



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

CONTENTS

INTRODUCTION	2
PRACTICE DIRECTIVE	2
1. Format of Appeals	2
a) In writing	3
b) Telephone or Video Hearings	4
c) In-person hearings	5
2. Chambers	5
3. E-filing	6
5. Etiquette	9
6. Civility.....	10
7. Technological Difficulties	11
8. Media and the Public	11
9. Prohibition on Recording Electronic Hearings.....	13
10. Self-Represented Parties	13
11. Miscellaneous	14

INTRODUCTION

Nova Scotia remains under a provincial state of emergency due to the ongoing COVID-19 pandemic. The following practice directive is designed to enable the Nova Scotia Court of Appeal to resume 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 adapts to a new mode of operations.

Subject to any order of the Court, all matters to be heard on or after June 15, 2020 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/>.

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. On the basis of written materials only;
- ii. By teleconference or video conference;
- iii. By in-person attendance of the parties; or
- iv. By a “hybrid” of in-person and remote participation, in which some parties participate remotely (by telephone or video) and some participate in-person (in the courtroom).

In person-attendance is not yet possible. All matters (appeals and motions) will proceed by remote appearance or in writing at this time.

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.

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 the custody and access of children.

Parties will not be allowed to adjourn (postpone) appeals on the sole basis that they would prefer to have the appeal heard in person.

a) In writing

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.

If all agree, parties may request their appeal proceed in writing by email to the Registrar (Caroline.McInnes@courts.ns.ca).

Where a panel decides that that an appeal may be determined on the basis of the written materials alone, the parties will receive a letter from the Registrar stating that the matter is set down to proceed in writing.

Where parties have agreed or otherwise do not object to the panel's decision to 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).

Parties who are dissatisfied with the panel's decision to proceed in writing will have the opportunity to express their objection in writing, by dates and

within page limits determined by the panel. Objecting parties should explain why they believe an oral hearing is necessary.

Where a party raises an objection to the panel's decision as to the manner in which the appeal will proceed, the panel may:

- Uphold the objection and direct that the matter proceed by a teleconference or video conference;
- Uphold the objection and postpone the appeal until an in-person hearing is possible (where a party specifically requests an in-person hearing); or
- Dismiss the objection and proceed on the basis of written materials only.

The panel does need to provide reasons for its decision.

If the objection is dismissed, the parties will have the opportunity to file additional submissions on dates and within page limits determined by the panel.

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 a video or telephone hearing.

The panel has final discretion as to the manner in which the appeal proceeds.

b) Telephone or Video Hearings

If a panel determines that an appeal will be heard by remote appearance (either by telephone or by video), court staff will arrange for the participation of parties by extending an invitation to an electronic hearing, either by providing call-in information for a hearing by teleconference or by sending a meeting invitation for a hearing by videoconference.

The Court has not yet made a final decision as to the program it will use for videoconferencing. Parties will be advised of the appropriate program in

advance of the hearing and must familiarize themselves with the program prior to their hearing date(s).

Parties will not be able to file documents with the Court during telephone or video hearings. Any documents that have not already been provided to the Court and that parties wish to file must be provided to the other party or parties and the Court's Registry Office at least one clear day before the hearing date.

Parties who are unable to access the Internet and/or webcam or microphone equipment for their remote hearing should contact the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca) at the earliest opportunity.

c) In-person hearings

In-person hearings are not yet possible. The Court is working to equip its appeal courtrooms so that parties can appear in-person in a manner that complies with public health guidelines.

If a matter is determined to require an in-person hearing, it will be adjourned until such a hearing is possible.

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

2. Chambers

All chambers matters will be heard by telephone, unless the parties request (and the presiding justice agrees to) a video appearance.

Requests for video 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 video appearance.

Parties to any chambers motion requiring a witness to give evidence (e.g., a contested motion for bail) should notify the Chambers Clerk, Cheri Brown (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.

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.

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 to appealcourt@courts.ns.ca 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, or by dropping off with Court Administration when possible).

- The Registry Office will acknowledge receipt of all electronic filings by email. If there are problems with any electronic filing, the Registry 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 in which there is 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 single 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, parties should seek direction from the Court by contacting the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca).
- As soon as is practicable following the conclusion of the provincial state of emergency, all parties must file one physical copy of each appeal book and factum filed for their appeal with the court registry office, as well as original copies of any sworn affidavits, if applicable.

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.
- Documents requiring a signature or an oath/affirmation may be submitted electronically without that signature or oath/affirmation where a party does not have access to a person authorized to take an oath or affirmation. Parties must file the original document signed by an individual authorized to take an oath or affirmation with the Court as soon as practicable.

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, 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.

Parties are also encouraged to hyperlink the key documents referred to in their factums and to use PDF bookmarks to facilitate navigation of the materials filed, particularly for larger appeals.

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 suspended for the period of March 26 to June 26, 2020. The deadlines for making a motion for date and directions in Rule 90.25(2) and 91.12(2) are also suspended for this period. This does not apply to appeal periods set out in legislation.

Existing appeal book and factum filing deadlines that have been set by a justice of the Court of Appeal remain in place, unless otherwise ordered by a judge. For all appeals that were previously scheduled for the March/April and May/June terms and subsequently adjourned, new filing deadlines have been set to reflect the new hearing date. 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.

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 hearings but must dress in business attire. Counsel may gown if they prefer to do so.
- Self-represented parties should wear clothing that is appropriate for a court appearance.
- Participants should make reasonable efforts to find a quiet space with a neutral background, and to avoid or reduce the risk of interruptions during the hearing. Participants should mute or turn off notifications on any digital devices.
- Participants may 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 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.

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 that their equipment is functioning correctly and that their internet service can accommodate the bandwidth video conferencing requires.

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 that 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 held remotely. In particular, they should not take advantage of, or act upon, slips, irregularities, technical issues or mistakes, or inadvertence.

If technical issues arise during the remote 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.

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 or public who wish to listen to or observe electronic hearings should contact the Court’s Registry Office in advance for instructions. Registry Office staff, in consultation with the Court of Appeal, will determine whether public access is possible on a case-by-case basis (for example, due to limits on the number of possible teleconference participants.)

The Court will take all reasonable steps to provide access to the media to appeal proceedings, in recognition of the important role the media plays in maintaining the open courts principle.

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

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 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 Amanda Guitard, Executive Office Coordinator: Amanda.Guitard@courts.ns.ca.

11. Miscellaneous

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