

CIVIL PROCEDURE RULES - NOVA SCOTIA

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RULE 1

CITATION, APPLICATION AND INTERPRETATION

Citation

1.01.

(1) These Rules may be cited as the Civil Procedure Rules. [E. 1/1]

(2) A group of rules having the same numeral to the left of a decimal point may be cited in these rules and in documents for use in the court as "Rule", and in other cases, as "Civil Procedure Rule", followed by the numeral: for example, "Rule 3" and "Civil Procedure Rule 3" each means rules 3.01 to 3.04, both inclusive.

(3) A rule or part of a rule may be cited in these rules and in documents for use in the court as "rule", and in other cases as "Civil Procedure Rule", followed by the number, paragraph, clause or sub-clause of the rule cited: for example, "rule 48.04(1) (b) (ii)" or "Civil Procedure Rule 48.04 (1) (b) (ii)" each means, sub-clause (ii) of clause (b) of paragraph (1) of rule 48.04.

Application

1.02. These Rules apply to proceedings in the Court of Appeal and the Supreme Court except where an enactment otherwise provides.

[Amend. 31/1/98]

Object of Rules

1.03. The object of these Rules is to secure the just, speedy and inexpensive determination of every proceeding.

Application of *Interpretation Act*

1.04. Except where a contrary intention appears, the **Interpretation Act** applies to these Rules.

[E. 1/3]

Definitions

1.05. In these Rules, unless the context otherwise requires,

- (a) "Act" means the *Judicature Act*; [Amend. 05/02/03]
- (b) "affidavit" includes a statutory declaration and an agreed statement of facts;
- (c) "Court of Appeal" means the Nova Scotia Court of Appeal;
- (d) "application" means an originating or interlocutory application, motion or petition made,
 - (i) in the Nova Scotia Court of Appeal, to a judge or the judges of the Nova Scotia Court of Appeal or to the Nova Scotia Court of Appeal;
 - (ii) in the Supreme Court of Nova Scotia, to a judge in chambers, or to the court when sitting during a trial or pursuant to an order;
 - (iii) to the prothonotary where the prothonotary has power to act. [Amend. 6/97]
- (e) "court" means,
 - (i) in the Nova Scotia Court of Appeal, the court or a judge or the judges thereof, whether sitting in court or chambers;
 - (ii) in the Supreme Court of Nova Scotia, the court or a judge or the judges thereof, whether sitting in court or chambers; and where a prothonotary has power to act, the prothonotary respectively;
 - (iii) repealed
- (f) "decision" means the reasons given by the court for its judgment or other order;
- (g) repealed
- (h) repealed

(i) "document" includes a sound recording, photograph, film, plan, chart, graph, and any information generated, recorded or stored by means of any device, including, but not limited to, computers and digital media. [Amend. 05/02]

(j) "enter judgment" or "entering judgment", means to deliver to the prothonotary an order embodying a judgment or to cause him to make a formal record of a judgment;

(k) "hearing" means the hearing of an application;

(l) "holiday" includes any day on which the prothonotary's office is closed; [Amend. 29/03/96]

(m) "interlocutory notice" means a notice of application in a pending proceeding; [Amend. 29/03/96]

(n) "judge" means a judge sitting in chambers; [Amend. 29/03/96]

(o) "judgment" means the order of the court that disposes of a proceeding;

[Amend. 29/03/96]

(p) "judgment creditor" includes a party entitled to a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment creditor; [Amend. 29/03/96]

(q) "judgment debtor" includes a party required to make a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment debtor; [Amend. 29/03/96]

(r) "mentally incompetent person" means a person, not an infant, who is incapable from infirmity of mind of managing his own affairs;

(s) "notice of application" means a notice of an application by an originating notice (application inter partes or ex parte), or an interlocutory notice (application inter partes or ex parte);

(t) "order" means an order of the court and includes a judgment, decree or rule;

(u) "originating notice" means the notice that commences a proceeding pursuant to rule 9; [Amend. 5/10/96]

(v) "person under disability" means a person who is an infant or a mentally incompetent person;

(w) "proceeding" means any action, suit, cause or matter, or any interlocutory application therein, including a proceeding formerly commenced by a writ of summons, third party notice, counterclaim, petition, originating summons, originating motion, or in any other manner;

(x) "property" includes real and personal property and any interest therein;

(y) "prothonotary" means a prothonotary of the Supreme Court of Nova Scotia;

(z) "Rules" or "these Rules" mean the Civil Procedure Rules;

(aa) the expressions "taxed costs", "costs taxed", "costs to be taxed" and expressions of a like nature mean costs fixed, determined or taxed pursuant to Rule 63, and "taxed" means fixed, determined or taxed pursuant to Rule 63; [Amend. 02/89]

(ab) "taxing officer" means a taxing master or a judge of the Supreme Court, or an adjudicator of the Small Claims Court for accounts claimed in his or her court and within the court's jurisdiction, as provided by the **Barristers and Solicitors Act**;

[Amend. 29/03/96]

(ac) "vacation" means the long vacation which begins on the first day of July and ends on the 31st day of August of each year;

(ad) "wages" includes salaries, commissions, gratuities, and other compensation for labour or services. [Amend. 20/6/94]

[Amend. 05/02]

References to Rules, etc.

1.06. (1) Unless the context otherwise requires, any reference in these Rules to a specified rule or appendix is a reference to that rule of, or that appendix to, these Rules and any reference to a specified rule, paragraph, clause, or sub-clause, is a reference to that rule, that paragraph of the rule, that clause of the paragraph, or that sub-clause of the clause, in which the reference occurs. [E. 1/5(1)]

(2) Unless the context otherwise requires, any reference in these Rules to "these Rules" means to all the Civil Procedure Rules, and any reference to a specified Rule, such as Rule 3, means to rules 3.01 to 3.04, both inclusive, of Rule 3.

(3) Any reference in these Rules to anything done under a rule includes a reference to the same

thing done before the commencement of that rule under any corresponding rule of court ceasing to have effect on the commencement of that rule. [E. 1/5(2)]

1.07. Repealed

Authority of solicitor to act for a party under Rules

1.08. Where a rule provides that any act may be done or omitted by a party, or the service of a document may be made on or by a party, or the parties may by written agreement agree to any act or omission, the term "party" shall, unless the context otherwise requires, be deemed to mean the "party or his solicitor". [Amend. 12/12/74]

RULE 2

EFFECT OF NON-COMPLIANCE

Non-compliance with Rules

2.01.

(1) A failure in a proceeding to comply with any requirement of these Rules shall, unless the court otherwise orders, be treated as an irregularity and shall not nullify the proceeding, any step taken in the proceeding, or any document, or order therein. [E. 2/1(1)]

(2) Where there has been a failure in a proceeding as mentioned in paragraph (1), the court may, subject to paragraph (3) and such terms as it thinks just,

- (a) set aside, either wholly or in part, the proceeding;
- (b) set aside any step taken in the proceeding or any document, or order therein;
- (c) allow any amendment to be made under Rule 15;
- (d) make such other order as it thinks just. [E. 2/1(2)]

(3) The court shall not wholly set aside any proceeding or the originating notice by which it was begun, on the ground that the proceeding was required by any of these rules to be begun by an originating notice other than the one employed. [E. 2/1(3)]

Application to set aside for irregularity

2.02. An application to set aside for irregularity a proceeding, any step taken in a proceeding, or

any document, judgment or order therein, shall not be allowed unless it is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity. [E. 2/2(1)]

RULE 3

TIME

Computation of time

3.01. Unless the contrary otherwise appears, the computation of time under these Rules or any order of the court is governed by the following provisions:

(a) where the time limited for the doing of a thing expires or falls upon a Saturday or holiday, the thing may be done on the day next following that is not a Saturday or holiday;

(b) where there is a reference to a number of clear days or "at least" a number of days between two events, in calculating the number of days there shall be excluded the days on which the events happen;

(c) where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and included the day on which the second event happens;

(d) where a time is expressed to begin or end at, on, or with a specified day, or to continue to or until a specified day, the time includes that day;

(e) where a time is expressed to begin after or to be from a specified day, the time does not include that day;

(f) where anything is to be done within a time after, from, of or before a specified day, the time does not include that day;

(g) where there is a reference to a period of time consisting of a number of months after or before a specified day, the number of months shall be counted from, but not so as to include, the month in which the specified day falls, and the period shall be reckoned as being limited by and including

(i) the day immediately after or before the specified day, according as the period follows or precedes the specified day, and

(ii) the day in the last month so counted having the same calendar number as the specified day, but if the last month has no day with the same calendar number,

then the last day of that month;

(h) where any limited time less than six (6) days from or after any day or event is appointed or allowed for doing any act or taking any proceeding, Saturdays and holidays shall not be reckoned in the computation of the limited time.

