

NOVA SCOTIA

Court of Appeal

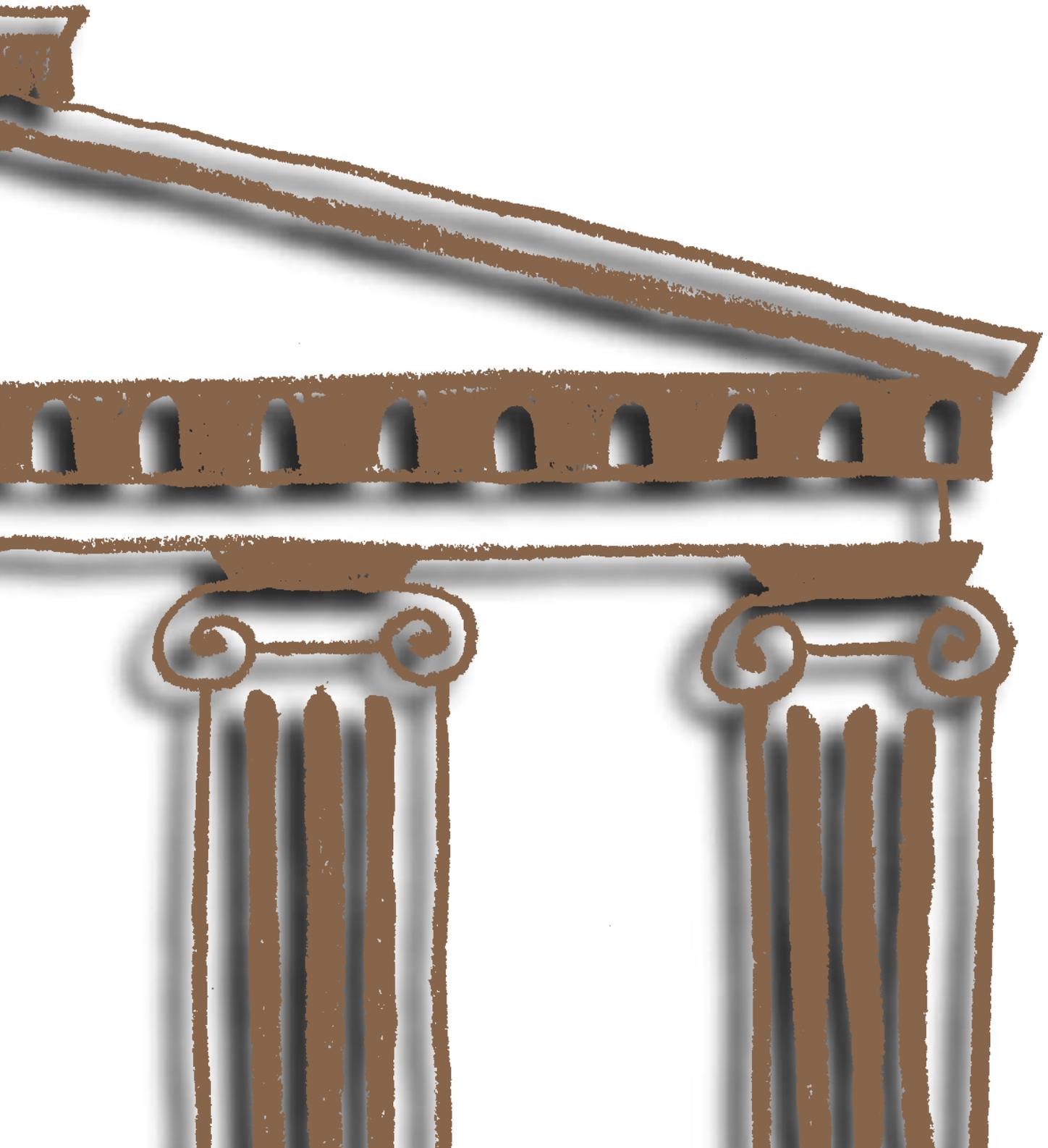


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Introduction

The information in this brochure is intended to give a general overview of the procedures required to launch an appeal. The first section contains questions and answers about the appeal process; this is followed by more specific information about procedures, by information about certain specialized appeals, and by an explanation of some of the terms used in this brochure.

