



## **COVID-19: Measures Applicable to the Nova Scotia Court of Appeal**

**Monday, March 16, 2020**

Following the advice of public health officials regarding social distancing and public gatherings, Chief Justice Michael Wood has directed that all appeals scheduled for the March/April term will be adjourned. Court staff will contact counsel and the parties involved to reschedule these matters.

The Court will review this term's docket to determine if there are any matters that must proceed due to their exceptional circumstances. Parties in those matters will be contacted and advised of alternative procedures to permit the appeal to be heard without the parties or counsel having to appear in person.

All Chambers matters will proceed as scheduled and will be heard by telephone only.

Anyone looking to file documents electronically with the Court of Appeal should make that request in writing to the Registrar at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca).

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## **COVID-19: UPCOMING APPEALS ADJOURNED; COURT OF APPEAL FILING DEADLINES SUSPENDED**

Friday, March 27, 2020 (Halifax, NS) – To further reduce the spread of the COVID-19 virus, the Nova Scotia Court of Appeal is adjourning all hearings that were scheduled for the upcoming May/June term and suspending all filing deadlines related to those matters.

The exception will be cases determined to be urgent or essential by the Court. Counsel or self-represented individuals who wish to argue that their matter should proceed on an urgent or essential basis should make their submissions in writing to the [Registrar](#) no later than April 10, 2020. These requests will be considered by a panel of three judges to determine if any meet the urgent or essential threshold.

Earlier this month, the Court of Appeal adjourned all but two of the hearings scheduled for the rest of the March/April term. Those two matters were deemed to be urgent and proceeded by telephone.

All the adjourned hearings will be rescheduled this fall, with new filing deadlines to be set for those that were previously scheduled in May and June.

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 will be suspended for the period from March 26 to June 26, 2020. This does not apply to appeal periods set out in other legislation. This should mean fewer new appeals will be started during this time. The deadlines for making the motion for date and directions in Rule 90.25(2) and 91.12(2) will also be suspended for this period.

As well, until further notice, Court of Appeal Tele-Chambers and Chambers will be limited to urgent or essential matters, as determined by the Chambers judge. Any matters currently on the Chambers docket will be reviewed by the current Chambers judge and adjourned if they do not meet the urgent or essential threshold. Any matters that do proceed will be done by telephone.

For new Chambers motions, counsel and self-represented litigants must make a request in writing to the [Registrar](#) outlining the circumstances of why the matter should be scheduled. The Chambers judge will review those requests to determine what new matters will be put on the Chambers docket.

All these measures will help to further reduce the number of people who need to visit the courthouses in person and help protect the health and well-being of the employees and judges still working at the courthouses.

For more information on the preventative measures introduced in other levels of Court, go to [https://www.courts.ns.ca/News\\_of\\_Courts/COVID19\\_Preventative\\_Measures.htm](https://www.courts.ns.ca/News_of_Courts/COVID19_Preventative_Measures.htm).

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## **COVID-19: FREQUENTLY ASKED QUESTIONS IN THE COURT OF APPEAL**

**Tuesday, April 28, 2020**

It has been more than a month since the World Health Organization declared the COVID-19 virus a global pandemic, forcing us all to make difficult decisions in our personal and professional lives.

Like many other jurisdictions in Canada, Nova Scotia remains under a provincial State of Emergency. The Courts continue to operate, but with new restrictions that are based on the advice of public health officials.

Practical measures like reducing staff, electronic filing of documents, hearing more matters remotely, and adjourning non-urgent proceedings are helping protect the health and safety of those working in and appearing before the courts during the pandemic.

Our current situation looks to be the new normal, at least for the foreseeable future. With that in mind, we have endeavoured to answer the most frequent questions that have come in about matters in the Nova Scotia Court of Appeal.

We appreciate that this is a difficult and uncertain time for everyone, including our court staff. We ask for your patience and cooperation as we work through these new processes and develop a plan for the months ahead.

Thank you.

Michael J. Wood  
Chief Justice of Nova Scotia  
Chief Justice of the Nova Scotia Court of Appeal

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### **Q/ What matters are currently proceeding in the Court of Appeal?**

The Court of Appeal is hearing urgent and essential chambers motions only. All but two of the appeal hearings that were scheduled for the remainder of the March/April term, and all the appeal hearings scheduled for the upcoming May/June term have been adjourned and will be heard this fall.

**Q/ What deadlines have been suspended in the Court of Appeal?**

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 other legislation.

**Q/ Can I start a new appeal?**

Yes. There is no prohibition on filing new Notices of Appeal in the Court of Appeal.

**Q/ Can I file paper documents?**

Yes. Paper filing is permitted; however, counsel and parties are encouraged to request permission to file electronically by email and hold off on filing paper copies until the Court of Appeal resumes regular operations. E-filing requests should be emailed to the Registrar, Caroline McInnes, at [Caroline.McInnes@courts.ns.ca](mailto:Caroline.McInnes@courts.ns.ca). In most instances, we expect these requests will be granted during the pandemic.

