



## **COVID-19: SURETY DECLARATIONS UNDER S. 515.1 OF THE CRIMINAL CODE**

**Tuesday, March 31, 2020**

To help reduce the spread of the COVID-19 virus, the Nova Scotia Provincial Court has adopted new procedures for consent Release Orders with a Surety under s. 515.1 of the Criminal Code (Declaration of Surety) which can be effected either at the Justice of the Peace center (on first appearance) or before the Provincial Court during a video appearance.

These new procedures are helping reduce the number of people who need to come to court and providing alternatives to filing paper documents at courthouses. This will help protect the health of the staff and judges continuing to work at the courthouses, and the broader public, during the ongoing situation with COVID-19.

Counsel are encouraged to discuss the requirements of s. 515.1 when considering a release plan. There may be practical approaches that can be worked out depending on the circumstances of the parties, which could result in execution of the document without creating any increased risk. Two options are as follows:

### **Electronic Signing of PDF Documents**

Instructions once an agreement is reached on a Release Order with Surety:

- Defense counsel completes the [PDF fillable Surety Declaration form](#).
- Defense counsel sends the completed form to the proposed surety by email.
- Defense counsel connects with the proposed surety by video (i.e. Skype or Face Time) and swears the Surety Declaration after the proposed surety signs electronically.
- The proposed surety sends the declaration to defense counsel electronically for counsel's electronic signature.
- Defense counsel sends the completed declaration to the Court electronically and copies the Crown.
- The Court conducts a consent video bail hearing with the individual in custody and explains the conditions of the order.
- The Court prepares a PDF Release Order with Surety and sends it to the surety, who is standing by, for electronic signature.

- The Release Order with Surety is sent via fax to the correctional facility or the police station for signature by the individual in custody.

### **Signing Documents at the Correctional Facility**

Instructions once an agreement is reached on a Release Order with Surety:

- Defense counsel prepares the Surety Declaration and sends the unsigned copy to the Court.
- The Court conducts a consent video bail hearing with the individual in custody and explains the conditions.
- Defence counsel directs the surety to attend at the correctional facility to sign the Surety Declaration and the Release Order with Surety.
- The Court prepares the Release Order with Surety and faxes the Surety Declaration and the Release Order with Surety to the correctional facility for signature by the surety and the individual in custody.
- The correctional facility provides a copy to the individual in custody and the surety and faxes copies of the documents back to the Court.

In the event it is not practical or advisable to execute the document, the parties may wish to consider the following aspects of s. 515.1:

Parties are reminded that s. 515.1 (2) (a) allows for the Crown to consent to the named surety and dispense with the need for a declaration under s. 515.1(1). It will be in the discretion of the Crown involved when they consider it appropriate to consent.

In addition, the Judge or Presiding Justice of the Peace (PJP) may dispense with the need for a declaration in the following circumstances outlined in s.515.1(2)(b):

(b) the judge, justice or court is satisfied that

- (i) the person cannot reasonably provide a declaration in the circumstances,
- (ii) the judge, justice or court has received sufficient information of the kind that would be set out in a declaration to evaluate whether the person is suitable to act as a surety for the accused, and
- (iii) the person has acknowledged that they have received sufficient information with respect to the matters referred to in paragraphs (1)(e) to (g) to accept the role and responsibilities of a surety.

If the Judge or Presiding Justice of the Peace chooses to utilize s. 515.1(2)(b), a record should be maintained.

Once again, all parties are encouraged to discuss this section of the Criminal Code in advance to ensure the most efficient use of resources.

**Instructions for Electronic Signatures in the Fillable PDF Form**

At the signature line, click **Fill & Sign**.



On the tool bar at the top, click **Sign**.



A drop-down menu will appear. Click **Add Signature**. Type the name of the person signing and then click **Apply**. You can then drag the signature text box to the signature line.

On the tool bar, click the **Crosscheck (X)** option and then click in the document to add the X. (Note: If the Crosscheck option does not appear on the tool bar, enter crosscheck in the Search Tools box.)

