

HINTS AND TIPS FROM THE PROTHONOTARY - REGISTRAR

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September 9, 2005

Please note that there will be no Appearance Day on the following dates: October 21, November 11 and December 16, 2005.

Supreme Court Crownside in Halifax will be held on the following dates: September 15, 22, 29, October 6, 13, 18, 27, November 3, 10, 17, 24, December 1, 8, 15 and 22, 2005. Please note that some of these dates are for Tuesday rather than Thursday.

COURT OF APPEAL

1. Counsel are reminded that Civil Procedure Rule 62.31(3) has now been **amended**. **The amendment was effective July 1, 2005**. All Chambers applications now require **at least three (3) clear days** notice.
2. Counsel are reminded that the supporting material on bail applications must include the sentencing judge's remarks and the pre-sentence report, if available.
3. Applications to introduce "fresh evidence" on appeal must be heard before a Panel of three (3) judges of the Court of Appeal. Material in support of such applications must be filed separately from the Appeal Book or the Factum and is to be "stand alone" material. Fresh evidence applications are always heard before the Panel hearing the appeal proper but at the outset of the proceedings, thus, your Notice must reflect that a Panel is hearing the application on the same date and at the same time as the appeal is being heard. Five (5) copies of the application material is required.

SUPREME COURT

1. The Civil Procedure Rules are silent on whether an application pursuant to Civil Procedure Rule 37 needs to be brought in the jurisdiction where the action is commenced. Thus, it is possible to bring an application in a jurisdiction other than where the action is commenced. However, when the application documents are filed a cover letter is required setting out that the application is being brought on an "out of town file" in the district where the application is being filed. Otherwise the documents will not be accepted for filing as they are on an "out of town" file. It is the responsibility of counsel bringing the application to forward a letter to the

Prothonotary in the jurisdiction where the action resides requesting that the file be forwarded for the hearing of the application to the Prothonotary of the jurisdiction where the application will be heard.

2. Large numbers of documents filed with the court are sent by courier. Couriers, in many cases, are simply dropping off the documents and not waiting for any “return” documents. Counsel should be aware that in these cases, if there are defects in the documents being presented for filing, that they are **not** being filed and are simply being placed in the lawyer’s bin. In many cases the documents in the bin are only collected several days after they were initially sent to the court for filing. If the courier waited for the documents, any defects would be brought to the immediate attention of the lawyer by the courier
3. Counsel are reminded that Civil Procedure Rule 37.08 (b) requires the filing of a memorandum on all Chambers applications listing any authority and the applicable provisions of any enactments, regulation or rule that are to be relied upon on the application. It has been noted that very few lawyers are filing such memorandum. Please ensure that your Chambers applications are accompanied by the required memorandum to facilitate the judge’s preparation for the hearing of the application.
4. Counsel are encouraged to review Civil Procedure Rule 19 on Interrogatories. Although there are clear requirements regarding the serving of interrogatories, you will note that there is no requirement to file either the interrogatories themselves or the answers with the court.
5. I refer counsel to the October 10, 2003 and the March 24, 2005 Hints and Tips under the Supreme Court section - when actions are presented for filing and name as a Defendant the provincial Crown or an agency **counsel will be asked whether they have given the statutory required notice before the document will be accepted for filing.** This requirement has **NOT** been working. **I would ask that counsel place a cover letter on any action they wish to commence against the provincial crown or a municipal government stating that they have provided to the Defendant’s counsel the required notice of intended action.** If this cover letter is not with the initiating document, **IT WILL NOT** be accepted for filing. Counsel are also hereby informed that self-represented litigants will be asked to file a Notice of Intended Action with the court in cases where they wish to commence an action against the provincial crown or a municipal government - once the required notice period has lapsed from the filing of the Notice of Intended Action, the self-represented litigant’s action will be accepted for filing.

A.M.B.