so contracted and the mortgagee has so pleaded, the mortgagee has the right "to expend moneys to protect the property and to recover the same on a claim on the covenants so long as the expenditures were properly and reasonably incurred to realize the best price possible so as to minimize a claim for a deficiency against the mortgagor." (*Nova Scotia Savings and Loan Co. v. MacKay and MacCulloch* (1980), 41 N.S.R. (2d) 432 (S.C.-T.D.) at para. 16 quoted with approval in *Royal Bank of Canada v. Marjen Investments Ltd.* (1998), 164 N.S.R. (2d) 293 (C.A.) at para. 59.) The Court will allow only those items which: (a) are authorized by the mortgage; (b) were necessarily expended for the purpose of preserving and protecting the property; and (c) are demonstrated by evidence to have been necessary and reasonable, the specifics of which are set out in an affidavit of the mortgagee or its officer.

(b) The affidavit in support of the application for deficiency judgment should contain the following: a copy of the sheriff's report, order confirming sale, appraisal



report(s), certificate of taxation, evidence supporting protective disbursements as set out in paragraph 3.5 and a calculation of the amount of the deficiency.

3.6 All amounts retained by the mortgagee's solicitor shall be supported by a solicitor's statement of account.

3.7 Commentary on Protective Disbursements

A claim for a protective disbursement must be supported by evidence and explained in a chambers memorandum. A claim for a protective disbursement will not be allowed unless the mortgage provides for both the payment and its inclusion in the mortgage debt. The memorandum should refer to the term relied upon and if its meaning is in any way open to interpretation, the memorandum should provide a submission for interpretation mindful that the term is part of an adhesion contract. The affidavit on behalf of the mortgagee must contain sufficient detail so the Court can ascertain whether the disbursement is within the wording of the mortgage, whether the expenditure was necessary and whether the amount was reasonable. The following comments describe experiences of chambers judges in recent years, with the intention that this may provide some guidance as to claims that will likely be unsuccessful, claims that will require sound explanation and claims the amount of which will be closely scrutinized.

(a) Administrative Fees – Fees charged for efforts made by employees, such as on account of a missed payment or an NSF cheque or to inspect the mortgaged premises, have generally been rejected.

(b) Credit Reports, Trace Searches and Demand Letters – The cost of these has generally been refused. Disbursements for reports or searches may be taxable if they were incurred to effect service or used in an application for substituted service.

(c) Appraisals and Surveys – Ordinarily one appraisal is allowed as a taxable disbursement on a deficiency judgment application. Generally, judges have refused to allow the cost of appraisals or surveys obtained for the mortgagee's own purposes.

(d) House Sitting – Applicants may expect close scrutiny of the cost and necessity, including frequency, of charges for mowing, snow removal, cleaning, maintenance, repairs and inspection. Commissions or flat fees, such as “weekly inspection” or “maintenance fee”, are not generally allowed unless the cost is, by evidence, tied to specific services and justified.

(e) Insurance – Premiums for policies insuring against fire and similar perils will only be allowed upon proof that the mortgagor's policy was terminated. The mortgagee should also file with the court an undertaking that the balance will be credited against the mortgage debt if the policy is cancelled before its usual expiry.

Premiums for liability policies are generally not allowed.

(f) Costs Associated with Environmental Concerns – In order for the cost of an environmental assessment or any remedial work to be allowed, there must be evidence establishing the need for the assessment or remedial work. The need to replace an oil tank must be proved before the cost of replacing the tank is allowed.

(g) Improvements – The need for and cost of making improvements, such as replacing a chimney or furnace or rebuilding a deck, will be closely scrutinized. There will be a presumption that an improvement made after appraisal increases the property's value, and its cost will not usually be included in a deficiency judgment.

(h) Real Estate Commission – Some mortgagees receive a reduction in the amount of the real estate commission charged on sale of a property. The mortgagor is to receive the benefit of any such reduction. A mortgagee is only entitled to receive credit for the amount of the real estate commission actually paid.

### 3.8 Documentation

The documentation required on all applications is:

(a) Notice of Application – The notice must refer to the Civil Procedure Rule being relied upon, and must enumerate which of the three claims is being made. If there is a claim for a surplus, the notice must be directed to the defendant and all subsequent encumbrancers and it must include counsel's certificate that all subsequent encumbrancers are listed.

(b) Affidavit by or on behalf of the mortgagee – There will be attached to this affidavit as exhibits all documents necessary to establish each of the claims being made by the plaintiff. These shall include the following:

- (1) a statement showing the calculation of the plaintiff's claim for interest, the rate used and the per diem amount;
- (2) a listing of any protective disbursements claimed which were not already included in the Order for Foreclosure, Sale and Possession and which are otherwise permitted by this Memorandum. The list shall itemize each disbursement by category and show the total amount claimed in each category. Information must be provided to demonstrate the necessity for incurring the protective disbursements, and;
- (3) statement showing details and calculation of any claim for judgment interest accruing after the date of judgment up to and including the

date of application, and in any event no longer than six months after the date of sale.

(c) Affidavit of Service.

### 3.9 Costs

Reference is made to Civil Procedure Rule 63 - Tariff E.

Upon this application, counsel will submit a bill of costs covering all services and disbursements which are directly connected with the foreclosure proceeding, and be prepared to substantiate each item claimed as a disbursement. The Court will at this time tax the bill of costs by awarding an all-inclusive amount covering the Application for Foreclosure, Sale and Possession, together with disbursements as substantiated. Alternatively, the Court may order disbursements to be taxed.

The Court will not approve disbursements which are in any way artificial. For example: legal accounts for searching or sub-searching title, attendance fees, office overhead charges and fees paid to another solicitor for work which is normally covered in the award of costs.

## **IV. Foreclosure of Collateral Mortgages**

- 4.1 The principal difference between foreclosure of a collateral mortgage compared to foreclosure of a standard mortgage is that the foreclosure documentation will be required to set forth the particulars of the instrument to which the mortgage is collateral, and to establish that all conditions precedent to the enforcement of that instrument have been fulfilled.
- 4.2 Mortgagees wishing to foreclose a collateral mortgage may use the simple standardized Statement of Claim and other documentation, but amended, especially in regard to paragraph 2, to disclose the nature and particulars of the collateral instrument and the steps which have been taken to fulfill the conditions precedent to enforcement.
- 4.3 Because of the necessary amendments to the standardized Statement of Claim, and other documentation, the solicitor for the plaintiff is required to file an accompanying memorandum explaining and justifying each amendment.
- 4.4 An alternative foreclosure procedure may also be available to creditors who hold collateral mortgages. A collateral mortgagee may first sue and obtain judgment for the amount owing upon the collateral security, and then move to foreclose the mortgage and sell the property. Since the mortgagee would already have a judgment for 100% of the amount owing, there would appear to be no reason why it should

apply for a deficiency judgment. However, in case it might apply, the Order for Foreclosure, Sale and Possession must include additional paragraphs such as the following:

IT IS ORDERED that ten (10) days' notice of the application for settlement be given to the defendant in accordance with the Rules.

IT IS FURTHER ORDERED that on the application for settlement, the plaintiff, as a condition of obtaining the order, shall satisfy the Court that the defendant has been given credit against the judgment entered against the defendant on the        day of        , 20    , for the fair value of the property.

In this regard, reference is made to *Credit Union Atlantic Limited v. Bonang* (1996), 145 N.S.R. (2d) 175 (C.A.).

Note, if this procedure is followed, costs will not be allowed on an application for deficiency judgment.

## STANDARD PROCEDURE FOR SHERIFF'S SALE BY PUBLIC AUCTION

### INSTRUCTIONS TO THE SHERIFF

1. Upon receipt from a plaintiff or plaintiff's solicitor of a certified copy of an Order for Foreclosure, Sale and Possession, six (6) copies of the description of the lands to be sold and six (6) copies of the notice of public auction, the sheriff, deputy sheriff or person authorized by court order shall proceed to sell the lands (and chattels, if applicable) by public auction, commencing at the time and place specified in the notice, unless
  - (a) the plaintiff or the solicitor files a notice of discontinuance of the proceeding with the prothonotary and a certified copy of the notice is delivered to the sheriff prior to the time of sale; or
  - (b) the plaintiff, the solicitor, the sheriff, deputy sheriff or person authorized by court order, makes a public announcement at the time and place of sale, postponing the sale to a date certain, (only one postponement may take place without further court order) and;
    - (i) if the postponement is for thirty (30) days, or less, no further or other notice or publication is required; or
    - (ii) if the postponement is for more than thirty (30) days, the sheriff shall sell the lands (and chattels) at the time and place specified in a revised notice mailed by registered or certified mail to the mortgagor and subsequent encumbrancers, and advertised by one (1) insertion in one of the same newspapers as previously advertised, at least ten (10) days before the new date of sale; or
  - (c) the Court otherwise orders.
2.
  - (a) The minimum permissible bid is an amount equal to the sum of the sheriff's fees and outstanding property taxes.
  - (b) The purchaser at the time of sale shall pay to the sheriff a deposit of ten per cent (10%) of the amount of the purchase price by cash, bank draft, solicitor's trust cheque or certified cheque.
  - (c) Not later than twenty (20) days following the date of sale, or such later date not exceeding a further twenty (20) days consented to in writing by the plaintiff or the solicitor, the purchaser shall pay the balance of the purchase price to the sheriff, at which time the sheriff shall deliver the Deed (and Bill of Sale, if applicable) to the

purchaser or the purchaser's nominee. If the purchaser fails to make payment of the balance of the purchase price within the period fixed, the deposit is forfeited and shall be applied first to sheriff's fees, second to outstanding property taxes, and third to the plaintiff's claim. On default, the sheriff, deputy sheriff or authorized person shall re-sell the lands (and chattels) at the time and place specified in a new notice, which shall be published in accordance with the terms of the original order.

(d) When the mortgagee is the purchaser at sale and no other person is entitled to any part of the proceeds of sale, the sheriff may, upon receipt of the amount of the minimum permissible bid, deliver the Deed to the purchaser or its nominee.  
[Amend. 6/97]

3. The Deed shall contain a reference to the registration particulars of the mortgage foreclosed.
4. The sheriff shall, after payment of sheriff's fees and property taxes, pay out of the remaining proceeds of such sale, by disbursing to the plaintiff or the solicitor the amount due on the mortgage foreclosed, costs as taxed and the balance (if any) to the prothonotary of the Supreme Court until further order.

**FORM**

**STATEMENT OF CLAIM**

**20**

**No.**

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

**- and -**

**DEFENDANT**

**- and -**

**DEFENDANT-GUARANTOR**

**STATEMENT OF CLAIM**

1. In this proceeding, plaintiff includes all plaintiffs, and is the mortgagee, and defendant includes all defendants, and is the mortgagor of the lands located at  
County, Nova Scotia.

2. Particulars of the mortgage are:

- (a) Date:
- (b) Name of Mortgagor(s):
- (c) Name of Mortgagee(s):
- (d) Amount Secured:
- (e) The Description: Schedule "A"
- (f) Interest chargeable: % per annum, calculated half-yearly not in advance.
- (g) Recorded: Registry of Deeds, County, in Book at Page .  
[Recorded: Land Registration Office, County, identified by  
PID Number .]

3. Particulars of the mortgage have been changed by the following subsequent relevant agreements:

<u>Agreement</u>	<u>Date</u>	<u>Amendment Effected</u>
(a)		
(b)		

4. Default in payment has been made under the terms of the mortgage and consequently the following amounts are due as of \_\_\_\_\_, 20\_\_ :

(a) Principal balance	\$
(b) Interest	\$
(c) Taxes (debit or credit)	\$
(d) Protective disbursements	\$
(e) Other	\$ _____
Total outstanding	\$ _____

Particulars of the above amounts are available at the address of the plaintiff and the office of the plaintiff's solicitor.

5. The plaintiff claims against the defendant:

- (a) Payment of the total outstanding, together with interest at the rate set out in the mortgage, as amended, on the sum of \$ \_\_\_\_\_, from \_\_\_\_\_, 20\_\_ until the date of default judgment;
- (b) Charges and expenses incurred in connection with the lands and the mortgage, together with interest on these amounts at the rate set out in the mortgage, as amended, until the date of default judgment;
- (c) Interest on the amounts of any arrears from the date the payment or payments are due until the date of default judgment;
- (d) Costs;
- (e) In default of payment of the foregoing amounts, an Order for Foreclosure, Sale and Possession; and
- (f) An order for the deficiency, if any, between the amount realized after sale pursuant to the Order for Foreclosure, Sale and Possession and the aggregate due, as claimed above.

6. The plaintiff claims against each defendant who has any interest or equity of redemption in



the lands an Order for Foreclosure, Sale and Possession.

7. In this proceeding, defendant-guarantor includes all individual guarantors against whom the plaintiff claims for:

- (a) Payment of amounts guaranteed pursuant to the mortgage and calculated in accordance with paragraph 5; and
- (b) Judgment against the defendant-guarantor, in default of payment of the foregoing amounts.

