



THE NUNAVUT COURT OF JUSTICE

PRACTICE DIRECTIVE #39

CHARTER PRACTICE IN NUNAVUT

APPLICATION OF RULES

1. These rules apply to applications in criminal, quasi-criminal, or civil proceedings:
 - a. To declare unconstitutional or of no force or effect, in whole or in part, any enactment or regulation of the Parliament of Canada, the legislature of Nunavut or any subordinate legislative authority including a municipality or hamlet;
 - b. To suspend or declare inapplicable any part of any such enactment or regulation for any purpose or in relation to any person(s) as a result of a conflict with the constitution of Canada;
 - c. To declare unconstitutional and of no force and effect, in whole or in part, any rule or principle of law applicable to criminal, quasi-criminal or civil proceedings, whether on account of the Criminal Code s 8(2) or (3) or otherwise;
 - d. To suspend or declare inapplicable any rule or principle of law applicable to criminal, quasi-criminal or civil proceedings for any purpose or in relation to any person(s) as a result of a conflict with the constitution of Canada;
 - e. For any relief or remedy pursuant to the Canadian Charter of Rights and Freedoms, s 24 (1) or (2).

JURISDICTION

2. Any application made pursuant to these rules shall be brought before a court of competent jurisdiction. The Court must have jurisdiction both to hear the application and to grant the relief sought.

NOTICE

3. Any application made pursuant to these rules shall be initiated by the filing and service of a Notice of Application in Form 39A. This notice shall state:
 - a. The source of the court's jurisdiction to hear the application and to grant the relief sought;
 - b. The grounds to be relied upon in support of the application; This must include a concise statement of the application(s) to be raised, a statement of the constitutional principles to be argued and, where applicable, reference to any constitutional, statutory or regulatory provision to be relied upon;
 - c. The relief or the remedies sought;
 - d. The estimated amount of time required by the applicant to make the application; and
 - e. Whether an order is required abridging or extending the time for service or filing of the Notice of Application or supporting materials;
4. Notwithstanding any other rule to the contrary, an application for relief or a remedy pursuant to the Canadian Charter of Rights and Freedoms, s 24(1) or s 24(2) may be brought without filing and service of a Notice of Application in any case where the applicant is not represented by counsel or it is otherwise in the interests of justice for the Court to waive these requirements.
5. Where the Court waives the requirement of filing and service of a Notice of Application it shall adjourn the proceedings and take such steps as are necessary to ensure that the information otherwise contained in a Notice of Application is entered in the record of proceedings and delivered to the respondent(s). The Court shall thereafter afford the respondent(s) a reasonable opportunity to respond to the application.
6. The Court need not adjourn the proceedings where it elects to summarily dismiss the application. The respondent(s) may waive the necessity of any adjournment referred to in Rule 5.

NOTICE PERIOD

7. A Notice of Application seeking the relief referred to in Rule 1(a) through (d) shall be filed with the Court and served in accordance with Rule 8 no later than 60 days before the date fixed for commencement of the proceeding or within such time as is directed by a case-management judge.
8. A Notice of Application seeking the relief referred to in Rule 1(a) to (d) shall be served upon the Attorney General of Canada for challenges of a federal enactment, the Attorney General for Nunavut for challenges of a territorial enactment, or upon a hamlet or municipality in the case of a challenge to a bylaw, together with such other person(s) or bodies and upon such terms as the Court may direct.
9. A Notice of Application seeking the relief referred to in Rule 1 (e) shall be filed with the Court and served in accordance with Rule 10 no later than 30 days before the date fixed for commencement of the proceeding or within such time as is directed by a case-management judge.
10. A Notice of Application seeking the relief referred to in Rule 1(e) shall be served in accordance with Rule 7 on the office of the prosecutor having carriage of the proceedings and upon such other person(s) or bodies and upon such terms as the Court may direct.
11. Where there is uncertainty whether anyone should be served with the Notice of Application, the applicant may bring a motion for directions, without notice, to a judge of the Nunavut Court of Justice.
12. Upon a Notice of Application being filed in Court Registry with proof of service upon a Respondent, the Clerk of the Court shall forward a copy of the Notice of Application to a duty judge with a request for directions on the date and place of hearing. A case management judge shall thereafter convene a case management meeting with counsel to determine the proper venue and timing for the hearing. The hearing date shall be fixed after consultation with counsel.

MEMORANDUM OF APPLICANT

13. A Memorandum of Applicant shall be filed with the Court and served on any person or body served with a Notice of Application no later than 21 days before the date fixed for hearing or within such time as may be directed by a case-management judge.

14. Subject to rule 14, a Memorandum of Applicant shall contain:

- a. Transcripts of earlier proceedings which are material to a determination of the application or an agreed statement of facts in relation to those earlier proceedings;
- b. Where necessary to complete the record, an affidavit by or on behalf of the applicant deposing to the matters referred to in Rule 3;
- c. A copy of any other material in the court file that is necessary for the hearing and determination of the application;
- d. The documentary, affidavit, or other evidence to be adduced at the hearing of the application;
- e. The intended argument of the applicant;
- f. Copies of any authorities to be relied upon by the applicant.

