



NOVA SCOTIA COURT OF APPEAL PRACTICE DIRECTIVE: APPEAL PROCEEDINGS DURING THE COVID-19 PANDEMIC

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INTRODUCTION

Nova Scotia remains under a provincial state of emergency due to the ongoing COVID-19 pandemic. The following practice directive is designed to enable the Nova Scotia Court of Appeal to continue operations in a manner that protects the health and safety of justice system participants in line with guidance from public health officials. We appreciate the patience and cooperation of members of the public and the Bar as the Court of Appeal continues to adapt to a new mode of operations.

Subject to any order of the Court, all matters to be heard on or after November 10, 2020 will be conducted pursuant to this practice directive.

Details of this practice directive are subject to change as public health guidelines are updated in the province. For current information and updates, please see the Nova Scotia Courts website: <https://courts.ns.ca/>.

PRACTICE DIRECTIVE

1. Format of Appeals

The panel of justices assigned to each appeal will review the materials filed with the court and decide the format in which the appeal will be heard.

There are four formats by which appeals may proceed:

i. Fully In-Person Appeals

- Fully in-person appeals will be heard by in-person attendance of the parties and the panel.

ii. Fully Virtual Appeals

- Fully Virtual Appeals will be conducted using a virtual platform, currently Skype for Business (“Skype”) and, where necessary, telephone.

iii. **Appeals with Remote Appearances**

- Virtual appeals may be fully virtual (see above) **or** may involve a combination of in-person and remote appearance, in which some parties participate remotely (by Skype or by telephone) and some participate in-person (in the courtroom). For all appeals with one or more parties appearing in person, the panel will be in the courtroom.

iv. **In-writing Appeals**

- In-writing appeals will be considered on the basis of written materials only.

When selecting the format in which the appeal will be heard, the panel will consider, among other things:

- The nature of the case;
- The complexity of the case;
- Whether there are liberty interests at stake;
- Whether the appeal relates to a matter of public interest; and
- Other relevant considerations, including public health considerations.

Certain matters may typically require some form of oral hearing. Examples include (but are not limited to) appeals in which an individual's liberty is in jeopardy (such as when an individual in prison appeals his or her conviction or sentence) and appeals involving parenting arrangements and child protection proceedings.

Where the panel determines a virtual hearing is appropriate, parties will not be allowed to adjourn (postpone) appeals on the sole basis that they would prefer to have the appeal heard fully in-person.

a) Fully In-Person Appeals

In-person hearings are conducted much in the same way hearings were conducted before the COVID-19 pandemic. Parties should expect to sit in the same configuration as normal, with particular care to maintain social

distancing while entering the courtroom and while inside. The Court has equipped its appeal courtroom with Lexan barriers, so that parties can appear in-person in a manner that complies with public health guidelines.

Masks are mandatory in the Law Courts, consistent with provincial public health directives. Parties may remove masks once seated in the courtroom or making oral argument, subject to other instructions by the panel.

As water jugs will not be provided during this time, parties may bring their own water bottles into the courtroom.

At this time, Sheriffs Services are screening all individuals who wish to enter the Law Courts. No one should enter a court house if they feel unwell and are exhibiting any of the symptoms of COVID-19 as identified by public health officials, or if they have travelled outside the Atlantic provinces and have not self-isolated for at least 14 days upon their return.

Parties and members of the public are advised that individuals from outside the Atlantic provinces who are participating in legal proceedings in the Law Courts building (including the accused, complainant, witness, counsel or other party in the proceeding) may be using an exemption which allows them to attend court without first completing the provincial self-isolation requirements ([Restated Order of the Chief Medical Officer of Health under Section 32 of the Health Protection Act, 2004, c. 4, s.1, s. 3.6](#)).

All counsel and self-represented parties who would like to use this exemption to appear in-person for an appeal must seek permission from the Court by contacting the Court Administrator, Nicole Figueira (Nicole.Figueira@novascotia.ca) and the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca) at least 10 clear days in advance of the scheduled hearing date. Any persons using the exemption must comply with the [Operational Plan Guidelines for Court Approved Participants from Outside Atlantic Provinces](#).

