

NOTICE # 4 TO THE BAR (Q & A)

INTRODUCTION

dated April 14th, 2020

The most recent Q&A issued April 1.

When changes to information occur, an updated version of Notice #4 (this notice), a list of frequently asked questions and answers, will be available for distribution at noon of the next business day. Additions or revisions to existing answers made since the previous day will be underlined in the index, for ease of identification.

If you have questions or if you wish to receive this Notice directly by e-mail, please e-mail your request to scfamilyhfx@courts.ns.ca or fax it to 902-424-0395.

This Q. & A. should be read with other notices issued by the Court which to this date are:

- (1) Notice #1 – Scheduling Guidelines – Urgent Matters
- (2) Notice #2 – Notice re: E-Filing
- (3) Notice #3 – Notice to District Lawyers

This is a running list of frequently asked questions as we live through the COVID-19 Crisis.

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*Uncontested Divorces, new Applications, Variation Applications - see # 2 revised March 30 and April 14

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Thank you for your ongoing assistance and cooperation.

Associate Chief Justice O’Neil

Supreme Court of Nova Scotia (Family Division)

Q. & A.

1. All filing and service deadlines in the Rules of the Supreme Court or directed by a Judge or Court Officer of this Court are suspended unless they have been issued by a Judge or a Court Officer after March 1st, 2020 and pertain to urgent/emergency matters which are scheduled to return during this state of emergency in our Province.

Filing and service deadlines will be reinstated after the expiry of the state of emergency. The deadlines should be adjusted by you to reflect the new appearance/hearing date. New dates will be confirmed by Court Schedulers when they are known.

The calculation of the time for filing and or service or for doing anything under the Rules will restart on the day following the end of the State of Emergency in this Province with that day being day 1 of the period during which something must be filed or served as required by the Rules or as a result of a direction given by a Court Officer or a Judge.

2. The acceptance of New Applications; Variation Applications; Uncontested Divorces and Divorces by Agreement will be suspended effective Monday, March 30th, 2020 for two weeks ending Friday, April 10th, 2020. On Friday, April 10th, 2020 a decision will be made as to whether this suspension should continue in whole or in part.

The Court will put forward customized process options this week to the Family Division – Bar Society Liaison Committees and other bar groups. The input of the bar is being solicited. Details of the revised processes will be communicated to the entire family bar on Monday April 20.

Undefended divorces:

Currently Judges are continuing to review undefended divorce files, where files are complete. If a file is complete but there are deficiencies in the documents, judges are notifying counsel and unrepresented parties.

Some courthouses, including Devonshire, are now issuing Divorce and Corollary Relief Orders and Divorce Certificates as a result of staff being able to do so from home.

We continue to work with the central registry in Ottawa to obtain clearance certificates so more recently received applications for an undefended divorce may be processed by court staff. New divorces cannot yet be processed at Devonshire. The Central Registry of Divorce Proceedings, situated in Ottawa is operating with reduced staff.

3. Consent Orders filed by fax or e-mail will continue to be processed in the normal fashion.

4. Filing by paper, fax and electronic means is governed by Notice #2, issued earlier. A copy accompanies this for ease of reference.
5. Contact numbers for the Court are shown on Notices #1 and #2.
6. To assist your understanding of what the Court considers urgent, please review Notice #1, copy attached.
7. For urgent matters and those deemed an emergency in person court appearances by counsel; parties and witnesses will only be permitted in highly exceptional circumstances. The decision as to whether highly exceptional circumstances exist will be made by the Associate Chief Justice of the Supreme Court of Nova Scotia.

All parties are advised they must prepare to have their matters decided after each party has an opportunity to present direct and rebuttal affidavit evidence. Cross examination will be by means found by the presiding Judge to balance the need for access to Justice with the need to conduct the court proceedings in a manner consistent with the guidelines of the Nova Scotia Medical Officer of Health and the State of Emergency in Nova Scotia. Affirmations and cross examination over the telephone or communicated by video should be assumed to be the process.

8. Regular Court appearances are not expected to resume until after the end of May. It is anticipated that the resumption of regular Court appearances will follow an incremental increase in the Court's capacity to process work. The timing of when the Court will return to the pre-emergency operational level and processes, will be impacted by decisions on how to most efficiently address demand existing at the end of the emergency period.

New Court processes may need to be in place. Scheduling practices will need to be modified to ensure the maximum number of families have their issues addressed over a given period of time.

9. Conciliators are engaging in preliminary discussions with clients by telephone and from their homes. They are discussing issues with clients related to the subject file and attempting to assist parties in resolving their disagreements outside the court.
10. Adoption matters will proceed if deemed urgent or an emergency.
11. Personal service of documents is waived during this period of emergency. However, confirmation that the 'other' party is aware of or has received the relevant document may be necessary for a party to obtain the relief requested. That decision will be made by the presiding Judge.
12. Assessors are advised that their deadlines for completion of reports are suspended. Assessors will be advised of new filing dates when the Court is in a position to do so.

13. Unsworn affidavits will be accepted for matters deemed urgent or an emergency. However, a presiding Judge may require further validation. If a hearing is contemplated, the affidavit will need to be sworn or affirmed at the commencement of the hearing.
14. Mail Service – The Court will mail consent orders to parties once issued. Please do not mail the Court.
15. A Pre-Ruling as to whether a matter is urgent or an emergency is provided for as described in Notice #1 – Scheduling. To lessen the cost and inconvenience to parties which would result from filing an application asking for the urgent or emergency intervention of the Court, parties may summarize the circumstances relied upon to support that conclusion by writing a letter of less than two (2) pages and delivering it to the Court. Notice #2 explains how you may deliver documents to the Court.

If a matter meets the initial threshold, that is the court is persuaded it may be an urgent matter, a party will be required to file an application with an affidavit and there will be an opportunity for a response. A final decision will be made as to whether a matter is urgent or an emergency. Then if found to be urgent or an emergency the matter will be scheduled before a Judge.

16. Teleconferencing/Video services are being studied with a view to determining how they may be more fully utilized thereby permitting a wider number of people to have legal issues addressed.
17. Existing matters will be adjourned without a day to return. A date to return will be given when there is confidence that the current health crisis has passed.
18. Clients will be invoiced when filing by fax or email. Some clients will qualify for a waiver of fees. In a small number of cases, payment by credit card or over the phone may be possible.
19. Notice #1 identified unilateral interruptions of a parenting schedule as a non urgent/emergency matters. This position reflected the then already growing demand on the court to respond to decisions by parents to not comply with parenting orders because of concerns about COVID-19 transmission. The Court did not and does not have the capacity to adjudicate this issue in the current circumstances. It is open to a party, however, to make submissions that a particular parenting issue rises to the level of an emergency as provided for by Notice#1.

Should the Court eventually consider whether a parent acted reasonably all relevant factors will be considered, including the opinion of Dr. Strang if admitted into the evidentiary record. The Court is not prejudging the issue.