15. Where an application is brought under paragraph 1(e) and the evidence that forms the basis of the alleged Charter breach is in dispute, the Memorandum of Argument shall set out the factual allegations that are alleged by the Applicant to be the foundation for the Charter breach. The Memorandum of Applicant shall indicate that a Voir Dire is required and outline the number of witnesses the Applicant intends to call, together with the estimated time for hearing this evidence.

16. Notwithstanding Rule 12, an application for a remedy pursuant to the Canadian Charter of Rights and Freedoms, s 24(1) or (2) may be brought without filing and service of a Memorandum of Applicant in any case where the applicant is not represented by counsel or it is otherwise in the interests of justice for the Court to waive these requirements.

17. Where the Court waives the requirement of filing and service of a Memorandum of Applicant, it shall adjourn the proceedings and take such steps as are necessary to ensure that the information otherwise contained in a Memorandum of Applicant is entered in the record of proceedings. The Court shall thereafter afford the respondent(s) a reasonable opportunity to respond to the application.

18. The Court need not adjourn the proceedings where it elects to summarily dismiss the application. The respondent(s) may waive the necessity of any adjournment referred to in Rule 9.

MEMORANDUM OF RESPONDENT(S)

19. A Memorandum of Respondent shall be filed with the Court and served upon the applicant not less than seven days before the date fixed for hearing or within such time as is set by a case-management judge.

20. A Memorandum of Respondent filed in accordance with Rule 11 shall contain:

- a. Any material to be relied upon by the respondent(s) in support of a submission that the Canadian Charter of Rights and Freedoms section 1 applies to the application or an issue arising in the application;
- b. Any evidence, including any affidavit(s) or other materials not included in the Notice of Application or Memorandum of Applicant which the respondent intends to rely upon in response to the application;
- c. The argument of the respondent;
- d. Copies of any authorities to be relied upon by the Respondent.

21. Notwithstanding any other Rule, where a respondent elects to consent to the granting of any relief or remedy (s)he shall notify the applicant and Court in writing of the basis upon which the concession is made and the precise relief or remedy consented to.

INTERVENERS

22. Any person or body interested in an application authorized by these rules may apply to intervene in that application.

23. An Application to Intervene shall be filed with the Court and served on the applicant and the respondent(s) no later than 21 days before the date fixed for hearing or within such time as may be directed by a case-management judge.

24. An Application to Intervene filed in accordance with Rule 15 shall include:

- a. A brief statement identifying the intervener and who s/he represents;
- b. A statement outlining the intervener's interest in the application to be heard;
- c. A statement outlining the unique position or perspective that the intervener proposes to bring to the argument of the application;
- d. The position of the intervener (if any) on the remedies sought;
- e. Copies of any supporting evidence or authorities to be relied upon by the intervener on the hearing of the application;
- f. The estimated amount of time required by the intervener to address its submissions at the hearing of the application.

25. The applicant and the respondent(s) may file submissions in support of or in opposition to any application to intervene.

26. A Response to the Application to Intervene shall be filed with the court and served on the intervener no less than 14 days before the date fixed for hearing or within such time as may be set by a case-management judge.

27. The Court shall determine whether to permit a person or body to intervene on the hearing of an application no later than 7 days before the date fixed for hearing or as soon as may be practical. The applicant, respondent(s) and intervener shall be notified of that determination and any terms imposed upon the intervener by the Court for the purpose of the hearing.

ARGUMENT

28. The argument portion of any written submission shall contain:

- a. In Part 1, a concise summary of the facts material to the application;
- b. In Part 2, a description of the issues raised by the application;
- c. In Part 3, the intended argument to be raised in support of, or in opposition to the application; and
- d. In Part 4, the remedy or the relief sought.
- e. In Part 5, a list of the authorities to be relied on in the application.

29. The argument of the applicant and respondent shall not exceed 10 pages in length. The argument of an intervener shall not exceed 5 pages in length.

30. The Court may on application, and at any time permit, extensions to the length of a Memorandum of Applicant or Respondent where it is in the interests of justice to do so.

ABANDONMENT OF APPLICATION

31. A Notice of Abandonment may be filed at any time before the hearing of an application. The application shall be deemed to be dismissed where a Notice of Abandonment has been filed.

32. An applicant who fails to appear by counsel or in person without lawful excuse at the hearing of an application shall be deemed to have wholly abandoned the application.

33. A Court may reinstate an application dismissed for abandonment on such terms as are appropriate in the circumstances.

ABRIDGEMENT OF TIME

34. The Court may at any time extend or abridge the times specified by these rules for taking any step specified herein where it is in the interests of justice to do so.
35. On hearing an application governed by these rules, a Court may give such directions respecting the conduct of the application that the Court considers necessary in the interests of justice.

TRANSITIONAL PROVISION

36. This practice directive supersedes the filing deadlines set out in sections 68 and 70 of the criminal rules of the Nunavut Court of Justice.

This practice directive comes into force on February 1, 2012.

Issued this 18th day of January 2012 at the direction of the Judges of the Nunavut Court of Justice.

Mr. Justice R. Kilpatrick

Mr. Justice E. Johnson

Mr. Justice N. Sharkey

Madam Justice S. Cooper