All persons in the Law Courts should follow social distancing guidelines at all times and wear a mask whenever moving through the building. Hand sanitizer is provided throughout the building, including at the entrance of the appeal courtroom.

All parties and persons who attend in-person hearings will be required to comply with directives from the Court concerning health and safety. Parties must familiarize themselves with the applicable directives and ensure they are aware of requirements in place at the time of their hearing date.

b) Virtual Appeals / Appeals with Remote Appearances

If a panel determines that an appeal will be heard by remote/virtual appearance, court staff will arrange for the participation of parties by extending a Skype meeting invitation to a virtual hearing.

The Court is currently using Skype for Business for all virtual appeals. Parties must familiarize themselves with the program prior to their hearing date(s). Participants who are unable to use Skype videoconferencing for the appeal hearing may be provided with a number to call in to the Skype session by telephone.

All parties participating in an appeal by Skype must take part in a technology check (“tech check”) organized by the Court Clerk, Lorraine Lunn, prior to their hearing date(s). The Court Clerk will contact the parties in advance to set up a date and time for the tech check, and to provide instructions. All parties must use the same computer and/or other equipment for the tech check they plan to use for the appeal hearing. In addition, parties must ensure they are in the same location for the appeal as they were for the tech check. Questions about this process may be directed to Lorraine.Lunn@courts.ns.ca.

Parties will not be able to file documents with the Court during virtual appearances. Any documents that have not already been provided to the Court and that parties wish to file must be provided to the other party or parties and the Registrar at least one clear day before the hearing date.

Parties who are unable to access the Internet and/or webcam or microphone equipment should contact the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca) at the earliest opportunity.

If Skype fails for a participant appearing remotely, the Court will recess until the Court Clerk can reconnect that participant to the Skype session. If Skype fails for many or all involved, the Court Clerk will connect the parties

and the panel by teleconference and the appeal will resume as expeditiously as possible or be rescheduled. The Court Clerk will request a telephone number from each participant for that purpose in advance of the hearing. Participants must ensure they can be reached during the hearing at the telephone number they have provided.

c) In-writing Appeals

Proceeding with an appeal “in writing” means that the panel will decide the appeal based on the written arguments and related materials parties provide to the court without an oral hearing.

The Court may be prepared to decide appeals in writing where doing so is appropriate. If all parties are in agreement with proceeding with an in-writing appeal, a request may be made by email to the Registrar (Caroline.McInnes@courts.ns.ca). Alternatively, the Registrar may notify the parties that the panel believes the appeal may be addressed in writing.

Where parties have agreed or do not object to the panel’s assessment that the matter should proceed in writing, they will have the opportunity to file additional written submissions on dates and within page limits determined by the panel (the details of which will be communicated by the Registrar).

Additional submissions may be filed in hard copy or by email attachment, in accordance with this practice directive. All text must be formatted in compliance with the Civil Procedure Rules of Nova Scotia (e.g., font must be in size 12 and text must be double-spaced).

Appeals will only proceed in writing where all parties and the panel agree that the format is appropriate for the particular appeal. At this time, only select appeals will proceed in-writing.

If an appeal proceeds on the basis of written materials only and the panel determines that it needs to hear further from the parties, the panel may:

- Request further written submissions;
- Request answers to specific questions; or
- Schedule an in-person or virtual hearing.

2. Chambers

At this time, all chambers matters will be heard by telephone unless the parties request and the Court can offer the option of a virtual (Skype) or in-person appearance.

Requests for Skype/in-person chambers appearances will be accommodated where possible, but the following types of matters will be prioritized:

- Motions for bail pending appeal;
- Motions for stays;
- Motions related to publication bans;
- Motions for state-funded counsel; and
- Any other matter that the chambers justice in their discretion considers should proceed by video appearance.