The rules and procedures governing the appeal process, which are set out in the *Civil Procedure Rules*, are complicated. People considering appealing a lower court decision are encouraged to seek legal advice.

Questions and Answers

What is the Nova Scotia Court of Appeal?

The Court of Appeal is Nova Scotia's highest court. It sits only in Halifax and is located in the Law Courts Building, 1815 Upper Water Street.

The Court of Appeal hears appeals from decisions of the Supreme Court (including the Family Division), certain decisions of the Provincial Court or the Family Court, and administrative tribunal decisions. The Court of Appeal does not re-try cases. Rather, the Court of Appeal reviews the record of the trial and argument to determine if errors of law were made in a decision.

The Court of Appeal can dismiss the appeal (confirming the decision of the lower court); allow the appeal and order a new trial; or allow the appeal and change the order of the lower court.

Through its judgments the Court of Appeal clarifies the law and develops consistent legal policy for the Province of Nova Scotia.

What types of cases does the Court of Appeal deal with?

The Court of Appeal deals with a wide range of civil and criminal cases, averaging approximately 200 to 250 appeals a year. There are more civil than criminal appeals.

Not all appeals go to the Court of Appeal. Various statutes provide for appeals to be heard by other courts. For instance, summary conviction appeals from the Provincial Court are heard by the Supreme Court of Nova Scotia.

Can every case be appealed?

The justice system provides for a right of appeal (within set time frames) in most cases. However, the reviewing court generally reviews the earlier decision to determine if the judge made any errors of law or if the judge made an error in applying the law to the facts.

Who can start an appeal?

Generally, only people who are parties in a case can appeal.

Who are the parties in an appeal?

The party who brings the proceeding to the Court of Appeal is called the appellant. The appellant appeals the decision of a lower court or tribunal.

The party against whom an appeal is brought and who must respond to the appellant's case is called the respondent.

Does it cost anything to appeal a case?

Apart from any legal fees, there is a filing fee for starting an appeal in the Court of Appeal, plus a law stamp fee. Consult with court staff or visit the costs and fees section of the Court of Nova Scotia website at <http://www.courts.ns.ca/General/fees.htm> for fee information. Court filing fees may be waived on the basis of financial need. To have the fees waived, you must submit a Waiver of Fees Application form along with proof of income to the Court Administration staff for review.

The parties to an appeal are responsible for the significant costs of providing the documents required by the Court of Appeal.

How do appeals get started?

The appellant must first notify the Court of Appeal and the respondent of the appeal by filing a Notice of Appeal, within the prescribed time limits, at the Court Administration Office in Halifax and paying the required fees.

The appellant must also file a Notice of Application to appear in Court of Appeal Chambers to have a judge set an appeal date. The appellant must give notice to the respondent (three clear days) of the date of the Chambers application. The appellant must also complete a certificate verifying that several requirements have been completed including whether he or she has ordered tapes of the trial.

Is there a time limit on appealing?

Yes. Although some appeals must be taken within 10 days, generally the appellant must appeal within 30 days after the lower court or tribunal gives its decision. Any party who, for good reason, requires an extension of the time for filing the Notice of Appeal must convince a Court of Appeal Chambers Judge, on application, to extend the time.

What happens in a Court of Appeal hearing?

An appeal is very different from a trial. Normally three judges sit on an appeal, and most appeals last only two to two and a half hours. There are no witnesses or juries in the Court of Appeal. New evidence (that is, information not presented during the lower court proceeding) will not be considered by the Court of Appeal except in the rarest circumstances and upon permission of the Court of Appeal.

Before the appeal hearing, the judges are already entirely familiar with the appeal. They have reviewed the complete record of the lower court proceedings (as contained in the appeal book) as well as the written arguments of the appellant and the respondent, as set out in their factums.