DATED at \_\_\_\_\_, Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Solicitor for the Plaintiff  
Whose name and address are:

TO: The Defendant

\_\_\_\_\_  
Solicitor or Agent

**FORM**

**INTERLOCUTORY NOTICE  
(EX PARTE APPLICATION)**

**20**

**No.**

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

**- and -**

**DEFENDANT**

**- and -**

**DEFENDANT-GUARANTOR**

**INTERLOCUTORY NOTICE  
(EX PARTE APPLICATION)**

**TAKE NOTICE** that an application will be made on behalf of the plaintiff to a judge presiding in Chambers at the Court House, \_\_\_\_\_ in \_\_\_\_\_, Nova Scotia, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the forenoon, or as soon thereafter as the application can be made, for an Order for Foreclosure, Sale and Possession, pursuant to Civil Procedure Rule 47.

**AND TAKE NOTICE** in support of the application the plaintiff files three affidavits: in proof of service, of the plaintiff's solicitor, and by or on behalf of the plaintiff.

**DATED** at \_\_\_\_\_, Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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Solicitor for the Plaintiff

**FORM  
AFFIDAVIT**

**20**

**No.**

**BETWEEN:**

**PLAINTIFF**

- and -

**DEFENDANT**

- and -

**DEFENDANT-GUARANTOR**

**AFFIDAVIT**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ County, Nova Scotia, make oath and say as follows:

1. As solicitor for the plaintiff, I am familiar with this matter and say the following statements herein are correct.
2. This is an application for foreclosure, sale and possession.
3. The lands being foreclosed are/are not registered pursuant to the *Land Registration Act*. [The lands being foreclosed are identified by PID \_\_\_\_\_.]
4. Exhibit "A" is the Certificate of \_\_\_\_\_, Solicitor of the Supreme Court of Nova Scotia, dated \_\_\_\_\_, 20\_\_\_\_, containing a list and particulars of all recorded instruments affecting the title of the lands being foreclosed since the date of the deed or conveyance to the original mortgagor.

Alternate:

4. Exhibit "A" is a copy of the parcel register for the lands being foreclosed, which contains a list of all recorded instruments affecting the lands being foreclosed as of \_\_\_\_\_, 20\_\_\_\_ and Exhibit "B" is the Certificate of \_\_\_\_\_, Solicitor of the Supreme Court of Nova Scotia, dated \_\_\_\_\_, 20\_\_\_\_, containing particulars of all recorded instruments shown on Exhibit "A".

5. The Originating Notice (Action) and Statement of Claim were served on the defendant on \_\_\_\_\_, 20\_\_\_\_, as appears by the endorsement on the Affidavit of Service endorsed thereon, and the time for filing a Defence has expired.

6. I have reviewed the summary statement of account in Exhibit "B" to the Affidavit of \_\_\_\_\_, and verily believe the plaintiff is entitled, pursuant to the mortgage, to claim the items listed.

**SWORN TO** at \_\_\_\_\_, \_\_\_\_\_ )  
County, \_\_\_\_\_ )  
Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_ )  
\_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_ )  
)  
) \_\_\_\_\_ )  
)  
\_\_\_\_\_  
A Barrister of the Supreme Court  
of Nova Scotia

\*\*\*\*\*

**CERTIFICATE**

**I CERTIFY that listed below are the particulars of all instruments affecting the title of the lands described in Schedule "A", recorded in the Registry of Deeds for the County where the lands are located, subsequent to the date of the deed to the original mortgagor.**

**Dated at \_\_\_\_\_, Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.**

\_\_\_\_\_  
**Solicitor of the Supreme Court of  
Nova Scotia**

**PARTICULARS**

**CERTIFICATE**

(To be used if parcel registered pursuant to the *Land Registration Act*.)

**I CERTIFY that listed below are the particulars of all recorded and registered instruments shown on the parcel register attached to my accompanying affidavit as Exhibit “A”.**

**Dated at \_\_\_\_\_, Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ .**

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**Solicitor of the Supreme Court of  
Nova Scotia**

**PARTICULARS**

**FORM  
AFFIDAVIT**

20

No.

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

- and -

**DEFENDANT**

- and -

**DEFENDANT-GUARANTOR**

**AFFIDAVIT**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ County, Nova Scotia, make oath and say as follows:

1. As \_\_\_\_\_ the mortgagee, I am familiar with this matter and say all statements herein are correct.
2. I have read over the Statement of Claim in this proceeding and say the contents are true.
3. By mortgage dated \_\_\_\_\_, 20\_\_\_\_, and recorded in the (Registry of Deeds for \_\_\_\_\_ County, Nova Scotia, in Book \_\_\_\_\_ at Page \_\_\_\_\_) (Land Registration Office for \_\_\_\_\_ County as number \_\_\_\_\_), in the original principal amount of \$ \_\_\_\_\_, a certified copy of which mortgage is attached as Exhibit "A", the defendant, \_\_\_\_\_, mortgaged lands which are situate at \_\_\_\_\_, \_\_\_\_\_ County, Nova Scotia.
4. Exhibit "B" contains a statement detailing the dates and amounts of all charges and payments made on account of the mortgage since the \_\_\_\_\_, and a summary statement of account.

I have reviewed all entries and calculations, and they are correct.

5. As of the date of this affidavit, the mortgage is \_\_\_\_\_ months in arrears.

6. The following payments and/or other arrangements have been made since this foreclosure action was commenced:

7. Exhibit "C" contains a listing, together with true copies, of all relevant agreements subsequent to the mortgage changing the particulars of the mortgage.

8. Exhibit "D" contains a listing and particulars of all charges including protective disbursements made on account of the mortgage and shown on the summary statement of account in Exhibit "B". The originals or true copies of invoices or receipts will be disclosed to the Court upon filing of this application and, upon request, to the defendant and the guarantor.

**SWORN TO** at \_\_\_\_\_, )  
County, )  
Nova Scotia, the \_\_\_\_\_ day of )  
\_\_\_\_\_, 20\_\_\_\_, before me: )  
)  
)  
)  
\_\_\_\_\_)  
A Barrister of the Supreme Court )  
of Nova Scotia )

\_\_\_\_\_

**FORM**

**SUMMARY STATEMENT OF ACCOUNT**

Date: \_\_\_\_\_

**MORTGAGED PROPERTY** (Address): \_\_\_\_\_

As of this date, the following is a summary of the mortgage account:

1.	Principal amount (as of the latest of: date of mortgage/ latest renewal/latest assumption)	\$
2.	Subsequent interest accrued	\$
3.	Subsequent other charges	\$
4.	Subsequent payments made	\$
5.	Principal, interest and other charges outstanding	\$
6.	Taxes (debit or credit)	\$
7.	<b>AMOUNT CLAIMED</b>	\$

\_\_\_\_\_  
Signature of Deponent



**FORM**

**ORDER FOR FORECLOSURE, SALE AND POSSESSION**

20

No.

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

**- and -**

**DEFENDANT**

**- and -**

**DEFENDANT-GUARANTOR**

**ORDER FOR FORECLOSURE, SALE AND POSSESSION**

**BEFORE THE HONOURABLE JUSTICE**

**UPON MOTION** on behalf of the plaintiff, \_\_\_\_\_ :

1. **IT IS ORDERED** that the amount due to the plaintiff \_\_\_\_\_, on the mortgage being foreclosed is settled at the sum of \$ \_\_\_\_\_, with interest on \$ \_\_\_\_\_ at the rate of \_\_\_\_\_ % per annum from \_\_\_\_\_, 20\_\_\_\_, to the earlier of the date of payment by the sheriff to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff, together with any other charges and protective disbursements as approved by the Court, and costs to be taxed.

2. **AND IT IS ORDERED** that the plaintiff shall have judgment, subject to later quantification, against the defendant and the guarantor, and possession of the lands as against the defendant, effective the earlier of the date of payment by the sheriff to the plaintiff of the amounts due to the plaintiff or twenty (20) days following the date of the sale of the lands by the sheriff.

3. **AND IT IS ORDERED** that all the interest and equity of redemption of the defendant and of all persons claiming through the defendant in the lands described in the mortgage are forever

barred and foreclosed, and shall be sold by the sheriff at a public auction conducted in accordance with the standard procedure for sheriff's sales authorized by the Civil Procedure Rules, which is incorporated by reference except only to the extent varied by this or further order of the Court, unless before the time of sale the amount due, together with costs, are paid to the plaintiff.

4. **AND IT IS ORDERED** that the plaintiff shall give at least twenty (20) days notice of public auction to the defendant by ordinary mail and to each recorded subsequent encumbrancer by registered or certified mail, and advertise the public auction by two (2) insertions, the first in the \_\_\_\_\_ at least twenty (20) days prior to the date of sale, and the second in the \_\_\_\_\_, not more than ten (10) days prior to the date of sale, and the abbreviated description of the lands contained in Schedule "A" is approved for use in all notices and advertisements.

5. **AND IT IS ORDERED** that the plaintiff shall record a true copy of this Order in the parcel register for the lands described in the mortgage.

6. **AND IT IS ORDERED** that on or after application for confirmation of the sheriff's sale, the plaintiff may apply to assess the amount of any deficiency. [Note: no deficiency is to be claimed against a bankrupt mortgagor.]

**DATED** at \_\_\_\_\_, Nova Scotia, the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

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**PROTHONOTARY**

**FORM**

**NOTICE OF PUBLIC AUCTION**

**20**

**No.**

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

**- and -**

**DEFENDANT**

**- and -**

**DEFENDANT-GUARANTOR**

**NOTICE OF PUBLIC AUCTION**

**TO BE SOLD AT PUBLIC AUCTION** pursuant to an Order for Foreclosure, Sale and Possession granted by the Court, unless before the time of sale the amount due to the plaintiff on the mortgage foreclosed, plus costs to be taxed, are paid:

**PROPERTY:**

[Insert authorized description]

A copy of the description of the property, as contained in the mortgage foreclosed, is on file at the sheriff's office and may be inspected during business hours.

**DATE OF SALE:** , 20 .

**TIME OF SALE:** 12:00 o'clock noon local time.

**PLACE OF SALE:** The Law Courts, , Nova Scotia.

**TERMS:** Ten per cent (10%) deposit (payable by cash, certified cheque or solicitor's trust cheque) at the time of sale, remainder within twenty (20) days upon delivery of deed.

**DATED** at , Nova Scotia, the day of , 20 .

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High Sheriff in and for the  
County of

[Name and address]  
Solicitor for the Plaintiff

**FORM  
AFFIDAVIT**

20

No.

**IN THE SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**PLAINTIFF**

- and -

**DEFENDANT**

- and -

**DEFENDANT-GUARANTOR**

**AFFIDAVIT**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_ County, Nova Scotia, make oath and say as follows:

1. As solicitor for the plaintiff, I am familiar with this matter and say the following statements are correct.
2. Pursuant to the Order for Foreclosure, Sale and Possession herein dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, Notice of the Public Auction was sent to the defendant by ordinary mail on \_\_\_\_\_, 20\_\_\_\_, a true copy of which Notice is attached as Exhibit "A".
3. Exhibit "B" are true copies of confirmations of delivery to the subsequent encumbrancers of the Notice of Public Auction in accordance with the Order for Foreclosure herein.
4. Exhibit "C" are true copies of the Notice of Public Auction which were published in the \_\_\_\_\_, a newspaper published at \_\_\_\_\_, Nova Scotia on \_\_\_\_\_, 20\_\_\_\_ and \_\_\_\_\_, 20\_\_\_\_.

5. Exhibit "D" is a true copy of a Certificate of Taxation issued in the Small Claims Court of Nova Scotia on \_\_\_\_\_, 20\_\_\_\_, in the amount of \$ \_\_\_\_\_.

6. Exhibit "E" is the Sheriff's Report for the sale of the mortgaged property which was held by the sheriff in and for \_\_\_\_\_ County on \_\_\_\_\_, 20\_\_\_\_.