Parties to any chambers motion requiring a witness to give evidence (e.g., a contested motion for bail) should notify the Chambers Clerk, Cherri Brown (Cherri.Brown@courts.ns.ca) at the earliest opportunity.

3. E-filing

Parties may continue to file documents for any matter in paper format, in a manner consistent with the requirements of the Civil Procedure Rules of Nova Scotia and all existing practice directives and Guidelines requiring the filing of hardcopy documents with the Nova Scotia Court of Appeal.

However, for the period of time during which this practice directive is in effect, unless otherwise stated herein or ordered by the Court, parties are permitted and encouraged to file documents in electronic format in lieu of paper. Parties are not required to obtain special permission from the Registrar to do so.

For greater clarity, the Court of Appeal will continue to accept paper filings.

Electronically filed documents must meet the following requirements:

- Electronic documents must be filed in word-processing format and/or in text searchable PDF format. For scanned PDF documents, an Optical Character Recognition (OCR) format must be used to make the documents text searchable. If filing materials in text searchable PDF format, all attachments must be searchable as well.
- Electronically filed documents must be formatted in a manner that complies with the Nova Scotia Civil Procedure Rules (See Rules 90.30 – 90.33 for civil matters and Rules 91.15 – 91.19 for criminal matters).
- All electronic documents must be filed either by email or through delivery of a USB flash drive. The email or USB drive must be labelled with the court file number. USB flash drives can be delivered by mail, courier, or by in-person drop-off at the Law Courts (using the drop bin located at the front doors).
- Electronic filings of appeal books (including transcripts), facta, and books of authorities (where applicable) should be emailed to appealcourt@courts.ns.ca. All other filings should be sent directly to the Registrar, Caroline McInnes, at Caroline.McInnes@courts.ns.ca.
- The Registrar will acknowledge receipt of all electronic filings by email. For greater clarity, the Registrar will not provide a court-stamped copy for electronic filings of appeal books, transcripts, facta or books of authorities, but will acknowledge receipt by email. However, the Registrar will provide a court-stamped copy for parties' records for other e-filed materials. If there are problems with any electronic filing, the Registrar will contact the affected party.
- In addition to the court file number on the email or USB, all documents filed electronically must be individually named in a manner that identifies their contents. For example: "Factum of the Appellant"; "Factum of the Respondent"; "Appeal Book Part I"; "Trial Transcript [DATE]".

- Any documents being filed for a matter with a publication ban in effect must carry an appropriate caution as part of the file name.
- Appeal Books should be filed as single electronic Word or PDF documents, rather than as a series of separate attachments. Trial transcripts and other similar documents should be merged into one document (rather than separate files for different trial dates, etc.). If the size of a document is too large to send as an email attachment, documents may be divided into smaller parts and labelled accordingly (e.g., Appeal Book Vol. I, Appeal Book Vol. II, etc.).
- If parties have particular concerns regarding the filing of sealed documents, parties should seek direction from the Court by contacting the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca).
- Parties who elect to e-file must file one physical copy of each appeal book and factum filed for their appeal with the registrar's office, as well as original copies of any sworn affidavits (if applicable) by the filing deadline, unless otherwise given permission to file a hard copy at a later date by the Registrar or the presiding justice in chambers. Parties are asked to include a covering note stating that the materials are being filed as hard-copy duplicates of the documents that were previously filed electronically. Such hard copies must be identical in content to the documents filed electronically.
- Electronic service under this practice directive shall constitute proper service unless the affected party shows otherwise.

Rather than filing books of authorities, the preference is for parties to hyperlink their factums to the judgment databases found on the websites of Canadian courts or www.canlii.org/en/index.html, and where not available on either, to LexisNexis Quicklaw or WestlawNext Canada. However, if this is not possible or feasible, then books of authorities are to be filed electronically in accordance with the e-filing protocols described herein. If books of authorities are filed electronically, then electronic highlighting of the relevant passages is requested.

Parties are also encouraged to hyperlink the key documents referred to in their factums and to use PDF bookmarks to facilitate navigation of the materials filed, particularly for larger appeals.