Time Definition Act

3.02. The **Time Definition Act** applies to these Rules.

Extension, etc., of time

3.03.

(1) The court may, on such terms as it thinks just, extend or abridge the period within which a person is required or authorized by these Rules, or by any order, to do or abstain from doing any act in a proceeding. [E. 3/5(1)]

(2) The court may extend any period referred to in paragraph (1) although the application for extension is not made until after the expiration of the period. [E. 3/5(2)]

(3) The period within which a person is required by these Rules or any order to serve, file or amend any pleading or other document may be extended by consent in writing of the parties. [E. 3/5(3)]

Notice of intention to proceed after six months delay

3.04. Where six (6) months or more have elapsed since the last step in a proceeding, the party who desires to proceed shall, unless the court otherwise orders, give to the prothonotary and every other party not less than one (1) month's notice of his intention to proceed, and a notice on which no order was made is not a step for the purpose of rule 3.04. Neither a discontinuance nor an application to dismiss for want of prosecution is a step in a proceeding. [E. 3/6] [Amend. 12/88]

RULE 4

FORMS AND DOCUMENTS

Form

4.01. The forms in the appendices shall be used where applicable with such variations as the circumstances of the particular proceeding require. [E. 1/9]

Documents

4.02. (1) Unless the nature of the document renders it impracticable, every document prepared by a party for use in the court shall be legibly printed, typewritten, written or reproduced on durable white paper eleven inches (11") in length and eight and one-half inches (8 1/2") in width, with a margin on the left side of the face of the page and, where the reverse side is used, on the right side of the reverse. [E. 66/1]

(2) Transcripts of viva voce evidence to be used in a proceeding in the Supreme Court of Nova Scotia shall conform to this rule and to applicable provisions governing the case on appeal, except that each question put to a witness shall be preceded by the letter "Q" and may be numbered consecutively on each page, and each answer shall continue on the line on which the question ends and be preceded by the letter "A".

Copies of documents for other party

4.03. (1) Where a document prepared by or for a party for use in the court is printed, the party shall, on receiving a written request from any other party entitled to a copy of the document and on payment of the proper charges, supply the other party with such number of copies thereof, not exceeding ten, as may be specified in the request. [E. 66/3]

(2) A document is deemed to be printed if it is produced by type, lithography, stencil duplicating or photocopying or reproduced by other electronic means. [Amend. 09/91]

References to gender

4.04. Whenever the language in any form in the appendices to these Rules is gender specific, it may be amended so as to be neutral, inclusive of both masculine and feminine genders, or, if appropriate, to refer to a specific person by his or her correct gender designation. [Amend. 12/88]

4.05. repealed

RULE 4.A

FACSIMILE FILING

4.A.01 Any document, other than Appeal Books and Factums required by Rule 62 and Rule 65, may be delivered to and filed with the court by telephone transmission. [Amend. 14/12/98]

4.A.02 A document may be served by a party on a solicitor of record in accordance with subrule (3). [Amend. 29/5/98]

4.A.03 Subject to rule 4.02, a document which is delivered by telephone transmission shall include a cover page indicating:

- (a) the sender's name, address and telephone number;
- (b) the date and time of transmission;
- (c) the names of the parties in the proceeding and the file number, if one has been assigned;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted;
- (f) the name and telephone number of a person to contact in the event of transmission problems. [Amend. 29/5/98]

4.A.04 Subject to subrule (5), filing shall be deemed complete at the time the telephone transmission is filed by the court and the filed facsimile shall have the same force and effect as the original. [Amend. 29/5/98]

4.A.05 Documents received by telephone transmission shall only be filed on working days and all documents received after working hours will be filed the following working day after receipt and clearly marked on their face "RECEIVED BY FAX". [Amend. 29/5/98]

4.A.06 When a facsimile copy is incomplete, or of marginal quality, or from an unknown fax machine, source or person, or requires quality reproduction, or is deemed to be needed for review, security, comparison or otherwise, the prothonotary or the court may require that the original of any document received by telephone transmission be filed. [Amend. 29/5/98]

4.A.07 Upon failure to comply with any of the requirements of this Rule, the court may make such orders as are just, including but not limited to, an order striking pleadings or parts thereof, an order removing the facsimile document from the file, staying further proceedings until compliance is complete or dismissing the proceeding or any part thereof. [Amend. 29/5/98]

4.A.08 Any certified document sent by the court by telephone transmission in accordance with subrule (3) shall be deemed to be a certified original document notwithstanding the seal of the court is not impressed thereon. Such transmitted document may be further certified at the local office of the court by its proper officer. [Amend. 29/5/98]



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RULE 5

CAUSES OF ACTION AND PARTIES

Joinder of causes of action

5.01. Subject to rule 5.03, a party, whether suing in the same or different capacities, may join several causes of action in the same proceeding. [E. 15/1]

Joinder of parties

5.02. (1) Subject to rule 5.03, two or more persons may be joined together in one proceeding as plaintiffs or defendants where,

(a) if separate proceedings were brought by or against each of them, some common question of law or fact would arise in all the proceedings, and

(b) all rights to relief claimed in the proceeding, whether they are joint, several or alternative, are in respect of or arise out of the same transaction or series of transactions; or

(c) the court grants leave to do so. [E. 15/4(1)]

(2) Subject to the provisions of an enactment and unless the court otherwise orders, a plaintiff, who claims any relief that any other person is entitled to jointly with him, shall join all persons so entitled as parties to the proceeding, and any of them who does not consent to be joined as a plaintiff shall be made a defendant. [E. 15/4(2)]

(3) Where relief is claimed against a defendant who is jointly liable with some other person and also severally liable, the other person need not be made a defendant to the proceeding; but where persons are jointly, but not severally, liable under a contract and relief is claimed against some but not all of those persons in a proceeding in respect of the contract, the court may stay the proceeding until the other persons so liable are added as defendants. [E. 15/4(3)]

(4) It is not necessary that every co-defendant be interested in every cause of action or in all the

relief sought in a proceeding against him, but the court may order the co-defendant be compensated for being required to attend, or be relieved from attending, any part of the trial or hearing in which he has no interest.

Court may order separate trials, etc.