**SWORN TO** at \_\_\_\_\_, )  
County, )  
Nova Scotia, the \_\_\_\_\_ day of )  
\_\_\_\_\_, 20\_\_\_\_, before me: )  
)  
)  
)  
\_\_\_\_\_)  
A Barrister of the Supreme Court )  
of Nova Scotia )

\_\_\_\_\_

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**Practice Memorandum No. 14**

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**ADOPTIONS**

1. (a) **Children and Family Services Act**, S.N.S. 1990, c. 5, s. 106(6) requires applications and hearings to be held in chambers. The policy of the Act is in favour of privacy and confidentiality: see, e.g., s. 77. A judge or a solicitor should not speak aloud the names of the adopting parents or of the person to be adopted (herein called the “adoptee”) in presenting orally an uncontested application. Contested applications and those requiring viva voce evidence will usually be heard in camera.
- (b) Uncontested applications approved by the Minister of Community Services, or in cases where such approval is not requested, need to be supported by affidavit evidence only, in the usual case.
- (c) The application is commenced by an Originating Notice (Application Inter Partes). [Amend. 5/10/96]
2. (a) The application shall conform to the rules governing petitions or statements of claim and shall state only the facts that the applicants know personally:
  - (i) the full names, martial status and date of marriage, place of residence, ages, occupations, religious denominations and, if relevant, the domicile of the applicants;
  - (ii) the full name, sex, age and religious denomination of the adoptee; or that the adoptee has no religious denomination;
  - (iii) when and how the adoptee came to reside with the applicants (e.g., placement for adoption by the mother or by an adoption agency);
  - (iv) how long, where and in what circumstances the adoptee has resided with the applicants (include particulars of other children of the applicants);
  - (v) the ability and means of the applicants to give the adoptee suitable nurture, maintenance and education;
  - (vi) the desire of the applicants to adopt the adoptee as their own child and any change of name required.
- (b) The application shall be supported by:

- (i) proof that all necessary consents have been given and that the consents meet the requirements of the **Children and Family Services Act**, s. 78(1)(b).

**Note: Statutory Declaration re: parentage of child**

The definition of “parent” for consent purposes is Section 67(1)(f) of the **Children and Family Services Act**. Pursuant to that definition, various persons can be required to consent to the adoption of a particular child. For the purpose of satisfying the court as to the number and identity of the person or persons required to consent to the adoption, a statutory declaration in the form suggested is required. The statutory declaration must be from a person (usually the child’s birth mother) who has a sufficient knowledge of the facts pertinent to the various categories of “parent”. In some instances it may be necessary to obtain statutory declarations from two (2) persons in order to establish sufficient evidence of the class of parents.

- (ii) proof that the person named in the consents is the same as the adoptee named in the application;
  - (iii) proof that all necessary notices have been given.
3. (a) A consent to adoption or an adoption agreement giving up the adoptee to the Minister of Community Services or an agency<sup>1</sup> should be verified by a statutory declaration or affidavit. A statutory declaration is preferable as it need not be intitled in any court or in any pending matter and may be used outside of Nova Scotia.
- (b) The statutory declaration or affidavit should be made by the person executing the consent or adoption agreement or, where that is not feasible, by someone with personal knowledge of the execution and reliable knowledge of the apparent circumstances of the person executing the consent or adoption agreement.

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<sup>1</sup> See s. 68 of the **Children and Family Services Act**; Adoption Agreement under this section constitutes consent to adoption for the purposes of s. 74(3)(9).

- (c) The statutory declaration or affidavit shall show:
- (i) the full name, place and date of birth and (unless it cannot be obtained) the birth registration number of the adoptee;
  - (ii) where the person consenting or giving up the adoptee for adoption is the mother of the adoptee, her marital status at the time of the birth of the adoptee and also at the time of execution of the consent or instrument and, if married at either time, whether her then husband is the father of the adoptee; and
  - (iii) that the consent is given freely, with understanding of its nature and effect and, in the case of a parent, that its effect is to deprive her or him perm of her or his parental rights with respect to the adoptee.
4. (a) A Certificate of the full particulars of the registration of the birth of the adoptee (**long form certificate**) should be provided in every case to avoid misnomers and other errors in description.
- (b) Where the description of the adoptee in the application, or in any consent or adoption agreement, does not clearly identify the adoptee with the person described in the birth certificate, the identification (i.e., the identity of the person described in the several documents) should be established by the **affidavit** of a person who is able to say so from personal knowledge or, if that is not feasible, by reference to the records of the Department of Community Services or of a recognized adoption agency. This will usually involve a recital of the birth of the child named in the certificate to the mother who has executed the consent or adoption agreement, and the subsequent placement of the child with the applicants for adoption.
5. Service of notices and receipt of acknowledgments, letters of approval, waivers and the like, shall be proved in the usual way by the **affidavit of the solicitor**. The first form of paragraph in the sample application should be used where an agent has given the notice. Where the applicants personally sent the original notice of intent to the Minister of Community Services and received his or her acknowledgment, these facts can be shown in the application and the second form of paragraph 7 of the sample application should be used.
6. **The order** may be in the form annexed. The order should not contain any particulars of natural parentage of the adoptee; the birth registration number, with the date and place of birth, is quite sufficient for identification and any further history may prove embarrassing to the applicants or the adoptee in the cases where copies of an adoption order are commonly required: see s. 77(4).
7. The Minister of Community Services may now issue a **Certificate of Adoption**



(s.85(4)), which may be an adequate substitute for a certified copy of the order in cases where the latter is sometimes used.

**APPLICATION FOR ADOPTION (SAMPLE)**

(Title of Court and of Proceeding as in adoption order form)

1. The applicants, John Richard Doe and Mary Susan Doe, are husband and wife, having been married on the 9<sup>th</sup> day of September 1984, and they reside at 1234 Rose Street, Dartmouth, Halifax County, Nova Scotia.
2. John Richard Doe is thirty-three (33) years of age, is employed as a sales man by Highrise Industrial Equipment Limited in Halifax, and is a member of the United Church of Canada.
3. Mary Susan Doe is thirty-four (34) years of age, is not employed otherwise than at home, and is an Anglican.
4. On or about the 4<sup>th</sup> day of September 1986, the Children's Aid Society of Halifax placed with the applicants for the purpose of adoption a male infant, Richard Albert Roe, (hereinafter called the "child") born on the 19<sup>th</sup> day of August, 1986, whose birth is registered as No.: 86-02-006-315 by the Registrar General of Nova Scotia\* and the applicants caused the child to be baptized in the Anglican Church at Saint Paul's Parish, Halifax, on the 11<sup>th</sup> day of September 1986.
5. The applicants have reared the child in their own home as their own child since the 4<sup>th</sup> day of September 1986, in company with their two (2) other children, John Bernard Doe, six (6) years of age, and Susan Marie Doe, four (4) years of age, who have accepted the child as a brother.
6. The applicants have the ability and means to provide the child with suitable nurture, maintenance and education, they are in good mental and physical health and the applicant husband has been steadily employed in his present occupation for eleven (11) years.
7. The applicants gave or authorized the Children's Aid Society of \_\_\_\_\_ to give the Minister of Community Services of the Province of Nova Scotia notice of the proposed adoption by a written instrument.

**OR**

The applicants sent the Minister of Community Services of the Province of Nova Scotia notice of the proposed adoption, a copy of which is marked as Exhibit "A" hereto, on or about the 5<sup>th</sup> day of September 1986, and received from him/her the acknowledgment thereof that is marked as Exhibit "B" hereto.

8. The applicants desire to adopt the child, Richard Albert Roe, and that his name be changed to Richard Albert Doe and do hereby apply for an order granting the adoption and changing the name accordingly.

---

Signature of Applicant

**NOTES ON ADOPTION**

- \* (1) The applicants may acquire knowledge of the date of birth and birth registration number from a short form birth certificate. While it would hardly constitute personal knowledge if the child were named "John Smith", if the name is sufficiently distinctive and the birth certificate is procured in circumstances that make it certain that it relates to the child in question, the resultant knowledge is "personal" enough to qualify.
- (2) The application shall be verified by an affidavit attached thereto signed by each applicant.
- (3) A separate application must be made for each child to be adopted. An adoption order shall be made in respect to one (1) child only.
- (4) Where the person to be adopted is the natural child of the female applicant and born out of wedlock, the following suggested paragraphs should be included in the application as well as the consent of the female applicant;
- (a) The child to be adopted, Richard Albert Roe, (hereinafter called the "child") whose birth is registered as No. 83-02-006-315 by the Registrar General of Nova Scotia, was born to Mary Susan Doe (nee Foe) on the 19<sup>th</sup> day of August, 1983.
- (b) The female applicant was not married at the time of the birth of the child and has never been married to the natural father of the child.
- (c) The child has resided with the female applicant since birth and with both applicants since the 9<sup>th</sup> day of September 1984.

- (d) The applicants have two (2) other children, namely John Bernard Doe, age four (4) years and Susan Marie Doe, age three (3) years.
  - (e) The applicants have the ability and means to provide the child with suitable nurture, maintenance and education, they are in good mental and physical health and the applicant husband has been steadily employed in his present occupation for 11 years.
  - (f) The female applicant hereby consents to the adoption of Richard Albert Roe by John Richard Doe, understanding that the effect of the adoption order will be to require her to share, permanently with her spouse, her parental rights and responsibilities.
- (5) When the person to be adopted is the legitimate child of the female applicant, the consent of the female applicant shall be included in the application and, as well, a paragraph similar to the following should be used:
- Mary Susan Doe, previously married to Kenneth Richard Hill, was divorced from him on the 14<sup>th</sup> day of February 1978. Herewith produced and marked Exhibit "A" is a certified photocopy of a certified copy of the Divorce Decree Absolute which was granted by the Supreme Court of Nova Scotia.
- (6) For a child under the age of sixteen (16) years, where the Department of Community Services has not undertaken a home study, i.e., step-parent adoptions, the applicants are required to file a copy of their marriage certificate. The copy of the marriage certificate can be attached as an exhibit to the Application for Adoption.
- (7) In such step-parent adoptions, the court may require proof that the child's step-parent is not registered on the Provincial Child Abuse Register and further, does not have a criminal record.

**CONSENT FOR ADOPTION**

I, Marjorie Roe (formerly Marjorie Foe) of Halifax, in the County of Halifax and Province of Nova Scotia, do solemnly declare:

- 1. I am the mother of Richard Albert Roe, a male infant who was born on the 19<sup>th</sup> day of August 1986, at the Grace Maternity Hospital, Halifax, Nova Scotia, and whose birth was registered as No. 86-02-006-315 by the Registrar General of Nova Scotia.
- 2. I hereby consent to the adoption of Richard Albert Roe by John Richard Doe and Mary Susan Doe, of 1234 Rose Street, Dartmouth, in the County of Halifax and Province of Nova Scotia, and I give this consent freely,

understanding its nature and effect and, in particular, understanding that its effect is to deprive me permanently of my parental rights with respect to Richard Albert Roe;

- 3. I am not now married and have never been married. (OR I was divorced from Ronald Roe on the 2<sup>nd</sup> day of January 1986, and I was living separate and apart from him for fourteen (14) months before the date of birth of said child and he is not the father of said child. OR I am married to Ronald Roe but was living separate and apart from him for fourteen (14) months before the date of birth of said child and my said husband is not the father of said child.)

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED BEFORE ME: \_\_\_\_\_  
SIGNATURE

NOTE: Reference to the provisions of Section 70 of the Act should be included where applicable.

MOTHER’S STATUTORY DECLARATION (SAMPLE)

I, \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, and Province of Nova Scotia, do solemnly declare:-

- 1. I am the mother of \_\_\_\_\_ (hereinafter called the “child”), who was born at the \_\_\_\_\_ Hospital, in \_\_\_\_\_, Nova Scotia, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, and whose birth is registered as No. \_\_\_\_\_ By the Registrar General of Nova Scotia.
- 2. I am not now married and have never been married (or, a martial status clause describing the mother’s marital status both at the present time and at the time of the child’s birth).
- 3. The father of the child is \_\_\_\_\_.

OR

- 3. The father of the child has not been identified by me.
- 4. Neither the father of the child nor any man claiming to be the child’s father has, to

my knowledge, an application before a court respecting custody, support or access for the child.

- 5. Neither the father of the child nor any man claiming to be the child's father has provided support for or has exercised access to the child since \_\_\_\_\_.
- 6. No person other than me (and \_\_\_\_\_) has, or has had custody of the child at any time from \_\_\_\_\_ to the date of this document. [I understand that a person having custody of the child is a person who has had actual custody of the child during the time referred to above, or, is a person who has custody of the child either by written agreement or court order. To my knowledge, there is no person with custody of the child by written agreement or court order].
- 7. During the last twelve (12) months, no individual has stood in loco parentis to the child. [I understand that an individual stand in loco parentis to a child when that individual cohabits in a "husband-wife" relationship (whether in wedlock or otherwise) with either the father or mother of the child while that father or mother has custody of the child, and furthermore, the individual contributes to the financial support of the child.]
- 8. There is no person who, under a written agreement or a court order, is required to support the child or has a right of access to the child.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

**SWORN TO** at \_\_\_\_\_ , )  
 in the County of \_\_\_\_\_ )  
 Province of Nova Scotia, the )  
 day of \_\_\_\_\_ A.D., 19 \_\_\_\_\_ , before )  
 me: )  
 )  
 )  
 \_\_\_\_\_ )  
 A Barrister of the Supreme )  
 Court of Nova Scotia )

\_\_\_\_\_  
(Name of Mother)

**ADOPTION AGREEMENTS**

The forms for these agreements are prepared by the Children's Aid Society.