To commence the hearing the Court Clerk calls the Court of Appeal to order. The appellant first addresses the Court of Appeal setting out his or her legal argument, which is based on the factum. The respondent then does the same. The judges frequently ask questions as the case is presented. No additional time is allowed for questions from the judges. **Therefore, parties should plan to speak for between 30 to 40 minutes only**, to allow time for them to respond to judges' questions. The Court of Appeal may give its decision orally the day the appeal is heard, or it may reserve its decision and issue a written judgment at a later date.

Can the public attend the Court of Appeal?

Yes, Court of Appeal proceedings are open to the public. The media may apply for permission to film Court of Appeal hearings on a case-by-case basis.

Who are the judges of the Court of Appeal?

The Court of Appeal consists of the Chief Justice of Nova Scotia (who is also the Chief Justice of the Court of Appeal) and seven other judges. The judges do not sit on any other court, and they have no previous involvement with the cases that come before them on appeal.

What are the judges called?

The judge's title, male or female, is "Justice ..." (for example, Justice Jane Doe, Justice John Doe). Collectively they are referred to as the "Judges of the Court of Appeal."

During court proceedings the judges may be addressed as "My Lady" or "My Lord."

Who are the Court of Appeal staff and what do they do?

The senior staff member is the Registrar of the Court of Appeal, a legally trained civil servant who has overall responsibility for the administration of the Court of Appeal. At present, the Registrar of the Court of Appeal also acts as the Prothonotary of the Supreme Court.

The Registrar is assisted by a Deputy Registrar. The Deputy Registrar carries out the day-to-day administration for the Court of Appeal in such areas as scheduling and monitoring the flow of documentation required for appeals. The Deputy Registrar must be contacted on all Court of Appeal Chambers matters.

The Court Clerk assists in organizing case files and documentation. The Court Clerk attends Court of Appeal hearings, calling the Court of Appeal to order and ensuring that the proceedings are recorded.

Neither Court of Appeal nor Court Administration staff can provide legal advice to the members of the public.

What do people wear in the Court of Appeal?

The Court of Appeal judges, the Court Clerk, and lawyers wear black gowns for the hearing of appeal cases. No one wears gowns for Chambers hearings. Members of the public participating in appeal proceedings should be appropriately dressed.

What documents are needed for an appeal?

The appeal process is complex. Each party must provide many documents to the Court of Appeal and to the other party. It is advisable that the parties to an appeal have lawyers prepare the necessary documentation.

The *Civil Procedure Rules* set out the requirements for the documentation that must be filed. The rules include everything from the time frames and the type of documents required to instructions about cover colours, spacing, margins, and binding. Samples of many of the required forms are included in the *Civil Procedure Rules*.

Appeals are reviews of lower court decisions, so the appeal process is based largely on the parties' written arguments and a review of the material resulting from the earlier court process. The appellant must file **five copies** of an appeal book and **five copies** of the factum with the Court of Appeal. The appellant must also serve the respondent with a copy of the appeal book and factum.

For more information on appeals books and factums, see page 5.

Are there time frames for filing appeal documents?

Yes, time frames are set out in the *Civil Procedure Rules* and by the Court of Appeal Chambers Judge for the parties to file the various documents required in connection with an appeal.

If an appeal is not "perfected" (that is, if a party does not file the documentation by the required dates), the appeal may be dismissed. A party with good reason for failing to meet the filing dates may ask for an extension of the time allowed for filing documents.

What is Court of Appeal Chambers?

Each Thursday at 10 a.m., one of the Court of Appeal judges sits in court to set dates for upcoming appeals and to hear various applications dealing with such matters as bail applications and any extensions of time requested by a party. This is called Court of Appeal Chambers.

Arrangements may be made in advance, in accordance with the rules, to have uncontested Chambers applications (usually matters to be set down for a hearing date) heard by telephone conference call.

When does the Court of Appeal make its decision in a case?

The Court of Appeal may give its decision orally the day the appeal is heard, or it may reserve its decision and issue a written judgment at a later date.

Can a Court of Appeal decision be appealed?