**Q/ Are my appeal book and factum filing deadlines still in place?**

Yes. These deadlines are set by a Court of Appeal judge and remain in place unless changed 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](mailto:Caroline.McInnes@courts.ns.ca).

**Q/ Can I make a motion to schedule my appeal hearing?**

Scheduling of appeals takes place through a motion for date and directions in chambers. Effective March 27, 2020, chambers motions have been limited to those determined to be urgent or essential by the chambers judge. A motion for date and directions that meets this criterion will be heard. In addition, if all parties agree, a motion for date and directions will be heard without having to be urgent or essential.

**Q/ Are chambers matters still being heard?**

Yes. Chambers is available for urgent or essential motions, as determined by the chambers judge. In addition, motions for date and directions will be heard with agreement of the parties. Chambers motions will be heard by telephone, unless the chambers judge decides that another procedure is more appropriate, based on the circumstances. This might include video conference or by written submissions only.

**Q/ I have an appeal scheduled for this fall. What will happen if an in-person hearing is not possible or advisable at that time?**

We expect that appeals set for this fall will proceed as scheduled. Work is underway to ensure that appeals can be heard remotely by video or telephone conference, if necessary or advisable. The panel of judges assigned to each appeal will have discretion to determine the procedure whereby the matter will be heard. If the panel determines that an in-person hearing is essential and cannot be accommodated, the panel will then consider whether an adjournment is required.



## **COVID-19: COURT OF APPEAL EXPANDING SERVICES DURING THE PANDEMIC**

Friday, June 5, 2020 (Halifax, NS) – The Nova Scotia Court of Appeal is expanding the types of matters that can be heard remotely during the COVID-19 pandemic. In-person proceedings continue to be restricted, based on public health advice regarding social distancing.

Effective immediately, the Court will now accept non-urgent motions in Chambers. Those matters are currently being heard by telephone and video; however, this process continues to be reviewed as the situation with the pandemic evolves.

Counsel and parties involved with a Chambers motion that requires witness testimony should notify the Deputy Registrar, Cherri Brown, at [Cherri.Brown@courts.ns.ca](mailto:Cherri.Brown@courts.ns.ca) for further directions.

The Court of Appeal holds telechambers every Wednesday and Chambers on Thursday. Dockets for each will be emailed to media at the beginning of the week. Members of the media looking to participate remotely in a Court of Appeal matter should refer to the processes outlined in the [temporary policy for media access during the pandemic](#).

The Court of Appeal had adjourned most of its hearings from the March/April term and all its hearings during the May/June term. Those matters were rescheduled for this fall and new filing deadlines were set.

The Court also suspended the time periods for commencing appeals and setting down motions for date and directions. That suspension expires on June 26, 2020, and will not be extended.

The Court of Appeal is developing a protocol for how appeal hearings will be conducted during the pandemic, which is expected later this month. Further updates will be posted at: [https://www.courts.ns.ca/News\\_of\\_Courts/COVID19\\_Preventative\\_Measures.htm](https://www.courts.ns.ca/News_of_Courts/COVID19_Preventative_Measures.htm).

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## **COURT OF APPEAL USING WEBCASTING TO EXPAND PUBLIC ACCESS DURING PANDEMIC**

**Thursday, March 18, 2021**

The Nova Scotia Court of Appeal will increase its use of webcasting this spring as a way to safely expand public access to appeal proceedings during the COVID-19 pandemic.

Physical access to courthouses in Nova Scotia continues to be limited to those who work in the building, who are directly involved in a court proceeding, or who have an appointment and have passed the mandatory health screening questions. This measure follows public health directives regarding physical distancing but has created challenges when it comes to maintaining the open courts principle.

With that in mind, the Justices of the Court of Appeal have agreed to livestream more appeal hearings in the March/April and May/June terms, where it is appropriate to do so. The presiding Panels will have discretion on what matters will be webcast. Matters where a publication ban is in effect will not be considered.

“Having open courts is a hallmark of our justice system,” said The Hon. Michael Wood, Chief Justice of the Nova Scotia Court of Appeal. “It is important that the public be able to see court proceedings and have confidence that matters are not being decided behind closed doors. Appeal hearings lend themselves well to the livestreaming format and we hope to be able to expand this option as more resources and technology become available.”

The Nova Scotia Court of Appeal was the first in Canada to webcast its proceedings, starting in 2008. Since then, the Court has livestreamed dozens of appeal hearings and the initiative has expanded to include certain types of proceedings in the Supreme Court of Nova Scotia.