**ORDER FOR ADOPTION (SAMPLE)**

19\_\_

S. \_\_\_ No. \_\_\_

**IN THE SUPREME COURT OF NOVA SCOTIA**

IN THE APPLICATION OF JOHN DOE AND MARY DOE  
TO ADOPT THE PERSON WHOSE BIRTH IS  
REGISTERED AS NO. .86-02-006-315 BY  
THE REGISTRAR GENERAL OF NOVA SCOTIA

- under -

THE CHILDREN AND FAMILY SERVICE ACT

**ORDER FOR ADOPTION**

**BEFORE THE HONOURABLE JUSTICE \_\_\_\_\_.**

**UPON** reading the application of John Doe and Mary Doe, dated the 9<sup>th</sup> day of August, 1986, their affidavit in verification thereof sworn the same day, and the other material submitted upon the hearing of the application;

**AND UPON** hearing [the evidence adduced upon behalf of the applicants and] Mr. Frederick Foe, counsel for the applicants, in support of the application, and no one appearing at the hearing of the application to object to the adoption;

**AND IT APPEARING** that

[(a) notice of the proposed adoption has been given to the Minister of Community Services of the Province of Nova Scotia not later than six (6) months before the application to the court for the order for adoption;

(b) notice of the hearing of the application and a copy of the application and all material to be used in support of it have been filed with the Minister of Community Services of the Province of Nova Scotia not later than one (1) month before the date of the application; and

(c) the child sought to be adopted has, for a period of not less than six (6) months immediately prior to the application, lived with the applicants under conditions that, in the

opinion of the court, justify the making of the order;]

**NOW UPON MOTION** of Mr. Foe,

The court, being satisfied of the ages and identities of the parties, and

(a) that every person whose consent is necessary [and has not been dispensed with] has given his or her consent freely, understanding its nature and effect [and, in the case of a parent, understanding that its effect is to deprive him or her permanently of his or her parental rights] and

(b) that the adoption is proper and in the best interest of the person to be adopted,

doth hereby order and declare:

2. The application of John Doe and his wife, Mary Doe, both presently living at 2187 Pleasant Street, Bedford, Halifax County, Nova Scotia, to adopt a male person born at the Grace Maternity Hospital in Halifax, Nova Scotia, on the 1<sup>st</sup> day of January, 1986, whose birth is registered by the Registrar General of the Province of Nova Scotia as number 86-02-006-315, is hereby granted;
3. The name of the person adopted is changed to John Richard Doe;
4. For all purposes, upon this adoption order being made, the person adopted becomes the child of the applicants and the applicants become the parents of the adopted person as if the person adopted had been born in lawful wedlock to the applicants (but the provisions of the **Children and Family Services Act** do not apply for the purposes of the laws relating to incest and the prohibited degrees of kindred for marriage to remove any person from a relationship of consanguinity which, but for the **Children and Family Services Act** would have existed).

DATED at Halifax, Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

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**PROTHONOTARY**

**NOTES TO ADOPTION ORDER**

1. The material with brackets - [ ] - should be omitted where it does not apply.
2. **Dispensing with notice or residence:** Where the Minister<sup>1</sup> has shortened or dispensed with a period of notice or residence, clauses (a), (b) and (c), or those not applicable, should be omitted and the dispensation recited, e.g.:
  - (a) the Director of Family and Children's Services [or the Minister of Community Services] has by a certificate in writing, dispensed with [the lengths of notice and] the period of residence required by subsection (1) of Section 76 of the **Children and Family Services Act**;
3. **Dispensing with consent:** Where the consent of any person is dispensed with, the reason for doing so should be given in the paragraph beginning "The court being satisfied", e.g.:

The court being satisfied of the ages and identities of the parties, and

- (a) that Richard John Roe, and father of the child sought to be adopted, is divorced from the mother of said child, and neither has custody nor is contributing to the support of the child at the time of this application, and is a person whose consent in all the circumstances of the case ought to be dispensed with, and that it is in the interest of the person to be adopted to dispense with this consent;
- (b) that every person whose consent is necessary and has not been dispensed with has given his/her consent freely, understanding its nature and effect [and, in the case of a parent, understanding that its effect is to deprive him/her permanently of his/her parental rights];
- (c) that the adoption is proper and in the best interests of the person to be adopted,

doth hereby order and declare:

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<sup>1</sup>The power to grant waivers has been delegated to the Supervisor of Adoptions and the Director of Family and Children's Services of the Department of Community Service, under the provisions of s. 5 of the **Children and Family Services Act** and a paragraph dispensing with the consent should be included in the operative part of the order, e.g.:



4. The consent of Richard John Roe, father of the person proposed to be adopted, to this adoption is hereby dispensed with.
5. Clause 3 of the operative part of the order is not strictly necessary and is inserted to give the applicants some idea of the general effect of the order and of the Act. It may be omitted, if desired.

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**Practice Memorandum No. 15**

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**Small Claims Court of Appeals**

1. Pursuant to Section 32 of the **Small Claims Court Act** R.S.N.S. 1989, c. 430, an order or determination of an adjudicator may be appealed to the Supreme Court of Nova Scotia. Appeals of Small Claims Court adjudicators are no longer by way of Stated Case.
2. The Notice of Appeal shall be in Form 7 of the Regulations. In addition to stating the statutory ground of appeal, the appellant shall particularize the matter complained of. Not later than thirty (30) days after the adjudicator's order or determination is filed, two (2) copies of the Notice of Appeal shall be served by the appellant on the prothonotary, and one (1) copy on the respondent.
3. Service of the Notice of Appeal on the prothonotary and respondent, by the appellant, shall be by personal service or registered mail. Proof of service on the respondent shall be filed with the prothonotary, by the appellant, not later than seven (7) days after the last day for service of the Notice of Appeal. Such proof may consist of a letter certifying the fact of service and the mode thereof. If the service is by registered mail, the Canada Post registration receipt is to be filed with the prothonotary.
4. Upon receipt of the Notice of Appeal, the prothonotary shall send one (1) copy thereof to the adjudicator, who shall within thirty (30) days complete Form 8 as attached to the Regulations and send four (4) copies thereof to the prothonotary.  
[Amend. 31/1/98]
5. Upon receipt of Form 8 by the prothonotary, the prothonotary shall forthwith send a copy thereof to the appellant and respondent by Canada Post Corporation Priority Courier, and shall notify the court that the appeal is ready for hearing, and a date is set for the hearing of the appeal and all parties are advised of such date.  
[Amend. 5/99]
6. A judge may direct what additional material may be filed and may request an adjudicator for a clarification of the case.
7. (a) When both parties to appeal submit briefs, the court may dispense with oral argument.  
  
(b) An appellant's brief shall be submitted at least four (4) clear days prior to the date set for the hearing, and the respondent's brief shall be submitted two (2) clear days prior to the date set for hearing.
8. In all appeals under the **Small Claims Court Act**, the parties shall conform in all

respects to the regulations made under Section 33 of the **Small Claims Court Act** and passed by Order in Council 93-110, dated February 2<sup>nd</sup>, 1993.

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**Practice Memorandum No. 16**

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**Residential Tenancies Appeals**

1. An order of the Residential Tenancies Board may be appealed to the Supreme Court of Nova Scotia. See Section 17E(1) of the **Residential Tenancies Act**, R.S.N.S. 1989, c.401, as amended.
2. (1) The Notice of Appeal shall be in the form attached to this Practice Memorandum and shall include the grounds of appeal together with detailed particulars of the error which form the ground of appeal.  
  
(2) The appellant shall file with the Prothonotary four (4) copies of the Notice of Appeal and attach to each copy of the Order under appeal.
3. (1) The Notice of Appeal shall be filed no later than ten (10) days after the date of the Board's order.  
  
(2) Upon application by the appellant the time may be extended, for example where the appellant did not receive a copy of the Board's order within the prescribed time for appeal.
4. (1) Upon receipt of the Notice of Appeal, the Prothonotary shall schedule a date for the hearing of the appeal and enter the date for the hearing in the Notice of Appeal.  
  
(2) The date for the hearing of the appeal shall be no sooner than twenty (20) days from the date of the filing of the appeal.
5. (1) The Notice of Appeal shall be served by the appellant upon the respondent within ten (10) days of the date it was filed with the Prothonotary.  
  
(2) The appellant shall send a copy of the Notice of Appeal to the Board within ten (10) days of the date it was filed with the Prothonotary.  
  
(3) Service of the Notice of Appeal on the respondent shall be by personal service or registered mail.
6. Proof of service on the respondent in the form attached to this Practice Memo shall be filed with the Prothonotary not later than seven (7) days after the expiry of the time for service of the Notice of Appeal.
7. Within fifteen (15) days of receipt of the Notice of Appeal, the Residential Tenancies Board shall send to the Court the following:

- (a) indication of the date and place of the Board hearing together with the names of the Board members present at the hearing;
  - (b) a record of the Board's findings of fact and conclusions on:
    - (i) service of the Notice of Hearing on the appropriate parties and the dates thereof,
    - (ii) the persons present at the Board hearing,
    - (iii) whether a tenancy exists;
  - (c) if a tenancy exists, a record of the Board's findings of fact and conclusions on:
    - (i) the type and duration of the tenancy,
    - (ii) the term of the tenancy,
    - (iii) when the tenancy ended,
    - (iv) when the premises were vacated,
    - (v) whether a written lease was signed, and
    - (vi) whether a copy of the **Residential Tenancies Act** was provided to the tenant;
  - (d) a summary of the evidence of all witnesses together with copies of any exhibits;
  - (e) a statement as to the findings of fact and conclusions as determined by the Board; and
  - (f) a copy of any order made.
8. The Court may order additional materials to be filed by the Board and may request clarification of the materials as provided by the Board.
9. (1) The Court may request the parties to file briefs.
- (2) An appellant's brief shall be submitted at least four (4) clear days prior to the date set for the hearing and the respondent's brief shall be submitted at least two (2) clear days prior to the date set for hearing.

IN THE SUPREME COURT OF NOVA SCOTIA

Appellant

v.

Respondent

NOTICE OF APPEAL

The appellant hereby appeals to the Supreme Court of Nova Scotia from the Order made by the \_\_\_\_\_ Residential Tenancies Board on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ at or near \_\_\_\_\_ in the County of \_\_\_\_\_, Province of Nova Scotia, copy of which is attached to this Notice of Appeal.

The appellant seeks an Order on the grounds of:

[ ] Jurisdictional error

[ ] Error of law

The particulars of the error which form the grounds of the appeal are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The hearing of the appeal will be held on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_\_ noon at the Law Courts/Courthouse located at \_\_\_\_\_.

DATED at \_\_\_\_\_, in the County of \_\_\_\_\_, Province of Nova Scotia, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
**Appellant**

TO: The Respondent  
Residential Tenancies Board

PRACTICE MEMORANDA AND DIRECTIONS  
IN THE SUPREME COURT OF NOVA SCOTIA

P.M. 16

**BETWEEN:**

**APPELLANT**

- and -

**RESPONDENT**

**AFFIDAVIT OF SERVICE**

I, \_\_\_\_\_ of ( *city/town* ) \_\_\_\_\_ in the county of \_\_\_\_\_ in the Province of Nova Scotia make oath and say as follows:

I did on the \_\_\_\_\_ day of \_\_\_\_\_ , 19 \_\_\_\_ :

[Check one]

- [  ] a) personally serve the above-noted Respondent with the Notice of Appeal produced herewith and marked Exhibit "A" to this my affidavit by delivering a true copy to the Respondent or
  
- [  ] b) serve by registered mail the above-noted Respondent with the Notice of Appeal produced and marked Exhibit "A" to this my affidavit by mailing it to the Respondent at (*address*).

**SWORN TO** at \_\_\_\_\_ )  
in the County of \_\_\_\_\_ )  
in the Province of \_\_\_\_\_ )  
this day of \_\_\_\_\_ , 19 \_\_\_\_\_ )  
before me, \_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
\_\_\_\_\_ )  
A Barrister of the Supreme )  
Court of Nova Scotia )

\_\_\_\_\_

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*MacDonald v. Dumont* (2000), 186 N.S.R. (2d) 178; S.H. 162011R, Saunders, J., July 26, 2000. S456/16. A tenant's application for damages was dismissed by the residential tenancies officer, on grounds of insufficient evidence and missing the one-year limitation. An appeal to the Board was dismissed on the basis of no new evidence. The tenant appealed and sought discovery of the officer to determine what information was obtained by the Board from the officer, *Held*, appeal dismissed. The discovery or disclosure requested was refused, whether founded on the court's inherent

jurisdiction or Practice memorandum 16(8). Substantive rights are not created by practice memoranda issued from time to time by the Supreme Court. Such directives are intended to instruct practitioners or other interested parties as to the proper procedures to be followed, when applying a particular Civil Procedure Rule or statute to which the practice memorandum relates. The officer's decision, while brief, was clear. By "no new evidence", the Board meant there was nothing presented at the second hearing to justify any variation of the initial decision. Given the intent and purpose of the statute and the documentation provided, there was no reason to order the Board to file more than the record required by the ACT.

