

HINTS AND TIPS FROM THE PROTHONOTARY - REGISTRAR

CAROLINE McINNES

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My contact information is as follows:

Phone: 902-424-8962

Fax: 902-424-0524

Email: Caroline.McInnes@courts.ns.ca OR PROTHONOTARYHFX@courts.ns.ca

Prothonotary Staffing Update

Timothy Morse has taken another position within the Nova Scotia Department of Justice and is no longer Prothonotary at the Halifax Law Courts. Jessica Boutilier was the successful candidate for this competition and is the new Prothonotary for the Halifax Law Courts. Ms. Boutilier's contact information is as follows:

Phone: 902-424-7968

Fax: 902-424-0524

Email: Jessica.Boutilier@courts.ns.ca OR PROTHONOTARYHFX@courts.ns.ca

COVID-19

Please continue to refer to the Courts of Nova Scotia website [here](#) for updates on the directives related to COVID-19 in both the Supreme Court and the Court of Appeal.

The Court Administration Office (front counter) at the Halifax Law Courts is open for service. The document drop-box through the main doors of the Law Courts will remain in place and documents may continue to be dropped off using this drop-box.

Please refer to the Courts' [November 14, 2022 Notice](#) for an update on masking in courthouses.

A reminder that as per the [March 23, 2022, Notice](#), the Supreme Court has ended the COVID-19 accommodations that allowed for personal service by email and virtual commissioning of affidavits in the Supreme Court.

Court of Appeal Practice Directive for Appeals Proceeding during COVID-19

The Court of Appeal is implementing two new practice directives that will affect the filing of court documents and the expectations for appearances in the Court of Appeal:

[Practice Directive: Appearances in the Court of Appeal](#): This practice directive **replaces** the Practice Directive for Appeal Proceedings during the COVID-19 Pandemic. Unless otherwise noted by the Court, participants should assume that their matter will proceed in person. Counsel or parties may make a request to the Court to appear virtually. Subject to any order of the Court, all fully virtual appeals or in-person appeals with remote appearances will be conducted pursuant to this practice directive.

[Practice Directive: Electronic Filing of Documents in Appeal Proceedings](#): This practice directive provides instructions on the electronic filing of Factums, Transcripts, Appeal Books and Books of Authorities.

PLEASE NOTE: Effective Feb. 1, 2023, documents that had been accepted electronically by the Registrar (e.g. Notices of Appeal, Cross Appeal or Contention, letters, and other documents related to Chambers motions) must be filed and served in accordance with the Civil Procedure Rules, which do not permit electronic filing or service as of right.

The permission to file and serve these types of documents electronically was specific to the circumstances of the pandemic and no longer applies. Further to that, the Nova Scotia Courts do not currently have a document management system to properly support electronic filing.

These new practice directives go into effect on Feb. 1, 2023. Read the full court notice [here](#).

CIVIL PROCEDURE RULE AMENDMENTS

The Judges of the Supreme Court and the Court of Appeal passed numerous amendments to the *Civil Procedure Rules* in 2022. These amendments are posted on the Courts' website [here](#). Broadly speaking, the amendments cover the following:

- Amendments to Rule 91 [**Court of Appeal (Nov. 30, 2022)** [Amendments to Rule 91](#)]
- Amendments to Rule 31 [**Supreme Court (Oct. 17, 2022)** [Amendments to Rule 31](#)] replacing 'Her Majesty the Queen' with 'His Majesty the King'.
- Amendments to the Expert Opinion (Rule 55) & Conduct of Trial (Rule 51) Rules [**Supreme Court (June 24, 2022)** [Amendments \(Expert Opinion\)](#)]. Highlights include the following:
 - Changes were made to the expert opinion Rule to incorporate concepts that had been developed in the case law (see e.g. *Brown v. Nova Scotia Association of Health Organizations Long Term Disability Plan*, [2020 NSSC 301](#)).
 - The amendments represent a shift in the nomenclature used, with Treating Physician's Narrative being replaced by Treating Physician's Report ("TPR").
 - The amendments have incorporated the concept that the TPR must have been prepared for the predominant purpose of treating the patient.

