



**PRACTICE DIRECTIVE:
APPEARANCES IN THE COURT OF APPEAL**
(including for appeals with remote appearances and fully virtual appeals)

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INTRODUCTION

Typically, appeal proceedings are held in person, with all parties appearing physically in the courtroom. However, the Nova Scotia Court of Appeal is capable of running fully virtual appeals using Microsoft (MS) Teams or appeals with remote appearances by telephone or videoconferencing. Unless otherwise noted by the Court, participants should assume that their matter will proceed in person. Counsel or parties may make a request to the Court to appear virtually. Letters concerning format will be sent to counsel only in instances where the panel chooses a format other than in-person.

Subject to any order of the Court, all fully virtual appeals or in-person appeals with remote appearances will be conducted pursuant to this practice directive.

PRACTICE DIRECTIVE

1. Format of Appeals

i. Fully In-Person Appeals

- Fully in-person appeals will be heard by in-person attendance of the parties and the panel.

ii. Appeals with Remote Appearances

- Appeals with Remote Appearances may involve a combination of in-person and remote appearance, in which some parties participate remotely (by Microsoft Teams or by telephone) and some participate in-person (in the courtroom) **or** appeals in which all parties participate remotely, but the panel hears the appeal by physically attending the courtroom. An Appeal with Remote Appearances may also be referred to as an appeal “via Microsoft Teams with the panel in the courtroom.” For greater clarity, in any appeal designated an “Appeal with Remote Appearances,” the panel will be in the courtroom.

iii. Fully Virtual Appeals

- Fully Virtual Appeals will be conducted using Microsoft Teams, unless otherwise ordered by the Panel. Microsoft Teams also allows for a telephone connection. For the Fully Virtual Appeal format, the panel will also participate remotely.

iv. In-writing Appeals

- In-writing appeals will be considered on the basis of written materials only.

Fully In-Person Appeals are the default format unless circumstances dictate that an alternative format is preferred or required. When deciding whether an alternative format is preferred or required, the panel will consider, among other things:

- The nature of the case;
- The complexity of the case;
- Whether there are liberty interests at stake;
- Whether the appeal relates to a matter of public interest; and
- Other relevant considerations, including the positions of the parties.

I. Fully In-Person Appeals

Disposable medical masks are mandatory in public spaces in the Law Courts. Parties may remove masks when in the courtroom making oral argument, subject to other instructions by the panel.

Water is available in the courtroom. Parties also may bring their own water bottles into the courtroom.

No one should attend for an appeal or Chambers if they are exhibiting any symptoms of a contagious illness. In the event counsel or a party are feeling unwell or showing symptoms, they should contact the Court for direction, such as the scheduling of an adjournment or a remote appearance.

Hand sanitizer is provided throughout the building, including at the entrance of the appeal courtroom.

II. Appeals with Remote Appearances

If a panel determines that an appeal will be heard by remote/virtual appearance (or one or more parties request to appear remotely), court staff will arrange for the participation of parties by extending a Microsoft Teams meeting invitation to a virtual hearing.

Parties must familiarize themselves with Microsoft Teams prior to their hearing date(s). Participants who are unable to use Microsoft Teams videoconferencing for the appeal hearing should use the teleconference information included in the Microsoft Teams invite.

All parties participating in an appeal by Microsoft Teams must take part in a technology check (“tech check”) organized by the Court Clerk prior to their hearing date(s). The Court Clerk will contact the parties in advance to set up a date and time for the tech check, and to provide instructions. All parties must use the same computer and/or other equipment for the tech check they plan to use for the appeal hearing. In addition, parties must ensure they are in the same location for the appeal as they were for the tech check. Questions about this process may be directed to Alanah Wallace (alanah.wallace@courts.ns.ca).

If Microsoft Teams fails for a participant appearing remotely, the Court will recess until the Court Clerk can reconnect that participant to the Teams session. If Microsoft Teams fails for many or all involved, the Court Clerk will connect the parties and the panel by teleconference and the appeal will resume as expeditiously as possible or be rescheduled. The Court Clerk will request a telephone number from each participant, for that purpose, in advance of the hearing. Participants must ensure they can be reached during the hearing at the telephone number they have provided.

III. Fully Virtual Appeals

The same requirements apply to Fully Virtual Appeals as to Appeals with Remote Appearances, set out above. The key difference between the two formats is that for Fully Virtual Appeals, the members of the panel will not physically attend the courtroom to hear the appeal, whereas for Appeals with Remote Appearances, the panel will be physically present in the courtroom during the hearing of the appeal, even if all parties are appearing remotely.

IV. In-writing Appeals

Proceeding with an appeal “in writing” means that the panel will decide the appeal based on the written arguments and related materials parties provided to the court without an oral hearing.

The Court may be prepared to decide appeals in writing where doing so is appropriate. If all parties are in agreement with proceeding with an in-writing appeal, a request may be made by email to the Registrar (Caroline.McInnes@courts.ns.ca). Alternatively, the Registrar may notify the parties that the panel believes it appropriate for the appeal to proceed on the basis of written materials only.