*Bent v. MacLean*, S.A.R. 02021, Haliburton, J., October 12, 2001. 2001 N.S.S.C. 144; S474/29. A landlord appealed a decision of the Residential Tenancies Board, ordering him to release the tenant's personal property. *Held* matter returned to Board. Paragraph 7 of the Practice memorandum reflects the Court's interpretation of what constitutes a record of a hearing under s. 17D of the *Residential Tenancies Act*. The record provided by the Board in this case had significant deficiencies, failing to state the basic terms of the tenancy, to make findings of fact or to refer to what evidence may have been given. Upon the return to the Board, its decision was to be amplified, to make the necessary findings of fact, supported by a summary of the evidence of all witnesses together with copies of any exhibits and conclusions reached on those facts.

*Briand v. Metropolitan Regional Housing Authority*, C.A. 175606, Chipman J.A., May 27, 2002. 2002 N.S.C.A. 71; S483/28. A tenant signed a lease in a high-rise building, including a "no dogs" rule. The landlord applied to the Director of Residential Tenancies to terminate the tenancy, but the Director held the rule was not a reasonable rule within s. 9A(b) of the *Residential Tenancies Act*. On appeal, the Board upheld the rule and ordered termination of the tenancy. Four days after the ten-day appeal period specified in Practice Memorandum 16 for filing an appeal, the tenant applied for an extension of time to appeal. The extension was refused, for lack of arguable grounds. *Held*, appeal allowed. The foundation for the ten-day appeal time limit was Practice Memorandum 16. A practice memorandum cannot operate to circumscribe a statutory right of appeal and no time limited was specified in s. 17E(1) of the *Tenancies Act*.



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**Practice Memorandum No. 17**

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**Personal Property Security Act, N.S. 1995-96, c. 13****Application for extension or abridgment of time**

1. Clause 68(c) of the **Personal Property Security Act** provides that upon application by an interested person, the Supreme Court may make an order extending or abridging, conditionally or otherwise, the time periods for compliance specified in Section 12, subsection 37(18), subsection 39(16) and subsection 44 (11) or in Part V.
2. Attendance in court is unnecessary unless required by the judge assigned in chambers. An Application (Ex Parte) shall be made by filing the proper documents in the appropriate Prothonotary's Office to be forwarded to the judge assigned in Chambers.
3. The documentation shall include an Originating Notice (Ex Parte Application) and an affidavit of the solicitor or officer of the party applying, setting forth the reason for such application, to which affidavit is attached a copy, where appropriate, of the particular document. Any proposed order issued should include a provision similar to the following:

**NOW UPON MOTION:**

**IT IS ORDERED**, pursuant to clause 68(c) of the **Personal Property Security Act**, that the time provided for providing \_\_\_\_\_ pursuant to Section \_\_\_\_\_ of the Act be extended and that the Applicant shall have \_\_\_\_\_ days from the date of the granting of this order within which to provide \_\_\_\_\_.

**OR**

**IT IS ORDERED**, pursuant to clause 68(c) of the **Personal Property Security Act**, that the time provided for providing \_\_\_\_\_ pursuant to Section \_\_\_\_\_ of the Act be abridged and that the Applicant shall have \_\_\_\_\_ days from the date of the granting of this order within which to provide \_\_\_\_\_.

**(AND IN EACH CASE)**

**AND IT IS FURTHER ORDERED**, and in each case, that the priority of the \_\_\_\_\_ shall be subject to the rights of the persons, if any, accrued by reason of the omission to file the \_\_\_\_\_ within the time prescribed by the \_\_\_\_\_ Act (or by reason of the omission or misstatement contained in the said \_\_\_\_\_). [Amend. 29/5/98]

**Practice Memorandum No. 18**

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Restoration of Driver's License - Motor Vehicle Act, R.S.N.S. 1989,  
c. 293, ss. 67(19, (20) and (21)

[Repealed. 05/02/03]

**Practice Memorandum No. 19**

Application for Approval of Adequate Security Pursuant to s.208(1) (c) of the Motor Vehicle Act, R.S.N.S. 1989, c.293

1. These applications are to be set down by the Prothonotary’s Office as non-contested matters before the Criminal Chambers Judge or before the Chambers Judge for the District.
2. Before a date is set the applicant must file with the court a confirmation by the Registrar of Motor Vehicles in the form set out as Schedule “A” hereto.
3. The applicant must appear in Chambers together with the sureties who should already have signed the bond in the amount determined by the Registrar, and signed the affidavits of verification.
4. The Chambers Judge may hear oral evidence from the applicant and the sureties as to their financial stability.

SCHEDULE “A”

To: Justice Presiding in Chambers  
Supreme Court of Nova Scotia

S. \_\_. No: \_\_\_\_  
Dept. No. \_\_\_\_  
Date: \_\_\_\_\_

Re: Application for Approval of Adequate Security, Pursuant to Section 208(1) (c) of the Motor Vehicle Act

Name of Applicant: \_\_\_\_\_

Address of Applicant: \_\_\_\_\_

\_\_\_\_\_ Postal Code \_\_\_\_\_

Date of Accident: \_\_\_\_\_

Details of Damages (if any) \_\_\_\_\_

Estimated Cost of Repair: \_\_\_\_\_

Details of Personal Injuries (if any): \_\_\_\_\_

\$ I hereby fix the amount of \_\_\_\_\_  
as being adequate security for a bond with personal sureties pursuant to Section 208(1)(c) of the **Motor Vehicle Act**.

**Registrar of Motor Vehicles  
Province of Nova Scotia**

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**Practice Memorandum No. 20**

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**Supreme Court of Nova Scotia - Speedy Trial Rules  
Made pursuant to the Criminal Code**

1. **Fixing Place and Time of Trial:**
  - (a) Where an accused
    - (i) has been committed for trial or ordered to stand trial, and
    - (ii) has elected to be tried by judge without a jury, the sheriff or other person having custody of the accused, or where the accused is not in custody, the prothonotary of the court shall forthwith give notice pursuant to **Criminal Code** s. 560(1), to a judge having jurisdiction.
  - (b) Unless the judge otherwise orders, the time and place fixed for the trial of the accused is the first day after the notice has been given pursuant to **Criminal Code** s. 560(1) on which
    - (i) in cases in the Halifax District, a judge sits to deal with proceedings on the Crownside, and
    - (ii) in cases in districts other than the Halifax District, a judge sits in court or in chambers at a courthouse in the district in which the accused has been committed for trial, or ordered to stand trial.
2. **Adjournments:** To ensure continuity of jurisdiction and record, the party applying for an adjournment of the trial shall take out an order, except where the adjournment is applied for, at the trial.
3. **Witness, Exclusion of:** Unless the court otherwise orders, witnesses other than the accused and the informant will be excluded from the courtroom throughout the trial in criminal cases. Exceptions will usually be made for experts and others who need to hear the testimony in order to give their own properly.
4. **Repeal:** The Speedy Trial Rules made in 1977 by the County Courts in Nova Scotia are repealed.

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**Practice Memorandum No. 21**

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**Supreme Court of Nova Scotia Summary Conviction Appeal Rules  
Made Pursuant to the Criminal Code****1. Notice of Appeal:**

- (1) Where an appeal is taken pursuant to **Criminal Code**, s. 813, the appellant shall prepare a notice of appeal in writing, setting forth with reasonable certainty
  - (a) the summary conviction court from which the appeal is taken;
  - (b) the date and place where the adjudication was made;
  - (c) the conviction order or sentence that is being appealed;
  - (d) whether the appeal is from the conviction or order, or against the sentence, or both;
  - (e) what order the appellant asks the court to make, and the grounds or reasons therefore; and
  - (f) when and where the appellant will apply to the appeal court pursuant to Rule 4, to fix a time and place to hear the appeal

and the notice may be in Form 1 in the Appendix, where the appellant is the defendant and, where the appellant is the prosecutor, in Form 2, varied in each case as the circumstances require.

- (2) Where the appellant is the defendant, the appellant shall within thirty (30) days after the conviction or order was made, or the sentence was imposed, whichever is the later, cause the notice of appeal to be filed in the office of a prothonotary of the appeal court in the district where the offence is alleged to have occurred, together with proof that the appellant has mailed a copy of the notice of appeal to the prosecutor by prepaid post.
- (3) Where the appellant is the prosecutor, the appellant shall within thirty (30) days after the conviction or order was made, or the sentence was imposed, whichever is the later,
  - (a) cause the notice of appeal to be served on the defendant or on such other person, or in such other manner as a judge of the appeal court directs; and

- (b) file the notice of appeal in the office of the prothonotary of the district where the offence is alleged to have occurred with proof of service thereof, as in clause (a).

**2. Extension of Time and Substituted Service:**

- (1) An application to extend the time for service or filing or both, or to serve some person other than the defendant, or to serve the defendant in some manner other than as prescribed in sub-rule 1(2), may be made to the appeal court, or a judge ex parte, and shall be supported by proof, by affidavit or otherwise, that the appellant has consistently intended to appeal, and showing adequate grounds for the order sought.
- (2) The court or judge may require the appellant to give notice of the application to the respondent.

**3. Transcripts:**

- (1) Where the parties agree in writing on the facts, or where the appeal is from sentence only, no transcript of the evidence is necessary unless the court otherwise orders.
- (2) In all other cases the appellant shall, before or at the time of filing a notice of appeal, notify the summary conviction court that a transcript is required.

**4. Application for Hearing:**

- (1) The appellant shall apply to the court to fix a time and place to hear the appeal:
  - (a) not sooner than five (5) days after the notice of appeal has been filed; and
  - (b) not later than the first day after expiry of the five (5) days that a judge sits
    - (i) to deal with proceedings on the Crownside in the case of appeals in the Halifax region; and
    - (ii) in court or in chambers in the district where the appeal has been taken, in the case of appeals elsewhere.
- (2) Where the appellant fails to apply to the court to fix a time and place to hear the appeal as provided by subsection (1), the court may fix the time and place to hear the appeal.

- (3) Where the appeal court or a judge fixes a time and place to hear the appeal, the prothonotary of the appeal court shall forthwith notify any party not present, or not represented at the setting down of the time and place so fixed; such notification may be given by prepaid postcard or letter or in any other effective way.

5. **Written Arguments:**

- (1) Any party may present his/her argument in writing to the court, or by filing the argument with the prothonotary at any time before the hearing of the appeal.
- (2) Where both parties submit written arguments the court may dispense with a formal hearing.

6. **Non-Compliance:**

Non-compliance with these rules shall render a proceeding void, unless the court otherwise orders.

7. **Amending Notice of Appeal:**

The court may order that any notice of appeal be amended, or may deal with it as may be just.

8. **Matters Unprovided For:**

In matters not herein specifically provided for, the Civil Procedure Rules shall apply *mutatis mutandis*.

9. **Definitions:**

In these Rules, “court” means the appeal court or a judge thereof.

10. **Repeal:**

The Summary Conviction Appeal Rules previously made by the County Court in Nova Scotia are repealed.

N.B. Please note that for the purpose of the Summary Conviction Appeal Rules “appeal court” means the Supreme Court of Nova Scotia.

APPENDIX

APPEALS TO SUPREME COURT OF NOVA SCOTIA

FORM 1 - NOTICE OF APPEAL - DEFENDANT - APPELLANT

SAMPLE

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF \_\_\_\_\_  
TO WIT:

S. \_\_. No. \_\_\_\_\_

IN THE SUPREME COURT OF NOVA SCOTIA

HER MAJESTY THE QUEEN, on the  
information of John Doe

RESPONDENT

versus

RICHARD DOE

APPELLANT

I hereby appeal to the Supreme Court of Nova Scotia against the conviction {and sentence} made by The Honourable Judge G.H.I., a judge of the Provincial Court, on the \_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_, at or near \_\_\_\_\_ in the County of \_\_\_\_\_, Province of Nova Scotia, unlawfully \_\_\_\_\_ {etc.} and upon which conviction I was ordered to pay a fine of \$ \_\_\_\_\_, and in the alternative was ordered to be imprisoned in the County Jail at \_\_\_\_\_ for a period of \_\_\_\_ days.

The appellant seeks an order {set out the order asked for and the grounds or reasons therefore}

On the \_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_ noon, the court or judge thereof will set down the appeal for hearing.

DATED at \_\_\_\_\_ in the County of \_\_\_\_\_ and Province of Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_.

