



# NOVA SCOTIA COURT OF APPEAL PRACTICE DIRECTIVE: APPEAL PROCEEDINGS DURING THE COVID-19 PANDEMIC

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## **INTRODUCTION**

Nova Scotia remains under a provincial state of emergency due to the ongoing COVID-19 pandemic. This practice directive is designed to enable the Nova Scotia Court of Appeal to continue operations in a manner that protects the health and safety of justice system participants in line with guidance from public health officials. We appreciate the patience and cooperation of members of the public and the Bar as the Court of Appeal continues to adapt to a new mode of operations.

Subject to any order of the Court, all matters currently being heard will be conducted pursuant to this practice directive.

Details of this practice directive are subject to change as public health guidelines are updated in the province. For current information and updates, please see the Nova Scotia Courts website:  
[https://courts.ns.ca/Virtual\\_Court.htm](https://courts.ns.ca/Virtual_Court.htm).

## **PRACTICE DIRECTIVE**

### **1. Format of Appeals**

The panel of justices assigned to each appeal will review the materials filed with the court and decide the format in which the appeal will be heard. There are four formats by which appeals may proceed:

#### **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 a virtual platform. As of April 29, 2021, that platform will be 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.

When selecting the format in which the appeal will be heard, 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 public health considerations.

Certain matters may typically require some form of oral hearing. Examples include (but are not limited to) appeals in which an individual’s liberty is in jeopardy (such as when an individual in prison appeals his or her conviction or sentence) and appeals involving child protection proceedings.

Where the panel determines a virtual hearing is appropriate, parties will not be allowed to adjourn (postpone) appeals on the sole basis that they would prefer to have the appeal heard fully in-person.

## I. Fully In-Person Appeals

In-person hearings are conducted much in the same way hearings were conducted before the COVID-19 pandemic. Parties should expect to sit in the same configuration as normal, with particular care to maintain social distancing while entering the courtroom and while inside. The Court has equipped its appeal courtroom with Lexan barriers, so that parties can appear in-person in a manner that complies with public health guidelines. Disposable medical masks are mandatory in the Law Courts, consistent with provincial public health directives. Parties may remove masks once seated in the courtroom or making oral argument, subject to other instructions by the panel.

As water jugs will not be provided during this time, parties may bring their own water bottles into the courtroom.

At this time, Sheriffs Services are screening all individuals who wish to enter the Law Courts. No one should enter a court house if they feel unwell and are exhibiting any of the symptoms of COVID-19 as identified by public health officials.

No one should enter the Law Courts unless they follow the guidelines from the [Restated Order #3 of the Chief Medical Officer of Health Under Section 32 of the Health Protection Act, 2004, c.4, s. 1](#) including all self-isolation guidelines under s. 3.1 of that Order.

For greater clarity, this means that before entering the Law Courts anyone who has travelled outside of Nova Scotia must fill out a Nova Scotia Safe Check-in form and:

- If fully vaccinated, provide the Chief Medical Officer with proof of vaccination;
- If not fully vaccinated, self-quarantine on the day of entry into Nova Scotia and continuing thereafter for 14 days and not cease isolation until they have completed at least 7 days and received a negative COVID-19 test result;

Parties and members of the public are advised that individuals from outside Nova Scotia who are participating in legal proceedings in the Law Courts building (including the accused, complainant, witness, counsel or other party in the proceeding) are exempt from the provincial self-isolation requirements while attending court if they adhere to the COVID-19 Protocol for [Exempt Travelers established by the Chief Medical Office of Health](#).

Anyone who intends to use this exemption to appear in-person for an appeal must provide notice to the Court by contacting the Registrar, Caroline McInnes ([Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)) 14 days in advance of the scheduled hearing date.

Even where the exemption is being relied on, the panel hearing the appeal will make the final determination on whether in-person attendance will be permitted.

All persons in the Law Courts should follow social distancing guidelines at all times and wear a mask whenever moving through the building. Hand sanitizer is provided throughout the building, including at the entrance of the appeal courtroom.

Anyone who attends in-person hearings will be required to comply with directives from the Court concerning health and safety. Parties must familiarize themselves with the applicable directives and ensure they are aware of requirements in place at the time of their hearing date.

## **II. Appeals with Remote Appearances**

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

The Court is using Microsoft Teams for all virtual appeals. Parties must familiarize themselves with this platform prior to their hearing date(s). Participants who are unable to use Microsoft Teams videoconferencing for the appeal hearing may be provided with a number to call in to the session by telephone.

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](mailto: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.