Yes, in some cases an appeal can be taken to the Supreme Court of Canada in Ottawa. In some of the most serious criminal cases a party has an automatic right to appeal; however, in most cases permission to appeal must be granted by the Supreme Court of Canada or the Nova Scotia Court of Appeal. Only a few Nova Scotia cases each year are heard by the Supreme Court of Canada.

Nova Scotia Court of Appeal Procedures

General Information

- The rules governing appeals to the Nova Scotia Court of Appeal are set out in *Civil Procedure Rules* 62 (Civil) and 65 (Criminal).
- Appellants generally have 30 days to file their appeal from a decision or order of a lower court with the Court Administration Office in Halifax. On appeals dealing with costs or an interlocutory order, the time limit is 10 days from the date of the order or decision from the lower court. The appellant may apply in Court of Appeal Chambers for an extension of time in which to file a Notice of Appeal.
- An appeal is started by filing three copies of a Notice of Appeal with the Court Administration Office (Halifax). A copy of the Notice of Appeal must be served on the respondent. There is a fee to file this document, plus a fee for a law stamp. There is also a fee to file cross appeals. Consult with court staff or visit the court costs and fees section of the Courts of Nova Scotia website at <<http://www.courts.ns.ca/General/fees.htm>>. The Court Administration Office can waive fees, on application, in certain cases. Facsimile filing is permitted, however, a court file is not opened until the **original** document and filing fees are received by the Court Administration Office in Halifax.

- After the Notice of Appeal has been filed, the appellant must file a Notice of Application scheduling a date to have the matter set down in Court of Appeal Chambers.

The Certificate Respecting the Preparation of the Appeal Book must also be filed with the Notice of Application. This certificate verifies that the tapes of the hearing or trial have been ordered and arrangements made for the transcript to be typed by a certified court reporter. These procedures may be combined and all documents filed at the same time. These documents must be filed by 4:30 in the afternoon on Friday to be heard in Court of Appeal Chambers on Thursday of the following week. **It is the appellant's responsibility to notify the respondent(s).**

NOTE: Not all appeals come directly to the Court of Appeal. Some appeals, for example, Summary Conviction offences, Small Claims Court matters, and appeals from Taxing Masters, are heard by a Supreme Court Judge.

Non-Perfection of Appeals

- If an appeal is not perfected (meaning that the correct documentation has not been submitted within the allotted time frame) the appeal may be dismissed. This is generally within four months of the decision appealed from, but a judge may direct a shorter time. The Registrar of the Court of Appeal gives seven days' notice to the parties that he/she will apply to a Chambers Judge for an order dismissing the appeal for non-compliance with the *Civil Procedure Rules*.

Court of Appeal Chambers

- Court of Appeal Chambers are usually held in Courtroom No. 502 at the Law Courts (fifth floor, 1815 Upper Water Street, Halifax). No gowning is required for Chambers.
- Every **Thursday at 10:00 a.m.** the Chambers Judge assigns a hearing date for appeals and sets the dates by which appeal books and factums must be filed. A party

who, for good reason, cannot meet the date fixed for filing the appeal book and factums may **apply to the Registrar of the Court of Appeal** for an extension of the time for filing. The party on the other side must agree to the extension. To obtain a new date for the hearing of an appeal, **application must be made to the Chambers Judge**. There is a fee to adjourn civil matters to a new hearing date if the request for the adjournment falls within 30 days of the original hearing date and is not ordered by the court. Consult with court staff or visit the court cost and fee section of the Courts of Nova Scotia website at <http://www.courts.ns.ca/General/fees.htm>.

Telephone Chambers

- If counsel for both parties agree, the Chambers Judge may set dates by way of a telephone conference call. Such applications are heard on Wednesday and must be pre-booked by contacting the Deputy Registrar of the Court of Appeal at 424-6937. The appellant must make all the necessary arrangements for the conference call and ensure the parties are on the telephone on the correct date and at the correct time.

Bail Applications

- Applications for bail, pending appeal, may be made **after** the accused is sentenced. The following documents should be filed prior to the hearing: Notice of Appeal, Bail Application, draft Bail Order, sentencing remarks of the trial judge, pre-sentence report, and, if applicable, consent of Crown to short notice.

