

Table of Contents

Part 6 - Motions

Rule 22 - General Provisions for Motions.....	P6 - 001
22.01 - Scope of Part 6 - Motions.....	P6 - 001
22.02 - Notice.....	P6 - 001
22.03 - <i>Ex parte</i> motion.....	P6 - 001
22.04 - Continuing <i>ex parte</i> motion on notice.....	P6 - 002
22.05 - Full and fair disclosure on an <i>ex parte</i> motion.....	P6 - 002
22.06 - Rehearing of <i>ex parte</i> motion.....	P6 - 003
22.07 - Notice of rehearing <i>ex parte</i> motion.....	P6 - 003
22.08 - Affidavits for rehearing.....	P6 - 003
22.09 - Application of Rule 23 - Chambers Motion on rehearing.....	P6 - 003
22.10 - Acting on own motion.....	P6 - 004
22.11 - Motion involving non-parties.....	P6 - 004
22.12 - Motion by prothonotary.....	P6 - 004
22.13 - Motion to commissioner or referee.....	P6 - 005
22.14 - When appointments required.....	P6 - 005
22.15 - Rules of evidence on a motion.....	P6 - 005
22.16 - Transferring motion to courtroom.....	P6 - 006
22.17 - Notify court of failure to deliver notice of motion.....	P6 - 006
22.18 - Attendance, withdrawal, and adjournment.....	P6 - 006
Rule 23 - Chambers Motion.....	P6 - 008
23.01 - Scope of Rule 23.....	P6 - 008
23.02 - Starting a motion in chambers.....	P6 - 008
23.03 - Motion on notice.....	P6 - 008
23.04 - Motion set by party (1/2 hour or less).....	P6 - 009
23.05 - Motion set by court (1/2 day or less) (more than 1/2 day).....	P6 - 009

23.06 - File notice of motion when date obtained.....	P6 - 010
23.07 - Disagreements about time or place.....	P6 - 010
23.08 - Manner of providing evidence.....	P6 - 010
23.09 - Cross-examination.....	P6 - 010
23.10 - Briefs.....	P6 - 011
23.11 - Deadlines for chambers motion.....	P6 - 011
23.12 - No further affidavit.....	P6 - 012
23.13 - Subpoena.....	P6 - 012
23.14 - <i>Ex parte</i> motion.....	P6 - 013
23.15 - Attendance in chambers.....	P6 - 013
Rule 24 - Appearance Day Motion.....	P6 - 014
24.01 - Scope of Rule 24.....	P6 - 014
24.02 - When appearance day motion appropriate.....	P6 - 014
24.03 - Appearance day notice.....	P6 - 015
24.04 - Deadline.....	P6 - 015
24.05 - Evidence.....	P6 - 015
Rule 25 - Motion by Appointment.....	P6 - 017
25.01 - Special appointment.....	P6 - 017
25.02 - Hearing by attendance in courtroom.....	P6 - 017
25.03 - Hearing by teleconference without public access.....	P6 - 017
25.04 - Hearing by teleconference with public access.....	P6 - 018
25.05 - Directions or Rule 23 - Chambers Motion applies.....	P6 - 018
Rule 26 - Conference.....	P6 - 019
26.01 - Conference.....	P6 - 019
26.02 - Case management.....	P6 - 019
26.03 - When conference appropriate.....	P6 - 019
26.04 - Motions at conference.....	P6 - 019
26.05 - Record of conference.....	P6 - 020

Rule 27 - Motion by Correspondence.....	P6 - 021
27.01 - Motions by correspondence to a judge.....	P6 - 021
27.02 - Motions by correspondence to the prothonotary.....	P6 - 022
Rule 28 - Emergency Motion.....	P6 - 023
28.01 - Request for emergency hearing.....	P6 - 023
28.02 - Emergency motion on notice.....	P6 - 023
28.03 - <i>Ex parte</i> emergency motion.....	P6 - 024
28.04 - Manner of providing evidence.....	P6 - 024
28.05 - Emergency hearings outside court hours or courthouse.....	P6 - 024
Rule 29 - Motion to Presiding Judge.....	P6 - 025
29.01 - Assigned judge to hear all motions.....	P6 - 025
Rule 30 - Motion to the Prothonotary.....	P6 - 026
30.01 - Motion to prothonotary generally.....	P6 - 026
30.02 - <i>Ex parte</i> motion.....	P6 - 026
30.03 - Motion on notice.....	P6 - 026
30.04 - Review by judge.....	P6 - 027

Part 6 - Motions

Rule 22 - General Provisions for Motions

Educational Notes

22.01 - Scope of Part 6 - Motions

- (1) A motion is an interlocutory step in a proceeding, not an original proceeding (for kinds of original proceedings, see Part 2 - Civil Proceedings).
- (2) Part 6 provides general procedures for all motions (Rule 22 - General Provisions for Motions) and specific procedures for the motions made in the ways listed below:
 - (a) in chambers (Rule 23 - Chambers Motion);
 - (b) on appearance day (Rule 24 - Appearance Day Motion);
 - (c) by special appointment with a judge in person or by teleconference (Rule 25 - Motion by Appointment);
 - (d) at a meeting or conference (Rule 26 - Conference);
 - (e) by correspondence (Rule 27 - Motion by Correspondence);
 - (f) in an emergency (Rule 28 - Emergency Motion);
 - (g) to a judge who presides or presided over the trial of an action, or hearing of an application (Rule 29 - Motion to Presiding Judge);
 - (h) to the prothonotary (Rule 30 - Motion to Prothonotary).
- (3) A person may make or respond to a motion, in accordance with this Part 6.

22.02 - Notice

A party must make a motion on notice unless the party satisfies the judge hearing the motion that it is properly made *ex parte*.

22.03 - *Ex parte* motion

- (1) A party may make an *ex parte* motion in one of the following circumstances:
 - (a) the order sought does not affect the interests of another person;
 - (b) the party makes a motion in an *ex parte* application;
 - (c) the other party is disentitled to notice under Rule 31 - Notice;
 - (d) legislation or these Rules permit the motion to be made *ex parte* ;
 - (e) there are circumstances of sufficient gravity to justify making a motion without notice, for which examples are listed in Rule 22.03(2).
- (2) Each of the following is an example of circumstances of sufficient gravity to justify an *ex parte* motion:

Rule 22 - General Provisions for Motions

- (a) a child may be harmed if notice is given, and the court's obligation to secure the best interests of the child requires the court to proceed without notice;
- (b) notice will likely lead to violence, and an *ex parte* order will likely avoid the violence;
- (c) notice will likely lead to destruction of evidence or other serious loss of property, and an *ex parte* order will likely avoid the destruction or loss;
- (d) a party facing an emergency has a right to make a motion, but the motion cannot be determined on notice within the time provided by these Rules, even if a judge exercises the power to shorten a notice period, or to direct a speedy method of notice.

