

HINTS AND TIPS FROM THE PROTHONOTARY - REGISTRAR

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UPDATE RE: THE PROTHONOTARY'S OFFICE

Caroline McInnes is on maternity leave until October 2018. Until her return, you may contact Lyndsay Hollett or myself concerning Prothonotary matters. I will also continue as Registrar of the Court of Appeal until Ms. McInnes' return.

COURT DOCKETS for June, July and August

**Please note: the Prothonotaries' Offices will be closed on the following holidays:
Monday, July 2, Monday, Aug. 6, and Monday, Sept. 3, 2018.**

A) Court of Appeal:

Court of Appeal regular chambers will be held on Thursdays at 10:00 a.m. Court of Appeal tele-chambers are held on Wednesdays at pre-appointed times. Please call ahead to the Deputy Registrar, Cherri Brown, at 902-424-6937 to book a time.

The Court of Appeal posts the docket for appeal hearings, including the date, time, location of the appeal and the panel members, on its website:

<http://courts.ns.ca/Appeal Court/NSCA dockets.htm>

In addition to posting the current appeal hearing term, the Court now posts a 'Rolling Docket', which means that once appeals are set down they are added to the online docket.

B) Supreme Court:

Regular Chambers: In a change from previous years, in July and August, the regular chambers schedule will continue to be followed on each weekday, i.e., during these two months, there will be general chambers held on Mondays, Tuesdays, Wednesdays, Thursdays and Fridays.

Special Time Chambers: There will be six Special Time Chambers hearings held each week docketed as follows: Monday, Tuesday, Wednesday and Thursday, starting at 2:00 p.m. with up to two additional Special Time Chambers hearings on the Weekly List docket (if there is availability). Only one motion per day is to be scheduled.

NOTE – Crownside will be sitting every week in the summer of 2018.

Crownside in Halifax will be held on the following Thursdays at 9:00 am:

July 5, 12, 19 & 26; August 2, 9, 16, 23 & 30

Appearance Days: will be held on Fridays at noon in Halifax with the following exceptions: **there will be no appearance day on June 22 and June 29.**

REMINDER: ESTATE AND ESTATE RELATED MATTERS IN PROBATE & SUPREME COURTS

The Registrars of Probate kindly ask counsel to adhere to the following protocol for filing documents on estate and estate-related matters:

- All documents on estate matters are to be filed with the Probate Court.
- For any proceedings started in Supreme Court – General Division OR Family Division affecting an ongoing estate file in Probate Court: please provide the Registrar of Probate with a copy of the originating document, any motions and/or applications filed, and any orders issued out of Supreme Court.
- Any questions about this protocol? Please contact your Registrar of Probate.

BOTH COURTS

Free Legal Clinic at the Law Courts

The Free Legal Clinic continues to operate on the 2nd Floor of the Law Courts in Halifax. The Clinic is open most Thursdays from 9:00 a.m. to 1:00 p.m. Private one-hour sessions with a volunteer practicing lawyer and a law student are available by appointment during the clinic's scheduled hours of operation.

The Clinic supports self-represented litigants with limited to no experience in the court system. This service is available for civil matters at the Supreme Court (General Division) and the Court of Appeal, including family law appeals but excluding child protection appeals. The Clinic does not deal with any criminal matters in either court. Assistant for family law appeals at the Court of Appeal will be provided approximately one Thursday a month.

If you have litigants who may benefit from this service, kindly refer them to Court Administration at the Law Courts. Litigants may apply in person or by telephone at 902-424-6900 for Supreme Court matters, and 902-424-6937 for Court of Appeal matters. For more info, go to: 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.

Practice Tip

Rule 78.08 Correcting Errors on Orders

78.08 A judge may do any of the following, although a final order has been issued:

- (a) correct a clerical mistake, or an error resulting from an accidental mistake or omission

To:

- a) Conform with the principle of finality, by which an appeal court is usually the only court with power to vary a trial court order; and
- b) Avoid confusion around times for filing an Appeal

It is recommended that the following drafting practice be adopted with respect to seeking the issuance of an order correcting a clerical or accidental mistake:

- 1) A stand-alone order should be drafted using the same style-of-cause and titled "Order Under Rule 78.08"; It should be recited as "Before the Honourable Justice _____, in Chambers"; and
- 2) The operative clause should refer to the Order being corrected, by its title and issuance date, and confirm what part(s) of that order are being corrected and how; e.g.:

[Style of Cause]

ORDER UNDER NOVA SCOTIA CIVIL PROCEDURE RULE 78.08

BEFORE THE HONOURABLE JUSTICE

IN CHAMBERS:

- 1. "The order for foreclosure, sale and possession, issued on _____, 20__, is corrected by inserting the date "April 29, 2016" in paragraph 1 of the order."

or

1. "It is ordered that the words 'in support of its motion for assessment of deficiency' in subparagraphs a) and c) of the order, issued on _____, 20__, are replaced with 'in support of its notice of action and statement of claim'."

or

"On being satisfied that the description approved by the order for foreclosure, sale and possession, issued on January 8, 2016, contained the description from the mortgage instead of a description suitable for advertising;

And being satisfied that a proper description, rather than the approved description, was used in the advertisement of the sale;

The following is ordered:

1. The order for foreclosure, sale and possession is corrected under Rule 78.08 to replace the approved description with the one found in the advertisement.
2. The sale of the property known as _____ Street, Halifax, Nova Scotia, PID# _____ is confirmed."

or

1. "The Execution Order, issued on July 31, 2015, is corrected by replacing each occurrence of the word 'Andrea' with the word 'Angela'."

Issued, at Halifax, Nova Scotia the _____ day of _____ 201_.

Prothonotary

Practice Tip: Ex Parte Motions, Rule 23.14(3)

Five days' notice is now required for ex parte motions.

Ex parte motion

23.14 1) ...

2) ...

3) An *ex parte* motion, draft order, affidavit, and brief must be filed no later than five days before the motion is to be heard.

Practice Tip: On Affidavits

Affidavits, once filed in a proceeding, necessarily become part of the Court's record; they need **not** be marked as exhibits to be part of the Court's record.

Once designated as an Exhibit, a document is handled in manner that results in it not being kept in the Court's file, but with other physical exhibits in the Court's exhibit locker. This causes delay and confusion when a request for access to the Court's file is made and it appears documents are missing but have been unnecessarily marked as exhibits.

Notice from the Nova Scotia Registrars of Probate

Parallel Proceedings in other NS Courts

The Registrars of Probate remind counsel and self-represented parties that the Registrar of Probate should be notified immediately when counsel or a party becomes aware of other Courts' proceedings involving the same parties to an existing Probate proceeding.