5.03. (1) Where a joinder of causes of actions or parties in a proceeding may embarrass or delay the trial or hearing of the proceeding or is otherwise inconvenient, the court may order separate trials or hearings, or make such other order as is just. [E. 15/5(1)]

(2) Where a counterclaim or a third party proceeding ought to be disposed of by a separate proceeding, the court may order the counterclaim or third party proceeding to be struck out or tried separately, or it may make such other order as is just. [E. 15/5(2)]

Misjoinder and nonjoinder of parties

5.04. (1) No proceeding shall be defeated by reason of the misjoinder or nonjoinder of any party or person, and the court may determine any question or issue in dispute in a proceeding so far as it affects the rights and interests of any party, saving the rights of any person who is not a party. [E. 15/6(1)]

(2) At any stage of a proceeding the court may, on such terms as it thinks just and either of its own motion or on application,

(a) order any party who is not, or has ceased to be, a proper or necessary party, to cease to be a party;

(b) order any person, who ought to have been joined as a party or whose participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated upon, be added as a party;

but no person shall be added as a plaintiff without his consent signified in writing or in such other manner as the court may order. [E. 15/6(2)]

Change of parties

5.05.

(1) Where a party dies or becomes bankrupt, or a corporate party is wound up or otherwise ceases to exist, but the cause of action survives, the proceeding shall not abate by reason of the death or bankruptcy or the corporate party having been wound up or ceasing to exist. [E. 15/7(1)]

(2) Where at any stage of a proceeding the interest or liability of any party is assigned or transmitted to or devolves upon some other person, the court may, on ex parte application, if it thinks it necessary in order to ensure that all matters in the proceeding may be effectually adjudicated upon, order the other person to be made a party to the proceeding in substitution for the party and the proceeding to be carried on upon such other terms and conditions as the court thinks just. [E. 15/7(2)]

(3) Where an order is made under paragraph (2), the court may order that, unless the other person becomes a party within the time specified in the order, the applicant, if the plaintiff in the proceeding, may have such

judgment as is just and any counter claim dismissed, or, if the defendant, may have the proceeding dismissed for want of prosecution and judgment on a counter claim. [E. 15/9]

(4) Any person served with an order made ex parte under this rule, may within ten (10) days after service of the order on him, apply to the court to have the order discharged or varied. [E. 15/7(5)]

Provisions consequential on making of order under rule 5.04 or 5.05.

5.06. Where an order is made under rule 5.04 or 5.05,

(a) the originating notice in the proceeding shall be amended accordingly within the time specified in the order, or, if no time is specified, within ten (10) days after the making of the order, and a reference to the order and the date on which the amendment is made shall be endorsed upon the amended notice;

(b) the person added or made a party under the order shall not become a party until the amended originating notice is served upon him;

(c) the rules as to service of an originating notice and filing a defence or appearing on the application shall apply, with any necessary modification, to the amended originating notice;

(d) when a person becomes a party in substitution for another party, all things done in the course of the proceeding before the making of the order shall, unless the court otherwise orders, have effect in relation to the new as they had to the former party, except that filing a defence by the new party shall not be dispensed with. [E. 15/8(4)]

Actions for possession of land

5.07. (1) The court may at any stage of a proceeding for possession of land permit any person, who is in possession of land, whether in actual possession or by a tenant, and who is not a party, to be added as a defendant. [E. 15/10(1)]

(2) An application by any person for an order under this rule may be made ex parte, supported by

an affidavit showing that he is in possession of the land in question or, if by a tenant, naming him. [E. 15/10(2)]

(3) A person added as a defendant under this rule shall serve a copy of the order on the plaintiff and file a defence within the period specified in the order or, if no period is so specified, within ten (10) days after the making of the order. [E. 15/10(3)]

Relator actions

5.08. Before the name of any person is used in a proceeding as a relator, that person shall give a written authorization to his solicitor to use his name and the authorization shall be filed in the prothonotary's office. [E. 15/11]

Representative proceeding

5.09. (1) Where numerous persons have the same interest in a proceeding, not being a proceeding mentioned in rule 5.10, the proceeding may be begun, and, unless the court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them. [E. 15/12(1)]

(2) At any stage of a proceeding under this rule the court may, on the application of the plaintiff, and on such terms, if any, as it thinks fit, appoint any one or more of the defendants or other persons to represent all, or all except one or more, of the persons having the same interest in the proceeding, and where, in exercise of the power conferred by this paragraph, the court appoints a person not named as a defendant, it shall make an order under rule 5.04 adding that person as a defendant. [E. 15/12(2)]

(3) An order given in a proceeding under this rule is binding on all persons represented in the proceeding as parties, but the court may,

(a) make it binding on any person not a party to the proceeding;

(b) exempt any person represented as a party on the proceeding from any liability under a judgment or order in the proceeding. [E. 15/12(3) (5)]

Representation of interested persons who cannot be ascertained, etc.

5.10.

(1) In a proceeding concerning,

(a) the administration of the estate of a deceased person;

(b) property subject to a trust;

(c) the construction of a written instrument, including an enactment;

the court may appoint one or more persons to represent any person, including any unborn or unascertained person, or the members of a class of persons who have a present, future, contingent, or unascertained interest in, or who may be affected by the proceeding, and who, or some of whom, cannot be readily ascertained or found. [E. 15/13(1) (2)]

(2) Where the person or persons appointed under paragraph (1) are parties to the proceeding, any order in the proceeding is binding upon any person or class so represented. [E. 15/13(3)]

(3) Where in a proceeding under paragraph (1), a compromise is proposed, and any person or member of the class referred to in the paragraph and interested in the compromise is not a party to the proceeding, but

(a) there is another person in the same interest who is a party and who assents to the compromise or on whose behalf the court sanctions the compromise, or

(b) the absent person or member of the class is represented by a person appointed under paragraph (1) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent person or member of the class and that it is expedient to exercise the power, may approve of the compromise and order that it shall be binding on the absent person or member of the class, and unless the order has been obtained by fraud or non-disclosure of material facts, the person or member of the class shall be bound accordingly. [E. 15/13(4)]

Representation of beneficiaries by trustees, etc.

5.11. (1) A proceeding may be brought by or against trustees, executors or administrators in their capacity as such without joining any person having a beneficial interest in the trust or estate; and any order granted or made in the proceeding shall be binding on those persons, unless the court otherwise orders, on the ground that the trustees, executors or administrators could not or did not represent the interests of these persons. [E. 15/14(1)]

(2) Paragraph (1) shall not limit the power of the court to order any person having such a beneficial interest to be made a party or to make an order under rule 5.10. [E. 15/14(2)]

Representation of deceased person interested in a proceeding

5.12. (1) Where it appears to the court that a deceased person had an interest in a matter in question in a proceeding and has no personal representative, the court may proceed in the absence

of a person representing the estate of the deceased person to appoint a person to represent the estate for the purposes of the proceeding, and any order made or granted in the proceeding shall bind the estate of the deceased person to the same extent as it would have been bound had a personal representative of that person been a party to the proceeding. [E. 15/15(1)]

(2) Before making an order under this rule, the court may require notice of the application to be given to any person having an interest in the estate. [E. 15/15(2)]

Representation of deceased mortgagee

5.13. (1) Where a mortgagee has died, a proceeding for foreclosure and sale may be taken and carried on by his personal representative, and he shall represent the heirs and other persons interested in the estate of the deceased.

(2) Except where otherwise ordered, it shall not be necessary to make the heirs-at-law or devisees, or widow of a deceased mortgagor, or of a deceased owner of the equity of redemption, parties to a proceeding for foreclosure or foreclosure and sale, but the personal representative of the deceased person may be made a party and be proceeded against, and he shall represent the heirs-at-law, devisees and widow, or any of them.

(3) Where there is no such personal representative, the court may, before issuing an originating notice, appoint a party to represent the heirs-at-law, devisees, widow and other persons interested in the estate of the deceased, or any of them, and make such order as is necessary for promoting or protecting the claims and rights of any person who may be interested in the mortgaged premises or the proceeds thereof.