Annotations

The applicant sought an order under the *Safer Communities and Neighbourhoods Act*, and applied (on an *ex parte* basis) to abridge the time-frame for filing documents/providing notice on the basis of public safety concerns (a fear of reprisal) should the respondents learn of the application 25 days before the hearing as typically required. A provincial Department of Justice investigator's affidavit contained information concerning complaints from neighbours about illegal drug activity at the respondents' home and outlined the respondents' lengthy criminal records (including violence and/or threats of violence). *Held*, application granted on an *ex parte* basis. Under Rule 22.03 (2) (b), notice here will likely lead to violence and an *ex parte* order will likely avoid the violence. Further the *Act* reads "The court shall hear the application on an urgent basis" (s.6(3)). Notice of the main application is reduced to ten days, which could still result in violence, but the potential is lessened with a shortened time-frame. *Nova Scotia (Director of Public Safety) v. Clarke et al.* , [2009 NSSC 427](#)

The plaintiff alleged the defendant breached an order restraining him from communicating with shareholders to solicit the exercise/non-exercise of proxy votes. The plaintiff brought an *ex parte* motion, under Rule 89.04 of the *Civil Procedure Rules (2008)*, seeking leave to bring a motion for contempt. At issue was whether such a motion must or can be brought on an *ex parte* basis or whether the defendant is entitled to notice. The predecessor rule under the *Civil Procedure Rules (1972)* expressly permitted an *ex parte* application; the new rule is silent. The Nova Scotia Barrister's Society's educational notes for these *Rules* suggest this means the new Rule 89.04 does not require notice. *Held*, contrary to the educational notes, notice must be given. Motion adjourned to allow for service. Rule 22.03(1)(a) applied. The defendant's "interests" are potentially affected at every stage of the contempt application, including the motion for leave.

National Bank of Canada v. Weir , [2009 NSSC 287](#)

22.04 - Continuing *ex parte* motion on notice

A judge who hears an *ex parte* motion may require that the motion continue on notice and give directions for notice to each other party.

22.05 - Full and fair disclosure on an *ex parte* motion

- (1) The party who makes an *ex parte* motion must include, in an affidavit filed for the motion, any evidence known to the party, personally or by information, that weighs against granting the order.

Rule 22 - General Provisions for Motions

- (2) A party who makes a motion for an *ex parte* order must advise the judge hearing the motion of any fact that may weigh against granting the order.
- (3) A judge who is satisfied that an *ex parte* order was obtained without full and fair disclosure may set aside the order.

22.06 - Rehearing of *ex parte* motion

- (1) A party who obtains an *ex parte* order affecting the rights of a party not disentitled to notice must immediately deliver a copy of the order to the affected party, unless a judge orders otherwise.
- (2) A party who is affected by an *ex parte* order may require the motion to be heard again in chambers by filing a notice to that effect.
- (3) The judge rehearing the motion may set aside, vary, or continue the order.

22.07 - Notice of rehearing *ex parte* motion

The prothonotary must notify the parties of the time, date, and place for rehearing an *ex parte* motion no more than two days after the day a notice for a rehearing is filed.

22.08 - Affidavits for rehearing

- (1) A party who obtains an *ex parte* order may only rely on the following affidavits at a rehearing:
 - (a) the affidavit filed on the *ex parte* motion;
 - (b) an affidavit filed by another party;
 - (c) an affidavit substituting direct evidence for hearsay in the affidavit filed on the *ex parte* motion;
 - (d) a rebuttal affidavit limited to new points raised by the other party's affidavit;
 - (e) an affidavit allowed by a judge who is satisfied that the party has good reason for not having provided the evidence on the *ex parte* motion.
- (2) The affidavit substituting direct evidence for hearsay may be filed no later than the deadline for filing a supporting affidavit in Rule 23.11, of Rule 23 - Chambers Motion.
- (3) A judge who rehears a motion may only consider hearsay in the affidavit filed on the *ex parte* motion that is admissible under an exception recognized by the rules of evidence or is within the further exceptions provided by Rule 22.15.

N.S. Gaz. Pt. 1, [12/16/2009](#)

22.09 - Application of Rule 23 - Chambers Motion on rehearing

Rules 23.08 to 23.10, the deadlines in Rule 23.11 except the deadlines for a notice of motion and supporting affidavit, Rule 23.12 and Rule 23.15 apply to the rehearing of an *ex parte* motion.

22.10 - Acting on own motion

A judge, prothonotary, referee, or commissioner may make an order on their own motion.

22.11 - Motion involving non-parties

- (1) A person who is appointed by a judge to carry out an assignment, such as a sheriff or receiver, may make a motion in connection with the assignment.
- (2) A person who is not a party to a proceeding, and is not appointed in the proceeding, may make a motion in the proceeding only if a judge permits, except the person requires no permission to make a motion to intervene under Rule 35 - Parties.
- (3) A party may move for an order binding a non-party only if legislation or these Rules allow, or a judge permits.
- (4) A non-party who makes a motion, or against whom a motion is made, may be joined as a party to the proceeding in accordance with Rule 35 - Parties.
- (5) In addition to the obligation to give notice to the other party, a party who moves for an order binding a non-party must make the motion on notice to the non-party, unless the party satisfies the judge hearing the motion that it is properly made without notice to the non-party.
- (6) Rules applicable to a party on a motion, including Rules about an *ex parte* motion, must, as nearly as possible, be applied to a non-party who moves for an order or who is sought to be bound by an order, as if the non-party were a party.

