

Practice Memorandum No. 28

Freedom of Information and Protection of Privacy Appeals

The following procedure applies to appeals commenced before the Supreme Court in accordance with section 41 of the ***Freedom of Information and Protection of Privacy Act***, SNS 1993 c. 5 and section 12(10) of the Regulations made pursuant to the ***Freedom of Information and Protection of Privacy Act***.

This Practice Memorandum also sets out the procedure to follow on an appeal from a Supreme Court decision rendered on appeal as set out in the above paragraph before the Nova Scotia Court of Appeal.

Appeals before the Supreme Court of Nova Scotia

1. Appeals to the Supreme Court may be initiated by use of one of the forms prescribed at section 12 of the Regulations made pursuant to the ***Freedom of Information and Protection of Privacy Act*** (Act).
2. **Form 9** is used where an **applicant** is as mentioned in subsection 32(3) of the Act. **Form 10** is used where an **applicant** is as mentioned in subsection 41(1) of the Act. **Form 11** is used where a **third party** is as mentioned in subsection 41(1).
3. The appellant must complete Part A of the appropriate Form. The appropriate Form is then filed with the Prothonotary of the Supreme Court along with the attachments as Appendices required in the particular Form itself. The Prothonotary date stamps the Form with completed Part A and the appellant must then serve the Form on the Respondent and upon the Minister of Justice for the Province of Nova Scotia pursuant to subsection 41(1A) in order that the Minister may become a party to the appeal pursuant to subsection 41(1B). The appellant shall file with the Prothonotary an affidavit of service of the Form on the respondent and the Minister of Justice.
4. Upon receipt of the duly completed Form with attachments, the Prothonotary will not be able to complete Part B of the Form as the date for the hearing will be determined at a **pre-hearing conference convened before a judge of the Supreme Court**. Thus, the Prothonotary will affix a red coloured stamp immediately below PART B which will clearly indicate the date, time and place for the pre-hearing conference **ONLY**. This should ensure that all parties being served with the Form are aware that the first meeting with the judge will be for a pre-hearing conference only. Part B of the Form will be completed by the Prothonotary following the pre-hearing conference.
5. In setting the date for the pre-hearing conference the Prothonotary and/or the court schedulers may obtain from the appellant and/or the respondent and/or the known third parties an estimate of the time required for the pre-hearing of the matter.

6. The Prothonotary shall assign the matter for the pre-hearing conference to a specific special time chambers date no earlier than twenty (20) days after the Form is filed with the Prothonotary. The Form is then issued by the Court Administration Office and must be served by the appellant within ten (10) days of issuance on the head of the public body referred to in the Form.
7. The chambers judge then sitting will convene the pre-hearing conference with all known parties. The chambers judge who will conduct the pre-hearing conference will not automatically be seized with the appeal hearing itself.
8. The pre-hearing conference will be conducted “in camera” and in the same manner as a pre-trial conference for civil cases. The conference need not be recorded and a memorandum only will issue from the conference. At the pre-hearing conference the presiding judge will address (subject to such amendments as may be made by the judge himself/herself) the following issues:
 - (a) if all interested parties have been identified and given notice as required;
 - (b) if any portions of the pre-hearing conference shall be confidential;
 - (c) if any portions of the appeal hearing will be considered confidential and what measures will be necessary to assure such confidentiality;
 - (d) whether the names of any of the parties are to be confidential and if so, what steps will be taken to assure that confidentiality;
 - (e) the manner in which the record keeper will present information or records to the court and the manner in which confidential information or records is to be identified for the court;
 - (f) the dates by which information or records are to be filed with the court;
 - (g) which of the parties, if any, shall have access to the information or records;
 - (h) identity of the “record” to be given to the court;
 - (i) whether any of the parties will give oral testimony or whether there will be cross-examination on any affidavits filed or expected to be filed with the court;
 - (j) the times for the filing of additional affidavits by any of the parties and for the filing of briefs;
 - (k) whether there will be discoveries of any of the parties and the fixing of the dates for same;
 - (l) the date, time and place for the hearing of the appeal; and
 - (m) any and all such matters which the judge conducting the pre-hearing conference deems are necessary for the proper conduct of that particular appeal.
9. Any documents or records to be filed with the court following the pre-hearing conference are to be placed in a brown manila envelope and SEALED. The following notation is to be placed by counsel on the envelope: “CONFIDENTIAL DOCUMENTS PRODUCED TO THE COURT ONLY PURSUANT TO THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY APPEAL.

THESE DOCUMENTS ARE FILED BY _____ (name of the lawyer and the party they represent)". This brown manila envelope is to be kept separate from the court file and is to be held by the Prothonotary and given by the Prothonotary to the judge who will hear the appeal.

10. At the conclusion of the appeal hearing counsel are encouraged to raise with the presiding judge whether a provision in the order to be prepared should provide for a stay of the enforcement of the order for a period sufficient to afford the public body or a dissatisfied third party an opportunity to appeal the decision to the Court of Appeal.
11. Following the hearing the judge will determine in which manner any sealed documents or records are to be handled - whether they remain sealed or not. All sealed documents are to be given by the judge to the Prothonotary and retained by the Prothonotary until such time as all appeal periods have passed. Where no appeal is made of the decision of the Supreme Court judge to the Nova Scotia Court of Appeal - the Prothonotary will return to the solicitor who has filed the sealed documents all the sealed documents after 45 days have passed following the date of the issuance of the Order for Judgment by the Supreme Court.

Appeals before the Nova Scotia Court of Appeal

Where an appeal is filed with the Nova Scotia Court of Appeal from an appeal decision of the Supreme Court rendered above, the following procedures apply.

1. A Notice of Appeal from the Supreme Court decision is to be filed in accordance with the **Civil Procedure Rules** within thirty (30) days of the Order being appealed.
2. Upon filing the Notice of Appeal the Appellant's solicitor must also indicate the date that he/she will be making a chambers application to set down the appeal. The chambers application will be heard in person and the parties to the appeal must be prepared at the chambers application to address the issues identified at paragraph 10 above under the hearing "Appeals before the Supreme Court of Nova Scotia.
3. Where the parties to the appeal have not agreed to a stay of the Supreme Court decision under appeal, a stay application can be made at this first chambers appearance before the Court of Appeal on proper notice to the other parties to the appeal.