

## **Rules of the Supreme Court, 1986**

### **PRACTICE NOTE**

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The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published pursuant to rule 4.04 of the *Rules of the Supreme Court, 1986*.

### **ACCESS TO JUDGES AFTER HOURS FOR EMERGENCY PURPOSES**

#### **Background**

1. From time to time, counsel need access to the court outside of its normal sitting time, either on weekends, holidays or evenings. This need may arise in civil, family and criminal proceedings. Examples on the civil side would include applications for *ex parte* injunctions or other interim orders where irreparable harm would be caused by any delay. In family matters, emergency applications may also be necessary with respect to orders for non-removal from the jurisdiction in child mobility cases. On the criminal side, wiretap applications, warrants or restraining orders under proceeds of crime legislation may all be time-sensitive.

2. In the past, counsel have sometimes been unsure as to how to initiate contact with the court for such emergency purposes and, in particular, as to when it would be appropriate to make contact with a judge directly or how to select the particular judge to approach.
3. There have been occasions when access to a judge after hours has been abused. Sometimes, the circumstances are such that there would be no prejudice to the party seeking the emergency order to wait until the next sitting day before approaching the court. On other occasions, counsel have asked to have a judge and a court clerk available within a particular time frame when counsel are not in fact fully ready and end up keeping the court effectively on stand-by for an extended period of time.
4. The purpose of this Practice Note is to outline the procedure to be generally employed to gain access to a judge on an emergency basis where the special circumstances of the case justify such an approach.

### **Practice Note**

5. When counsel anticipate that access to a judge outside of regular hours in the Judicial Centre of St. John's may be necessary, contact should be made by telephone with the Senior Deputy Registrar or an Assistant Deputy Registrar at the telephone numbers set out in the List available to counsel upon request from the Registry. An up-to-date List will be available at the beginning of each term of the court.
6. Contact should be made with as much advance notice as possible and should include information as to:
  - (a) the general nature of the anticipated application;
  - (b) counsel's best estimate of how much time will be needed for the judge to peruse the applicable paperwork;
  - (c) counsel's best estimate of when the judge and court clerk will be needed to hear the application.
7. The Senior Deputy Registrar or Assistant Deputy Registrar who is contacted will:
  - (a) either contact the Head of the appropriate Judicial Panel or provide the name and telephone number of that person to counsel who may then contact him or her directly;
  - (b) assign a court clerk.

8. When contacted, the Head of the Judicial Panel will either deal with the proposed application himself or herself or will assign another judge from that Panel to deal with it.
9. Once a judge and a court clerk have been assigned to deal with the matter, it will be the responsibility of the judge, clerk and counsel to co-ordinate the time and place for the hearing of the application.
10. In the case of an emergency application to the Unified Family Court, counsel shall first contact the Clerk of the Unified Family Court or one of the court clerks of the Unified Family Court at the telephone numbers set out in the List available to counsel upon request from the Registry. The person so contacted shall then request one of the resident Unified Family Court judges to hear the application and shall assign a court clerk of the Unified Family Court for that purpose. If no resident Unified Family Court judge is available, the Clerk of the Unified Family Court or court clerk shall contact the Senior Deputy Registrar or an Assistant Deputy Registrar of the Trial Division for assistance.
11. In the case of an emergency application in a judicial centre outside St. John's, counsel shall first contact the resident Deputy Registrar or Assistant Deputy Registrar who shall then request a resident judge to hear the application and shall assign a court officer from that judicial centre for that purpose. If no resident judge is available, the Deputy Registrar or Assistant Deputy Registrar shall contact his or her counterpart in the next closest judicial centre for assistance.
12. Where, because of time constraints or other special circumstances, the foregoing procedure cannot be employed, counsel may contact the Chief Justice or the senior non-supernumerary judge in the Judicial Centre of St. John's or the senior resident judge outside St. John's directly for assistance.
13. These procedures should only be employed where counsel are, after considering all relevant circumstances, of the *bona fide* opinion that the proposed application is of such an urgent nature that prejudice will be suffered by the applicant or some other affected party if the presentation of the application is delayed to the next regular sitting day of the court.

AUTHORIZED BY:

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J. Derek Green  
Chief Justice of the Supreme Court  
of Newfoundland and Labrador, Trial Division

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Barry R. Sparkes, B.C.L.  
Registrar of the Supreme Court  
Secretary, Rules Committee