N.S. Gaz. Pt. 1, [03/02/2011](#); [12/14/2011](#)

Annotations

The applicant sought an order restraining the respondent and his common-law spouse from disposing of jointly-owned properties pending the resolution of a related law suit. The respondent's spouse was not a party to either proceeding. Rule 22.11(3) suggests a party can move for an order against a non-party, but must seek leave to do so if not authorized by legislation. *Held*, while the court granted a preservation order in relation to the respondent's interest in the properties, it declined to do so in relation to the non-party's interest. It was not necessary to restrain her from disposing of her interest given that the respondent was restrained from disposing of his.

Stewart v. Bardsley, [2012 NSSC 130](#)

22.12 - Motion by prothonotary

- (1) A prothonotary may make a motion to a judge in any manner the prothonotary sees fit, unless these Rules or legislation provides or a judge directs otherwise.
- (2) The prothonotary may make a motion based on the prothonotary's representations, unless a judge directs that an affidavit be provided.
- (3) The prothonotary may file a "Notice of Prothonotary's Motion" signed by the prothonotary to make a motion in chambers, appearance day chambers, or court.
- (4) The notice of prothonotary's motion must state all of the following:
 - (a) the time and date when, and the place where, the motion is to be heard;

Rule 22 - General Provisions for Motions

- (b) the contents of the proposed order;
 - (c) a reference to the legislation, Rule or point of law under which the motion is made;
 - (d) the prothonotary's representations of the facts supporting the order.
- (5) The notice may be in Form 22.12.
- (6) Rules applicable to a party on a motion apply to a prothonotary as if the prothonotary were a party, unless these Rules provide or a judge directs otherwise.

Forms

Notice of Prothonotary's Motion(22.12).

22.13 - Motion to commissioner or referee

A party may make a motion to a commissioner or a referee appointed in the proceeding, and the motion may be made in one of the ways a motion may be made to a judge, except under Rule 23 - Chambers Motion, and Rule 24 - Appearance Day Motion.

22.14 - When appointments required

A party who wishes to make any of the following motions must obtain an appointment:

- (a) a motion in the Family Division, a motion that requires more than a half-hour in chambers, a motion by special appointment, and an emergency motion;
- (b) a motion to a judge assigned to a trial or hearing, unless the motion is made at the trial or hearing or the judge permits the motion to be made without an appointment;
- (c) a motion to the prothonotary, a referee, or a commissioner concerning the conduct of a hearing by the prothonotary, an inquiry by a referee, or the taking of evidence by the commissioner, unless the motion is made at the hearing or inquiry or when the commission evidence is taken.

22.15 - Rules of evidence on a motion

- (1) The rules of evidence apply to the hearing of a motion, including the affidavits, unless these Rules or legislation provides otherwise.
- (2) Hearsay not excepted from the rule of evidence excluding hearsay may be offered on any of the following motions:
 - (a) an *ex parte* motion, if the judge permits;
 - (b) a motion on which representations of fact, instead of affidavits, are permitted, if the hearsay is restricted to facts that cannot reasonably be contested;
 - (c) a motion to determine a procedural right;
 - (d) a motion for an order that affects only the interests of a party who is disentitled to notice or files only a demand of notice, if the judge or the prothonotary hearing the motion permits;
 - (e) a motion on which a Rule or legislation allows hearsay.
- (3) A party presenting hearsay must establish the source, and the witness' belief, of the information.

- (4) A judge, prothonotary, commissioner, or referee may act on representations of fact that cannot reasonably be contested.

22.16 - Transferring motion to courtroom

A party who is notified of a motion to be heard outside a courtroom, or who is present for a motion being heard outside a courtroom, may make a motion to transfer the hearing to, or continue the hearing in, a courtroom.

22.17 - Notify court of failure to deliver notice of motion

A party who fails to deliver a notice of a motion before a deadline for doing so must immediately notify the court of that fact and whether, when the party appears on the motion, the party will consent to dismissal, request an adjournment, or make a motion for an order excusing compliance with the deadline and permitting the motion to proceed.

N.S. Gaz. Pt. 1, 12/16/2009

22.18 - Attendance, withdrawal, and adjournment

- (1) A party who makes a motion to be heard at a time and date set by the party or appointed by the court at the party's request must appear at the time and date, and in the place or by the method set for the hearing, unless one of the following apply:
 - (a) all parties consent to the motion being withdrawn or adjourned, the party making the motion immediately advises the prothonotary and the judge of the agreement, and the party confirms the advice in writing delivered to the prothonotary and the judge's office;
 - (b) a judge gives permission to withdraw the motion, or adjourns the hearing of the motion.
- (2) A motion for permission to withdraw or adjourn a motion may be made under Rule 28 - Emergency Motion, or such other Rule in Part 6 - Motion as a judge permits.
- (3) A new time and date may be appointed for a motion adjourned by agreement in the same manner as the time and date of the adjourned motion was appointed or as a judge directs.

Annotations

The defendants moved to have the claim dismissed as an abuse of process (under Rule 88.02), pointing to the self-represented plaintiff's failure to comply with the *Rules* (2008) and her repeated refusal to follow the court's directions. She had failed to file materials they argued were necessary to prove she had a *bona fide* intention to pursue her claims, and failed to provide an address for service (as required by Rule 31.16). The plaintiff was wintering in Florida and unilaterally wrote the court asking to have the defendant's motion adjourned until she returned to Canada. *Held*, adjournment granted. Despite the lack of a formal motion, the lack of evidence filed in support of the request, and the lack of notice to the defendants, the plaintiff's letter was treated as a request for an adjournment (see Rule 27.01). A motion to dismiss could end the plaintiff's claim(s) on the merits, which is an exceptional remedy and one courts are reluctant to order in the

Rule 22 - General Provisions for Motions

absence of a party. The possibility that a similar motion could proceed in the plaintiff's absence at a later date was left open, but it was premature to do so now.
Bridges v. Dominion of Canada General Insurance Co. , [2012 NSSC 169](#)

Rule 23 - Chambers Motion

Educational Notes

23.01 - Scope of Rule 23

- (1) This Rule provides for the standard way to make a motion to a judge outside the trial of an action or hearing of an application, judicial review, or appeal.
- (2) A motion in chambers is made on written notice, with affidavits, in a courtroom, and on record.
- (3) A party may make a motion in chambers, in accordance with this Rule.

N.S. Gaz. Pt. 1, 03/04/09

23.02 - Starting a motion in chambers

A party may start a motion in chambers by filing a notice of motion and a draft order, or an *ex parte* motion and a draft order.