4. Filing Deadlines

The time periods for commencing civil appeals under Rules 90.13(3) and 90.14, and criminal appeals under Rules 91.09(1) and 91.10 of the Civil Procedure Rules are currently in effect.

Deadlines may be extended by consent in certain circumstances. Any party seeking an extension to file an appeal should contact the Registrar, Caroline McInnes (Caroline.McInnes@courts.ns.ca), who will provide instructions on the steps required to obtain an extension. In the event that parties are unable to meet filing deadlines or to fulfil other obligations due to the COVID-19 pandemic, they must be prepared to explain how the pandemic has impacted their ability to do so.

5. Etiquette

Courtroom etiquette should be maintained during all remote hearings. Participants should make best efforts to avoid detracting from the dignity of proceedings, including the following considerations:

- Counsel are not required to gown for remote appearances unless requested to do so by the panel but must dress in business attire. Counsel may gown if they prefer to do so.
- Counsel are expected to gown for in-person appeals.
- Self-represented parties should wear clothing that is appropriate for a court appearance.
- Counsel and self-represented litigants must be able to participate from a quiet space with a neutral background. Counsel and self-represented litigants must make reasonable efforts to avoid or reduce

the risk of interruptions during the hearing. If it is not possible to find a quiet space, it may be necessary for the appeal to proceed in-person to preserve the quality of the transcript.

- Participants should mute or turn off notifications on any digital devices.
- Participants will be asked by the Court to mute their microphone or telephone when not speaking during a video or telephone hearing. It is ideal for all participants to use a headset and microphone to reduce background noise and to ensure that all parties can be heard and recorded clearly.
- Parties should not eat during the hearing, unless the Court or presiding justice allows otherwise.
- Participants should not move away from the screen or turn off their camera during a video hearing without the permission of the Court. Panels will direct participants at the beginning of each hearing as to breaks.
- Unless directed otherwise by the court, it is not necessary in virtual hearings to stand when the panel joins the hearing or when addressing the Court. Parties should take reasonable steps to ensure they remain within view of the camera during the entire hearing. In lieu of bowing to the Court, counsel may nod or bow their heads when the panel or presiding justice enters the video. Participants should remain seated throughout their submissions to the Court.
- Unless addressing the Court, or otherwise requested to speak, all participants should have their microphones muted during video or telephone hearings. Parties should refrain from typing when their microphones are on if it creates a disruption to the proceedings.
- Parties must take special care not to interrupt one another during remote hearings, in order to avoid gaps in the audio recording of the

proceedings. All participants should speak slowly and clearly, especially when there is any lag or delay in the audio or video.

- The panel chair may provide direction as to when or how questions will be asked. Parties are asked to keep a close eye on their screens and to allow for pauses in their submissions so that panel members may ask questions without compromising the quality of the transcript.

6. Civility

As with all hearings, remote hearings require civility, professionalism, cooperation, communication, and collaboration between parties, both before and during the hearing.

Parties must be flexible when it comes to technical difficulties or other challenges that other participants may experience. The Court recognizes that due to the COVID-19 pandemic, many participants will be working from home and/or on modified schedules, and that many will be dealing with particular challenges related to technology, child, and elder care.

Parties should cooperate in good faith and be open to adapting their plans to ensure that all matters may be determined in the most just, speedy and inexpensive manner possible. Parties should communicate with one another in advance of remote hearings to resolve as many hearing details as possible.

7. Technological Difficulties

It is the responsibility of each participant to ensure their equipment is functioning correctly and that their Internet service can accommodate the bandwidth video conferencing requires.

Wherever possible, parties are asked to use a hard-wired Internet connection, rather than wireless Internet (Wi-Fi).

In the event of technological issues during a video hearing, parties should wait to see if the issue resolves itself and, if it does not, should inform the court clerk that a problem is occurring. The Court is not able to provide

technical support. Do not contact court staff for assistance using videoconferencing software.

