

NOVA SCOTIA COURT OF APPEAL

Revised- January 2016

HOW TO MAKE A MOTION FOR STATE-APPOINTED COUNSEL

This guide provides general information only. It may not tell you all you need to know. It does not explain the law and should not be considered legal advice.

Attached to this guide are the following documents. You will need to fill them out as instructed below:

- (1) Notice of Motion
- (2) Supporting Affidavit

As a general rule, you need to have done the following before you can make this motion:

- Filed a Notice of Appeal with the Nova Scotia Court of Appeal involving a criminal matter.
- Applied for and been refused legal aid through the Nova Scotia Legal Aid Commission.
- Exhausted all your appeal remedies within the Nova Scotia Legal Aid Commission and still be refused the services of a legal aid lawyer.
- Exhausted all your own personal financial resources and not have the money to retain your own lawyer to represent you on the appeal

What are the reasons for your motion?

Under section 684 of the ***Criminal Code of Canada*** you have the obligation to demonstrate to the judge the following:

- (i) that it is desirable in the interests of justice that you should have legal assistance, *and*
- (ii) that you do not have sufficient means to obtain that assistance

For these reasons, you should include the following information in your Affidavit in support of your motion for the appointment of legal counsel. (Note that this list is not exhaustive):

- Information regarding why you cannot conduct the appeal, including:
 - ▶ Education
 - ▶ Training
 - ▶ Employment/business background
 - ▶ Reading skills
 - ▶ Communication skills
 - ▶ Availability of help from friends or family with the reading materials
 - ▶ Familiarity with Court procedures
 - ▶ Understanding of the conviction(s) and /or sentence(s) under appeal

- Why your appeal is so complex that it requires a lawyer to advance the appeal on your behalf, including details of the grounds of appeal and the complexity of issues to be raised on appeal
- Why you believe your appeal should succeed;
- Details and documentation regarding why you say you cannot afford a private lawyer, and your efforts to retain private counsel
- Details and documentation of your efforts to retain a publically-funded lawyer, including:
 - ▶ That you have exhausted all your rights to legal counsel through the process established by the Nova Scotia Legal Aid Commission and that includes all appeal steps within the Nova Scotia Legal Aid Commission.

Follow these steps to file your motion for the appointment of legal counsel:

- Read the attached forms and this information sheet and try to understand how to make the motion for the appointment of legal counsel.
- Complete the document called the 'Notice of Motion':
 - ▶ this is a fill in the blank form: write in the court file number, the names of the parties, and date and sign the form
 - ▶ ***If you are in custody:*** the date and time for the chambers motion should be left blank. The Registrar will set a date and time for your motion.
 - ▶ ***If you are not in custody:*** select a chambers date. Court of Appeal chambers are generally held on Thursdays at 10:00 a.m.
- Complete the Affidavit:
 - ▶ you must provide as much detail as possible in the Affidavit and include the information requested in the above section entitled: **What are the reasons for your motion?**
 - ▶ your Affidavit must be sworn before a Commissioner of Oaths or a lawyer.
- Send your Notice of Motion and Affidavit to the Court.
 - ▶ ***if you are in custody:*** you only need to send one copy of each document to the Registrar
 - ▶ ***if you are not in custody:*** you will need to send five copies of each document to the Registrar. Note that you must have your copies filed with the Court at least four clear days in advance of the chambers date you have selected for your motion

- Once the Court receives these documents, the Registrar will review your documents. If everything is in order, the Registrar will:
 - ▶ ***if you are in custody***: a date and time for your motion will be set. The Registrar will notify the other parties, the Nova Scotia Legal Aid Commission, and counsel for the Attorney General of Nova Scotia, and will send you back a copy of each document for your own records. The Registrar will make arrangements with the institution to have you brought before the Court for the hearing of your motion
 - ▶ ***if you are not in custody***: the Registrar will return the extra copies of the documents to you. It is your responsibility to notify the other parties of the motion. This must be done at least four clear days in advance of the hearing date. In addition to notifying the other party(ies), you must also notify:
 - Mr. Edward Gores, Q.C., for the Attorney General of Nova Scotia
 - Ms. Megan Longley, for the Nova Scotia Legal Aid Commission