

HINTS AND TIPS FROM THE PROTHONOTARY - REGISTRAR

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CHANGES AT THE PROTHONOTARY'S OFFICE

Timothy Morse, Prothonotary at the Law Courts, has taken a leave of absence and will be away for a one-year period. A competition for his position is underway. In the meantime, Jessica Boutilier, who has been the civil scheduler in Halifax for some time now, will be fulfilling the duties of Prothonotary for the Supreme Court.

While Jessica is filling the role of Prothonotary, Sarah Drysdale will be completing the duties of civil scheduling. The number for the civil scheduling office remains the same (902-424-5782).

COVID-19

Please continue to refer to the Courts of Nova Scotia website [here](#) for updates on measures being taken in relation to COVID-19 in both the Supreme Court and the Court of Appeal.

CIVIL PROCEDURE RULE AMENDMENTS

The Judges of the Supreme Court approved three series of amendments to the Civil Procedure Rules on December 11, 2020. The amendment documents can be found [here](#). To date, the amendments have not yet been incorporated into the official consolidated version of the Rules / Forms on the Courts' website. The three sets of amendment documents are titled "Miscellaneous", "Mortgages", and "Applications".

I will not attempt to summarize the amendments, nor is it my place to do so. However, with respect to the amendments made to applications in court, I will highlight *some* of the amendments from the perspective of the Prothonotary's Office (I note any discrepancies or errors in these summaries are my own, as this summary has not been endorsed by the Court).

Please review the amendment documents in full. They are as follows (paragraph references are to the paragraphs contained in the amendment document):

- Application in court hearings are now limited in length. The Rule now states that they are for “a dispute that can be ready for hearing within two years and will take no more than four days to be heard”. (para 1)
- The deadline for the motion for date and directions is now 35 days after the date of filing the application (formerly 25 days). Of course, this is clear days as defined Rule 94.02. (para 3).
- Similarly, the deadlines for filing a notice of contest or respondent’s claim have been lengthened from 15 to 25 [clear] days. (paras 8 and 9)
- The judge’s authority / obligations in a motion for directions has been expanded. (paras 11-15)
- Lead counsel must attend the motion for directions, and the motion must be heard in chambers (not by phone) unless a judge permits otherwise. (para 12)
- There is a **new form**: Notice of objection to admissibility (new Rule 5.16(1)), that a party may file if they object to the admission of an averment, an exhibit, or part of an affidavit. This form must be filed before the finish date (for finish date see new Rule 5.17(1) – finish date is 60 [clear] days before date set for hearing of application). (para 16 and para 28)
- Prehearing Conference: this is new (new Rule 5.18). On the motion for directions or afterwards, the court must schedule a prehearing conference with the judge who is expected to hear the application in court. However, if the hearing judge is not available, the court may schedule the prehearing conference with another judge. (new Rule 5.18(5)). What is done at the prehearing conference is set out in the new Rule. (para 16)
- Prothonotary’s motion to dismiss dormant applications: Rule 5.24 is changed so that the prothonotary’s motion to dismiss is now to be made 2 years after the application is filed for which no hearing date is set, instead of five. (para 17)
- Under new Rule 6.03, a judge may now convert an application to an action or vice versa on their own motion. (para 21)
- Rule 19 (interrogatories) – now allows a judge to permit interrogatories in an application. (para 25)
- Changes to existing Forms are found in paragraphs 27, and 29.

PRACTICE TIPS

Supreme Court:

I have reviewed the 'pink slips' we have signed over the past few months and thought it might be helpful to provide a reminder to counsel on the matters listed below (this list is similar to the one I provided in [December 2019 Hints & Tips](#)).

1. You cannot file documents for proceedings in other courts in Halifax.

Please keep in mind that documents for any matter (regardless of where it is sought to be heard) must be filed in the court selected for the main proceeding*: see Civil Procedure Rule 32.02(2). This is still true *even if the file has been temporarily transferred to another court for the hearing of a matter*.

You may deliver an extra copy of materials directly to the judge assigned to hear your matter, but you must still file your materials in the normal course at the court selected for the main proceeding.

*The only exception to this is trial subpoenas: a party may have these issued at any court: see Rule 50.02(1).

2. Dropping Off Documents at the Law Courts

Filing documents at the Law Courts continues to be done by way of a 'drop box'. The drop box is to the right of the entrance area off of the main doors to the building – there is a doggy door contraption that allows you to push your documents (as large as a banker's box) through to the drop box. The front counter remains closed except by advance appointment.

3. Covering Letters; No Paperclips

Please keep in mind that court staff deal with hundreds of documents weekly. The helpfulness of a covering letter explaining what you are filing, noting any urgency, or identifying unusual circumstances cannot be overstated. A covering letter can help court staff process your documents more quickly and efficiently.

In addition, particularly because documents are being dropped into a drop box, please ensure that your documents are fastened together properly either with an envelope or at very least a bull clip. Please do not use paperclips.

