

Nova Scotia Civil Procedure Rules

Amendment

June 27, 2014

The following Rules and Forms are amended as follows:

1. The word "pre-trial" in Rules 4.16(4), 4.16(6)(c), 4.19(1), and 4.19(3) is replaced with "pretrial".
2. The words "application in chambers" in Rule 5.08(2) are removed and are replaced with "contest (chambers application)".
3. Rules 5.09 to 5.18 are renumbered 5.13 to 5.22 and the following Rules 5.09 to 5.12 are added to Rule 5 - Application:

Respondent's Claim in Chambers Application

5.09 A respondent to a chambers application who wishes to make a claim against the applicant, another respondent, or a third party may start an independent proceeding.

Respondent's Claim in Application in Court

5.10 (1) A respondent who wishes to make a claim against the applicant, or against another respondent, in an application in court must file a notice of the claim no more than fifteen days after the day the respondent is notified of the application in accordance with Rule 31 - Notice.

(2) The notice of claim by a respondent must contain the standard heading, be entitled "Notice of Respondent's Claim", be dated and signed, and include all of the following:

- (a) notice that the respondent applies to a judge for an order against a named party and a description of the order applied for;
- (b) a concise statement of the grounds for the order, including the material facts the respondent seeks to establish, and a reference to legislation or points of law relied on by the respondent;

- (c) a statement naming the witnesses whose affidavit the respondent intends to file in support of the respondent's claim and describing the subjects about which each witness could give evidence;
 - (d) a statement that the respondent will seek directions concerning the claim when the applicant's motion for directions is heard;
 - (e) a statement that the respondent is, or is not, also filing a notice of contest of the application;
 - (f) if the respondent is not filing a notice of contest, the designation of address and the acknowledgment of the effect of delivery required in a notice of contest.
- (3) A notice of claim by a respondent may be in Form 5.09.

Contesting Respondent's Claim

- 5.11 (1)** A party against whom a respondent makes a claim, and who wishes to contest the claim, must file a notice of contest no less than two days before the day of the hearing of the motion for directions.
- (2)** The notice of contest must contain the standard heading, be entitled "Notice of Contest of Respondent's Claim", be dated and signed, and include all of the following:
- (a) a statement that the respondent's claim is contested and indicating which of the material facts in the notice of respondent's claim are admitted, which are denied, and which are neither admitted or denied only because the respondent does not have sufficient information to admit them;
 - (b) a concise statement of any further grounds relied on in contest of the respondent's claim;
 - (c) a statement identifying any further witness from whom the contesting party expects to obtain affidavits;
 - (d) if the party is a respondent and if the party is not filing a notice of contest of the application, the designation of address and the acknowledgment of the effect of delivery required in a notice of contest of an application.

(3) A notice of contest of respondent's claim may be in Form 5.10.

5.12 A respondent in an application in court who wishes to make a claim against a person who is not a party may start an independent proceeding or make a motion at or before the hearing of the motion for directions to join the third party under Rule 35 - Parties.

4. Rules 5.09 to 5.12 come into effect when these amendments are published in the Royal Gazette, and claims made by a respondent in connection with an application before that time are governed by the unamended Rules, unless the parties agree or a judge orders otherwise.
5. The word "cross-claim" in Rules 10.10(1) and 82.05(2)(a) is replaced with "crossclaim".
6. The word "attached" in Rule 31.05(2)(c) is replaced with "exhibited".
7. The period at the end of Rule 31.05(2)(f) is replaced with a semi-colon and Rule 31.05(2)(g) is added:
 - (g) a certified copy of the notice attached and marked as an exhibit to the affidavit.
8. Rule 54.06 is renumbered 54.06(1) and Rule 54.06(2) is added:

The party who is called as a witness, or whose officer, director, or employee is called as a witness, by an adverse party may cross-examine the witness on subjects touched upon during the cross-examination by the adverse party.
9. Rule 54.06(3) is added after Rule 54.06(2):

A witness called by an adverse party, and cross-examined, may be directly examined on new subjects at the conclusion of the first cross-examinations or on recall.
10. Rule 70.06(2) is changed to read as follows:

A party may prove a discount rate to be used in calculating the difference between estimated investment and price inflation rates for calculating the value of damages for future loss of business income.