If at any time due to delay, distortion, or disconnection a party misses something that was said during a hearing, that party should notify the panel immediately so the statement can be repeated. Parties should also be prepared to repeat statements if asked.

Parties should not take unfair advantage of the fact that the hearing is being held virtually. In particular, they should not take advantage of, or act upon, slips, irregularities, technical issues or mistakes, or inadvertence.

If technical issues arise during a virtual hearing or the dynamics of the hearing are challenging or distracting, the parties may ask the panel for permission to deliver post-hearing submissions in writing. Permission to file post-hearing submissions is at the discretion of the panel.

8. Media and the Public

The Nova Scotia Court of Appeal recognizes the importance of the “open courts principle,” which ensures all court hearings are accessible to the public. The Court further recognizes the key role that the media plays in informing the public about legal proceedings taking place in courtrooms throughout Nova Scotia.

The docket (schedule of hearings) is publicly available on the Court of Appeal website: https://courts.ns.ca/Appeal_Court/NSCA_dockets.htm.

Members of the media and public who wish to attend or access information about appeals are advised of the following:

- Individuals who wish to attend an **in-person appeal** or an **appeal with remote appearances** are asked to notify the Communications Director, Jennifer Stairs (for members of the media) or the Registrar, Caroline McInnes (for all other members of the public) in advance. They will consult with the Court of Appeal to determine whether public access is possible on a case-by-case basis (for example, due to room occupancy limitations.)

- Those who wish to listen to or observe **fully virtual appeals** should contact Jennifer Stairs (for inquiries from members of the media) or Caroline McInnes (for inquiries from all other members of the public) in advance for instructions.
- Individuals who wish to access materials filed in relation to an appeal heard **in writing** (without an oral hearing) may do so by contacting Jennifer Stairs (for inquiries from members of the media) or the Registrar, Caroline McInnes (for inquiries by all other members of the public).

Jennifer Stairs
 Communications Director
 Nova Scotia Judiciary
 902-221-5257
stairsjl@courts.ns.ca

Caroline McInnes
 Registrar
 Court of Appeal
 902-424-8962
Caroline.McInnes@courts.ns.ca

For more information on media access to the Court of Appeal during the COVID-19 pandemic, please review the most recent [Notice to the Media](#).

9. Prohibition on Recording Electronic Hearings

No one can take photos (including screen captures) or recordings of a hearing without prior approval of the panel or presiding justice.

Accredited members of the media may use audio recording devices for the purpose of ensuring the accuracy of their reporting but must not use recordings for broadcast or publication. Members of the media are advised that [existing policies](#) regarding the use of electronic recording devices continue to apply to remote hearings.

10. Self-Represented Parties

This practice directive applies to both counsel and self-represented parties involved in appeals before the Nova Scotia Court of Appeal. The Court recognizes that self-represented parties may experience particular

challenges in advancing or responding to appeals during the current pandemic. The Court is committed to addressing those challenges and facilitating access to justice for all parties.

Counsel's responsibilities in matters involving self-represented litigants are unchanged in a remote hearing. Counsel are officers of the court and must be mindful of their professional obligations when dealing with self-represented litigants. Counsel must cooperate with the Court to ensure that a self-represented litigant receives a fair hearing, including, where appropriate, collaborating with self-represented litigants and recommending possible alternatives and/or accommodations to the Court (e.g., consenting to having an appeal proceed in writing where a self-represented party is unable to easily access the Internet).

If any party is unable to access Internet, microphone, or webcam equipment required for video appearances, he or she should contact the Registrar, Caroline McInnes, at Caroline.McInnes@courts.ns.ca to make alternate arrangements as soon as possible in advance of the hearing.

The [Nova Scotia Courts' Free Legal Clinic](#) remains available for self-represented parties appearing before the Court of Appeal to access free basic legal advice. At this time, the Free Legal Clinic is operating by telephone only. To make an appointment, contact the Executive Office of the Nova Scotia Judiciary at 902-424-3690.

11. Miscellaneous

Except as varied by this practice directive, all Rules and previous practice directives remain in effect.