23.03 - Motion on notice

- (1) A notice of motion must contain the standard heading, be entitled "Notice of Motion", be dated and signed, and include all of the following:
 - (a) the motion, including the name of the party who makes the motion and a concise statement describing the order the party seeks;
 - (b) the time and date when, and the place where, the motion is to be heard;
 - (c) whether the motion will require a half-hour or less in chambers, more than a half-hour but less than a half-day, or more than a half-day;
 - (d) references to applicable legislation, Rules, or points of law;
 - (e) a reference to each affidavit relied on by the party, identified by the name of the affiant and either the date it was sworn or a brief description of the contents;
 - (f) a statement that the other party may file an affidavit or a brief, and attend the hearing of the motion and make submissions;
 - (g) a warning that an order may be made although the party does not attend.
- (2) The reference in the notice of motion to an affidavit may be a reference to an affidavit already filed, an affidavit filed with the notice, or an affidavit to be filed later but before the deadline in Rule 23.11.
- (3) The notice of motion may be in Form 23.03.

Forms

Notice of Motion(23.03).

23.04 - Motion set by party (1/2 hour or less)

- (1) A party who makes a motion, except a motion in the Family Division, and who is satisfied on all of the following, may select the time, date, and place of the motion:
 - (a) the motion will take less than a half-hour in chambers;
 - (b) no party will require cross-examination in court;
 - (c) no party will require cross-examination out of court, or the parties have reached an agreement under which cross-examination will be completed in sufficient time for a transcript to be filed no less than two days before the date of the hearing.
- (2) The party must select a time, date, and place when and where the court regularly holds chambers and the time when chambers opens.
- (3) The party must take reasonable steps to ascertain and, if possible, meet the convenience of each party who wishes to participate in the hearing of the motion.

23.05 - Motion set by court (1/2 day or less) (more than 1/2 day)

- (1) A party may request the prothonotary provide a time, date, and place for the hearing of any of the following kinds of motion in chambers:
 - (a) a motion in the Family Division;
 - (b) a motion at which a party cross-examines a witness;
 - (c) a motion that requires more than a half-hour in chambers.
- (2) The party must provide the information needed to assess the amount of time required, select an appropriate place, assess whether the place proposed by the moving party is reasonable, and ascertain when counsel for the other parties, or a party who acts on their own, will be available.
- (3) The court must, as soon as possible, provide to the party making the request a written notice of a time and date for the hearing that is more than the following number of days after the day the notice of motion is expected to be delivered to each other party:
 - (a) ten days, if the motion requires less than a half-day;
 - (b) fifteen days, if the motion requires more than a half-day.
- (4) A judge may convene a conference to assign a time, date, and place and give other directions, if the prothonotary or the judge is satisfied that the motion is too complicated for a date to be assigned without a conference.
- (5) The judge may give any directions at the date assignment conference, including directions on any of the following subjects:
 - (a) the deadlines for filing the notice of motion, affidavits, and briefs;
 - (b) the place for the motion;
 - (c) necessary disclosure of documents;
 - (d) cross-examination in or outside chambers;
 - (e) limits on the duration of, or subjects for, cross-examination.

23.06 - File notice of motion when date obtained

- (1) A party who obtains a date for a motion in chambers must file the notice of motion no more than one day after the court delivers to the party a written notice of the date.
- (2) The prothonotary may cancel the date if a notice of motion is not filed after one day.

23.07 - Disagreements about time or place

A party who disagrees with the estimate of time required, or the place selected, for a motion in chambers may make a motion for a new date or place.

23.08 - Manner of providing evidence

- (1) A party may provide evidence for a chambers motion by filing any of the following documents:
 - (a) an affidavit that conforms with Rule 39 - Affidavit;
 - (b) admissible excerpts from a discovery transcript in the proceeding under Rules 18.20 and 18.21, of Rule 18 - Discovery;
 - (c) admissible excerpts from a transcript of commission evidence taken in the proceeding, under Rule 56 - Commission Evidence;
 - (d) an agreed statement of facts signed by all parties to the motion.
- (2) An affidavit may prove a written statement admissible under legislation, a Rule, or the common law.
- (3) A party may provide evidence by cross-examination as provided in Rule 23.09 and by re-direct examination.
- (4) A person may give evidence in chambers by direct examination, followed by cross-examination, only if a judge is satisfied that it is impossible or undesirable for a party to present the evidence by affidavit.

23.09 - Cross-examination

- (1) A party may cross-examine an affiant on an affidavit filed by another party.
- (2) A judge may restrict cross-examination in any of the following ways:
 - (a) refuse cross-examination to a party who has the same interest in the motion as the party who files the affidavit;
 - (b) limit the time for, or subjects of, cross-examination before it takes place;
 - (c) impose a time limit before, or during, cross-examination.
- (3) A party who intends to cross-examine an affiant must immediately notify each other party in writing and either the judge who is to hear the motion or, if no judge is assigned, the prothonotary.
- (4) The witness who provides an affidavit on which cross-examination is required must be cross-examined and examined in re-direct in chambers, unless the parties agree or a judge orders otherwise.

- (5) On cross-examination out of court, the witness must be sworn, the cross-examination must be recorded by a court reporter, and a transcript certified by the reporter must be obtained.
- (6) A party who files the affidavit of a witness cross-examined out of court must file a transcript of the cross-examination.
- (7) A party who files an affidavit must pay the expense of presenting the witness for cross-examination, unless the parties agree or a judge orders otherwise.
- (8) A judge who hears a motion in which a witness is cross-examined and determines the cross-examination was unnecessary may order the party who required cross-examination to indemnify another party for the expense of the cross-examination.

Annotations

The wife challenged our court's jurisdiction to hear this protracted cross-border family law dispute. The husband moved (by correspondence) for an order permitting two witnesses to be cross-examined out of court. They had cancelled plans to travel to the Middle East in order to be available for the original hearing dates. The adjourned dates conflicted with their rescheduled travel plans. They were available for numerous dates. The wife complained about the lack of a judge to rule on objections, and that it would be too expensive for her to fly here twice. *Held*, motion granted. The *Rules* contemplate and approve of this process in the right circumstances (see Rules 53.03 and 23.09). While neither contain any guidance on when such an order is appropriate, Rule 56.03 (on commission evidence) is helpful. Relevant factors include: the convenience of the witness; the chances they won't be available to testify in court; and the apparent importance of their testimony. It would be unreasonable to expect these witnesses to cancel their travel plans again. If necessary, a ruling can be made on objections at the hearing based on a transcript. There's insufficient evidence to prove the wife can't travel to Nova Scotia twice. It's her choice to attend or not. If this motion isn't granted, there will likely be more delay to allow the witnesses to testify after they return to Canada. The testimony needn't be videotaped because viewing it would add time to the process and cause delay. A transcript is sufficient. There's no need for a commissioner to be appointed because no direct evidence is being given.

