

NOVA SCOTIA COURT OF APPEAL

MOTION TO INTRODUCE FRESH EVIDENCE AT THE HEARING OF THE APPEAL

1. Where evidence existed at the time of the lower court proceeding but the appellant only became aware of the evidence after the lower court proceeding was concluded **AND** that evidence may have changed the outcome of the lower court decision, it is possible to make a motion to introduce this fresh evidence at the Court of Appeal on the appeal of the lower court decision.
2. A motion for the introduction of fresh evidence at the Court of Appeal level is heard at the same time as the appeal proper before a Panel of three (3) judges, but is a separate stand alone motion.
3. If you are making a fresh evidence motion you normally discuss this at the motion to set the appeal down for hearing with the Chambers judge and opposing counsel and the judge will set specific deadlines for the filing of the required material with the court.
4. Civil Procedure Rules 90.34 and 90.36 apply to motions before the court. Review the rule on the courts website at: www.courts.ns.ca .
5. A form of Notice of Motion is provided - you must retype your Notice of Motion with your own information. The Notice of Motion, should be filed as soon as you are able with the court, but no later than thirty (30) days before the date of the hearing of the motion and the appeal, **unless the judge has directed otherwise at the motion to set the appeal down for hearing**. Time is calculated in accordance with Civil Procedure Rule 94. This means you do not count the date on which you file your notice of motion and supporting affidavit with the court, you do not count the day the hearing will take place, but you count thirty (30) days in between EXCLUDING Saturdays, Sundays and any day on which the Prothonotary's office is closed.
6. You must file an Affidavit in support of your Notice of Motion to introduce fresh evidence. A form of Affidavit is provided for you to use as a guide to prepare your own Affidavit. Remember to append as an exhibit to the affidavit a copy of the fresh evidence you seek to have entered on the appeal.
7. You must notify the Respondent of your motion by providing a copy of all the material you have filed with the court to the Respondent.
8. For more information:
Registrar, Nova Scotia Court of Appeal
1815 Upper Water Street
Halifax, NS
Telephone: 424-6187
Fax: 424-0524