Where parties have agreed or do not object to the panel’s assessment that the matter should proceed in writing, they will have the opportunity to file additional written submissions on dates and within page limits determined by the panel (the details of which will be communicated by the Registrar).

Additional submissions may be filed in hard copy or by email attachment, in accordance with this practice directive. All text must be formatted in compliance with the Civil Procedure Rules of Nova Scotia (e.g., font must be in size 12 and text must be double-spaced).

Appeals will only proceed in writing where all parties and the panel agree that the format is appropriate for the particular appeal.

If an appeal proceeds on the basis of written materials only and the panel determines that it needs to hear further from the parties, the panel may:

- Request further written submissions;
- Request answers to specific questions; or
- Schedule an in-person or a fully virtual hearing or a hearing with remote appearances.

2. Chambers

Chambers matters are heard in-person or by telephone conference in accordance with Rule 90.37. Motions may be heard virtually (Microsoft Teams) with permission of the chambers judge. Requests for a motion to be heard virtually should be made to the Registrar.

3. Electronic Filing of Documents

The Court of Appeal has approved a standalone Practice Directive on Electronic Filing of Documents in Appeal Proceedings. This Practice Directive is applicable to all appeal proceedings at the Court of Appeal. Please refer to that Practice Directive [here](#) for information on this practice.

4. Etiquette

Courtroom etiquette should be maintained during all virtual proceedings. Participants should make best efforts to avoid detracting from the dignity of proceedings, including the following considerations:

- Before court commences you will be asked to identify yourself and who you represent, if applicable. The court clerk will confirm all the parties and counsel attending the hearing.
- Select a screen name on Microsoft Teams containing your full name and role in the proceeding (e.g. Jane Doe, Counsel to the Appellant).
- Counsel are expected to gown for all appeals, including when appearing virtually. Counsel with personal circumstances that require them to modify their courtroom attire should refer to the Nova Scotia Court of Appeal Practice Directive Re: Courtroom Attire for Counsel at https://www.courts.ns.ca/Civil_Procedure_Rules/cpr_rules_and_forms_index.htm.
- Self-represented parties should wear clothing that is appropriate for a court appearance.
- Counsel and self-represented litigants must be able to participate from a quiet space with a neutral background. Counsel and self-represented litigants must make reasonable efforts to avoid or reduce the risk of interruptions during the hearing. If it is not possible to find a quiet space, it may be necessary for the appeal to proceed in-person to preserve the quality of the transcript.
- Participants should mute or turn off notifications on any digital devices (e.g. cell phones, computers, etc.).

- Participants will be asked by the Court to mute their microphone or telephone when not speaking during a video or telephone hearing. It is ideal for all participants to use a headset and microphone to reduce background noise and to ensure that all parties can be heard and recorded clearly.
- Parties should not eat during the hearing, unless the Court or presiding justice allows otherwise.
- Participants should not move away from the screen or turn off their camera during a video hearing without the permission of the Court. Panels will direct participants at the beginning of each hearing as to breaks.
- Unless directed otherwise by the court, it is not necessary in virtual hearings to stand when the panel joins the hearing or when addressing the Court. Parties should take reasonable steps to ensure they remain within view of the camera during the entire hearing. In lieu of bowing to the Court, counsel may nod or bow their heads when the panel or presiding justice enters the video. Participants should remain seated throughout their submissions to the Court.
- Unless addressing the Court, or otherwise requested to speak, all participants should have their microphones muted during video or telephone hearings. Parties should refrain from typing when their microphones are on if it creates a disruption to the proceedings.
- Parties must take special care not to interrupt one another during virtual hearings, in order to avoid gaps in the audio recording of the proceedings. All participants should speak slowly and clearly, especially when there is any lag or delay in the audio or video.
- The panel chair may provide direction as to when or how questions will be asked. Parties are asked to keep a close eye on their screens and to speak slowly and allow for pauses in their submissions so that panel members may ask questions without compromising the quality of the transcript.

- Except as provided for members of accredited news media, recording audio or video of the hearing, in whole or in part, without prior permission of the presiding judge or Panel is strictly prohibited. All participants other than counsel will be required to undertake not to record audio or video of the hearing.

5. Civility

As with all types of court hearings, virtual proceedings require civility, professionalism, cooperation, communication, and collaboration between parties, both before and during the virtual appearance. This includes instances where one or more individuals are participating by telephone or video in an otherwise in-person proceeding.

Parties should cooperate in good faith and be open to adapting their plans to ensure that all matters may be determined in the most just, and where possible, speedy and inexpensive manner possible. Parties should communicate with one another in advance of fully virtual matters or hearings with remote aspects to resolve as many hearing details as possible beforehand.

For those participating virtually, the Court expects parties and counsel to make every effort to secure a quiet, private space for the duration of the appearance. However, the Court recognizes that may not always be possible. In some instances, participants may have no other option than to participate virtually from home, perhaps while other individuals, including children, may be in the vicinity. With that in mind, parties should be patient and flexible when it comes to technical difficulties or other challenges that other participants may experience.

6. Technological Difficulties

It is the responsibility of each participant to ensure their equipment is functioning correctly and that their Internet service can accommodate the bandwidth videoconferencing requires.