11. Rules 82.09(9) and 82.09(10) are added to Rule 82.09:
 - (9) A prothonotary who is satisfied on each of the following may, without notice, order that the heading of a proceeding is varied to remove the name of a party:
 - (a) all claims against the party are dismissed or discontinued;
 - (b) the party is making no claim in the proceeding;
 - (c) the proceeding continues against others.
 - (10) A prothonotary who removes the name of a party from the heading must notify the parties of the variation.
12. Forms 5.09 and 5.10 are added to Part 22 - Forms, after Form 5.08.
13. The phrase "to which this affidavit is attached" in Form 31.05 is changed to "attached to this affidavit and marked Exhibit 'A' ".

Certificate

I, Joseph P. Kennedy, Chief Justice of the Supreme Court of Nova Scotia, certify that on June 27, 2014, a majority of the judges of the court made the foregoing amendment to the *Nova Scotia Civil Procedure Rules*.

Signed June , 2014

Joseph P. Kennedy
Chief Justice of the Supreme Court
of Nova Scotia

Form 5.09

20

No.

Supreme Court of Nova Scotia

Between: [copy standard heading]

[name]

Applicant

and

[name]

Respondent

Notice of Respondent's Claim

To: [name of each other party]

The respondent requests an order against [name]

The respondent [name] is applying to a judge in chambers for an order [describe] against [the applicant/the respondent], [name].

Grounds for order

The respondent is applying for the order on the following grounds: [briefly state grounds in point form; include material facts, and references to legislation or points of law relied on and the facts that make each applicable; do not state evidence or provide argument]

1

2

3

Witnesses for respondent

The respondent [name] expects to produce affidavits from the following witnesses, dealing with the following subjects, as evidence when the application and the respondent's claim are heard:

<i>Name of witness</i>	<i>Subject</i>

Directions about respondent's claim

The respondent [name] will seek directions about the claim, and the hearing of it, when the applicant's motion for directions is heard.

Whether filing notice of contest

The respondent [name] [*is/is not*] filing a notice of contest.

[**Contact information** if not filing a notice of contest to the applicant's claim

The respondent name designates the following address:

Documents delivered to this address are considered received by the respondent.
Further contact information is available from the prothonotary.]

Signature

Signed _____, 20__

Signature of respondent
Print name:

[or]

Signature of counsel
[name] as counsel
for [name of respondent]

Prothonotary's certificate

I certify that this notice of respondent's claim was filed with the court on _____, 20__ .

Prothonotary

Form 5.10

20

No.

Supreme Court of Nova Scotia

Between: [copy standard heading]

[name]

Applicant

and

[name]

Respondent

Notice of Contest of Respondent's Claim

To: [name of each other party]

The claim of [name] is contested

The [applicant/respondent], [name], contests the claim made by the respondent, [name].

The [applicant/respondent], [name] admits the facts stated in the grounds of the claim numbered , , and .

The [applicant/respondent] denies the rest of the grounds, but may admit the following after receiving more information: , , and .

Grounds of contest

The [applicant/respondent], [name], says that the claim should be [dismissed/allowed only to the extent of] because: [briefly list grounds in point form; include material facts and references to legislation and points of law; do not state evidence or provide argument]

- 1
- 2
- 3

Further witnesses

[The applicant/respondent name expects to produce affidavits from the following additional witnesses, in addition to any already named, on the following subjects as a result of the respondent's claim:

or

The applicant/respondent name does not expect to produce affidavits from any witness in addition to those already named.]

[Contact information if respondent and not filing a notice of contest to the applicant's claim
The respondent name designates the following address:

Documents delivered to this address are considered received by the respondent.
Further contact information is available from the prothonotary.]

Signature

Signed _____, 20____

Signature of
[applicant/respondent]
Print name:

[or]

Signature of counsel
[name] as counsel for
the [applicant/respondent] , [name]