

**NSCA PRACTICE DIRECTIVE RE:  
Judicial Mediation**

The Nova Scotia Court of Appeal offers parties who have an appeal before the Court the opportunity to meet with a judge of the Court to seek a solution to the dispute between the parties. The program is based on following principles and requirements:

1. All parties to civil or family litigation before the Court of Appeal who have a genuine desire to seek a solution to their legal disputes may request judicial mediation.
2. All parties must agree to judicial mediation and submit a joint request to participate in the program.
3. If one or both of the parties are self represented litigants, they will be encouraged to participate in the pro bono program being sponsored by the Canadian Bar Association.
4. The mediation program is free.
5. The Court, or a judge thereof, will decide whether it is an appropriate case for mediation. No reasons will be given for accepting or declining a request for mediation.
6. Once a joint request for mediation form is received by the registrar of the Court, and the case is approved for mediation, a mediation session will be scheduled as soon as practicable.
7. A judge of the Court of Appeal will review the joint request for mediation and contact the parties to review their objectives and to establish the rules of procedure to be followed at the mediation session. Matters for discussion will likely include the content and scheduling of materials to be filed in advance of the

mediation, the date and time required, who will be present and the process to be followed during the mediation session. Flexibility in procedure and format will be emphasized. Some aspects of the program are not negotiable. These include:

- The process is completely confidential. All documents prepared for mediation, statements by counsel or by the parties during the mediation process are without prejudice and confidential – they cannot be used or disclosed for any other purpose;
- The judge conducting the mediation will not hear any applications with respect to the outstanding appeal, nor sit on the appeal should mediation fail to achieve a complete resolution of the dispute between the parties;
- The judge conducting the mediation will not discuss the mediation process with any member of the Court assigned to hear the appeal;
- The judge conducting the mediation is performing a judicial function and as such enjoys complete judicial immunity and is not a compellable witness in any proceeding relating to any matter arising out of the mediation process;
- The judge conducting the mediation can recommend solutions but never force the parties to accept terms of settlement.

8. If the parties are successful in resolving their dispute, they will be responsible to draft an agreement to be signed by all of the parties followed by a notice of abandonment of the appeal proceedings.

9. If an order of the Court is required, the parties shall prepare and consent to the order, but the order will not take effect unless and until it is approved by a panel of the Court. The allowance of an appeal by consent is not to be taken as any expression of opinion by the Court on the correctness or otherwise of the reasons for judgment from the court or tribunal whose decision and confirmatory order is the subject of appeal.