

NOVA SCOTIA COURT OF APPEAL

MOTION TO INTRODUCE FRESH EVIDENCE AT THE HEARING OF THE APPEAL

1. Where evidence existed at the time of the lower court proceeding but the appellant only became aware of the evidence after the lower court proceeding was concluded **AND** that evidence may have changed the outcome of the lower court decision, it is possible to make a motion to introduce this fresh evidence at the Court of Appeal on the appeal of the lower court decision.
2. A motion for the introduction of fresh evidence at the Court of Appeal level is usually heard at the same time as the appeal proper before a Panel of three (3) judges, but is a separate standalone motion.
3. Civil Procedure Rules 90.34 and 90.36 apply to motions before the court. Review the rules on the courts website at: www.courts.ns.ca. The Rules direct making a motion to introduce fresh evidence is a two-step process.

Step 1 - Motion for Directions on your Motion for Introduction of Fresh Evidence

3. If you are making a fresh evidence motion you normally discuss this at the motion to set the appeal down for hearing (motion for date and directions) with the Chambers judge and opposing counsel and the judge will set the date for the motion and specific deadlines for the filing of the required material with the court. If you have already had this motion and obtained filing directions for your motion for fresh evidence, you may proceed directly to Step 2.
4. If you have already had your motion for directions and fresh evidence was not discussed, you will have to file a Notice of Motion for directions and appear before a judge in Chambers to get directions on your proposed fresh evidence motion. You do not need to file the fresh evidence itself at this stage. A form of Notice of Motion for directions is provided - you must retype the Notice of Motion with your own information.
5. This motion can be heard either in regular in person Chambers on a Thursday at 10:00 a.m. **OR** can be heard at a pre-booked time in telephone Chambers on a Wednesday. To pre-book a telephone Chambers you must contact the Deputy Registrar at 902-424-6937.
6. You must file your Notice of Motion for directions with the court and deliver a copy to the respondent(s) at least four (4) days before your Chambers hearing date.
7. Please remember all time is calculated in accordance with Civil Procedure Rule 94 – this means you do not count the date you file your Notice of Motion and you do not count the day the motion is heard. You count the days in between and you omit any Saturday or Sunday or day when the Prothonotary's office is closed.

Step 2 - Motion for Introduction of Fresh evidence

8. At the motion for directions, the Chambers judge will provide a date for the motion for fresh evidence to be heard, as well as filing deadlines for your Notice of Motion for the Introduction of Fresh Evidence and your Affidavit containing the fresh evidence.
9. A form of Notice of Motion for the Introduction of Fresh Evidence is provided - you must retype your Notice of Motion with your own information. The date you insert for the motion is the date provided to you by the Chambers judge.
9. You must file an Affidavit in support of your Notice of Motion to introduce fresh evidence. A form of Affidavit is provided for you to use as a guide to prepare your own Affidavit. Remember to append as an exhibit to the affidavit a copy of the fresh evidence you seek to have entered on the appeal.
10. Remember that you must file one original plus four copies, for a total of five (5) copies of your Notice of Motion to introduce fresh evidence and supporting Affidavit, which the court will keep. This is because it is a motion being heard by the panel of the court and not a single judge in Chambers. You must provide enough additional copies so that you have one for each Respondent and one for yourself. These additional copies will be court stamped and returned to you.
11. You must deliver a copy of all the material you have filed with the court to the Respondent(s).
12. For more information, contact:

Registrar, Nova Scotia Court of Appeal
1815 Upper Water Street
Halifax, NS
Telephone: 902-424-8962
Fax: 902-424-0524