\_\_\_\_\_  
Appellant

To the Prothonotary of the  
Supreme Court of Nova Scotia



To the Prosecutor

**FORM 2 - NOTICE OF APPEAL**

**ATTORNEY GENERAL OR PROSECUTOR-APPELLANT**

**SAMPLE**

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF \_\_\_\_\_  
TO WIT:

S. \_\_. No. \_\_\_\_\_

IN THE SUPREME COURT OF NOVA SCOTIA

**HER MAJESTY THE QUEEN**  
by her Attorney General for  
Nova Scotia

RESPONDENT

versus

**RICHARD DOE**

APPELLANT

The Attorney General for Nova Scotia hereby appeals to the Supreme Court of Nova Scotia, against the order of dismissal made [or sentence passed], by His Honour Judge G.H.I., a Judge of the Provincial Court, on the \_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_, at \_\_\_\_\_ in the County of \_\_\_\_\_, Province of Nova Scotia, on the information of \_\_\_\_\_ that Richard Roe of \_\_\_\_\_, in the County of \_\_\_\_\_, did on or about [set out the charge which the defendant was discharged or convicted, and the sentence, if any].

The appellant seeks an order {set out in the order asked for and the grounds or reasons therefore}

On the \_\_\_\_ day of \_\_\_\_\_, A.D., 19\_\_\_\_, at the hour of \_\_\_\_\_ o'clock in the \_\_\_\_noon, the court or Judge thereof will set down the appeal for hearing.

DATED at \_\_\_\_\_ in the County of \_\_\_\_\_ and Province of Nova Scotia, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

To the Prothonotary of the  
Supreme Court of Nova Scotia

To the Respondent

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*R. v. Harris* (1996), 154 N.S.R. (2d) 399, C.A.C. 129764, Roscoe, J.A., September 25, 1996, September 24, 1996 (orally), S398/20. The Crown appealed from a dismissal by a Supreme Court Judge of an application to extend time for service of notice of appeal. The Sheriff had not been able to effect service because the respondent was “in the woods”. The respondent had been acquitted of a fisheries offence. *Held*, appeal allowed and time extended for service. The rules relating to summary conviction appeals, made pursuant to the authority of s. 482 of the *Criminal Code* are contained in Practice Memorandum No. 21. Section 1(3) sets out the time limit for the Crown and section 2 provides for extensions of time. If the notice of appeal raises an arguable ground, the appellant has shown a consistent intention to appeal, provided a reasonable explanation for the delay, and the delay is minimal, the application pursuant to the Summary Conviction Appeal Rule should be allowed.

*Kelsie v. Medley*, S.H. 134565, Davison J., June 4, 1997, May 13, 1997 (orally). S412/13. The provincial court judge refused to grant a peace bond under s. 810 of the Code. The appellant applied to extend time for service of the notice of appeal. *Held*, extension granted. The appeal proceedings to date were fraught with delays and errors. The service of a defective notice of appeal did indicate a *bona fide* intention to appeal during the appeal period. There was an arguable ground, relating to exclusion of evidence. The appellant had not acted with dispatch. It would be a denial of justice not to hear the appeal, where the purpose of s. 810 was to prevent a crime and the errors were those of the solicitor.

*R. v. Trimper* (1998), 171 N.S.R. (2d) 350; C.A.C. 147010, Glube, C.J.N.S., November 17, 1998. S431/31. The provincial court judge acquitted the accused on one charge and entered stays on the other three, in an oral decision. The judge advised a written decision would be filed, but no decision was filed, despite successive promises. Five months later, the Crown filed its notice of appeal and applied to extend time. The Supreme Court judge dismissed the application and the Crown appealed further. *Held*, appeal dismissed. The Supreme Court judge was correct in describing the Crown as consistently considering an appeal, but not consistently intending to appeal, as the appeal was seen to depend upon the written reasons. Nothing was said to the respondent about an appeal during the 30-day period.

*R. v. Marshall*, S.H. 170568, Wright J., October 4, 2001, August 23, 2001 (orally). S472/24. The appellants had been convicted of offences under the *Crown Lands Act* and then appealed. The Director of Public Prosecutions appointed a Justice Department lawyer to argue the appeals, leading to an application for judicial review of that appointment. The appellants sought to discover the Director of Public Prosecutions on the summary conviction appeal. *Held*, discovery refused. Paragraph 8 of Practice Memorandum No. 21 provided a procedural basis upon which a party could make an interlocutory application in a summary conviction appeal. But it should not be read in such broad terms that would encompass the right to discovery examination of a witness under rule 18 in a summary conviction appeal. The intended scope of paragraph 8 is to invoke the Civil Procedure Rules in summary conviction appeals only to the extent that there were gaps or amplifications needed in the provisions which are to be found there or as circumstances dictate. Another insurmountable barrier would be the principle of Crown immunity from discovery, which the Director could invoke.

PRACTICE MEMORANDUM NO. 22

**Resolution Conferences - Criminal Trials**

**Introduction**

1. Resolution Conferences in criminal cases [judge alone and jury] provide an opportunity to obtain judicial response to counsel's efforts at resolution, to facilitate the disposition of cases in a timely and fair manner other than by trial. To be effective they require counsel who are able to address the issues that will likely arise in a trial, understand the context in which the issues will arise and what the likely outcome of a criminal trial would be. Therefore, it is preferable that counsel attending the Resolution Conference:

- (a) be the person who is planning to conduct the trial;
- (b) be fully prepared;
- (c) have adequate instructions to deal with all issues likely to arise in a conference. If practical, the accused persons should be available in the courthouse or otherwise readily accessible to provide instructions.

**Scheduling Resolution Conferences**

2. At the first Crownside appearance by an accused person with counsel, the presiding judge will inquire as to whether both the Crown and defence want to participate in a Resolution Conference. If so, a Resolution Conference date may be set at that initial Crownside appearance, preferably within 2 months from the date of the Crownside appearance. The court may also adjourn the setting of the trial date to allow for the scheduling of a Resolution Conference.

3. The parties may at any time request the scheduling office to set a date for a Resolution Conference, even if one has been set or held under paragraph 2.

4. A joint request for a particular judge to conduct the Resolution Conference may be made to the scheduling office and, if practical, that judge will be assigned.

5. All Resolution Conferences in a case shall ordinarily be attended by the same judge.

**Material for Resolution Conferences**

6. At least 14 days prior to the Resolution Conference, the Crown will provide the following material to the judge and to all counsel attending the Resolution Conference:

- (a) an Agreed Statement of Facts, or if an agreement on all facts cannot be obtained, a statement of the facts on which there is agreement and the facts that remain in issue;

- (b) a list of the issues for the resolution conference;
- (c) the accused's criminal record, if any;
- (d) expert reports, if any;
- (e) the Crown's position on resolution;
- (f) a legal brief that contains an analysis of the law in support of the Crown's position, a list of legal authorities and the pertinent excerpts from those authorities.

7. At least 7 days prior to the Resolution Conference, defence counsel will provide the following material to the judge, the Crown and all other counsel attending the Resolution Conference:

- (a) expert reports, if any;
- (b) a legal brief that contains an analysis of the law in support of the defence position, a list of legal authorities and the pertinent excerpts from those authorities.

8. The judge who attends the Resolution Conference may review all material on file, including the preliminary transcript and exhibits.

### **Counsel's Efforts at Resolution**

9. Prior to the Resolution Conference, Crown and defence counsel shall discuss the information and materials exchanged and attempt to reach resolution. At the start of the Resolution Conference, counsel shall inform the judge concerning progress achieved toward resolution.

### **Conduct at Resolution Conferences**

10. Every effort will be made during the Resolution Conference to resolve the case or at least as many issues as can reasonably be resolved.

11. Victim Impact Statements and evidence concerning any victim shall be considered prior to determination of sentence.

12. If the parties reach a resolution, by joint recommendation on either a specific sentence or range of sentence, the plea should be entered in open court immediately following the conference unless the exigencies of the case require the plea and/or sentencing to be set over to another date, with minimum delay.

13. The judge who attends the Resolution Conference shall not be the trial judge or hear any contested proceedings in the case, but may adjudicate on sentence.

14. A Resolution Conference is private. All communications within it shall be confidential and shall be treated in the same fashion as without prejudice communications. Any material resulting from a Resolution Conference shall not be placed in the court file unless it is material which is part of the final disposition of the matter which is presented in open court.

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**Practice Memorandum No. 23**


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**Sentencing**

*This practice memorandum applies to cases where there has been an interval of more than two clear days between the finding of guilt or the pleas of guilty and the sentencing hearing.*

Whereas the Judges of the Supreme court recognize sentencing to be a duty of considerable responsibility and are desirous of being well informed prior to sentencing hearing;

And whereas the Judges of the Supreme court are sensitive to the concerns of the Bar that resources do not permit extensive pre-hearing memoranda;

And whereas it is the intention that the following practice memorandum balance these concerns:

At least two (2) clear days before a sentencing hearing, unless waived by the presiding judge, counsel shall submit in writing to the judge who will preside at the hearing:

- (1) a brief statement of the facts;
- (2) a brief statement of the position of counsel which shall include suggestions as to the appropriate sentence or range of sentence;
- (3) the criminal record of the accused;
- (4) a notion of any cases on which counsel rely.

At a time of entering a plea of guilty or of a finding of guilt questions may be addressed to counsel in accordance with the following checklist.

**JUSTICES' SENTENCING CHECKLIST**

*When setting a date for sentencing, the presiding Justice may wish to consider questioning counsel on the following topics:*

**I. PRE-SENTENCE REPORT (P.S.R.)**

Is either counsel requesting a Pre-sentence Report?

"      Crown                      "      Defence

Reason for request: \_\_\_\_\_

" P.S.R. ordered

## II. CIRCUMSTANCES OF THE OFFENCE(S)

*(This question need only be asked if there has been a guilty plea.)*

Does Defence counsel anticipate any dispute with the facts?

" Yes " No

If Yes: What allegations of the circumstances of the offence(s) are likely to be disputed?

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Does the Crown intend to call evidence re disputed fact(s)?

" Yes " No

Does the Defence intend to call evidence re disputed fact(s)?

" Yes " No

## III. CRIMINAL RECORD OF THE ACCUSED

Is the Crown alleging a prior criminal record?

" Yes " No

If Yes: Is the Defence aware of the alleged record?

" Yes " No

If Yes: Is the Defence contesting the alleged record?

" Yes " No

If Yes: Will the Crown call evidence on the disputed record?

" Yes " No

Will the Defence call evidence on the disputed record?

" Yes " No

## IV. VICTIM IMPACT STATEMENTS (V.I.S)

Will a V.I.S. be introduced? " Yes " No

If Yes: Does the Defence wish to cross-examine on V.I.S.?

" Yes " No

N.B. Counsel to advise if additional time required.

**V. DEFENCE EVIDENCE**

Will there be any Defence evidence, e.g., character?

" Yes " No

**VI TIME NEEDED FOR SENTENCE HEARING**

\_\_\_\_\_ Hours



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**Practice Memorandum No. 24**

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**Notice to the Attorney General of Canada - Constitutional Cases**

1. At the present time, no notice requirement exists when a challenge is made to the constitutional validity of federal legislation or regulations in civil cases before the Supreme Court of Nova Scotia.
2. The lack of a requirement for appropriate notice to the Attorney General of Canada is causing procedural and administrative difficulties.
3. Until appropriate provincial legislation is passed, a party intending to challenge the constitutional validity of an Act of Parliament or a regulation made thereunder shall give fourteen (14) days notice to the Attorney General of Canada.
4. This notice period is consistent with that which is required to be given to the Attorney General of Nova Scotia under the **Constitutional Questions Act**, R.S.N.S. 1967, c. 51.

[Amend. 5/10/96]

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**Practice Memorandum No. 25**

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**Corollary Relief Judgments****Contents of Practice Memorandum:**

- I. General directions from the Court regarding the Corollary Relief Judgment for Child Support Guidelines cases.
- II. Directions regarding the use of the Forms.
- III. List of Alternative Clauses.
- IV. Notes to assist in the drafting of the Corollary Relief Judgment for Child Support Guidelines cases.

**I. GENERAL**

The Federal Child Support Guidelines, effective May 1, 1997, set out specific requirements for the contents of the Corollary Relief Judgment (Form 57.22B or Form 57.22C and Form 70.23D or Form 70.23E). The form of Corollary Relief Judgment varies depending on the provisions of the Child Support Guidelines relied upon. Rule 57 (Matrimonial Causes) and Rule 70 (Family Proceedings) set out two forms of the Corollary Relief Judgment. This practice memorandum provides a list of additional clauses to assist litigants in the preparation of this document, and notes to provide more detailed explanations for the Forms and content of the clauses. The purpose of this Practice Memorandum is to ensure standardization and uniformity of corollary relief clauses, as well as compliance with the detailed requirements of the Guidelines.

1. The Corollary Relief Judgment shall be in Form 57.22B (Form 70.23D) or Form 57.22C (Form 70.23E) as set out in Rules 57 and 70, and shall include the basic clauses specified, unless otherwise directed by the court.
2. Additional clauses from the List of Alternative Clauses attached to this Practice Memorandum, or as otherwise required, may be added to the Corollary Relief Judgment.