Armoyan v. Armoyan, [2011 NSSC 448](#)

23.10 - Briefs

A party moving, or opposing, a motion must deliver a brief to the judge hearing the motion.

23.11 - Deadlines for chambers motion

- (1) Documents for a motion on notice in chambers must be filed no later than the deadlines in the following chart:

Rule 23 - Chambers Motion

Document	½ Hour or Less	½ Day or Less	More Than ½ Day
notice of motion and draft order	5 days before hearing	10 days before hearing	15 days before hearing
supporting affidavit	5 days before hearing	10 days before hearing	15 days before hearing
supporting brief	5 days before hearing	10 days before hearing	15 days before hearing
response affidavit	2 days before hearing	5 days before hearing	10 days before hearing
response brief	2 days before hearing	5 days before hearing	10 days before hearing
rebuttal affidavit	1 day before hearing	3 days before hearing	5 days before hearing
notice that cross examination is required	reschedule	3 days before hearing, except 1 day for rebuttal affidavit	5 days before hearing, except 3 days for rebuttal affidavit
cross examination transcript	not applicable	3 days before hearing, except one day for cross-examination on rebuttal affidavit	3 days before the hearing.

- (2) A party who certifies on a notice of motion that no party will oppose the motion may file a notice of motion, draft order, supporting affidavit, and supporting brief two days before the motion is to be heard.

N.S. Gaz. Pt. 1, 12/16/2009, 03/02/2011

23.12 - No further affidavit

- (1) A party may only file an affidavit after a deadline in Rule 23.11 with the permission of a judge.
- (2) On a motion to permit a late affidavit, the judge must consider all of the following:
- (a) the prejudice that would be caused to the party who offers the affidavit, if the motion proceeds without that affidavit;
 - (b) the prejudice that would be caused to other parties by allowing the affidavit to be filed, including the prejudice caused by an adjournment, if an adjournment would result;
 - (c) the prejudice caused to the public if motions set by appointment are frequently adjourned when it is too late to make the best use of the time of counsel, the judge or court staff.
- (3) A judge who allows a late affidavit may order the party filing the affidavit to indemnify any other party for expenses resulting from the filing, including expenses resulting from any adjournment.

N.S. Gaz. Pt. 1, 07/03/2013

23.13 - Subpoena

The prothonotary may only issue a subpoena for attendance at the hearing of a motion with permission of a judge.

23.14 - *Ex parte* motion

- (1) An *ex parte* motion must contain all of the following:
 - (a) everything required by Rule 23.03(1) in a notice of motion, except the title of the document is “ *Ex Parte* Motion” and Rules 23.03(1)(f) and (g) do not apply;
 - (b) a statement explaining why it is appropriate for the judge to grant the order without notice to another person, if the motion is made in a proceeding other than an *ex parte* application.
- (2) The *ex parte* motion may be in Form 23.14.
- (3) An *ex parte* motion, draft order, affidavit, and brief must be filed no later than two days before the motion is to be heard.

N.S. Gaz. Pt. 1, [03/04/09](#)

Forms

Ex Parte Motion(23.14).

23.15 - Attendance in chambers

- (1) A party may attend chambers in person, personally by counsel, or, in the case of a corporation, personally by agent.
- (2) A chambers judge may permit a party, counsel, or a corporation’s agent to attend chambers by audiovisual conference, if the judge is satisfied on both of the following:
 - (a) the party, counsel, or agent lives or has a place of business more than fifty kilometers from the courthouse;
 - (b) the chambers courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in chambers.
- (3) The chambers judge may permit a party, counsel, or a corporation’s agent to attend chambers by teleconference only if the attendance is necessary and there is no other way the party, counsel, or agent can attend chambers.

Rule 24 - Appearance Day Motion

Educational Notes

24.01 - Scope of Rule 24

- (1) The court provides a time and date when parties to a proceeding in which documents are filed at the Law Courts in Halifax may appear, or be required by the prothonotary or a judge to appear, before a judge for a motion made quickly and without an affidavit.
- (2) The court may provide a time for appearance day motions on issues involving the scheduling of trials and another time for all other appearance day motions.
- (3) A party to a proceeding in which documents are filed elsewhere may seek to have the same kinds of issues dealt with quickly or without an affidavit in accordance with Rule 25.03, of Rule 25 - Motion by Appointment, or Rule 26 - Conference.
- (4) A party may make a motion on appearance day, in accordance with this Rule.

24.02 - When appearance day motion appropriate

- (1) A party may make a motion on appearance day, if a Rule permits or all of the following circumstances exist:
 - (a) the motion is brought to determine a procedural issue in dispute between parties or to compel compliance with a Rule;
 - (b) no relevant fact can reasonably be contested;
 - (c) the motion can be heard and determined quickly;
 - (d) no judge has been assigned to preside at the trial or hearing of the proceeding.
- (2) The following are examples of a procedural issue in dispute between parties that is usually suitable to a motion on appearance day:
 - (a) a disagreement about how much time will be required for the hearing of a motion in chambers or an application;
 - (b) a disagreement about whether a date assignment conference should be allowed on the ground that the other party is lagging in making disclosure or conducting a discovery;
 - (c) an objection to setting trial dates following a request for a date assignment conference;
 - (d) an objection to the time, date, or place selected for a discovery, or for a motion or application in chambers, unless a motion by teleconference is more appropriate than a motion on appearance day;
 - (e) a dispute about the method of recording, exclusion of witnesses, or order of witnesses at a discovery;
 - (f) a dispute about the need for, or terms of, the variation;
 - (g) appointment of a case management judge.
- (3) The following are examples of a non-compliance with a Rule that may lead to a motion on appearance day to compel compliance with the Rule:

Rule 24 - Appearance Day Motion

- (a) not disclosing relevant documents or electronic information;
- (b) not performing a discovery undertaking;
- (c) failing to give an answer to interrogatories;
- (d) failing to adhere to a deadline set by a Rule.

