

NOVA SCOTIA PROVINCIAL COURT RULES

(Implementation Date: January 1, 2013)

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Rule 1 – General

Fundamental Objective

- 1.1 (1)** The fundamental objective of these Rules is to ensure that cases in the Provincial Court of Nova Scotia are dealt with fairly, reasonably and efficiently.

Duty of Counsel, Agents and Self-Represented Persons

- 1.1 (2)** In every case, each counsel, agent and self-represented person shall comply with these Rules and with applicable Practice Directions and other orders made by the Court.

Duty of Court

- 1.1 (3)** The Court shall take the fundamental objective into account when,
- (a) exercising any power under these Rules; or
 - (b) applying or interpreting any Rule or Practice Direction.

Scope of Rules

- 1.2** These Rules apply to all cases before the Court.

Definitions

- 1.3** In these Rules,
- “Charter” means the Charter of Rights and Freedoms;
 - “Court” means the Provincial Court of Nova Scotia.

Rule 2 – Applications

Notice of Application

- 2.1 (1)** An application shall be commenced by,
- (a) completing a Notice of Application in Form 1;
 - (b) serving (giving or sending) Form 1 to the opposing parties; and
 - (c) filing a copy of Form 1 with the Court.

Contents of Notice

- 2.1 (2)** The Notice of Application shall include,
- (a) a statement of what is being requested;
 - (b) the reasons for the request; and
 - (c) the facts supporting the request.

Commentary

The party who is making an application to the Court under these Rules must use Form 1. It is important that Form 1 is filled out completely.

Transcripts or Audio Recordings

- 2.1 (3)** A party who wishes to rely upon something that happened in a previous court proceeding shall attach the transcript or audio recording of the relevant part of the other proceeding to Form 1.

Commentary

Transcripts of court proceedings may be very important to the Court in deciding an application. Transcripts are important where a party seeks a stay of proceedings due to unreasonable delay under s. 11(b) of the Charter. Where a party requires a transcript or audio recording, it is important that the procedures for ordering recordings of court proceedings are followed, so that there is enough time for the transcript or audio recording to be prepared, to be attached to Form 1 and to be served and filed.

Response

- 2.2 (1)** A party who wishes to respond to a Notice of Application may prepare, send or give a Response in Form 2 to the opposing parties and file a copy of it with the Court before the first appearance on the application.

Contents of Response

- 2.2 (2)** If a party chooses to respond, the Response shall include,
- (a) the reasons for opposing the application; and
 - (b) the facts supporting those reasons.

Commentary

If a party chooses to respond it is important that Form 2 is filled out completely.

Additional Material

- 2.3** Parties making applications and opposing parties, may serve and file any additional documents that they consider appropriate and helpful to assist the Court, including,
- (a) a brief statement of the legal argument to be made;
 - (b) one or more affidavits;
 - (c) case law to be relied upon; and
 - (d) an agreed statement of facts.

Commentary

Additional materials may be filed that will assist the Court to decide the application. These might include an agreed statement of facts, affidavits and written argument and case law, where appropriate. It may also be necessary to have witnesses attend court (e.g., on an application for an adjournment of trial, a person who has firsthand knowledge of the reasons for the unavailability of the witness on the trial date). Where cases or statutes, bills or laws are filed, the relevant passage(s) should be indicated.

There is no need to reproduce well known material, such as a section of the Criminal Code. All materials shall be filed as soon as possible subject to any direction of the Court.

Time for Pre-Trial Applications

- 2.4 (1)** Except with the permission of the Court, a pre-trial application shall be heard at least 60 days before trial.
- 2.4 (2)** For the purposes of sub-rule (1), pre-trial applications include,
- (a)** procedural applications such as applications for adjournments or withdrawal of counsel of record;
 - (b)** preparatory applications for matters that are necessary before proceeding to trial, such as disclosure, access to private records, release of exhibits for testing or commission evidence;
 - (c)** applications for severance and for particulars;
 - (d)** applications for the appointment or removal of counsel; and
 - (e)** applications for a stay of proceedings for unreasonable delay under clause 11(b) of the Charter.
- 2.4 (3)** An application for a stay of proceedings for unreasonable delay under clause 11(b) of the Charter shall be brought before the assigned trial judge.

Time for Trial Applications

- 2.5 (1)** A trial application shall be heard at the start of the trial or during the trial, subject to the direction of a judge at a pre-trial or of the trial judge.
- 2.5 (2)** Trial applications include,
- (a)** applications such as those under the Charter that,
 - (i)** challenge the constitutionality of legislation,
 - (ii)** seek a stay of proceedings, except for unreasonable delay under clause 11(b) of the Charter,
 - (iii)** seek the exclusion of evidence; and
 - (b)** complex evidentiary applications such as applications for the admission of,
 - (i)** similar fact evidence,

- (ii) evidence of a complainant's prior sexual activity, or
- (iii) hearsay evidence.

