

NOTICE # 4 TO THE BAR (Q & A)

INTRODUCTION

dated April 29th, 2020

The most recent Q&A issued April 20th, 2020.

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, revised April 20th
- (2) Notice #2 – Notice re: E-Filing
- (3) Notice #3 – Notice to District Lawyers (Antigonish, Pictou, Colchester and Cumberland)
(Notices #5-#9 inclusive are dated April 20)
- (4) Notice #5 – Additional Processes
- (5) Notice #6 – Request for Document Only Proceeding
- (6) Notice #7 – Request for a Non-Binding Judicial Recommendation
- (7) Notice #8 – Request for a Settlement Conference by Telephone
- (8) Notice #9 – CFSA/APA/Urgent Matters: Length of Affidavits and Hearings

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

Index

- *Filing and Service Deadlines and e mail addresses - see # 1 revised April 1st
- *Uncontested Divorces, new Applications, Variation Applications - see # 2 revised March 30th, April 14th and April 29th
- *Consent Orders - see # 3
- *Paper, Fax and Electronic Filing - see # 4
- *Contact Numbers for Court - see # 5
- *Definition of Urgent - see # 6
- *Appearing in Person - see # 7
- *Resumption of Regular Court Appearances – see # 8
- *Conciliation – see # 9
- *Adoptions – see # 10
- *Personal Service – see #11
- *Assessors – see # 12
- *Unsworn Affidavits – see # 13

- *Mail Service – see # 14
- *Pre-Ruling re: Urgent Matters – see # 15
- *Video and Teleconferencing – see # 16
- *Adjourning to a Date Certain? – see # 17
- *Filing Fees – see # 18
- *Parenting schedules interrupted- see # 19 added April 1
- *Revisions to notices-see revised Notice #9 re length of affidavits
- *Back Log – see #21
- *New Matters – see #22

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 was suspended effective Monday, March 30th, 2020 for two weeks ending Friday, April 10th, 2020. On Friday, April 10th, 2020 a decision was made this suspension should be modified.

The Court will has put forward customized process options to the Family Division – Bar Society Liaison Committees and other bar groups. Details of the revised processes were 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, staff and 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.

Commencing April 29th, 2020, initiating uncontested divorce applications delivered by mail, e-mail or fax will be accepted for processing. Prior to the issuance of final orders, sworn documents must be received by the Court. Personal service of the Petition will need to be confirmed as per #11 following.

However, to ensure no delay in processing an uncontested divorce, direct confirmation from a Respondent that service has occurred is recommended.

3. Consent Orders filed by fax or e-mail will continue to be processed in the normal fashion.
4. Subject to specific permission contained in this Notice, filing by paper, fax and electronic means will continue to be governed by Notice #2, issued earlier.
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.
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 presiding Justice or Judge.

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.

Parties are reminded Consent Variation Orders and Initial Consent Orders will continue to be processed by the court.

Parties are also reminded they may request (1) a Document Only Proceeding as outlined in Notice#6 (2) a Judicial Recommendation as outlined in Notice#7 or a Settlement Conference as outlined in Notice#8.

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. Revised April 15
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. For uncontested Divorces #2 above will govern.
14. Mail Service – The Court will mail consent orders to parties once issued. Subject to #2 above, please do not forward paper mail to the Court. E mail communication is preferred.
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 is in wide use by the Court. 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 by video, recognizing many people do not have access to video capabilities.

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 mail, 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 the unilateral interruption of a parenting schedule as a non-urgent/emergency matter. 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.

The Court will now consider a limited role in addressing parenting disputes. That role will not include a 'traditional' adversarial hearing at this time. However, both self-represented persons and lawyers may request a judicial recommendation concerning a parenting issue as explained in Notice #7. The consent of the **Respondent is not required** to trigger the involvement of the Court when there is an allegation of an arbitrary interruption of a Court ordered parenting schedule. A conference with a conciliator or a Judge will be scheduled in response to a request of this nature. (added April 29)

20. Revisions to other Notices: Five (5) new Notices were issued April 20; see the introduction to this notice.

Notice #7 was revised April 29th to make the request for a judicial recommendation available to self-represented persons.

Notice #1 was revised re arbitrary interruptions of parenting schedules.

21. The Court has begun rescheduling matters removed from the Court's docket as a result of the COVID-19 crisis. The first rebooked files will be considered by the Court on Monday, May 4th, 2020. These files were removed from the Court's docket for the week of Monday, March 23rd, 2020. This is the beginning of Phase 2 referenced in Notice #5.
22. New matters are being accepted as explained in Notice #5 and will be brought forward for scheduling over the coming weeks.

Notice#4-q&a to April 29th, 2020