(4) It shall not be necessary to make beneficiaries or subsequent incumbrancers defendants in a proceeding for foreclosure or foreclosure and sale, but the court may direct notice to be given to the beneficiaries or subsequent incumbrancers by mailing by registered mail a copy of the order and advertisement of sale, and after mailing of the copies any beneficiary or subsequent incumbrancer shall be bound by the proceeding in the same manner as if he had originally been made a party, and any person so notified may within twenty (20) days thereafter apply to the court to discharge, vary or add to the order, or for such other relief in the proceeding as he is entitled to, and the court may make such order as is just. [Amend. 07/95]

Declaratory judgment

5.14. No proceeding shall be open to objection on the ground that only a declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not any consequential relief is or could be claimed. [E. 15/16]

Conduct of a proceeding

5.15. The court may give the conduct of a proceeding to such person as it thinks fit. [E. 15/17]

Public Officers: Death or separation from office

5.16. (1) When a public officer is a party to a proceeding in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, his successor automatically becomes the party with no abatement of the proceeding, and unless the court otherwise orders any further step in the proceeding shall be taken in the name of the substituted party, and any mis-nomer not affecting the substantive rights of the parties shall be disregarded.

(2) When a public officer brings or opposes a proceeding in his official capacity, he may be described as a party by his official title rather than by name, but the court may require his name to be added.

Proceeding by a person entitled to legal aid, etc.

5.17. (1) Any person who lacks the financial means to commence or defend a proceeding may apply to the court to be exempt from the payment of all or any of the cost and fees which may be payable by him as a party in a proceeding. [Amend. 12/12/74]

(2) When an applicant under paragraph (1) has satisfied the court that

(a) he has complied with the legal aid regulations of the Nova Scotia Barristers' Society, or of any provincial plan providing legal aid or similar services, with respect to commencing or defending a proceeding thereunder, or

(b) he is entitled to the exemption applied for even though he has not complied with the legal aid regulations; and

(c) he files with the court a legal opinion that sets out all the material facts in issue in the proceeding and establishes that the applicant has reasonable grounds for commencing or defending the proceeding;

the court may,

(i) exempt the applicant from the payment of all or any of the costs and fees in the proceeding;

(ii) grant such other order as is just.

(3) A solicitor or counsel who gives a legal opinion shall not, except as may be allowed or provided for by the regulations of the Nova Scotia Barristers' Society or of any provincial plan providing legal aid or similar services, take, or agree to take, or seek to obtain any fee, profit or reward for his services without the consent of the court, and he shall be guilty of contempt of court if he does so.

(4) No person exempted under this rule from the payment of any fees or costs, shall discontinue, settle or compromise the proceeding without the leave of the court.

(5) All the provisions of these Rules shall, with any necessary modification, apply to any person exempted under this rule from the payment of any fees or costs.

[Amend. 29/11/96; 06/01]

RULE 6

INFANTS AND MENTALLY INCOMPETENT PERSONS

Interpretation

6.01. In this Rule, "Act" means the **Incompetent Persons Act** or the **Adult Protection Act**.

[Amend. 29/11/96]

Person under disability shall commence a proceeding, etc., by litigation guardian

6.02. (1) A person under disability shall commence or defend a proceeding by his litigation guardian. [E. 80/2(1)]

(2) Unless a rule otherwise provides, anything in a proceeding that is required or authorized by the rules to be done by a party shall or may, if the party is a person under disability, be done on his behalf by his litigation guardian. [E. 80/2(2)]

(3) A litigation guardian of a person under disability shall act by a solicitor. [E. 80/2(3)] [Amend. 20/6/94]

Appointment of litigation guardian

6.03. (1) Unless the court otherwise orders or an enactment otherwise provides, any person may be a litigation guardian of a person under disability without being appointed by the court. [E. 80/3(2)]

(2) Where a person is appointed as the guardian of a mentally incompetent person under the Act, the guardian shall, unless the court otherwise orders, be the litigation guardian of that person in any proceeding. [E. 80/3(3)]

(3) Where a party becomes a mentally incompetent person and a guardian has not been appointed for him under the Act, the court shall appoint a litigation guardian for the party. [E. 80/3(5)]

(4) Where a party has a litigation guardian in a proceeding, no other person shall, unless the court otherwise orders, act as the litigation guardian. [E. 80/3(4)]

(5) When it is in the interest of a party who is a person under disability, the court may remove, appoint, or substitute a litigation guardian and make such other order as is just.

(6) Before a person acts as litigation guardian of a person under disability there shall be filed in the office of the prothonotary an affidavit of the proposed litigation guardian in which the person:

(a) consents to act as litigation guardian in the proceeding;

(b) confirms giving written authority to a named solicitor to act in the proceeding;

(c) states his or her ordinary residence and that of the person under disability;

(d) sets out his or her relationship, if any, to the person under disability;

(e) states that he or she has no interest in the proceeding adverse to that of the person under disability;

(f) attaches a copy of the infant's birth certificate where the person under disability is an infant;

(g) acknowledges potential liability to pay personally any costs awarded against him or her or against the person who is under disability. [Amend. 20/6/94]

(7) Unless a guardian has been appointed under the Act, the solicitor for a person under disability before acting in a proceeding shall file in the prothonotary's office a certificate certifying that he knows or believes,

(a) the person to whom the certificate relates is an infant or mentally incompetent person, giving the grounds of his knowledge or belief, and if a mentally incompetent person, that a guardian has not been appointed for him under the Act, and

(b) the litigation guardian of the person under disability has no interest in the proceeding adverse to that person. [E. 80/3(8)(c)]

Appointment of litigation guardian where a person under disability does not oppose proceeding

6.04.

(1) Where no defence is filed or appearance made on the hearing of a proceeding against a person under disability, the plaintiff before continuing the proceeding shall obtain an order from the court appointing a litigation guardian for the person under disability by whom he may defend or appear. [Amend. 20/6/94]

(2) Unless the court otherwise orders, notice of the application for the order under paragraph (1) shall be personally served on the person under disability in the manner provided by rule 10.03 six (6) clear days before the hearing of the application. [E. 80/6]

Application to discharge or vary certain orders

6.05. Any application to the court on behalf of a person under disability for the discharge or variation of an order made *ex parte* under rule 5.05 shall be made,

(a) when a litigation guardian is acting for that person in the proceeding in which the order is made, within ten (10) days after the service of an order on that person;

(b) when there is no such litigation guardian, within ten (10) days after the appointment of the guardian to act for him. [E. 80/7]

[Amend. 20/6/94]

Discovery, etc.

6.06. Rules 18 to 23, both inclusive, and Rule 26 shall apply to a person under disability and to his litigation guardian. [E. 80/9] [Amend. 20/6/94]

Compromise, etc., by person under disability

6.07. Where in any proceeding money is claimed by or on behalf of a person under disability, no settlement, compromise, payment, or acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without approval of the court. [E. 80/10]

Approval of settlement

6.08. (1) Where an agreement is reached for the settlement or compromise of a claim of a person under disability, whether alone or with others, and it is desired to obtain the court's approval of the settlement or compromise, the proceeding may be begun by an originating notice (application inter partes) in Form No. 9.02A, and the court may make such order as is just. [E. 80/11]

(2) On such application for approval there shall be filed:

(a) An affidavit of the litigation guardian setting out the material facts, an opinion that the settlement is in the best interests of the person under disability and any other reasons supporting the proposed settlement, and the position of the litigation guardian in respect of the settlement;

(b) Unless the court otherwise orders, the consent in writing where the person under disability is a minor over the age of sixteen (16) years;

(c) A copy of the proposed order for settlement;

(d) Where the solicitor who acts for the minor requests that legal

fees be paid out of the settlement proceeds, a detailed statement of account setting out the basis on which the total amount of fees and disbursements is charged or calculated, certified by the solicitor that all services have or will be completed and containing the approval or otherwise of the litigation guardian;

(e) An affidavit of the proposed trustee consenting to act as trustee, setting out the present standing, health and circumstances of the person under disability, and accepting the terms of trust imposed by the draft order submitted with the application;

(f) An undertaking that the proposed trustee shall enter into a bond for the performance of the trustee's duties as ordered by the court and such bond shall be in such terms with or without surety as the court may require;

(g) An undertaking that the trustee shall account to the court and the person under disability for the monies received on behalf of the person under disability, upon termination of the trust, or, if the person under disability is an infant, when the person reaches the age of majority. [Amend. 20/6/94]

Control of money recovered by person under disability

6.09. Where an order is granted providing for the recovery of money by a person under disability or that a proceeding be dismissed or stayed upon payment of the money to that person, the money shall, unless the court otherwise orders, be dealt with in accordance with the order. [E. 80/12]

RULE 7

PARTNERS

Proceeding by or against a firm or partners

7.01.