24.03 - Appearance day notice

- (1) A party may make a motion for an order on appearance day by filing an appearance day notice.
- (2) The appearance day notice must contain the standard heading, be entitled "Appearance Day Notice", be signed by the party or counsel, and include all of the following:
 - (a) the name of the moving party;
 - (b) a concise description of the proposed order;
 - (c) the time and date when, and place where, the moving party will appear before a judge presiding in appearance day chambers;
 - (d) a representation that the motion can be heard and determined quickly;
 - (e) a concise statement of the reason for the motion;
 - (f) notice that a party may make representations to the judge of any fact that is not reasonably in contention, affidavits and testimony are not provided, and the judge may act on the representations;
 - (g) notice of the other party's right to be present and to provide representations briefly;
 - (h) a statement that a responding party who resides or has a place of business, or whose counsel resides or has a place of business, more than fifty kilometers from the Law Courts may make arrangements through the prothonotary to attend by telephone, or other teleconference;
 - (i) a warning that an order may be made although the other party does not attend.
- (3) The appearance day notice may be in Form 24.03.

N.S. Gaz. Pt. 1, 06/16/2010

Forms

Appearance Day Notice(24.03).

24.04 - Deadline

The appearance day notice must be filed no less than five days before the day of the hearing.

24.05 - Evidence

- (1) A party may make representations to the judge on appearance day of a fact that could not reasonably be in contention.
- (2) The representations may be made in the appearance day notice and in oral submissions to the judge when the motion is heard.

Rule 24 - Appearance Day Motion

- (3) The judge may act on the representations.

Rule 25 - Motion by Appointment

Educational Notes

25.01 - Special appointment

- (1) A party may request a judge provide a special appointment for a motion to be heard by the judge.
- (2) A judge may provide for the hearing of a motion by personal attendance, or if necessary by teleconference, in accordance with this Rule 25.

25.02 - Hearing by attendance in courtroom

- (1) A judge may appoint a time, date, and place for parties to attend before the judge in a courtroom for the hearing of a motion.
- (2) A party may attend the hearing in person, personally by counsel, or, in the case of a corporation, personally by agent.
- (3) A judge may permit a party, counsel, or a corporation's agent to attend the hearing by video conference, if the judge is satisfied on all of the following:
 - (a) it is impractical or unfair to require personal attendance;
 - (b) attendance by video conference will save significant expense;
 - (c) the courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in the courtroom.

25.03 - Hearing by teleconference without public access

- (1) A judge may appoint a time and date for a motion to be heard in less than a half-hour by teleconference, if all of the following apply:
 - (a) it is impractical or unfair to require the parties to attend before the judge;
 - (b) a hearing by teleconference will save significant time or expense;
 - (c) there is no serious disagreement on the facts in relation to the motion, or the difficulties arising from any disagreement are outweighed by the practicality or fairness of proceeding by teleconference;
 - (d) there is to be a recording sufficient to allow public scrutiny.
- (2) Each of the following is an example of circumstances in which it may be appropriate to request a short hearing by teleconference:
 - (a) parties cannot resolve an important procedural question for an upcoming trial or hearing, the parties are not able to conveniently appear before the judge, and the trial or hearing judge's ruling in advance of the trial or hearing may avoid an adjournment or other significant expense;
 - (b) a party has strong reasons for requesting an adjournment, the parties are not able to appear before the judge immediately, and significant expenses may be avoided if the request is determined promptly;

Rule 25 - Motion by Appointment

- (c) a party moves to change the place of an application or motion and, for the same reasons as support the change, it is unfair to require the party to appear at a place where the judge is available;
 - (d) the court has provided a time, date, and place for an emergency chambers hearing and the parties may be available by teleconference for a motion to shorten a notice period or provide for a speedy method of giving notice.
- (3) The party who requests a motion be held by teleconference must initiate the teleconference and the court must record it, unless a judge directs otherwise.

25.04 - Hearing by teleconference with public access

- (1) A judge who is satisfied on all of the following may provide a time and date for a motion to be heard by teleconference:
- (a) the teleconference will be accessible by the public in a courtroom;
 - (b) a court reporter will be present in the courtroom;
 - (c) the hearing will be logged and recorded in the same way as a hearing in a courtroom;
 - (d) it is impractical or unfair to require the parties to attend before the judge;
 - (e) a hearing by teleconference will save significant time or expense;
 - (f) there is no serious disagreement on the facts in relation to the motion, or the difficulties arising from any disagreement are outweighed by the practicality or fairness of proceeding by teleconference.
- (2) A judge who determines whether to allow a hearing by teleconference must weigh the benefits of holding the teleconference against the need for the court to be physically present in the community and other advantages of personal attendance before a judge.

25.05 - Directions or Rule 23 - Chambers Motion applies

- (1) A judge may give directions for notice, form of documents, filing deadlines, evidence, and conduct of a motion heard by appointment under Rules 25.02, 25.03, or 25.04.
- (2) In the absence of directions, the provisions of Rule 23 - Chambers Motion apply to the form of documents, filing deadlines, evidence, and conduct of the motion, except a notice of motion, or an *ex parte* motion, must state the name of the judge and either of the following:
- (a) the place of a motion to be heard in a courtroom;
 - (b) how each party and the judge, or the judge hearing an *ex parte* motion, will be contacted by the moving party at the time of a motion by teleconference.
- (3) Unless the parties agree or a judge directs otherwise, a teleconference must be set up so that each party is present before the judge in the same way, including both of the following:
- (a) no party is to be in the same room as the judge;
 - (b) a party will only have access to a visual transmission, if all parties have access to it.

Rule 26 - Conference

Educational Notes

26.01 - Conference

A judge may convene a conference, at which the parties meet with the judge with or without a record.

26.02 - Case management

- (1) The court may assign a judge to assist in managing a proceeding.
- (2) The case management judge may give directions on motion at a conference.
- (3) The case management judge may hear and determine a motion on evidence in a courtroom by special appointment.
- (4) The case management judge must hear all pre-trial motions, unless the judge determines that another judge should hear the motion.

