



Hints & Tips from the Prothonotary

October 23, 2024

COURT OF APPEAL - CIVIL PROCEDURE RULE 90 AMENDMENTS

The judges of the Nova Scotia Court of Appeal approved amendments to *Civil Procedure Rule 90*, which were dated by the Court September 30, 2024, and took effect on October 2, 2024 (the date they were published in the Royal Gazette).

These amendments are the product of a subcommittee established by Chief Justice Wood, whose purpose was to do a global review of *Rules 90 & 91*. Through the Court of Appeal's Bench-Bar Liaison Committee, the subcommittee also sought input from the Bar on what changes were desired from their perspective. These are the first round of amendments, addressing what the subcommittee considered quick fixes. A second round of amendments is in the works.

In addition, some amendments to *Rule 91* have been informally approved but have not been formalized, as these require translation into French as they apply to matters under the *Criminal Code of Canada*.

The October 2, 2024 amendments can be reviewed on the amendments section of Courts' *Civil Procedure Rule* website [here](#). At the time of posting these Hints & Tips, they have not yet been incorporated into the official consolidated version of the Rules on the Courts of Nova Scotia website.

Here is a summary of the amendments from the Registrar's perspective:

1. Appealing Interim/Costs only orders made under the *Divorce Act*

The process for appealing interim or costs only orders made under the *Divorce Act* is now clarified under the Rules. Leave is required, and the process for interlocutory/costs only appeals under *Rules 90.09/90.10* is to be followed, except that the deadline for filing the appeal is still governed by the *Divorce Act* (that is, 30 calendar days from the date of the order, as opposed to 10 clear days for regular interlocutory/costs only appeals). These changes are reflected in the amendments to *Rule 90.09 & 90.13(3)*.

2. Deadline for Filing Motion for Leave to Intervene

The deadline for filing a motion for leave to intervene has changed (*Rule 90.19(4)*). It was 15 days after the notice of appeal had been filed. The amendment now allows a motion for leave to intervene to be filed up until the motion for date and direction is heard, or afterwards with leave of a judge.

3. Deadline for Motion for Date and Directions

Rule 90.25(2) has been amended to clarify that a motion for date and directions must be “scheduled by the appellant and heard no more than the number of days in the following table...”. This amendment was aimed to address confusion around whether the motion for date and directions only had to be *filed* or whether it had to be filed *and heard* by the deadline in *Rule 90.25(2)*.

We have also updated the language accordingly in the Registrar’s customary letters that are sent out after an appeal is filed and to set the deadline for the motion for date and directions in a specific appeal.

4. Requesting Out of Province Transcriptionist

Rule 90.29 has been amended to add a new subsection to formalize the procedure a party must follow to request the use of an out-of-province transcriptionist for the preparation of the transcript.

5. Requesting Filing Extensions (by Consent) from Registrar

Rule 90.35(6) was added to formalize the process for parties to request filing extensions from the Registrar. This formalizes in the Rules the practice the Registrar has been employing for years.

6. Deadline to Notify the Court of Intent to Cross-Examine an Affiant

A couple of rules were amended to clarify the deadline by which a party must notify the court if they intend to cross-examine an affiant before a motion in chambers or before the Court:

- For chambers motions: *Rule 90.37* provides that the party must notify the Court of the intention to cross-examine an affiant 1 clear day before the chambers motion.
- For motions before a panel of the Court (e.g. a motion for fresh evidence): *Rule 90.36(3)* was amended to add that a judge may assign a date for parties to confirm whether there will be cross-examination on affidavits.

7. Motion for Leave to Review to the Chief Justice

A couple of corrections were made to *Rule 38*, which governs the process for making a motion for leave to review to the Chief Justice. One of the corrections fixes a typographical error, and the other clarifies that the motion for leave to review is a motion by correspondence.

8. Motion for Stay Pending Appeal

Amendments were made to the Rule governing motions for stay of execution pending appeal (*Rule 90.41*). These changes were made to formalize practices that were already being followed. The first is, if dates for the appeal have not yet been set, the motion for date and directions must be made with the motion for stay pending appeal (unless a judge orders otherwise). The other amendment indicates that a judge may order an interim stay, pending the hearing of the motion for stay itself.

9. Electronic Certified Copies of Orders

Rule 90.50A was added to authorize the Registrar to provide a certified copy of an order in electronic format. The Rule also indicates that a party can request a paper certified copy of the order.

10. Certificate of Readiness

Form 90.26 (Certificate of Readiness) was amended to remove the deadline for filing beneath the title.