(1) Any two or more persons claiming to be entitled, or alleged to be liable, as partners in respect of a cause of action, shall bring or oppose any proceeding on behalf of or against such persons in the name of the firm of which they were partners at the time the cause of action accrued, unless

(a) it is otherwise authorized or required by an order of the court; or

(b) the proceeding is on behalf of or against a firm in the name of the firm against or by a member of the firm. [E. 81/1]

(2) Where partners bring or oppose a proceeding in the name of a firm, Rule 6 shall not apply to any partner who is a person under disability at any material time.

Disclosure of partners' names

7.02.

(1) Where partners bring or oppose a proceeding in the name of a firm, the other party may serve on the firm a notice requiring it forthwith to furnish to the other party a written statement of the names and places of residence of all persons who were partners of the firm when the cause of action accrued, and if the notice is not complied with, the court may order the proceeding to be stayed or make such other order as is just. [E. 81/2(1)]

(2) Upon receipt of the statement referred to in paragraph (1) the other party shall forthwith serve a true copy of the originating notice in the proceeding and a true copy of the statement upon each of the persons named in the statement by mailing the same by ordinary mail to each such person at his place of residence as shown in the statement.

(3) Any person served with the originating notice and statement under paragraph (2) may, within twenty (20) days of its receipt, apply to the court to have his name struck off the statement on the ground that he was not a partner of the firm at any material time and the court may make such order as is just.

(4) Where service has been effected as provided in paragraph (2) on each of the persons named as partners in the statement referred to in paragraph (1), the proceeding shall, unless the court otherwise orders, continue in the name of the firm and the same consequences shall ensue as if the partners so named had been named as plaintiffs or defendants in the originating notice. [E. 81/2(2)]

Where a partner opposes a proceeding or denies the partnership

7.03. (1) Subject to paragraph (2), any partner who opposes a proceeding brought against a defendant firm shall do so in the name of the firm and any defence shall set out the name of each

partner who filed it, but all subsequent proceedings shall continue in the name of the firm and any defence so pleaded or raised by any partner shall be treated as a defence of the firm. [E. 81/4(1)]

(2) Any person served with an originating notice as a partner may,

(a) apply to the court to set aside the service of the originating notice on him on the ground that he was not a partner or liable as such at any material time and the court may grant such order as is just; or

(b) file a defence or appear on the hearing of an application in the name of the defendant firm and in the defence or on the hearing deny that he was a partner or liable as such at any material time; before such a defence may be raised on the hearing of the application, at least three (3) days notice of the denial shall be given to the plaintiff. [E. 81/4(3) (4)]

(3) Upon receipt of a defence containing a denial that a person was a partner or liable as such at any material time, the plaintiff may apply to the court to strike out the defence or he may leave the question to be subsequently decided by the court at such time and in such manner as it may decide. [E. 81/4(3)]

Order against firm and partners

7.04.

(1) Notwithstanding the provisions of Rule 6 in the case of a person under disability, the court in a proceeding by or against a firm may make an order against,

(a) the firm; and

(b) any partner of the firm who,

(i) having been served as a partner with an originating notice has, where the service has not been set aside, failed to file a defence or appear on the hearing of the application;

(ii) has filed a defence to or appeared on the hearing of the application as a partner;

(iii) has admitted in the pleading or on the record that he was a partner;

(iv) was adjudged to be a partner;

(v) having been served with a true copy of the originating notice

and statement under rule 7.02(3), has failed to have the court strike his name off the statement.

(2) Where a party has obtained an order against a firm in a proceeding and claims that any person, other than a partner referred to in paragraph (1), is liable to satisfy the order as a member of the firm, the party may, upon serving notice of the application upon the person personally, apply for leave to obtain an order against that person in the proceeding, and where on the application,

(a) the person does not dispute his liability, the court may make such order as it thinks just; or

(b) the person disputes his liability, the court may order the liability of the person to be determined in any manner it thinks just. [E. 81/5(4) (5)]

(3) Where in a proceeding against a firm none of the partners file a defence on behalf of the firm, judgment in default of defence may be entered under Rule 12 against the firm and any partner coming within the provisions of paragraph (1).

Enforcing order in a proceeding between partners, etc.

7.05. (1) An execution or receivership order to enforce an order granted or made in,

(a) a proceeding by or against a firm in the name of the firm against or by a member of the firm; or

(b) a proceeding by a firm in the name of the firm against a firm in the name of the firm where those firms have one or more members in common, shall not issue except with the leave of the court. [E. 81/6(1)]

(2) The court under paragraph (1) may give such directions, including directions as to the taking of accounts and the making of inquiries, as may be just. [E. 81/6(2)]

Application to person carrying on business in another name

7.06. An individual carrying on business within the jurisdiction in a name or style other than his own name, may bring or oppose a proceeding in that name or style as if it were the name of a firm, and rules 7.01 to 7.05 shall, with any necessary modification, apply as if he were a partner and the name in which he carries on business were the name of his firm. [E. 81/9]

RULE 8

INTERVENTION BY A THIRD PERSON

Intervenor becoming a party [Amend. 12/12/74]

8.01.

(1) Any person may, with leave of the court, intervene in a proceeding and become a party thereto where,

(a) he claims an interest in the subject matter of the proceeding, including any property seized or attached in the proceeding, whether as an incident to the relief claimed, enforcement of the judgment therein, or otherwise;

(b) his claim or defence and the proceeding have a question of law or fact in common;

(c) he has a right to intervene under an enactment or rule.

(2) The application for leave to intervene shall be supported by an affidavit containing the grounds thereof and shall have attached thereto, when practical, a pleading setting forth the claim or defence for which intervention is sought.

(3) On the application, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties to the proceeding and it may grant such order as it thinks just.

Intervenor as *amicus curiae*

8.02. Any person may, with the leave of the court and without becoming a party to a proceeding, intervene in the proceeding as a friend of the court for the purpose of assisting it.



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 9

COMMENCEMENT OF PROCEEDINGS

Mode of commencing a proceeding

9.01. Subject to rule 9.06(2) every proceeding, other than a proceeding under Rule 57 and Rules 59 to 61, shall be commenced by filing an originating notice and a copy thereof in the prothonotary's office, and the notice is deemed to have been issued on the day it is filed. [E. 5/1] [Amend. 12/12/74]

Commencing a proceeding (application)

9.02. A proceeding, other than a proceeding under Rule 57 and Rules 59 to 61,

(a) in which the sole or principal question at issue is, or is likely to be, a question of law, or one of construction of an enactment, will, contract, or other document;

(b) in which there is unlikely to be any substantial dispute of fact;

(c) which may be commenced by an originating application, originating motion, originating summons, petition, or otherwise under an enactment;

shall be commenced by filing an originating notice (application inter partes) in Form 9.02A in a proceeding between parties, and by an originating notice (ex parte application) in Form 9.02B in an ex parte proceeding. [E. 5/3/4/5]

Use of petition in certain proceedings

9.03.