Commentary

Trial applications can take many forms. Rule 2.5 is designed to balance the benefits of certainty, as to how a complex issue should be addressed, and flexibility, to ensure that the fundamental objective is properly respected.

Time for Third Party Applications

- 2.6 (1)** Applications by witnesses or by the media shall be heard at least 30 days before the trial.

Applications by Consent

- 2.7 (1)** Subject to sub-rule (2), an application may be dealt with by consent, without a hearing, if a party files a Consent in Form 3.
- 2.7 (2)** If the Court is of the opinion that the application requires a hearing, a hearing date shall be ordered.
- 2.7 (3)** An application in which a party is not represented by counsel may be dealt with by consent if,
- (a) the self-represented person appears before the Court; and
 - (b) the Court is satisfied that the self-represented person understands the nature of the consent and the consequences of giving it.

Commentary

Parties are encouraged to consent to applications in a timely way in appropriate cases.

Rule 3 – Serving Documents

Times for Serving Notices and Responses

- 3.1 (1)** A Notice of Application shall be served, and filed with proof of service, at least 7 days before the date of the first appearance on the application.
- 3.1 (2)** A Response shall be served and filed with proof of service at least 3 days before the date of the hearing of the application.

Exceptions

- 3.1 (3)** Despite sub-rules (1) and (2), the time periods set out in those sub-rules may be shortened or lengthened,
- (a)** by a local Practice Direction;
 - (b)** by an order of the Court;
 - (c)** with the consent of the parties, except for applications for adjournments and applications by counsel to be removed from the record.

Commentary

Timely notice of applications that are being brought under these Rules is essential to the efficient management of trial proceedings. The general rule is that applications must be served and filed no less than 7 days before the date set for hearing the application. Rule 3.1 provides exceptions to this, such as an order of the Court authorizing a different time period.

Application for Adjournment or for Counsel to Withdraw

- 3.2 (1)** On applications for adjournment and applications by counsel to be removed from the record, shortening the time periods set out in sub-rules 3.1 (1) and (2) requires the approval of the Court.
- 3.2 (2)** The Court shall consider all of the circumstances surrounding the application and the consent of the parties if any.

Commentary

It is recognized that there are occasions where unexpected developments take place, such as the illness of a witness shortly before the trial date or a breakdown in the lawyer-client relationship, and it is not possible to give as much notice as the Rules require. In such cases, the parties should not wait until the trial date to bring the application, but instead bring the application as soon as the matter comes to their attention, and request that the Court permit the matter to be heard on short notice, with the consent of the other party.

Methods of Service

- 3.3 (1)** Service under these Rules may be made in person, by fax or by email, and hard copies of the documents served shall be filed with the Court.

Electronic Filing Technology

- 3.3 (2)** If electronic filing technology is available and its use is authorized the documents may be served, filed or both by means of the technology. When a document has been filed electronically, it is not necessary to file a hard copy.

Rule 4 – Case Management

Hearing and Trial Management

- 4.1** When conducting a hearing or trial, the Court has power to make any order or direction in relation to the conduct of the case that would assist in ensuring that it is conducted fairly, reasonably and efficiently.

Commentary

Trial judges possess trial management powers in order to ensure that the proceedings are conducted reasonably, fairly and efficiently. A trial judge is not a mere observer who must sit by passively allowing counsel to conduct the proceedings in any manner they choose. For our justice system to operate effectively trial judges must have the ability to control the course of proceedings before them.

Judicial Pre-Trial

- 4.2 (1)** Every case that is proceeding to preliminary inquiry or to trial, that is set down for one full day or longer, may have a judicial pre-trial.
- 4.2 (2)** Before attending the judicial pre-trial, the parties shall,
- (a)** review the file; and
 - (b)** communicate in order to attempt to resolve issues.
- 4.2 (3)** At the judicial pre-trial the parties are expected to be authorized to make decisions on,
- (a)** disclosure;
 - (b)** applications, including Charter applications, that the parties will bring at trial;
 - (c)** the number of witnesses each party intends to call at the preliminary inquiry or at trial;
 - (d)** any admissions the parties are willing to make;
 - (e)** any legal issues that the parties anticipate may arise in the case;
 - (f)** an estimate of the time needed to complete the case; and
 - (g)** resolution of the matter, if appropriate.