PRACTICE TIPS

Supreme Court:

1. Registry Codes

Please ensure you insert the registry code on your document before filing, in accordance with *Rule 32.02(1)*. For example, if filing in Halifax, insert 'Hfx' before 'No'. We have noticed an increase in documents received with no registry code inserted. The registry code forms part of the mandatory heading of the document.

2. Technical requirements for hearings

I have been asked to remind counsel to make any technical requests for hearings well in advance of the hearing date.

3. Requests for Date Assignment Conferences

I have been asked to remind counsel to ensure that they meet all of the minimum requirements required when filing a request for a date assignment conference. With the exception of actions proceeding under *Rule 57*, the requirements are set out in *Rule 4.13(1)*, which provides:

(1) A party may obtain a date assignment conference to appoint trial dates after pleadings close as provided in *Rule 38 - Pleading*, and after each party has done all of the following:

- (a) disclosed documents and electronic information as required;
- (b) discovered each individual party of whom discovery is required;**
- (c) discovered, from each corporate party of whom discovery is required, at least the designated manager or one other officer or employee;
- (d) answered interrogatories required to be answered by or on behalf of the party. [emphasis added]

Should any of the requirements in *Rule 4.13(1)* not be met, counsel are reminded of *Rule 4.13(2)*, which allows a party to make a motion for permission to request a date assignment conference in the circumstances set out therein.

4. Contact Information in Pleadings

I have been asked to remind counsel to ensure their contact information is included in the signature line of their pleadings: please include firm address, phone number, fax number and email.

5. Headings (Style of Cause) in Proceedings

One of the most common reasons for rejection of documents is errors in the heading (previously called the style of cause) in proceedings. Please refer to *Rule 82.09* for the rules around when a heading changes. Filing a notice of discontinuance or a consent dismissal order does not automatically remove the party discontinued or dismissed against from the heading.

Best practices for partial consent dismissal orders would be to include a paragraph in the order amending the heading to remove the party dismissed against.

Alternatively, the prothonotary may vary the heading in a proceeding in accordance with *Rule 82.09(10)*. You may request the prothonotary amend the heading if the circumstances set out in the rule are met.

Court of Appeal:

1. Filing Deadlines – Electronic & Paper Copies of Documents

Parties are reminded that the filing deadlines set by a judge of the Court of Appeal for documents going to the panel of the Court (e.g. appeal book, factum, book of authorities) apply to **both** the electronic copies and the paper copies of these documents.

Please review the applicable *Rules* to make sure your paper copies are properly formatted, as the Court of Appeal has specific formatting requirements for these documents.

With respect to the electronic copies, you should familiarize yourself with the Court's [Practice Directive on Electronic Filing of Documents in Appeal Proceedings](#) to ensure your electronic documents meet the requirements set out in the Practice Directive.

BOTH COURTS

Free Legal Clinic at the Halifax Law Courts

The Law Courts in Halifax continues to offer support for eligible self-represented litigants through its Free Legal Clinic. Clinics are also offered at the courthouses in Truro, Sydney and Yarmouth.

The Free Legal Clinics address a gap in services for people who need assistance with their civil law matters and family law appeals, excluding child protection. Nova Scotia Legal Aid provides duty counsel services at most courthouses to help self-represented individuals with criminal and family law matters.

The Halifax clinic is located on the 2nd floor of the Law Courts. One-hour appointments with volunteer lawyers are available most Thursdays from 9 a.m. to 1 p.m. These appointments are offered in person or by telephone.

If you have litigants in mind who may benefit from this service, kindly refer them to the Court Administration office at the Law Courts. Litigants can also request appointments by calling 902-424-6840 or by email at HFXfreelegalclinic@ns.courts.ca.

The Halifax Free Legal Clinic is currently in need of volunteer lawyers for the upcoming fall and winter sessions. If you are interested in providing pro bono legal services for the Free Legal Clinic in Halifax, please contact Gael O'Keefe at 902-424-6840 or by email at HFXfreelegalclinic@ns.courts.ca.

For more information on the Free Legal Clinics, please visit the Courts website at <https://www.courts.ns.ca/resources/public/free-legal-clinics>.

Bench-Bar Liaison Committees

The Nova Scotia Court of Appeal and the Supreme Court of Nova Scotia both have Liaison Committees that are composed of members of the Bench and the Bar. These committees typically meet twice a year. Counsel are encouraged to bring forward items they would like raised at Liaison Committee meetings through the Bar members of the relevant committees. Current information on committee membership may be obtained from the Nova Scotia Barristers' Society.

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