The following proceedings shall be commenced by a petition,

(a) a matrimonial cause under the *Divorce Act* under Rule 57; [Amend. 05/02/03]

(b) a winding up of a company under the *Winding Up and Restructuring Act* under Rule 59; [Amend. 05/02/03]

(c) a proceeding under the **Controverted Elections Act (Nova Scotia)** under Rule 60.
[Amend. 05/02/03]

Commencing any other proceeding

9.04. Every other proceeding, which is not within the provisions of rules 9.02 or 9.03, shall be commenced by filing an originating notice (action) in Form 9.04A. [E. 5/2]

Duty of prothonotary on filing an originating notice

9.05.

(1) Upon receipt of an originating notice, the prothonotary shall

(a) insert on the originating notice a file number and the date of filing,

(b) impress thereon the seal of his office, and

(c) issue the originating notice and file a true copy thereof in his office.

(2) The file number assigned to a proceeding shall consist of,

(a) the letter "S" for a proceeding in the Supreme Court, [Amend. 29/03/96]

(b) the letters "SF" for a proceeding in the Supreme Court (Family Division);
[Amend. 5/99]

(c) a letter distinctive of the office where the proceeding is commenced, viz.

H - Halifax. **K** - Kentville. **AT** - Antigonish.

BW - Bridgewater. **T** - Truro. **Pha** - Port Hawkesbury.

Y - Yarmourth. **AM** - Amherst. **SN** - Sydney.

AR - Annapolis. **P** - Pictou. and **D** - Digby [Amend. 29/03/96; 01/01]

(d) the number assigned to the proceeding.

(3) All documents subsequently filed or delivered in the proceeding shall bear the same file number.

(4) A proceeding permanently transferred to the office of another prothonotary shall be assigned a file number proper to that office which shall thereafter be the file number of the proceeding.

(5) Notwithstanding the foregoing provisions of this Rule, the file number assigned to proceedings under the **Divorce Act (Canada)** shall continue to consist of a number prefix and be numbered consecutively upwards, without any distinguishing letter. [Amend. 29/03/96]

(6) The file number prefix assigned to proceedings under the **Divorce Act (Canada)** shall be distinctive of the office where the proceeding is commenced, viz.

1201 - Halifax. **1204** - Kentville. **1210** - Antigonish.

1203 - Bridgewater. **1207** - Truro **1217** - Port Hawkesbury

1208 - Yarmouth. **1202** - Amherst. **1206** - Sydney.

1209 - Annapolis Royal. **1205** - Pictou. **1213** - Digby
[Amend. 29/03/96; 01/01]

Issue of concurrent originating notice

9.06. (1) A prothonotary may, at any time before an originating notice ceases to be valid, issue one or more concurrent originating notices, each of which shall be a true copy of the originating notice as amended pursuant to any order, and shall bear his seal of office and the following certificate completed by him or on his behalf:

CONCURRENT ORIGINATING NOTICE

I certify this is a concurrent originating notice, [as amended] filed in my office at , Nova Scotia, and issued in this proceeding on the day of , 19 .

PROTHONOTARY (Seal) [E. 6/6]

(2) Where an originating notice or concurrent originating notice is to be served upon a person

elsewhere than in Canada or one of the states of the United States of America, the prothonotary shall not issue the notice until an order has been obtained under rule 10.07.

(3) If an order under rule 10.07 provides a time for filing a defence or other details that differ from those set out in the originating notice as

issued, the prothonotary shall amend the originating notice or the copy thereof on file to conform to the order and shall issue a concurrent originating notice as amended.

(4) A copy of an originating notice or concurrent originating notice that bears the seal of the prothonotary is evidence of the contents of the notice and of the date and place of its issue, without proof of the seal.

Duration and renewal of originating notice, etc.

9.07. (1) An originating notice is valid for a period of six (6) months beginning with the date of issue of the originating notice, and, when a party has not been served within the period, the court may, for just cause, at any time before or after its expiration, order the originating notice, to be renewed for a period of six (6) months from the date when it would otherwise expire or from such later date as the court may order. [E. 6/8/(1)]

(2) Upon the filing of the order, the prothonotary shall endorse the originating notice, including any concurrent notice or renewal thereof, with a memorandum as follows: "Renewed for the period of six (6) months from..... by order of", and shall sign and seal it with the seal of his office. Any concurrent originating notice subsequently issued shall be endorsed with a copy of the memorandum. [E. 6/8(3)]

(3) A concurrent original notice is valid for the period for which the originating notice is valid, including any renewal of that period.

(4) If no defence is filed and if a plaintiff fails to file the Originating Notice (Action) and Statement of Claim together with a completed Affidavit of Service within three (3) months after the end of the period of validity set out in rule 9.07(1), the prothonotary shall give seven (7) days notice to the parties that an application will be made to the court for an Order dismissing the claim for non-compliance with this Rule.

[Amend. 20/6/94; 05/10/96]

Right to sue or defend in person or by a solicitor

9.08. (1) Except in the case of a litigation guardian as referred to in rule 6.02(3), any person, whether or not he sues as a trustee or personal representative or in any other representative capacity, may commence, carry on or defend a proceeding in the court by a solicitor or in person.

[Amend 31/1/98]

(2) A body corporate may commence, carry on or defend a proceeding by a duly-authorized officer resident in the province.

[Amend. 27/10/80]

FORM 9.02a

(rule 9.02)

ORIGINATING NOTICE

(APPLICATION INTER PARTES)

19 no.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN: A.B. PLAINTIFF,

and

C.D. DEFENDANT

TO THE DEFENDANT:

TAKE NOTICE that an application will be made on behalf of the plaintiff to the judge presiding in chambers at the Court House, in

, Nova Scotia, on day, the day of , 19 , at the hour of o'clock in the noon or so soon thereafter as the application can be made for (set out a statement of the nature of the claim being made or the questions sought to be determined, and the relief or remedy sought).

AND TAKE NOTICE that in support of the application will be read the affidavit of , etc., a true copy of which is hereto attached, and such other material as counsel may advise, a true copy of which will be delivered to you or your solicitor not later than four (4) clear days before the hearing of the application. [Amend. 5/10/96]

AND FURTHER TAKE NOTICE that on the hearing of the application, the judge, may make an order in favour of the plaintiff in your absence and without further notice unless you or your

solicitor:

(a) cause to be delivered to the solicitor of the plaintiff at the address named herein for service, not later than two (2) clear days before the hearing of the application, a true copy of any affidavit or other material that you or your solicitor intend to read on the hearing of the application, and

(b) you or your solicitor appear on the hearing of the application at the time and place appointed for the hearing.

ISSUED at _____, Nova Scotia, this ___ day of _____, 20__.

(Prothonotary's Seal)

(signed)

[A.B. Plaintiff] whose address for service is and whose telephone and fax numbers (if available) are _____.

or

[M.N. Solicitor for the plaintiff]

whose address for service is _____ and whose telephone number is _____

and whose fax number is _____.

TO: [C.D. Defendant] whose address for service is and whose telephone and fax numbers (if available) are .

or

[O.P. Solicitor for the defendant] whose address for service is _____

and whose telephone number is and whose fax number is _____.

[Amend. 6/97]

[ATTACH AFFIDAVITS]

INDORSEMENTS

Received on _____, the ___ day of _____, 20__.

This originating notice was served by me on the defendant, at _____, on _____, the ____ day of _____, 20____, before the hour of o'clock in the noon.

Indorsed on _____, the ____ day of _____, 20____.