Commentary

Pre-trials can result in speedier trials, focused on the matters in issue. For the convenience of the parties, a pre-trial may be conducted by telephone with the consent of the pre-trial judge. A pre-trial on the record is particularly helpful for parties not represented by counsel. The court procedures can be explained, the position of the Crown on the issues can be related and the issues set out in sub-rule (3) above can be canvassed.

Judicial Directions

4.2 (4) After hearing from the parties during the judicial pre-trial, the pre-trial judge may take one or more of the following steps:

1. Confirm or amend the estimates of the time required to hear the case.
2. Set timelines for the exchange of materials on applications to be heard, or for the completion of disclosure on matters to be set for trial or preliminary hearing.
3. Set times for the hearing of applications.
4. Set a date for a further judicial pre-trial, if required.

Record of Pre-Trial Agreements and Admissions

4.2 (5) At the completion of the judicial pre-trial any agreements or admissions shall be recorded, transcribed and attached to the Information for the assistance of the trial judge.

Focus Hearing

4.3 (1) A case that is proceeding to a preliminary inquiry may have a judicial pre-trial as set out above, and shall have a focus hearing as set out in the Criminal Code if the parties request one or a judge so directs.

4.3 (2) A focus hearing shall be attended by counsel who will be conducting the inquiry or by the self-represented person.

Commentary

The purpose of a focus hearing pursuant to the Criminal Code is to:

(a) assist the parties to identify issues on which evidence will be given at the inquiry;

(b) assist the parties to identify the witnesses to be called at the inquiry taking into account the needs and circumstances of each witness; and

(c) encourage the parties to consider any other matters that would promote a fair and expeditious inquiry.

Materials

4.3 (3) The party who requests the preliminary inquiry shall serve the following materials on the opposing parties and file them with proof of service, at least 3 days before the focus hearing:

1. A list of witnesses whom the parties seek to have testify at the preliminary inquiry;
2. A brief statement as to whether committal for trial is in issue, and on what basis; and
3. A statement of admissions, if any.

Absence of Agreement

4.3 (4) At the conclusion of the focus hearing, if the parties do not agree as to the witnesses to be called at the preliminary inquiry, either party may schedule a hearing.

Commentary

The purpose of a focus hearing is to ensure that the process is streamlined and witnesses with non-contentious evidence are not inconvenienced or that non-contentious evidence is not called unnecessarily. If the parties cannot agree on the witnesses to be called or the manner of receiving their testimony, then a hearing can be scheduled under the Criminal Code provisions before the preliminary inquiry judge on the record and may result in the judge making binding orders for the conduct of the inquiry.

Rule 5 – Practice Directions, Forms, Non-Compliance, and Commencement

Power to Issue Practice Directions

- 5.1 (1)** The Chief Judge or his or her delegate may issue Practice Directions that are consistent with these Rules.
- 5.1 (2)** A Practice Direction may apply to the whole of Nova Scotia, to one or more regions or to a local court within a region.
- 5.1 (3)** A Practice Direction does not come into effect before it is posted on the Nova Scotia Courts website (www.courts.ns.ca).

Commentary

Practice Directions can address the issues and court culture of our regions and local courts. In creating Practice Directions the judiciary, in their discretion, will consult with members of the justice community.

Forms

- 5.2 (1)** The following forms, which are available on the Nova Scotia Courts website at www.courts.ns.ca/provincial/pc_forms.htm shall be used where applicable and with such variations as the circumstances require:
- Form 1 (Notice of Application)
- Form 2 (Response)
- Form 3 (Consent)
- 5.2 (2)** The Chief Judge may issue Forms Notices establishing additional forms and requiring their use. This power shall not be delegated.
- 5.2 (3)** A Forms Notice does not come into effect before,
- (a) it is posted on the Nova Scotia Courts website (www.courts.ns.ca); and
- (b) the form or forms it establishes are available on the website at www.courts.ns.ca/provincial/pc_forms.htm.

Power of Court to Excuse Non-Compliance

- 5.3** The Court may excuse non-compliance with any Rule at any time to the extent necessary to ensure that the fundamental objective set out in Rule 1.1 is met.

Commentary

It is expected that the parties will be familiar with these Rules of Court and will comply with them. It is a professional obligation to do so. However, on rare occasions, there may be circumstances that prevent compliance. The Court, in its discretion, may excuse compliance with the Rules to the extent required to ensure a fair hearing. Consequences may result from non-compliance, including dismissal of the application without a hearing on the merits.

Commencement

These Rules come into force on January 1, 2013.