N.S. Gaz. Pt. 1, [07/03/2013](#)

26.03 - When conference appropriate

- (1) The court must convene a conference required by a Rule, such as a date assignment conference or a trial readiness conference.
- (2) A conference may be convened to provide any of the following:
 - (a) organization of a trial or hearing;
 - (b) hearing a motion to appoint a time and date, and provide directions, for an application in court, a judicial review, or an appeal;
 - (c) case management by a case management judge;
 - (d) anything that may aid the disposition of a proceeding or motion, and may properly be dealt with outside a courtroom.

26.04 - Motions at conference

- (1) A judge who presides at a conference may do any of the following:
 - (a) give directions;
 - (b) appoint a time, date, and place for a trial or hearing;
 - (c) rule on an issue of procedure or evidence for an upcoming trial or hearing, if the parties consent to the issue being determined at a conference.
- (2) Directions given at a conference may be varied.
- (3) A ruling on an issue submitted by consent is binding at the trial or hearing.

26.05 - Record of conference

- (1) A conference must be recorded by the court, unless the judge who presides at the conference directs otherwise.
- (2) A judge who presides at a conference that is not recorded must make a record after the conference of each of the following:
 - (a) the subjects discussed, and agreements made, at the conference;
 - (b) directions given at the conference;
 - (c) a ruling on an issue of evidence or procedure for an upcoming trial or hearing submitted to the judge at the conference with the consent of the parties.
- (3) A direction, including a ruling, made at a conference may be enforced as provided in Rule 78 - Order.

Rule 27 - Motion by Correspondence

Educational Notes

27.01 - Motions by correspondence to a judge

- (1) A party may make a motion to a judge by delivering correspondence only in one of the following situations:
 - (a) a Rule permits a motion to be made by correspondence;
 - (b) the party seeks an adjournment of, or the dismissal of, an *ex parte* application or *ex parte* motion brought by the party;
 - (c) the party seeks permission to withdraw or adjourn the hearing of an application, and the parties agree the motion may be made by correspondence;
 - (d) the party seeks permission to withdraw a motion or adjourn the hearing of a motion, another party does not consent as required for automatic withdrawal or adjournment under Rule 22.18(1)(a), of Rule 22 - General Provisions for Motions, and the parties agree that the motion for permission to withdraw or for adjournment may be made by correspondence;
 - (e) the party moves for a consent order;
 - (f) the party requests a special appointment, conference, emergency hearing outside court hours or a courthouse, directions for making a motion to a presiding judge or the prothonotary, or permission to make a motion by correspondence;
 - (g) a judge permits a motion to be made by correspondence to that judge.
- (2) The correspondence may be delivered to the prothonotary, the judge's office, or another person authorized by the judge.

Annotations

The defendants moved to have the claims dismissed as an abuse of process, pointing to the self-represented plaintiff's failure to comply with the *Rules* (2008) and her repeated refusal to follow the court's directions. The plaintiff, who was wintering in Florida, unilaterally wrote the court asking to have the defendant's motion adjourned until she returned to Canada. *Held*, adjournment granted. Despite the lack of a formal motion, the lack of evidence filed in support of the request, and the lack of notice to the defendants, the plaintiff's letter was treated as a request for an adjournment. It was in the interests of justice to do so.

Bridges v. Dominion of Canada General Insurance Co. , [2012 NSSC 169](#)

The plaintiffs moved to ban publication of the court's decision. They sought to have the motion for a publication ban argued through correspondence pursuant to Rule 27.01 of the *Civil Procedure Rules* (2008). The defendants responded to the merits of the motion for a ban, but took no position on whether the matter could proceed by correspondence. *Held*, the court found it was appropriate to exercise the discretion afforded by Rule 27.01(g) to hear the motion by correspondence, but dismissed the motion for a ban. This case has been bogged down by contentious and expensive proceedings. The object of the *Rules* (Rule 1.01) is best served by answering the motion in the fastest and cheapest manner possible.

Leigh et al. v. Belfast Mini-Mills Ltd. et al. , [2011 NSSC 303](#)

27.02 - Motions by correspondence to the prothonotary

A party may make an *ex parte* motion to the prothonotary by delivering correspondence, unless the prothonotary directs otherwise.

Rule 28 - Emergency Motion

Educational Notes

28.01 - Request for emergency hearing

- (1) A party may request the court appoint a time, date, and place for a motion to be heard as an emergency.
- (2) The party must make the request for an emergency hearing by providing all of the following information to the prothonotary:
 - (a) details of the motion the party wishes to make;
 - (b) all information concerning the availability of, and means of communicating with, a party who is to receive notice of the motion;
 - (c) the reasons for proceeding *ex parte*, if the party proposes an *ex parte* motion;
 - (d) a description of the evidence to be presented;
 - (e) references to applicable legislation, Rules, or points of law;
 - (f) a statement of when the party will be ready to file an affidavit;
 - (g) the amount of time the hearing is likely to require;
 - (h) the reasons for concluding that an emergency exists.
- (3) The information must be in writing, unless a judge permits otherwise.

Annotations

The applicant's licence to practise medicine was suspended when his sponsor withdrew and he failed to find a replacement within a certain time frame. He moved to have an interim injunction (seeking to stay the enforcement of the respondents' decision to suspend the licence pending a judicial review on the merits) heard on an emergency basis. His former sponsor, who had reasons for withdrawing her sponsorship, was not a party to any of the proceedings or proposed proceedings. *Held*, motion dismissed. At issue is the effect of the sponsor's decision to withdraw her sponsorship. It was a decision she had every right to make. The respondents indicated they were willing to help the applicant find a new sponsor. There is no serious issue to be tried, nor will the applicant suffer irreparable harm if the motion is not granted. Potential losses, if any, are compensable. There is no need to consider the balance of convenience.

Fynn v. College of Physicians and Surgeons of Nova Scotia, [2012 NSSC 265](#)

28.02 - Emergency motion on notice

- (1) The court may provide a time, date, and place for an emergency motion to be heard on notice, if a judge is satisfied on each of the following:
 - (a) an emergency exists of sufficient gravity to require a speedy hearing;
 - (b) it is possible for all parties who wish to be heard to be in attendance for the motion;
 - (c) the gravity of the emergency outweighs any inconvenience to a party.