“Appeals with Remote Appearances” may also be referred to as appeals “via Microsoft Teams with the panel in the courtroom.”

### **III. Fully Virtual Appeals**

The same requirements apply to Fully Virtual Appeals as those 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 provide 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](mailto:Caroline.McInnes@courts.ns.ca)). Alternatively, the Registrar may notify the parties that the panel believes the appeal may be addressed in writing.

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 virtual hearing.

During this time, only select appeals will proceed in-writing.

## **2. Chambers**

At this time, chambers matters are being heard by telephone and in-person. The Court can also offer the option of a virtual (Microsoft Teams) hearing.

Requests for in-person chambers appearances will be accommodated where possible, but the following types of matters will be prioritized:

- Motions for bail pending appeal;
- Motions for stays;
- Motions related to publication bans;

- Motions for state-funded counsel; and
- Any other matter that the chambers justice in their discretion considers should proceed by in-person appearance.

Parties to any chambers motion requiring a witness to give evidence (e.g., a contested motion for bail) should notify the Chambers Clerk, Cherri Brown ([Cherri.Brown@courts.ns.ca](mailto:Cherri.Brown@courts.ns.ca)) at the earliest opportunity.

### 3. E-filing

Parties may continue to file documents for any matter in paper format, in a manner consistent with the requirements of the Civil Procedure Rules of Nova Scotia and all existing practice directives and Guidelines requiring the filing of hardcopy documents with the Nova Scotia Court of Appeal. In particular, all e-filings must be in compliance with the [Instructions for Electronically Filing Documents with the Nova Scotia Court of Appeal](#) (E-Filing).

However, for the period of time during which this practice directive is in effect, **unless otherwise stated herein or ordered by the Court**, parties are permitted and encouraged to file documents in electronic format in lieu of paper. Parties are not required to obtain special permission from the Registrar to do so. However, counsel and parties are advised that should a panel wish to have a hard copy or copies of any filings, they will be expected to provide such copies as directed.

For greater clarity, the Court of Appeal will continue to accept paper filings. **Electronically filed documents must meet the following requirements:**

- Electronic documents must be filed in word-processing format and/or in text searchable PDF format. For scanned PDF documents, an Optical Character Recognition (OCR) format must be used to make the documents text searchable. If filing materials in text searchable PDF format, all attachments must be searchable as well.
- Electronically filed documents must be formatted in a manner that complies with the Nova Scotia Civil Procedure Rules (See Rules 90.30 – 90.33 for civil matters and Rules 91.15 – 91.19 for criminal matters).

- All electronic documents must be filed either by email or through delivery of a USB flash drive. The email or USB drive must be labelled with the court file number. USB flash drives can be delivered by mail, courier, or by in-person drop-off at the Law Courts (using the drop bin located at the front doors).
- Electronic filings of appeal books (including transcripts), facta, and books of authorities (where applicable) should be emailed to [appealcourt@courts.ns.ca](mailto:appealcourt@courts.ns.ca). All other filings should be sent directly to the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca). The Registrar will acknowledge receipt of all electronic filings by email. For greater clarity, the Registrar will not provide a court-stamped copy for electronic filings of appeal books, transcripts, facta or books of authorities, but will acknowledge receipt by email. However, the Registrar will provide a court-stamped copy for parties' records for other e-filed materials. If there are problems with any electronic filing, the Registrar will contact the affected party.
- In addition to the court file number on the email or USB, all documents filed electronically must be individually named in a manner that identifies their contents. For example: "Factum of the Appellant"; "Factum of the Respondent"; "Appeal Book Part I"; "Trial Transcript [DATE]".
- Any documents being filed for a matter with a publication ban in effect must carry an appropriate caution as part of the file name.
- Appeal Books should be filed as single electronic Word or PDF documents, rather than as a series of separate attachments. Trial transcripts and other similar documents should be merged into one document (rather than separate files for different trial dates, etc.). If the size of a document is too large to send as an email attachment, documents may be divided into smaller parts and labelled accordingly (e.g., Appeal Book Vol. I, Appeal Book Vol. II, etc.).
- If parties have particular concerns regarding the filing of sealed documents, they should seek direction from the Court by contacting the Registrar, Caroline McInnes ([Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)).

- Parties who elect to e-file must file one physical copy of each appeal book and factum filed for their appeal with the registrar's office, as well as original copies of any sworn affidavits (if applicable) by the filing deadline, unless otherwise given permission to file a hard copy at a later date by the Registrar or the presiding justice in chambers. Parties are asked to include a covering note stating that the materials are being filed as hard-copy duplicates of the documents that were previously filed electronically. Such hard copies must be identical in content to the documents filed electronically.
- Electronic service under this practice directive shall constitute proper service unless the affected party shows otherwise.