**II. FORMS**

1. Form 57.22B (Form 70.23D) shall be used when the order made is for child support at the level set out in the tables which form part of the Child Support Guidelines.
2. Form 57.22C (Form 70.23E) shall be used when the order made is for child

support at the level set out in the tables plus special or extraordinary expenses.

3. Form 57.22 (Form 70.23E), as modified by the Alternative Clauses in Part III, shall be used in all other situations where a child support order has been made.

### III. LIST OF ALTERNATIVE CLAUSES

#### Imputation of Income

AND UPON IT APPEARING that C. B. has failed to provide income information when required by the order/notice dated \_\_\_\_\_ and his/her annual income is imputed to be \$\_\_\_\_\_ for the purpose of determining the amount of child support. [Note 10]

#### Rounding-Up of Table Amount

3. C. B. shall pay child support to A. B. pursuant to the federal Child Support Guidelines and in excess of the Nova Scotia table, the amount of \$\_\_\_\_\_ per month payable on the first day of each month, and commencing \_\_\_\_\_. [Note 11]

#### Undue Hardship

3. (a) C. B., resident of Nova Scotia, has an annual income of \$\_\_\_\_\_ [and his/her common law spouse, M.T., has an annual income of \$\_\_\_\_\_] for the purpose of determining the table amount of child support and his/her household standard of living.
- (b) A.B. has an annual income of \$\_\_\_\_\_ [and his/her common law spouse, J.D., has an annual income of \$\_\_\_\_\_] for the purpose of determining his/her household standard of living. [Note 12]
- (c) A.B.'s household has a higher standard of living than C.B.'s household.
- (d) C.B. would suffer undue hardship by reason of [circumstance] if required to pay child support pursuant to the federal Child Support Guidelines and in accordance with the Nova Scotia table in the amount of \$\_\_\_\_\_ per month. [ Note 13]
- (e) C. B. shall therefore pay child support to A.B. in the amount of \$\_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_.

#### Child 19 or Over

3. (a) C. B. has an annual income of \$ \_\_\_\_\_ and A. B. has an annual income of \$ \_\_\_\_\_, for the purpose of determining child support for D. B., born \_\_\_\_\_. [Note 14]
- (b) C. B. shall pay to A. B. [or D. B.] the amount of \$ \_\_\_\_\_ per month for the support of D. B., payable on the first day of each month, commencing \_\_\_\_\_.

### Split Custody

3. (a) C. B., resident of Nova Scotia, has an annual income of \$ \_\_\_\_\_ and A. B., resident of Nova Scotia, has an annual income of \$ \_\_\_\_\_, for the purpose of determining the table amount of child support.
- (b) C. B. would otherwise pay to A. B. for the support of D. B. the table amount of \$ \_\_\_\_\_ and A. B. would otherwise pay to C. B. for the support of E. B. the table amount of \$ \_\_\_\_\_.
- (c) C. B. shall therefore pay child support to A. B. in the amount of \$ \_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_. [Note 15]

### Shared Custody

**NOTE:** A standard clause for child support in a shared custody situation under Section 9 of the Child Support Guidelines has **not** been included as there are a wide variety of possible shared custody arrangements in practice. It may be possible to modify some of the alternative clauses to fit the particular shared custody situation.

### Reduced Spousal Support

8. No spousal support shall be paid by C. B. to A. B. As a result of giving priority to child support.

[or]

8. C. B. shall pay spousal support to A. B. in the amount of \$ \_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_, which amount is less than it otherwise would have been as a result of giving priority to child support. [Note 16]

### Waiver of Financial Disclosure

9. By agreement of the parties, neither A. B. nor C. B. shall be required to file a Statement of Financial Information or a Statement of Property in this proceeding. [Note 17]

#### IV. NOTES

1. Section 13(b) of the Guidelines requires that the order include “the income of any spouse whose income is used to determine the amount of the child support order”. As there are a number of different definitions of income, for different purposes, it is important to be clear what income has been determined and for what purpose.

In Form 57.22B (Form 70.23D) the “table-amount-only” version, the income recital need only mention the payor’s annual income for that purpose. In Form 57.22C (Form 70.23E), the “table-amount-plus-special or extraordinary expenses” version, the incomes of both spouses are required to determine the sharing proportions for special or extraordinary expenses and thus both incomes must be stated pursuant to ss. 7 and 13(b) of the Guidelines. Where spousal support is paid by one spouse to another, that spousal support must be deducted from the payor’s “table” income and added to the recipient’s income, before calculating the respective proportions: Guidelines, Schedule III, s. 3(2).

2. Using the name of the party rather than “Petitioner” or “Respondent” is simpler and less prone to error. In the body of the order, for ease of reading, only the first given name and the surname are used.
3. Section 13(a) of the Federal Child Support Guidelines requires the name and birth date of each child to whom the order relates.
4. In light of their importance, access terms should be set out in full in the body of the order, even if derived from Minutes of Settlement, a separation agreement or a Family Court Order, to which reference may be made. These terms being set out specifically in the order leaves no doubt as to their status and significance and thereby assists with enforcement. Further, the terms of access deserve at least as much detail as is being provided for child support terms. However, if the access provisions are lengthy, discretion may be used to incorporate provisions from Minutes of Settlement, a Separation Agreement or a Family Court Order by reference which must be attached.
5. As with Note 3, the terms respecting care and control should be set out in full in the body of the order. It is common for joint custody or shared parenting arrangements to include other terms, e.g. joint decision-making, access to information, mediation, etc., which should be incorporated by reference.
6. Section 6 of the Guidelines provides for this to be a term of child support. Any affidavit or Application for Judgment relating to child support should provide information to the court indicating whether or not such coverage exists or is to be

acquired, in order for the court to include this term: see *Mannett v. Mannett* (1992), 111 N.S.R. (2d) 327 and *Robski v. Robski*, [1997], N.S.J. No. 444.

7. Where the order is for the table amount, ss. 21 and 25 of the Guidelines only require the disclosure of the payor's income, consistent with the income-sharing philosophy of the Guidelines. Annual production is ordered here, rather than requiring a written request from the recipient, as would otherwise be necessary to trigger the obligation to disclose under s.25 of the Guidelines. Disclosure by the recipient is only required where there is an order for an amount other than the table amount.

The clause for mutual exchange of income tax returns (clause 7 of Form 57.22C (Form 70.23E)) should be used in all cases other than child support for the table amount only. The annual incomes of both parties must be disclosed, and hence income tax returns exchanged for child support or spousal support in the following cases: special or extraordinary expenses under s. 7, split custody (s. 8), shared custody (s.9), children 19 or over (s. 3(2)(b)), incomes over \$150,000 (s. 4(b)), undue hardship (s. 10), and spousal support (where ordered or where not ordered by reason of priority to child support).

8. This specific information concerning "special or extraordinary expenses" must be included in the order: Guidelines, s. 13(e): "the particulars of any expense described in subsection 7(1), the child to whom the expense relates, and the amount of the expense or, where that amount cannot be determined, the proportion to be paid in relation to the expense". The Director of Maintenance Enforcement prefers that an actual amount be stated for enforcement purposes, or at least a determinable amount to be shared, and not just the proportions. Sometimes both can be stated, e.g. of a total amount per month of \$100, the amount or percentage to be paid could be stated as "\$70 or 70 percent".
9. The method of payment preferred by the Director is for the payor to provide post-dated cheques for one year. If the preferred method of payment is adopted, this clause should read:

All support payments shall be made by way of post-dated cheques for a period of one year. The cheques shall be made payable to A. B. Payments shall be forwarded to the Office of the Director of Maintenance Enforcement, PO Box 803, Halifax, Nova Scotia, B3J 2V2, while the order is filed for enforcement with the Director. The current mailing address of A. B. is \_\_\_\_\_ and the current mailing address of C. B. is \_\_\_\_\_.

By reason of s.9 of the **Maintenance Enforcement Act**, all maintenance orders are filed with the Director of Maintenance Enforcement and enforced by the Director, unless the parties opt out or withdraw the order from enforcement. The court cannot order that the parties "opt out" of the Maintenance Enforcement Program. Parties wishing to opt out must do so in accordance with s. 10 of the Act, which requires that a written consent signed by both parties must be filed with the Director. In some

circumstances, a party may apply to the Director under s. 12 to have the order “withdrawn from enforcement”.

The current mailing addresses of both parties is to be included in most cases to assist with registration in the Maintenance Enforcement Program. However, there will be cases, such as those involving domestic violence, in which a party does not wish to disclose his or her address on the face of the order.

10. If a party has not provided the necessary income information, this clause may be used pursuant to ss. 19(1)(f), 21 and 22 of the Guidelines, to support the necessary imputation. Before income can be imputed under section 19(1)(f), the spouse must have failed to provide income information “when under a legal obligation to do so”, hence the reference to the disclosure order or notice. Section 21 sets out the information to be disclosed and s. 25 sets out the continuing obligation to disclose.
11. Often the parties will agree to “round up” the table amount, e.g. from \$478 to \$490 or \$500, or sometimes the parties will agree to fix support at an amount higher than the table amount, rather than detail some small amount of special or extraordinary expenses. In either case, this alternative clause identifies that the “basic amount” is in excess of the table amount. The Guidelines set a floor for child support purposes and parties are free to agree to a higher amount.
12. To determine undue hardship, it is necessary to itemize the incomes included in the calculation of the respective household standards of living, under s. 10(3) of the Guidelines. Incomes of all relevant members of the household should be identified, using Schedule II for guidance as necessary.
13. If allowed, undue hardship is usually used to reduce the table amount which would otherwise be ordered, an amount which must be stated in the order as required by s. 13(c) of the Guidelines. Any subsequent review or variation is then clear on what would have been ordered and what was actually ordered.
14. Pursuant to s. 3(2)(b), the court may decide the “table amount plus special or extraordinary expenses” is “inappropriate”, instead using the older method of working out a budget and sharing it proportionately between the parents. If the child has income, then the budget deficit is what is shared by the parents.
15. Section 8 of the Guidelines provides for the net difference to be paid in split custody situations. It may be necessary in some circumstances to include not just table amounts, but also special or extraordinary expenses in the calculation of the net difference, which should then be reflected in additional clauses.
16. Section 15.3(1) of the **Divorce Act** requires that the court give priority to child support over spousal support. Where that priority eliminates, or reduces the amount of, spousal support, the order should so note, consistent with the duty to record reasons in s. 15.3(3).7.

17. This clause may be used where both parties agree to waive the filing of the Statement of Financial Information and the Statement of Property, and there are no children of the marriage. This would include cases where the parties are not seeking relief regarding spousal support or matrimonial property and also where the parties have reached an agreement regarding spousal support and matrimonial and they have also agreed to waive the filing of these financial statements. This clause cannot be used where there are children of the marriage, even if child support has been agreed upon, in order to comply with s. 21 of the Guidelines.



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**Practice Memorandum No. 26**

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**Orders and Consent Orders - Family Maintenance Act****Contents of Practice Memorandum:**

- I. General directions from the court regarding the form of order for Child Maintenance Guidelines cases.
- II. Directions regarding the use of the Forms.
- III. List of Alternative Clauses

**I. GENERAL**

The Provincial Child Maintenance Guidelines, effective August 31, 1998, set out specific requirements for the contents of child maintenance orders. The form of order varies depending on the provisions of the Child Maintenance Guidelines relied upon. Rule 70 (Family Proceedings) sets out two forms of the order. This practice memorandum provides a list of additional clauses to assist litigants in the preparation of this document. The purpose of this Practice Memorandum is to ensure standardization and uniformity of clauses, as well as compliance with the detailed requirements of the Guidelines.

1. A **Family Maintenance Act** order shall be in Form 70.26A or Form 70.26B as set out in Rule 70, and shall include the basic clauses specified, unless otherwise directed to by the court.
2. Additional clauses from the List of Alternative Clauses attached to this Practice Memorandum, or as otherwise required, may be added to the order.
3. Practice Notes are included with Practice Memorandum No. 25, Corollary Relief Judgments. Although these practice notes primarily refer to the context of the **Divorce Act**, they may be of some assistance when preparing child maintenance orders, using either Form 70.26A or Form 70.26B and when using the List of Alternative Clauses.

**II. FORMS**

1. Form 70.26A shall be used when the order made is for child maintenance at the level set out in the tables which form part of the Child Maintenance Guidelines.
2. Form 70.26B shall be used when the order made is for child maintenance at the

level set out in the tables plus special or extraordinary expenses.

3. Form 70.26B, as modified by the Alternative Clauses in Part III, shall be used in all other situations where a child maintenance order has been made.

### III. LIST OF ALTERNATIVE CLAUSES

#### Imputation of Income

AND UPON IT APPEARING that C. B. has failed to provide income information when required by the order/notice dated \_\_\_\_\_ and his/her annual income is imputed to be \$ \_\_\_\_\_ for the purpose of determining the amount of child maintenance.