Rule 28 - Emergency Motion

- (2) The court must provide directions for giving notice, unless the parties agree on giving notice, and the directions may include a short notice period and a speedy method of giving notice.
- (3) A judge may give directions for conduct of the motion, including directions on notice, form of documents, filing deadlines, or evidence.
- (4) If a judge does not give directions on form of notice, the party who makes the motion may notify other parties by delivering a notice of motion under Rule 23 - Chambers Motion, with both of the following modifications:
 - (a) the notice need not refer to the time required for the motion to be heard, and it must not refer to the judge as presiding in chambers;
 - (b) the notice must state the name of the judge and that the motion is by special appointment to respond to an emergency.

28.03 - *Ex parte* emergency motion

- (1) The court may provide a time, date, and place for an *ex parte* emergency hearing, if a judge is satisfied that the motion falls within one of the circumstances in Rule 22.03 and that the motion cannot be heard in chambers.
- (2) A judge may give directions for making the motion, responding to the motion, and conduct of the hearing.

28.04 - Manner of providing evidence

- (1) A judge may provide directions on the manner in which evidence is to be provided on an emergency motion.
- (2) Evidence may be provided in the same ways as evidence is provided under Rule 23.08, of Rule 23 - Chambers Motion, unless the judge directs otherwise.

28.05 - Emergency hearings outside court hours or courthouse

- (1) A judge may hear a motion, at any time or place, if the judge is satisfied that the motion must be heard quickly and cannot be heard in the usual course of the court's business.
- (2) The judge may give directions for the conduct of the motion, including directions for making and keeping a record.

Rule 29 - Motion to Presiding Judge

Educational Notes

29.01 - Assigned judge to hear all motions

- (1) After a judge is assigned to preside at the trial of an action or hearing of an application, judicial review, or appeal all pretrial or prehearing motions must be heard by the assigned judge, unless the judge determines that another judge should hear the motion, or both of the following apply:
 - (a) it is not possible to contact the assigned judge for the judge's determination that another judge should hear the motion;
 - (b) the motion must be made before the judge can be contacted.
- (2) The assigned judge may give directions for the procedure to be followed on a motion made before, during, or after the trial or hearing.
- (3) In the absence of directions, the following Rules apply on a motion to a presiding judge:
 - (a) notice may be given orally during a trial or hearing;
 - (b) a written or oral notice must be given as soon as possible after the decision to make the motion is, itself, made;
 - (c) the evidence in support of the motion may be led at the trial, provided at the hearing, or provided under Rule 23.08, of Rule 23 - Chambers Motion;
 - (d) the motion may be dealt with by direction, ruling, or order made on record, by order made on record and to be confirmed later in a written order, or by written order.

N.S. Gaz. Pt. 1, [12/10/08](#)

Rule 30 - Motion to the Prothonotary

Educational Notes

30.01 - Motion to prothonotary generally

- (1) A party may make a motion to the prothonotary to do anything that the prothonotary is authorized to do under a Rule.
- (2) The prothonotary may refer the motion to a judge, and the judge may determine the motion.
- (3) The prothonotary may request an opinion from a judge before determining a motion.
- (4) The prothonotary who refers a motion or requests an opinion must place a record of the reference and its result, or the request and the opinion, in the file for the proceeding.

Annotations

The plaintiffs settled with the corporate defendant. The deputy-prothonotary issued an order dismissing the plaintiffs' claim against the corporate defendant, without giving notice to the other defendant, who only learned about the order some time later. She moved, in part, to set aside the dismissal order. *Held*, dismissal order set aside. The prothonotary wasn't authorized to issue the order, as not everyone entitled to notice was notified. The second defendant was a person affected by the order and should have been made aware of it.

Parsons v. S. Cunard & Co. Ltd. et al., [2011 NSSC 191](#)

30.02 - *Ex parte* motion

- (1) A party may make an *ex parte* motion to the prothonotary in writing or, unless the other party is entitled to notice, orally.
- (2) The prothonotary must make a record of a motion made orally.

Annotations

The plaintiffs settled with the corporate defendant. The deputy-prothonotary issued an order dismissing the plaintiffs' claim against the corporate defendant, without giving notice to the other defendant, who only learned about the order some time later. She moved, in part, to set aside the dismissal order. *Held*, dismissal order set aside. The prothonotary wasn't authorized to issue the order, as not everyone entitled to notice was notified. The second defendant was a person affected by the order and should have been made aware of it.

Parsons v. S. Cunard & Co. Ltd. et al., [2011 NSSC 191](#)

30.03 - Motion on notice

- (1) The prothonotary may give directions for making a motion to the prothonotary on notice.
- (2) The prothonotary may direct any of the following:
 - (a) the time, date, and place when and where the motion will be heard;

Rule 30 - Motion to the Prothonotary

- (b) the form and content of a notice of motion;
- (c) time for delivery of the notice of motion;
- (d) the manner of presenting evidence, representations or submissions;
- (e) whether the motion will be heard on record.

30.04 - Review by judge

- (1) A person affected by an order made by the prothonotary may make a motion to a judge under Rule 23 - Chambers Motion for a review of the prothonotary's order.
- (2) The motion must be started by filing a notice of motion no more than ten days after the day the person receives notice of the order.
- (3) On the review, the judge may consider the evidence placed on record before the prothonotary and further evidence provided by a party in accordance with Rule 23.
- (4) The reviewing judge may exercise any discretion the prothonotary could exercise, and substitute the judge's opinion for that of the prothonotary.
- (5) The judge may dismiss or grant the motion for review.
- (6) A judge who grants the motion may make any of the following kinds of orders:
 - (a) an order the prothonotary could have made;
 - (b) an order providing relief from the order of the prothonotary or the consequences of it;
 - (c) an order referring the subject back to the prothonotary with directions.

Annotations

The plaintiffs settled with the corporate defendant. The deputy-prothonotary issued an order dismissing the plaintiffs' claim against the corporate defendant, without giving notice to the other defendant, who only learned about the order some time later. She moved, in part, to set aside the dismissal order. *Held*, dismissal order set aside. The prothonotary wasn't authorized to issue the order, as not everyone entitled to notice was notified. The second defendant was a person affected by the order and should have been made aware of it. With the dismissal order overturned, it is open to the second defendant to join the corporate defendant by way of a cross-claim. Permitting this doesn't give rise to any prejudice that can't be compensated by costs. *Parsons v. S. Cunard & Co. Ltd. et al.* , [2011 NSSC 191](#)