Wherever possible, parties are asked to use a hard-wired Internet connection, rather than wireless Internet (Wi-Fi).

In the event of technological issues during a video hearing, parties should wait to see if the issue resolves itself. If the issue persists, parties should inform the court clerk that a problem is occurring. The Court is not able to provide technical support. Do not contact court staff for assistance in using videoconferencing software.

If at any time due to delay, distortion, or disconnection a party misses something that was said during a hearing, that party should notify the panel immediately so the statement can be repeated. Parties should also be prepared to repeat statements if asked.

Visual cues, such as nodding your head, are not picked up on the court audio. As such, participants should always verbalize their comments so they are captured on the official court record.

Parties should not take unfair advantage of the fact that the hearing is being held virtually. In particular, they should not take advantage of, or act upon, slips, irregularities, technical issues or mistakes, or inadvertence. If technical issues arise during a virtual hearing or the dynamics of the hearing are challenging or distracting, the parties may ask the panel for permission to deliver post-hearing submissions in writing. Permission to file post-hearing submissions is at the discretion of the panel.

7. Media and the Public

The Nova Scotia Court of Appeal recognizes the importance of the “open courts principle”, which ensures court hearings are accessible to the public. The Court further recognizes the key role media plays in informing the public about legal proceedings throughout Nova Scotia.

In order to better facilitate public access to the courts, the Court of Appeal allows webcasts of certain proceedings. The Court of Appeal will webcast suitable appeals at their discretion. Live webcasts are available to view directly on the [Courts of Nova Scotia website](#).

The docket (schedule of hearings) is publicly available on the Court of Appeal website: https://courts.ns.ca/Appeal_Court/NSCA_dockets.htm.

Members of the media and public who wish to attend or access information about appeals are advised of the following:

Individuals who wish to attend an **in-person appeal** must mask while in public areas of the courthouse and in the courtroom.

Those who wish to listen to or observe **appeals with remote appearances** or **fully virtual appeals** must abide by the following conditions:

By Telephone:

- Media must have their cellphone on mute during the proceedings; if using a landline, they must be in a quiet room, so as not to disrupt the proceedings;
- As per the Courts' policies on the use of electronic devices in courtrooms, they may record the proceeding for note-taking purposes only, not for broadcast; and
- If they do not call in at the set time or if the call is lost, the Court will not disrupt the proceedings to re-connect them.

By Microsoft Teams:

- Media must have their microphone on mute and their video camera turned off during the proceedings;
- As per the Courts' policies on the use of electronic devices in courtrooms, media may record audio of the proceedings for note-taking purposes only, not for broadcast;
- Media are not permitted to record video or take still photographs of the virtual court proceedings. The presiding judge may require a verbal undertaking on the record to this effect; and
- Media are expected to connect to the virtual court hearing at the set time; however, if the connection is lost or they need to leave the session, Teams allows them to rejoin without disrupting the proceedings.

Members of the media who wish to participate in a court proceeding by telephone or Microsoft Teams should contact the Judiciary's Communications Director, who will work with court staff to provide the details to connect remotely.

Individuals who wish to access materials filed in relation to an appeal heard **in writing** (without an oral hearing) may do so by contacting Jennifer Stairs (for inquiries from members of the media) or the Registrar, Caroline McInnes (for inquiries by all other members of the public).

Jennifer Stairs
Communications Director
Nova Scotia Judiciary
902-221-5257
stairsjl@courts.ns.ca

Caroline McInnes
Registrar
Court of Appeal
902-424-8962
Caroline.McInnes@courts.ns.ca

8. Self-Represented Parties

This Practice Directive applies to both counsel and self-represented parties involved in appeals before the Nova Scotia Court of Appeal. The Court recognizes that self-represented parties may experience particular challenges in advancing or responding to appeals. The Court is committed to addressing those challenges and facilitating access to justice for all parties.

Counsel's responsibilities in matters involving self-represented litigants are unchanged in a virtual proceeding. Counsel are officers of the court and must be mindful of their professional obligations when dealing with self-represented litigants. Counsel must cooperate with the Court to ensure that a self-represented litigant receives a fair hearing including, where appropriate, collaborating with self-represented litigants and recommending possible alternatives and/or accommodations to the Court (e.g. consenting to having an appeal proceed in writing where a self-represented party is unable to easily access the Internet).

If any party is unable to access Internet, microphone, or webcam equipment required for video appearances, they should contact the Registrar, Caroline McInnes, at Caroline.McInnes@courts.ns.ca or (902) 424-8962 to make alternate arrangements as soon as possible in advance of the hearing.

The [Nova Scotia Courts' Free Legal Clinic](#) remains available for self-represented parties appearing before the Court of Appeal to access free basic legal advice. To make an appointment, contact Court Administration at 902-424-6840 or by email at hfxfreelegalclinic@courts.ns.ca.

9. Miscellaneous

Except as varied by this Practice Directive, all Rules and previous practice directives remain in effect. **This Practice Directive replaces the Nova Scotia Court of Appeal Practice Directive: Appeal Proceedings During the Covid-19 Pandemic.**