(signed)

(address)

[Amend. 12/12/74]

AFFIDAVIT OF SERVICE

I, _____, of _____ Street, (place) , Nova Scotia, (occupation) (sheriff for the County of), make oath and say that I did on _____, the ____ day of _____, 20____, before the hour of ____ o'clock in the _____noon, serve with the within originating notice by leaving a true copy of the same with him personally at

, and that I indorsed the date of the service thereon on , the _____ day of _____, 20____.

SWORN to at _____)

in the County of _____)

this ____ day of _____)

20____, before me _____)

A COMMISSIONER OF THE)
SUPREME COURT OF NOVA)
SCOTIA)

FORM 9.02b

(RULE 9.02)

originating notice (ex parte application)

19 No.

IN THE SUPREME COURT OF NOVA SCOTIA

IN THE MATTER OF AN APPLICATION OF A.B. FOR . . .

(set out the nature of application and the enactment, if any, under which it is made).

TAKE NOTICE that an application will be made by the applicant to the judge presiding in chambers at the Court House, in _____, Nova Scotia, on ____ day, the ____ day of _____, 20__, at the hour of ____ o'clock in the ____ noon, or as soon thereafter as the application can be made for (set out a statement of the nature of the claim being made or the questions sought to be determined, and the relief or remedy sought).

AND TAKE NOTICE that on the hearing of the application will be read the affidavit of _____, etc. that is filed with this notice, and such other material as counsel may advise, a true copy of which will be filed.

ISSUED at _____, Nova Scotia, this ____ day of _____, 20__.

(signed) M.N., of _____ Street,
_____, Nova Scotia,

Solicitor for the Applicant.

form 9.04A

(RULE 9.04)

originating notice (action)

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN; A.B. PLAINTIFF,

and

C.D. DEFENDANT.

TO THE DEFENDANT:

TAKE NOTICE that this proceeding has been brought by the plaintiff against you, the defendant, in respect of the claim set out in the statement of claim annexed to this notice.

AND TAKE NOTICE that the plaintiff may enter judgment against you on the claim, without further notice to you, unless within (insert the period of time prescribed by the rules or order) days after the service of this originating notice upon you, excluding the day of service, you or your solicitor cause your defence to be delivered by mail or personal delivery to,

(a) the office of the prothonotary at the Court House,

Street, in Nova Scotia, and

(b) to the address given below for service of documents on the plaintiff;

provided that if the claim is for a debt or other liquidated demand and you pay the amount claimed in the statement of claim and the sum of \$_____

(or such sum as may be allowed on taxation) for costs to the plaintiff or his solicitor within six (6) days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the day of , 19 .

[A.B. Plaintiff] whose address for service is and whose telephone and fax numbers (if available) are .

or

[M.N. Solicitor for the plaintiff]

whose address for service is and whose telephone number is _____ and whose fax number is _____.

TO: [C.D. Defendant] whose address for service is and whose telephone and fax numbers (if available) are .

or

[O.P. Solicitor for the defendant] whose address for service is

and whose telephone number is and whose fax number is .

[Amend. 6/97]

[ATTACH STATEMENT OF CLAIM]

INDORSEMENTS

Received on , the day of , 19 .

This originating notice was served by me on the defendant, at

, on , the day of , 19 , before the hour of o'clock in the noon.

Indorsed on , the day of , 19 .

(signed)

(address)

AFFIDAVIT OF SERVICE

I, , of Street, (place) , Nova Scotia, (occupation) (sheriff for the County of), make oath and say that I did on , the day of , 19 , before the hour of o'clock in the noon, serve with the within originating notice by leaving a true copy of the same with him personally at , and that I endorsed the date of the service thereon on , the day of , 19 .

SWORN to at _____)

in the County of _____)

this __ day of _____)

20__, before me _____)

_____)

A COMMISSIONER OF THE)

SUPREME COURT OF)

NOVA SCOTIA)

[Amend. 12/12/74]

RULE 10

ORIGINATING NOTICES AND OTHER DOCUMENTS: SERVICE

General provisions

10.01. (1) Unless personal service is expressly prescribed by an enactment or rule or a court so orders, a document need not be served personally.

(2) Service of a true copy of a document, or a facsimile copy of the document, shall be service of the original document, but if the person served so requests, the person shall be shown the original document or a copy thereof certified by the prothonotary as being a concurrent or true copy, or a faxed copy of the original document. [Amend. 31/1/98]

Service of an originating notice

10.02. (1) Except on an ex parte application or where a rule otherwise provides, an originating notice shall be served personally on each defendant by the plaintiff or his agent. [E. 10/1]

(2) An originating notice (application inter partes) and an originating notice (ex parte application) and supporting affidavit shall be served as provided by rules 37.05 and 37.06.

Personal service of a document

10.03.

(1) Personal service of a document is effected on,

(a) an individual, by leaving a copy of the document with him;

(b) a body corporate, by leaving a true copy of the document with the president, chairman, mayor, warden or other chief officer of the body corporate, or with the manager, secretary, city or town manager or clerk, cashier or other similar officer thereof, or in the manner provided by section 9 of the **Corporations Registration Act**; [E. 65/3] [Amend. 6/90; 01/01]

(c) a partnership sued in the partnership name, by leaving a true copy of the document with one or more of the partners, or with a person at the principal place of business of the partnership business there, or in the manner provided by section 18 of the **Partnerships and Business Names Registration Act**; provided that, if the partnership has been dissolved before the proceeding is commenced and a declaration of dissolution or a new declaration has been filed as provided in the Act, the document shall be served on every person sought to be made liable; [E. 81/3] [Amend. 6/90] [Amend. 05/02/03]

(d) an infant, by leaving a true copy of the document with his father, mother or

guardian, or if there is no father, mother or guardian, with the person with whom he resides or in whose care he is, or with the person appointed by the court; [E. 80/16]

(e) a mentally incompetent person, by leaving a true copy of the document with his guardian, or if there is no guardian, with the person with whom he resides or in whose care he is, or with the person appointed by the court. [E. 80/16]

(2) Where a solicitor indorses on a copy of a document that he accepts service on behalf of a person, the document shall be deemed to have been personally served on the person on the date on which the endorsement was made. [E. 10/1(2)]

(3) Where an originating notice has not been duly served on a defendant, but he unconditionally files a defence or unconditionally appears on the application, the notice is deemed to have been personally served on him on the date he files or appears. [E. 10/1(3)]

Originating notice: Service on agent of non-resident principal

10.04. (1) Where a proceeding is against a principal out of the jurisdiction and the proceeding arose through dealings with or through his agent who resides or carries on business within the jurisdiction, then personal service of the originating notice may be effected on the principal by serving a true copy of it on the agent if at the time of service his authority as such agent has not been determined. [E. 10/2(1)]

(2) When the agent is served with an originating notice under paragraph (1), a true copy of the notice shall be sent within two (2) days by ordinary mail to the principal at his address out of the jurisdiction otherwise the service on the principal shall be deemed to be voided. [E. 10/2(3)]

(3) Unless the court otherwise orders, the originating notice served upon the agent and principal shall provide thirty (30) days for filing a defence or give thirty (30) days notice of the application. [E. 10/2(2)]

Originating notice: Service in pursuance of contract

10.05. (1) Where the court has jurisdiction in a proceeding in respect of a contract, or a contract confers jurisdiction on the court, and in the contract the parties have agreed on

(a) a place of service;

(b) a mode of service;

(c) a person upon whom service may be effected, service of the originating notice in the proceeding may be made in accordance with the contract, and when so made the notice shall be deemed to have been personally served. [E. 10/3(1)]

(2) A contractual stipulation for service of a document that commences a proceeding shall not invalidate a service otherwise valid.

Originating notice: Service in certain actions for possession of land

10.06.