Rather than filing books of authorities, the preference is for parties to hyperlink their factums to the judgment databases found on the websites of Canadian courts or [www.canlii.org/en/index.html](http://www.canlii.org/en/index.html), and where not available on either, to LexisNexis Quicklaw or WestlawNext Canada. However, if this is not possible or feasible, then books of authorities are to be filed electronically in accordance with the e-filing protocols described herein. If books of authorities are filed electronically, then electronic highlighting of the relevant passages is requested.

The panel hearing an appeal retains discretion and authority to require that the appellant file additional hard copies of its Appeal Book, facta and Books of Authority, where the panel considers it necessary. In such situations, the Registrar, Caroline McInnes, will contact the appellant(s) in advance of the hearing date to request one or more additional hard copies of these filings.

#### **4. Filing Deadlines**

The time periods for commencing civil appeals under Rules 90.13(3) and 90.14, and criminal appeals under Rules 91.09(1) and 91.10 of the Civil Procedure Rules are currently in effect.

Deadlines may be extended by consent in certain circumstances. Such requests should be sent to the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca). In the event that parties are unable to meet filing deadlines or to fulfil other obligations due to the COVID-19 pandemic, they must be prepared to explain how the pandemic has impacted their ability to do so.

## 5. Etiquette

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

- Counsel are not required to gown for remote appearances unless requested to do so by the panel but must dress in business attire. Counsel may gown if they prefer to do so.
- Counsel are expected to gown for in-person appeals.
- 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.
- 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 remote 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 allow for pauses in their submissions so that panel members may ask questions without compromising the quality of the transcript.

## **6. Civility**

As with all hearings, remote hearings require civility, professionalism, cooperation, communication, and collaboration between parties, both before and during the hearing.

Parties must be flexible when it comes to technical difficulties or other challenges that other participants may experience. The Court recognizes that due to the COVID-19 pandemic, many participants will be working from home and/or on modified schedules, and that many will be dealing with particular challenges related to technology, child, and elder care.

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, speedy and inexpensive manner possible. Parties should communicate with one another in advance of remote hearings to resolve as many hearing details as possible.

## **7. 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 video conferencing requires.

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

In the event of technological issues during a video hearing, parties should wait to see if the issue resolves itself and, if it does not, 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 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.

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.

## **8. Media and the Public**

The Nova Scotia Court of Appeal recognizes the importance of the “open courts principle,” which ensures all court hearings are accessible to the public. The Court further recognizes the key role that the media plays in informing the public about legal proceedings taking place in courtrooms 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 [Nova Scotia Courts' website](#).

The docket (schedule of hearings) is publicly available on the Court of Appeal website: [https://courts.ns.ca/Appeal\\_Court/NSCA\\_dockets.htm](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** are asked to notify the Communications Director, Jennifer Stairs (for members of the media) or the Registrar, Caroline McInnes (for all other members of the public) in advance. They will consult with the Court of Appeal to determine whether public access is possible on a case-by-case basis (due to room occupancy limitations.)
- Those who wish to listen to or observe **appeals with remote appearances** or **fully virtual appeals** should contact Jennifer Stairs (for inquiries from members of the media) or Caroline McInnes (for inquiries from all other members of the public) in advance for instructions.
- 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](mailto:stairsjl@courts.ns.ca)

Caroline McInnes  
Registrar  
Court of Appeal  
902-424-8962  
[Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca)

For more information on media access to the Court of Appeal during the COVID-19 pandemic, please review the most recent [Notice to the Media](#).

## 9. Prohibition on Recording Electronic Hearings

No one can take photos (including screen captures) or recordings of a hearing without prior approval of the panel or presiding justice.

Accredited members of the media may use audio recording devices for the purpose of ensuring the accuracy of their reporting but must not use recordings for broadcast or publication. Members of the media are advised that [existing policies](#) regarding the use of electronic recording devices continue to apply to remote hearings.

## **10. 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 during the current pandemic. 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 remote hearing. 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, he or she should contact the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca) 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. At this time, the Free Legal Clinic is operating by telephone only. To make an appointment, contact the Executive Office of the Nova Scotia Judiciary at 902-424-3690.

## **11. Miscellaneous**

Except as varied by this practice directive, all Rules and previous practice directives remain in effect.