#### Rounding-Up of Table Amount

3. C. B. shall pay child maintenance to A. B. pursuant to the provincial Child Maintenance Guidelines and in excess of the Nova Scotia table, the amount of \$ \_\_\_\_\_ per month payable on the first day of each month, and commencing \_\_\_\_\_.

#### Undue Hardship

3. (a) C. B., resident of Nova Scotia, has an annual income of \$ \_\_\_\_\_ [and his/her common law spouse, M.T., has an annual income of \$ \_\_\_\_\_] for the purpose of determining the table amount of child maintenance and his/her household standard of living.
- (b) A. B. has an annual income of \$ \_\_\_\_\_ [and his/her common law spouse, J.D., has an annual income of \$ \_\_\_\_\_] for the purpose of determining his/her household standard of living.
- (c) A. B.'s household has a higher standard of living than C. B.'s household.
- (d) C. B. would suffer undue hardship by reason of [circumstance] if required to pay child maintenance pursuant to the provincial Child Maintenance Guidelines and in accordance with the Nova Scotia table in the amount of \$ \_\_\_\_\_ per month.
- (e) C. B. shall therefore pay child maintenance to A. B. in the amount of \$ \_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_.

**Child 19 or Over**

3. (a) C. B. has an annual income of \$ \_\_\_\_\_ and A. B. has an annual income of \$ \_\_\_\_\_, for the purpose of determining child maintenance for D. B., born \_\_\_\_\_.
- (b) C. B. shall pay to A. B. [or D. B. ] the amount of \$ \_\_\_\_\_ per month for the maintenance of D. B. , payable on the first day of each month, and commencing \_\_\_\_\_.

**Split Custody**

3. (a) C. B., resident of Nova Scotia, has an annual income of \$ \_\_\_\_\_ and A. B., resident of Nova Scotia, has an annual income of \$ \_\_\_\_\_, for the purpose of determining the table amount of child maintenance.
- (b) C. B. would otherwise pay to A. B. for the maintenance of D. B. the table amount of \$ \_\_\_\_\_ and A. B. would otherwise pay to C. B. for the maintenance of E. B. the table amount of \$ \_\_\_\_\_.
- (c) C. B. Shall therefore pay child maintenance to A. B. In the amount of \$ \_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_.

**Shared Custody**

**NOTE:** A standard clause for child maintenance in a shared custody situation under Section 9 of the Child Maintenance Guidelines has **not** been included as there are a wide variety of possible shared custody arrangement in practice. It may be possible to modify some of the alternative clauses to fit the particular shared custody situation.

**Reduced Spousal Maintenance**

8. No spousal maintenance shall be paid by C. B. To A. B. as a result of giving priority to child maintenance.

[or]

8. C. B. shall pay spousal maintenance to A. B. In the amount of \$ \_\_\_\_\_ per month, payable on the first day of each month, and commencing \_\_\_\_\_, which amount is less than it otherwise would have been as a result of giving priority to child maintenance.

**Waiver of Financial Disclosure**

9. By agreement of the parties, neither A. B. nor C. B. shall be required to file a Statement of Financial Information or a Statement of Property in this proceeding. [cannot be used if child maintenance is part of the order, due to s. 21 of the Guidelines.]

**Occupation of Residence** [may be used when an order is also made for the maintenance of a spouse, pursuant to s.7 of the **Family Maintenance Act**]

10. A. B. shall have the right to occupy and use the family residence located at \_\_\_\_\_, \*subject to the following conditions, \_\_\_\_\_, \*until further order.

**Property Division** [to be used if an application under the **Matrimonial Property Act** is made with the **Family Maintenance Act** application]

**THE FOLLOWING RELIEF UNDER THE MATRIMONIAL PROPERTY ACT IS HEREBY ORDERED:**

11. The division of property shall be in accordance with the separation agreement dated \_\_\_\_\_, attached hereto and incorporated insofar as the jurisdiction of the court allows.

[or]

11. All property and debts have been divided by the parties and each shall retain the property now in his or her possession.

[or]

11. The division of property shall be as follows:

(a)

(b)

## PRACTICE MEMORANDUM No. 27

### CASE MANAGEMENT

#### SETTLEMENT CONFERENCES

1. Settlement conferences may be offered if requested by a party and consented to by all other parties to the action. Requests for a settlement conference, at any stage of the proceedings, shall be made in writing, confirming the consent of all parties to the request, to the office of the prothonotary.
2. A settlement conference date may be assigned at the date assignment conference which is scheduled after the filing of a notice of trial.
3. It is desirable to have settlement conferences at least sixty (60) days prior to trial and to have completed examinations for discovery and production of documents.
4. At least seven (7) days prior to the settlement conference the parties shall file a concise brief which shall contain a summary of the facts, issues and the relevant law in the proceeding and the relevant portions of:
  - (a) transcripts of examination discovery
  - (b) expert reports
  - (c) evidence expected at trial
  - (d) authorities to be relied upon at trial
5. The judge who presides at the settlement conference shall not be the trial judge.
6. A settlement conference is a private and confidential negotiation. All communications within it shall be treated in the same fashion as without prejudice communications. Some judges may seek further or more specific agreements respecting confidentiality before a conference begins.
7. Counsel for the parties must have available to them persons who can give them immediate instructions.
8. When a settlement is reached, the prothonotary shall be immediately informed.

### **APPEARANCE DAY**

1. Appearance day is held weekly on Friday at 12:00 noon.
2. The appearance notice must set out the nature of the dispute. No supporting affidavit is required and it is expected that appearance day matters will be brief. There is no cost for filing the appearance notice.
3. The court may on its own motion bring matters forward on appearance day to have counsel or the parties discuss with the court the status of the case where:
  - (a) ten (10) months have passed since the close of pleadings for fast process cases or twenty-four (24) months have passed since the close of pleadings for ordinary process cases;
  - (b) twenty-four (24) months have passed since the filing of the originating notice and no defence has been filed.
4. The appearance day judge has the jurisdiction to award costs. Failure to appear at an appearance day may result in an order being issued against the absent party.

### **OTHER MATTERS**

1. In all cases, a notice of trial and record for the trial judge must be filed as prescribed by Rule 28.05. Following this filing, a date assignment conference will be scheduled with a judge at which a settlement conference date may also be scheduled with the consent of all parties.
2. Rule 28.11 will continue to be used by the court to keep the General List of cases updated.
3. A case can only be identified as COMPLEX on the direction of an appearance day judge. Relevant factors to be considered include the complexity of the issues of fact or law, the anticipated length of trial, the number of parties involved and the nature and extent of the anticipated expert evidence and document production required.

## Practice Memorandum No. 28

### Freedom of Information and Protection of Privacy Appeals

The following procedure applies to appeals commenced before the Supreme Court in accordance with section 41 of the ***Freedom of Information and Protection of Privacy Act***, SNS 1993 c. 5 and section 12(10) of the Regulations made pursuant to the ***Freedom of Information and Protection of Privacy Act***.

This Practice Memorandum also sets out the procedure to follow on an appeal from a Supreme Court decision rendered on appeal as set out in the above paragraph before the Nova Scotia Court of Appeal.

### Appeals before the Supreme Court of Nova Scotia

1. Appeals to the Supreme Court may be initiated by use of one of the forms prescribed at section 12 of the Regulations made pursuant to the ***Freedom of Information and Protection of Privacy Act*** (Act).
2. **Form 9** is used where an **applicant** is as mentioned in subsection 32(3) of the Act. **Form 10** is used where an **applicant** is as mentioned in subsection 41(1) of the Act. **Form 11** is used where a **third party** is as mentioned in subsection 41(1).
3. The appellant must complete Part A of the appropriate Form. The appropriate Form is then filed with the Prothonotary of the Supreme Court along with the attachments as Appendices required in the particular Form itself. The Prothonotary date stamps the Form with completed Part A and the appellant must then serve the Form on the Respondent and upon the Minister of Justice for the Province of Nova Scotia pursuant to subsection 41(1A) in order that the Minister may become a party to the appeal pursuant to subsection 41(1B). The appellant shall file with the Prothonotary an affidavit of service of the Form on the respondent and the Minister of Justice.
4. Upon receipt of the duly completed Form with attachments, the Prothonotary will not be able to complete Part B of the Form as the date for the hearing will be determined at a **pre-hearing conference convened before a judge of the Supreme Court**. Thus, the Prothonotary will affix a red coloured stamp immediately below PART B which will clearly indicate the date, time and place for the pre-hearing conference **ONLY**. This should ensure that all parties being served with the Form are aware that the first meeting with the judge will be for a pre-hearing conference only. Part B of the Form will be completed by the Prothonotary following the pre-hearing conference.
5. In setting the date for the pre-hearing conference the Prothonotary and/or the court schedulers may obtain from the appellant and/or the respondent and/or the known third parties an estimate of the time required for the pre-hearing of the matter.

6. The Prothonotary shall assign the matter for the pre-hearing conference to a specific special time chambers date no earlier than twenty (20) days after the Form is filed with the Prothonotary. The Form is then issued by the Court Administration Office and must be served by the appellant within ten (10) days of issuance on the head of the public body referred to in the Form.
7. The chambers judge then sitting will convene the pre-hearing conference with all known parties. The chambers judge who will conduct the pre-hearing conference will not automatically be seized with the appeal hearing itself.
8. The pre-hearing conference will be conducted “in camera” and in the same manner as a pre-trial conference for civil cases. The conference need not be recorded and a memorandum only will issue from the conference. At the pre-hearing conference the presiding judge will address (subject to such amendments as may be made by the judge himself/herself) the following issues:
  - (a) if all interested parties have been identified and given notice as required;
  - (b) if any portions of the pre-hearing conference shall be confidential;
  - (c) if any portions of the appeal hearing will be considered confidential and what measures will be necessary to assure such confidentiality;
  - (d) whether the names of any of the parties are to be confidential and if so, what steps will be taken to assure that confidentiality;
  - (e) the manner in which the record keeper will present information or records to the court and the manner in which confidential information or records is to be identified for the court;
  - (f) the dates by which information or records are to be filed with the court;
  - (g) which of the parties, if any, shall have access to the information or records;
  - (h) identity of the “record” to be given to the court;
  - (i) whether any of the parties will give oral testimony or whether there will be cross-examination on any affidavits filed or expected to be filed with the court;
  - (j) the times for the filing of additional affidavits by any of the parties and for the filing of briefs;
  - (k) whether there will be discoveries of any of the parties and the fixing of the dates for same;
  - (l) the date, time and place for the hearing of the appeal; and
  - (m) any and all such matters which the judge conducting the pre-hearing conference deems are necessary for the proper conduct of that particular appeal.
9. Any documents or records to be filed with the court following the pre-hearing conference are to be placed in a brown manila envelope and SEALED. The following notation is to be placed by counsel on the envelope: “CONFIDENTIAL DOCUMENTS PRODUCED TO THE COURT ONLY PURSUANT TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY APPEAL.



THESE DOCUMENTS ARE FILED BY \_\_\_\_\_ (name of the lawyer and the party they represent)". This brown manila envelope is to be kept separate from the court file and is to be held by the Prothonotary and given by the Prothonotary to the judge who will hear the appeal.

10. At the conclusion of the appeal hearing counsel are encouraged to raise with the presiding judge whether a provision in the order to be prepared should provide for a stay of the enforcement of the order for a period sufficient to afford the public body or a dissatisfied third party an opportunity to appeal the decision to the Court of Appeal.
11. Following the hearing the judge will determine in which manner any sealed documents or records are to be handled - whether they remain sealed or not. All sealed documents are to be given by the judge to the Prothonotary and retained by the Prothonotary until such time as all appeal periods have passed. Where no appeal is made of the decision of the Supreme Court judge to the Nova Scotia Court of Appeal - the Prothonotary will return to the solicitor who has filed the sealed documents all the sealed documents after 45 days have passed following the date of the issuance of the Order for Judgment by the Supreme Court.

### **Appeals before the Nova Scotia Court of Appeal**

Where an appeal is filed with the Nova Scotia Court of Appeal from an appeal decision of the Supreme Court rendered above, the following procedures apply.

1. A Notice of Appeal from the Supreme Court decision is to be filed in accordance with the **Civil Procedure Rules** within thirty (30) days of the Order being appealed.
2. Upon filing the Notice of Appeal the Appellant's solicitor must also indicate the date that he/she will be making a chambers application to set down the appeal. The chambers application will be heard in person and the parties to the appeal must be prepared at the chambers application to address the issues identified at paragraph 10 above under the hearing "Appeals before the Supreme Court of Nova Scotia.
3. Where the parties to the appeal have not agreed to a stay of the Supreme Court decision under appeal, a stay application can be made at this first chambers appearance before the Court of Appeal on proper notice to the other parties to the appeal.