4. Scheduling Matters in Halifax – who picks the date?

Here is a reminder about who picks the date and whether you insert the date in your document before filing or leave it blank.

a) General Chambers: the moving party selects the date to appear for general chambers and insert this into the motion document before filing. At the Law Courts, general chambers (including appearance day) continues to be done virtually.

b) Motion for directions: the moving party must call ahead to the scheduling office (902-424-5782) and reserve a date. The scheduling office will hold this date for 24 hours. The moving party must insert this date into their document before filing.

c) Special (Complex) Chambers: typically, the moving party would leave the date and time for the hearing blank in the motion document upon filing, but still indicate the length of hearing requested. The scheduling office will reach out to the parties to find a suitable date and will return court stamped copies to the moving party with the date inserted once a date has been set.

There may be instances where a special time chambers date has been scheduled ahead of time and the court is holding this date. If that is the case, the moving party would insert the date and time into their motion document upon filing.

5. Filing Fees

Before sending your documents to the court for filing, please review to ensure that you have provided the required filing fee. You may refer to the courts' website for a summary chart of filing fees for Supreme Court (General Division) & Court of Appeal:

https://www.courts.ns.ca/Fees_Of_Courts/fee_docs/NSCA_NSSC_fees_15-04-01.pdf

6. Notice Periods & Clear Days

Please doublecheck the notice periods required under the applicable Civil Procedure Rule before filing your document. You may find Rules 23.11 for motions and 5.06 for applications helpful.

In particular, remember that the notice period for filing an *ex parte* motion is now the same as for filing a motion on notice: 5 clear days (see Rule 23.14(5)).

To calculate these notice period please refer to Civil Procedure Rule 94.02 for assistance on how to calculate clear days. Clear days is different than business days because you do not count the day the period begins or the day the period ends (Rule 94.02(1)(a) & (d)).

For example, if you want to appear for a motion in general chambers on Wednesday, January 8, 2020, you will need to have your documents filed 5 clear days in advance. Therefore, the latest you can file your documents is Monday, December 30, 2019, since Wednesday January 1, 2020 is a holiday and the Prothonotary's Office in Halifax is closed, and Saturday January 4 and Sunday January 5 are weekends. This gives you 5 business days between the day the period begins (the filing date) and the day the period ends (the day the motion will be heard).

7. Headings

Please remember that the forms created under the Rules for headings are mandatory: see Rule 82.09(2) and the corresponding forms.

In addition, once the heading is established by the originating document, all further documents filed in the matter must contain that standard heading unless it is varied in accordance with Rule 82.09(3), permitted under Rule 83 – Amendment or ordered by a judge (see Rule 82.09(4) & (8)).

Do not vary the title of the parties for a counterclaim or crossclaim, or to denote who is making a motion (Rule 82.09(7)).

Do not automatically remove a party from the heading when the claim has been discontinued or dismissed against that party. A discontinuance or dismissal against a party does not vary the heading. You may, however, seek to vary the heading by order or by requesting the prothonotary to do so if the conditions in Rule 82.09(10) are met.

8. Affidavits

Please remember the following when filing affidavits:

- Affidavit must be bound together by staple or binding coil. Paper clips or bull clips are insufficient.
- Ensure there is a copy for the Court that is signed in original ink
- Ensure all exhibits are referred to in the body of the affidavit and properly marked in accordance with Rule 39.09
- If the affidavit has more than 10 exhibits attached the exhibits must be separated by a lettered number or tab and the affidavit must contain a table of contents identifying the exhibits: see Rules 39.09(4) and (5).

BOTH COURTS

Free Legal Clinic at the Law Courts

The Law Courts in Halifax continues to be home to the Free Legal Clinic. The Clinic is located on the 2nd floor of the Law Courts and is held every Thursday from 8:30 a.m. to 12:30 p.m. in two simultaneous one-hour sessions held by volunteer lawyers. *

*** Due to the COVID-19 pandemic, these appointments are being conducted remotely by telephone.**

The Clinic is intended for self-represented litigants with limited to little experience in the court system. The Clinic provides service for civil matters at the Supreme Court (General Division) and at Court of Appeal, including family law appeals but excluding child protection appeals. It will not provide service on any criminal matters in either court. Assistant for family law appeals at the Court of Appeal will be provided approximately one Thursday per month.

If you have any litigants in mind that you believe might benefit from this service, kindly refer them to the Court Administration office at the Law Courts. Litigants may initiate the signup process in person or by telephone at 902-424-3690. For more information, visit the Courts website at http://courts.ns.ca/self_reps/nsca-nssc_free_legal_clinic.htm.

Liaison Committees

Both the Court of Appeal and the Supreme Court have Liaison Committees that are composed of members of both the Bar and Bench. These Committees sit approximately twice a year. Counsel are reminded that they are invited to bring forward items they would like raised at Liaison Committee meetings to Bar members of the relevant committees. Current information on committee membership may be obtained from the Nova Scotia Barristers' Society.