

## **NOVA SCOTIA COURT OF APPEAL**

Revised- April 2011

### **How to complete the forms for a motion to appoint legal counsel pursuant to section 684 of the *Criminal Code*.**

This guide provides general information only. It may not tell you all you need to know. It does not explain the law. If at all possible you should speak to a lawyer for legal advice about section 684 of the *Criminal Code*.

Attached to this guide are the following documents:

- Notice of Motion
- Supporting Affidavit

#### **What you must do in advance of making your motion**

- You must have filed a Notice of Appeal with the Nova Scotia Court of Appeal involving a criminal matter.
- As a general rule: You must have applied for and been refused legal aid through the Nova Scotia Legal Aid Commission.
- As a general rule: You must have exhausted all your appeal remedies within the Nova Scotia Legal Aid Commission and still be refused the services of a legal aid lawyer.
- As a general rule: You must have exhausted all your own personal financial resources and not have the money to retain your own lawyer to represent you on the appeal.

#### **What is the basis for your motion?**

Under section 684 of the *Criminal Code of Canada* you have the obligation to demonstrate to the judge that it appears desirable in the interests of justice that you should have legal assistance and it appears that you do not have sufficient means to obtain that assistance.

For these reasons, at the very least you must set out the following information in your Affidavit in support of your motion for the appointment of legal counsel:

- Why your appeal is so complex that it requires a lawyer to advance the appeal on your behalf;
- Why you cannot represent yourself on your appeal;
- Why you believe your appeal should succeed;
- That you have exhausted all your rights to legal counsel through the process established by the Nova Scotia Legal Aid Commission and that includes all appeal steps within the Nova Scotia Legal Aid Commission.

Do not attach any letters sent to you by the Nova Scotia Legal Aid Commission advising you that your appeal has no legal merit. You may request and the Commission will provide you with a letter that confirms you have been denied legal aid and that you have completed all appeal steps available to you through Nova Scotia Legal Aid. You should attach that letter to your affidavit.

## Steps

Follow these steps to file your motion for the appointment of legal counsel:

1. Read the attached forms and this information sheet and try to understand how to make the motion for the appointment of legal counsel.
2. Complete the Notice of Motion. The Notice of Motion is a fill in the blank form. The date and time for the chambers motion should be left blank. Chambers motions at the Court of Appeal are heard on Wednesdays by telephone conference at a predetermined time, and on Thursdays in person at 10:00 a.m. The specific date and time when your motion will be heard will be filled in by the Registrar once arrangements are made.
3. Complete your supporting Affidavit at the same time as your Notice of Motion. The attached Affidavit form is NOT a fill in the blank form. You must use your own sheet of paper and style it in the format provided.

Complete the Affidavit as outlined in the instructions. You must provide as much detail as possible in the Affidavit and include the information requested in the above section entitled: **What is the basis for your motion?** The instructions will outline the type of information you must include in your affidavit in order to show to the judge that it is in the interests of justice that you should have legal assistance that it appears that you do not have sufficient means to obtain that assistance.

Your Affidavit must be sworn before a Commissioner of Oaths or a lawyer.

4. Send at least five copies of the Notice of Motion and Affidavit to the Court. You may need to send more than five depending on the number of parties involved.
5. Once the Court receives these documents, the Registrar of the Court of Appeal will review them and, if they are properly filled out, will issue them. As noted above, arrangements will be made to set a date and time for the hearing. The Court will keep one copy of each document and will send you back the other copies of the Notice of Motion and Affidavit.
6. When you receive these documents back from the Court you will need to serve the other parties with these documents. You will note that there are 3 parties that you must serve with your Motion - the reason for this is that Mr. Gores, Q.C. must get notice as it is the Department of Justice who will be required to pay for legal counsel if you are successful on your motion, Ms. Malick, Q.C., must get notice as she is with the Legal Aid Commission and may be required to provide information to the court on your application and finally, Mr. Fiske, Q.C. represents the Crown on provincial criminal appeals before the Court of Appeal. If the federal crown was involved in your case at the trial level, then a copy of your motion needs to be sent to James Martin with the federal Prosecution service.
7. You must inform the Registrar of the Court of Appeal by telephone at 424-6187 if you are in custody at the time you make your application as arrangements must be made with the institution to have you brought to court for the hearing of the application.