Appeal Books and Factums

- An appeal book is a collection of relevant materials from the earlier case including (among many other things) the court's decision, a typed transcript* of the trial or hearing, copies of exhibits, an index of witnesses at the trial, and the pleadings. The appeal

book is filed by the appellant. All pages of the appeal book must be consecutively numbered and an index, referring to page numbers included. An appeal book that is not properly prepared may not be accepted by the Court of Appeal. In some cases where the transcript is lengthy, the appeal book may consist of more than one volume. The required contents of the appeal book are set out below. No other material is permitted.

- A factum contains a statement of facts **and** the legal argument submitted to the Court of Appeal.
- The Court of Appeal requires five sets of each factum, each appeal book, and each book of authorities. There is no filing fee for these documents once the initial appeal fee has been paid. The appellant must send a copy of the appeal book and factum to the respondent at the same time as they are filed with the Court of Appeal. The respondent, in turn, must send a copy of their factum to the appellant. The Court of Appeal also encourages parties to submit copies of the appeal book and factum on computer diskette, in WordPerfect or Rich Text Format (RTF), **in addition to** the hard copies.

NOTE: *All material must be filed four weeks before the hearing date.*

* *A transcript is a typed record of the proceedings of the court or tribunal being appealed from. The appellant must apply, in writing, to the lower court for a tape(s) of the trial or hearing in question. The appellant will be charged for each cassette tape provided. The appellant must then have this tape (or tapes) transcribed in the proper format by a certified court reporter. The appellant is responsible for all costs of preparing the transcript.*

Appeal Books

- Covers of the case books or appeal books must be grey in colour and should contain the style of cause (case name, number, etc.). The appeal book consists of the following:

Part I—Pleadings and Related Documents

- i) index of the documents properly referenced by page numbers
- ii) the Notice of Appeal, any Notice of Cross-Appeal or Respondent's Notice of Contention
- iii) the pleadings, including any particulars (pleadings would include the Statement of Claim and the Statement of Defence: the particulars consist of the additional information or further details that may have been requested by the opposing side)
- iv) the decision and order appealed from
- v) a reference sheet containing the heading and file number of the matter appealed, the name of the judge of the lower court, the dates of the hearing, and the date of the decision in the court below

Part II—Evidence

- i) index of witnesses, which includes the name of the witnesses, the party who called each witness, and the pages in the appeal book at which examination in chief, cross examination, or re-examination begin
 - ii) list of all exhibits
 - iii) transcript of the evidence at the trial
 - iv) copies of affidavits, written admissions, and discovery evidence if admitted in evidence at the trial and not reproduced in the transcript of evidence
 - v) photocopies of documentary exhibits if not reproduced in the transcript
 - vi) a statement of facts agreed to by the parties in lieu of any or all of (iii), (iv), and (v)
- The appeal book must be printed double spaced on letter-size paper with printing on both sides of the paper, with page numbering in the upper right corner of odd-numbered pages and the upper left corner of even-numbered pages. The appeal book is bound with a plastic coil binding, and each page of transcript has

a two-inch margin on the bottom of the page and a one-inch margin on the top and sides of the page. The type size is to be no smaller than 12 points. If they are not long, Parts I and II may be bound together. The cover of the appeal book contains the number and short title of the appeal and each volume is to be numbered. **All pages of the appeal book must be consecutively numbered and an index, referring to page numbers must be included in each book.**

Factums

- Covers of the appellant's factum are to be buff or yellow in colour and respondent factum covers are to be blue or green. A factum consists of:
 - a) Part I—Concise Statement of Facts
 - b) Part II—List of the Issues
 - c) Part III—Legal Argument
 - d) Part IV—Order or relief sought, including any order as to costs
 - e) Appendix A—List of citations referred to in Part III
 - f) Appendix B—Statutes and Regulations
- The factum must be double-spaced on one side of the paper only with typed pages to the left and numbered. It must include an index.

