

## **PRACTICAL REMINDERS TO COUNSEL**

Making an motion to the Court of Appeal for release of the Appellant pending the hearing of their appeal.

- A Notice of Appeal must be filed prior to or at the same time as the motion for release.
- The following material must be filed along with your Notice of Motion for release: transcribed sentencing remarks of the lower court, the pre-sentence report submitted to the sentencing judge, if any, a supporting affidavit (s), a brief of law and a draft Order for release.
- The motion must be set down for Court of Appeal Chambers. Chambers is held every Thursday at 10:00 am on four (4) days notice. Time is calculated in accordance with Civil Procedure Rule 94. This means that you do not count the date you file the Notice of Motion, you do not count any Saturday or Sunday or holiday on which the Prothonotary's office is closed and you exclude the Chambers hearing date itself. You count 4 days in between. This means that all the documentation needs to be filed AND served on the Crown doing the appeal (Kenneth (Butch) Fiske for provincial matters or Paula Taylor for federal matters) no later than 4:30 pm on the Thursday preceding the scheduled hearing date for the application.
- You must set the appeal down for hearing at the same time as you bring the motion for release. You will need a separate Notice of Motion to set down the appeal. The setting down motion will NOT be heard if the Certificate of Readiness is not properly completed and filed five (5) days prior to the hearing. Time, as noted above is calculated in accordance with Civil Procedure Rule 94. If you are unable to file the Certificate of Readiness in the prescribed form 90.26, you must file an affidavit setting out why you are unable to file the certificate (see Civil Procedure Rule 90.26(4)).
- You need to speak to the Crown to determine whether any proposed sureties need to be available to give evidence at the motion for release and to solicit the position of the Crown on the motion.
- The Appellant will need to be brought to court for the hearing of the motion for release. You are responsible to file the motion for the Warrant to Convey and the draft Warrant to Convey. This material should be included in the package you file with the court no later than the Thursday preceding the hearing at 4:30 pm. The forms that you must use for this motion for the Warrant and the Warrant itself are located on the courts website. Please note that there are two different forms of Warrant one to be used when the Appellant is in custody in a provincial institution and the other when the Appellant is in custody in a federal institution.

- If bail is granted the Registrar (or Deputy) of the Court of Appeal will prepare the Recognizance and have it signed by the Appellant and the sureties who need to be available at the conclusion of the hearing for this purpose.

Annette M. Boucher, Q.C.  
Registrar - Nova Scotia Court of Appeal  
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