- The Treating Physician must file with their TPR a ‘Representation’ confirming the opinion was formulated in the course of treatment and identifying the notes representing the opinion and notes supporting the opinion. Further, the TPR must also include a statement of qualification.
 - The deadline for filing the TPR, and responding to one with a rebuttal expert’s report, has changed and now mirrors that of an expert’s report.
 - Subpoenas for, or written interrogatories, are still not permitted for a TPR (they were also not permitted for a TPN).
 - There is a process set out in (new) Rule 55.16 for obtaining an advanced ruling to determine if the TPR has sufficient information to adequately deal with the physician’s opinion.
 - (New) Rule 55.15 states that the trial/application hearing judge must determine the admissibility of the TPR, and sets out the factors to be used in making this determination.
 - In addition to the changes in the TPR, the judges carved out a single exception to who may file a TPR: these may now be filed by a treating licensed nurse practitioner ((new) Rule 55.17). Note that this is a very limited exception and the judges have expressed **no** intention to make further exceptions (e.g. for physiotherapists, occupational therapists, etc.). The reason behind this change is the acknowledgment of the limited availability of family doctors and, in particular, the acknowledgment that in some areas of the province there may only be a licenced nurse practitioner available.
- Amendments to *Habeas Corpus* (Rule 7) [**Supreme Court (May 26, 2022)** [Amendments to Rule 7](#)]
 - The amendments to this Rule were the result of the Supreme Court judges’ workgroup on *habeas corpus*. This workgroup received input from numerous stakeholders and the amendments are a result of this consultation process.
 - The amendments have resulted in new forms. The new Notice for *Habeas Corpus* Form 7.12 aims to obtain much more information from the applicant at the front end of the process. It also contains more descriptive information about *habeas corpus* and mirrors the language used by the Supreme Court of Canada in its caselaw.
 - There is also a new form, a Notice of Contest (*Habeas Corpus*), Form 7.12A, required to be filed by the applicable Attorney General.
 - Miscellaneous Amendments [**Supreme Court (May 26, 2022)** [Miscellaneous Amendments](#)]
 - Rule 4.18(1) was amended to require parties to provide the actual **name** of the witness in a witness list, and not just the description of the type of witness.
 - Rule 18.02 was changed to include application in court, clarifying that this Rule applies to both actions and applications.

- Rule 24.02(3) was added to the **Appearance Motion Rule**. This addition clarifies the existing practice, which requires that an appearance motion be brought in the judicial district in which the action or application was initiated.
- This means that appearance motion are an exception to the general rule that a party may have a motion heard in any Supreme Court (as long as they file their documents in the originating court) [see Rules 47.03 & 32.02(2)]. Appearance motions may only be heard in the originating court.

PRACTICE TIPS

Court of Appeal:

More than a third of the hearings scheduled before the Court of Appeal in September and October 2022 were adjourned at such a late stage that it was not possible to schedule replacement matters. This results in a significant loss of court time and has a detrimental effect on access to justice for others appearing before the Court of Appeal.

Counsel and parties are reminded of the importance of giving realistic filing estimates and adhering to dates once they have been set by the court. Adjournments are at the discretion of the Chambers Judge and will take into account the reasons given for any missed filing deadlines.

Supreme Court:

I reiterate the practice tips set out in the [May 11, 2022](#) edition of Hints & Tips, as these remain relevant.

BOTH COURTS

Free Legal Clinic at the Law Courts

The Nova Scotia Courts offer free legal clinics for self-represented litigants who have limited or no experience navigating the legal system. These clinics are offered weekly at the Halifax Law Courts, and every other week in Yarmouth, Truro, and Sydney, Cape Breton.

The Halifax free legal clinic offers appointments most Thursdays between 8:30 a.m. and 12:30 p.m., excluding holidays. Each session lasts one hour. Appointments can be in person on the 2nd Floor at the Law Courts, or by telephone.

This initiative was created to fill a gap in services for people needing assistance with their civil law matters and family law appeals, excluding child protection matters. Legal Aid provides duty counsel services at most courthouses to help self-represented individuals with criminal and family law matters, but there was nothing available for other types of cases. Assistance for family law appeals at the Court of Appeal will be provided approximately one Thursday per month.

The Halifax Free Legal Clinic is currently in need of volunteer lawyers for 2023 winter session, which begins on Jan. 18. If you are interested in providing pro bono legal services at the clinic, please call 902-424-6840 or send an email to hfxfreelegalclinic@ns.courts.ca

If you have litigants in mind who you believe might benefit from this service, kindly refer them to the Court Administration office at the Law Courts. Litigants may initiate the sign-up process by telephone at 902-424-6840 or by email at hfxfreelegalclinic@ns.courts.ca. For more information, 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 the 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 through Bar members on the relevant committees. Current information on committee membership may be obtained from the Nova Scotia Barristers' Society.