NOTE: *The Court of Appeal does not accept the filing of appeal books or factums by fax.*

Specialized Appeals

Criminal Appeals

- For contents of the criminal appeal book and factum, refer to *Civil Procedure Rules* 65.12, 65.13, 65.14 and 65.15.

Workers' Compensation Tribunal Appeals

- For information to assist you with an appeal before the Nova Scotia Court of Appeal from a Workers' Compensation Appeal Tribunal (WCAT) decision, please contact the Court Administration office for an information package.

Children and Family Services Act Appeals

- All appeals must be filed at the Court Administration Office in Halifax (first floor, 1815 Upper Water Street, Halifax). Appeals to the Court of Appeal are heard only in Halifax.
- There is a specific Notice of Appeal form for these matters; please contact the Court Administration Office for copies of the form. The appellant (if not represented by a lawyer) should also contact the office of the Executive Director, Nova Scotia Legal Aid Commission at (902) 420-6573 to find out if they qualify for legal assistance on the appeal.
- After the appeal is filed, the appellant will have **10** days to apply to a Court of Appeal Chambers Judge in order to have the appeal set down for hearing before a panel of three judges. **Failure to apply within 10 days of filing the notice of appeal may result in the appeal being dismissed.**
- The appellant must serve the following individuals with a copy of the Notice of Appeal:
 - the Minister of Community Services
 - the court officer of the court being appealed from
 - counsel for the respondent agency involved in this matter
 - the Registrar of the Court of Appeal
 - any other parties involved in this appeal

- Although the Minister of Community Services will provide the appellant with a transcript of the evidence, the appellant must prepare an appeal book and factum (see information in this booklet on appeal books and factums).
- The appellant must give the respondents three clear days notice of the appellant's intention to apply to a Court of Appeal Chambers Judge for any motion such as setting down, extension of time to file the Notice of Appeal, appointment of counsel, etc.

Contact Information

Court of Appeal

- For general inquiries, filing instructions, copies of forms, waiving of fees, etc., contact the Court Administration Office at (902) 424-6900 in Halifax.
- For **specific inquiries**, once an appeal is launched, contact the Court of Appeal directly:
Registrar: (902) 424-8962

Law Courts staff cannot give legal advice.

NOTE: All material must be filed with the Court Administration Office in Halifax.

The Legal Information Society of Nova Scotia

The Legal Information Society of Nova Scotia has a library available to the general public. The society also runs a legal information and lawyer referral service, which can be reached at (902) 455-3135 or 1-800-665-9779.

Civil Procedure Rules

A copy of the *Civil Procedure Rules* can be consulted at the Law Library at Dalhousie University, at the Barristers' Society Library located on the seventh floor of the Law Courts Building at 1815 Lower Water Street in Halifax, and on the courts website at: <www.courts.ns.ca>.

Some Useful Terms

Here are some terms used in this brochure that may be unfamiliar or have a special meaning.

A

affidavit

a statement written down and sworn to be true; an affidavit is usually made before a notary public or a commissioner of oaths

appeal

a request to have a higher court determine if errors were made by the lower court or tribunal

appellant

the person who brings a proceeding to the Court of Appeal

appeal book

a collection of relevant materials from the case before the lower court

B

book of authorities

book of photocopies of decisions relied on in the factum

C

certified court reporter

a person who has received certification under the Court Officials Act

chambers

on a weekly basis one judge of the Court of Appeal sitting in court hears and determines preliminary motions on the appeal as presented by the parties

Civil Procedure Rules

the rules that govern all proceedings before the courts

cross appeal

where the respondent on an appeal launches his or her own appeal against the appellant

F

factum

a statement of facts and an outline of the legal argument submitted to the Court of Appeal

I

interlocutory order

generally, an order made in chambers that is not a final order in a proceeding

R

relief

remedy being sought before the Court of Appeal

respondent

the person against whom an appeal is brought and who must respond to the appellant's case

S

setting down

the setting of the appeal hearing date, as well as the filing dates for the appeal book and the appellant factum and the respondent factum

T

transcript

a typed record of the proceedings of the court case or tribunal case under appeal