The first matter that will be broadcast this term is scheduled to begin at 10 a.m. AST on Tuesday, March 23, 2021:

**CA 499116 – Heritage Trust of Nova Scotia v. AMK Barrett Investments Inc.**  
(formerly Brunswick Street Developments Ltd.), Halifax Regional Municipality,  
Nova Scotia Utility and Review Board, Attorney General of Nova Scotia, Ezra  
Edelstein, and Joanne MacRae



Members of the public can watch the proceedings live on the Courts of Nova Scotia website at [https://www.courts.ns.ca/Webcasts/webcasts\\_live.htm](https://www.courts.ns.ca/Webcasts/webcasts_live.htm). Details of upcoming webcasts from the Court of Appeal will be posted on the same page.

As per the Nova Scotia Courts' [copyright policy](#), webcasts of court proceedings may not be broadcast or re-broadcast by embedding them in another website or by any other means. However, members of the media are permitted to re-broadcast portions of the webcasts (audio and video) as part of conventional news coverage. Hyperlinks to the live webcast page and the page of archived videos on the Courts of Nova Scotia website are permitted.

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## **COVID-19: COURT OF APPEAL PROCEEDINGS DURING THE PANDEMIC**

**Wednesday, May 5, 2021**

With the Nova Scotia Court of Appeal set to start its next term on Tuesday, May 11, counsel and parties are reminded that the Court continues to operate under the [Practice Directive for Appeal Proceedings During the COVID-19 Pandemic](#).

First implemented in June 2020, the practice directive was updated on April 29, 2021, to reflect the transition to Microsoft Teams for virtual court proceedings. This document outlines how hearings will be held during the pandemic, including such things as etiquette and civility in virtual court proceedings, instructions for electronic filing of documents, and media access.

The format of appeal hearings will be set by the Panel, which will consider the nature of the proceeding and current public health restrictions. Hearings could be held with remote participation by some or all parties using Microsoft Teams, in-person hearings, or appeals heard and decided through written submissions only.

Counsel and parties are encouraged to electronically file documents, whenever possible. Detailed instructions for electronic filing are included in the practice directive.

Please note that filing deadlines in the Court of Appeal have not been suspended. Counsel and self-represented individuals are expected to comply with the requirements of the Civil Procedure Rules and any directions of the Court.

Chambers matters in the Court of Appeal will be dealt with primarily by telephone or video using Microsoft Teams. In-person hearings will be at the discretion of the Chambers judge. Mandatory masking and physical distancing measures will be in effect for any matter that proceeds in-person.

Counsel and participants who will be involved in appeal proceedings this term are encouraged to review the practice directive before their appearance. Those who will be involved in a fully virtual appeal or an appeal with remote appearances should also review the [Best Practices Checklist for Virtual Hearings](#).

Counsel and parties are asked to be flexible when it comes to technical difficulties or other challenges that participants may experience in virtual proceedings. The Court recognizes that due to the 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, childcare, and elder care.

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## **Statement from the Chief Justice regarding the Vaccination Status of Judges on the Court of Appeal**

**Friday, Nov. 26, 2021**

The following statement is issued on behalf of The Hon. Michael J. Wood, Chief Justice of Nova Scotia and the Chief Justice of the Nova Scotia Court of Appeal:

“Throughout the COVID-19 pandemic, the Nova Scotia Court of Appeal has continued to hear cases. We have been able to do so by following strict health and safety protocols consistent with the advice and guidance offered by public health officials.

As an independent branch of government, the Judiciary is not legally subject to the authority of the executive branch in respect of its practices and procedures. The Nova Scotia Court of Appeal does not routinely release information about its own internal policies. That said, the Court recognizes the interest of the public concerning the vaccination status of judges.

With this in mind, the judges of the Court of Appeal have voluntarily decided to disclose that they are all fully vaccinated.”

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## FORMAT OF COURT OF APPEAL PROCEEDINGS

Wednesday, Aug. 24, 2022

The Nova Scotia Court of Appeal is scheduled to begin its fall term on Tuesday, Sept. 13, 2022. Counsel and parties with matters on the docket in September and October are reminded that the Court's [Practice Directive for Appeal Proceedings During the COVID-19 Pandemic](#) remains in effect.

As per that directive, the Panel for each appeal will continue to review the unique circumstances of each case to determine the appropriate format for the hearing.

At this stage of the pandemic, the majority of appeal hearings have been proceeding in person. With that in mind, and to help reduce correspondence between the Court and counsel prior to the hearing date, participants should assume that their matter will proceed in person. Letters will be sent to counsel only in instances where the panel chooses a format other than in-person.

Anyone attending the Court of Appeal in person is reminded that they must wear a mask in all public areas of the courthouse, and, as per the Court's Practice Directive, they are also required to be masked in the courtroom, except when speaking.

To view the docket for the upcoming term, go to [https://courts.ns.ca/Appeal\\_Court/NSCA\\_dockets.htm](https://courts.ns.ca/Appeal_Court/NSCA_dockets.htm).

For more information on COVID-19 measures in the Nova Scotia Courts, please visit [https://courts.ns.ca/News\\_of\\_Courts/COVID19\\_Preventative\\_Measures.htm](https://courts.ns.ca/News_of_Courts/COVID19_Preventative_Measures.htm).

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