Where an originating notice is indorsed with a claim for the possession of land, the court may,

(a) if satisfied on an ex parte application that no person appears to be in possession of the land and that service could not otherwise be effected on a defendant, authorize service on that defendant to be effected by posting a copy of the originating notice in a conspicuous part of the land;

(b) if satisfied on such an application that no person appears to be in possession of the land and that service could not otherwise have been effected on a defendant, order that service already effected by affixing a copy of the originating notice to some conspicuous part of the land, shall be treated as good service on that defendant;

(c) make such other order as it thinks just. [E. 10/4]

Originating notice: Service out of the jurisdiction with leave

10.07.

(1) Subject to rule 10.04, where an originating notice is to be served on a person elsewhere than in Canada or one of the states of the United States of America, service of the notice on the person is only permissible with the leave of the court. [E. 11/(1)]

(2) The court may, upon an application under paragraph (1) supported by affidavit or other evidence stating that in the belief of the deponent the plaintiff has a good cause of action and showing in what place or country the defendant is or probably may be found, order that the originating notice be served on the defendant in such place or country and make such other order as it thinks fit. [E. 11/4(1)]

(3) An order made under paragraph (2) shall limit a time, depending upon the place of service,

within which the defendant is to file his defence or appear on the application. [E. 11/4(4)]

(4) Upon service being effected as authorized by an order made under paragraph (2), the court has jurisdiction to proceed and adjudicate in the proceeding to all intents and purposes, in the same manner, to the same extent, and with a like effect as if the defendant had been duly served within the jurisdiction of the court.

Originating notice: Service out of jurisdiction (how effected

10.08. (1) Where personal service of an originating notice is to be effected in any other province of Canada, in any state of the United States of America or in any other country that has acceded to the Convention on the Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters (Hague Convention #14, 1965), service may be effected,

(a) by anyone having authority within the province, state or country to serve judicial documents, or

(b) in the manner provided by articles 2 through 7 of the Convention and following Forms 10.A (1), 10.A (2) and 10.A (3).

(2) Where a country acceded to the Service Abroad Convention but objected under article 10 of the Convention, personal service may not be effected by way of rule 10.08(1)(a).

(3) Where service of an originating notice is to be effected in any country that has not acceded to the Service Abroad Convention but has entered into a bi-lateral treaty with Canada respecting service of civil documents, service may be effected,

(a) if consistent with the treaty, by personal service effected by anyone having authority within the country to serve judicial documents, or

(b) where service in the manner provided in paragraph (a) is inconsistent with the treaty, by such means as are prescribed by the treaty.

(4) Where personal service of an originating notice is to be effected upon a person in a country not covered by rules 10.08(1) and (3), service may be effected by a literate adult capable of swearing an affidavit or providing similar proof according to the laws of that country.

[Amend. 05/02]

Originating notice: Service out of jurisdiction: proof of service

10.09.

(1) Service of an originating notice out of the jurisdiction may be proved by,

(a) an affidavit of service of the person who served it; or

(b) an official return establishing that the notice has been served on a person personally or in accordance with the law of the place, being a return,

(i) by a Canadian or British consular authority in that place, or

(ii) by the government or judicial authorities of that place.

(2) Unless the contrary is proved, a document purporting to be an affidavit or return as is referred to in paragraph (1) shall be sufficient evidence of the facts stated therein.

[E. 11/5(7)] [Amend. 05/02]

Originating notice: Substituted service

10.10.

(1) Where it is impracticable for any reason to serve an originating notice personally, the court may make an order for substituted service.

(2) Substituted service of an originating notice is effected by taking such steps as the court has ordered to bring the notice to the attention of the person to be served. [E. 65/4]

Pleadings: Service

10.11. A statement of claim shall be served with an originating notice as provided in Rule 10; a defence, as provided in Rule 11; a counterclaim or defence thereto, as provided in Rule 16; and a third party notice or defence thereto, as provided in Rule 17.

Other documents: Effecting service

10.12.

(1) Service on any person of a document, not being a document required by these rules to be served personally, may be effected,

(a) by leaving the document or a copy at the person's proper address;

(b) by mailing the document or a copy addressed to the person at his proper address;

(c) by transmitting a facsimile of the document addressed to the person at the person's fax number; [Amend. 29/5/98]

(d) in such other manner as the court may order. [E. 65/5(1)]

[Amend. 29/5/98]

(2) For the purpose of paragraph (1), the proper address of a party includes their fax number and shall be, [Amend. 29/5/98]

(a) the address for service or fax number of the party's solicitor as shown on the originating notice or pleading; [Amend. 29/5/98]

(b) where a party brings or opposes a proceeding in person, the party's address for service or fax number within the jurisdiction as shown on the originating notice or pleading. [Amend. 29/5/98]

(3) For the purposes of paragraph (1), the proper address or fax number of a person who is not a party, or of a party whose proper address is not shown on the originating notice or pleading shall be, [Amend. 29/5/98]

(a) in any case, the business address or fax number of the solicitor who is acting for the person in the proceeding in which service of the document in question is to be effected; [Amend. 29/5/98]

(b) in the case of an individual, the person's usual or last known address or fax number; [Amend. 29/5/98]

(c) in the case of individuals who are suing or being sued in the name of a firm, the principal or last known place of business or fax number of the firm within the jurisdiction; [Amend. 29/5/98]

(d) in the case of a body corporate, the registered office or the principal office thereof, or the fax number if any appearing on its correspondence; [Amend. 29/5/98]

(e) in the case of an infant, the place of residence or business of his father, guardian or litigation guardian, or if there is no such person, of the person with whom he resides or in whose care he is, or of the person appointed by the court, and the fax number of any such person; [Amend. 29/5/98]

(f) in the case of a mentally incompetent person, the place of residence or business of his guardian or litigation guardian, or if there is no such guardian or litigation guardian, of the person with whom he resides or in whose care he is, or of the person appointed by the court and the fax number of any such person. [E. 65/2(2)] [Amend. 29/5/98]

(3.1) A document that is served by fax shall include a cover page indicating the name, address and

telephone number of the sender; the identity of the person being served; the date and time of the transmission; the total number of pages transmitted, including the cover page; the fax number of the sender; and, the name and telephone number of a person to contact in the event of transmission problems. [Amend. 05/02/03]

(4) Unless the contrary is proven, any document served by post shall be deemed to be served,

(a) where the delivery is local, on the second day following that upon which the letter, envelope or wrapper containing the document is posted, and in proving such service it shall be sufficient to prove that the letter, envelope or wrapper containing the document was properly addressed and put in the post office with the postage prepaid thereon;

(b) where the delivery is not local, on the day the document would in the normal course of post be delivered.

(4.1) Where a solicitor or a party agrees to accept service of a document by email or electronic document exchange, service is effected when the document is sent. [Amend. 05/02/03]

(5) Any document served by fax shall be deemed to be served when transmitted unless transmitted after four o'clock in the afternoon or on a weekend, in which case the provisions of paragraph 10.13 shall apply. [Amend. 29/5/98]

(6) Where a person attends during regular office hours at the office of a solicitor of a party to serve a document that does not commence a proceeding and the office of the solicitor is closed or no one is in attendance to accept service of the document, service may be effected by mailing the document, postage prepaid, at any time during the same day addressed to the solicitor at his office, and the document shall be deemed to have been served at the time of the attendance at the office of the solicitor. [Amend. 29/5/98]

(7) Nothing in this rule shall be taken as prohibiting personal service of any document or as affecting any enactment which provides for the manner in which a document may be served. [E. 65/5(3)] [Amend. 29/5/98]

Effect of service after certain hours

10.13. Any document, other than an originating notice, personal service of which is effected after four o'clock in the afternoon on a Friday or is effected on a Saturday or after four o'clock in the afternoon on any other weekday shall, for the purpose of computing any period of time after service of that document, be deemed to have been served on the Monday following that Friday or on the day following that other weekday, as the case may be. [E. 65/7] [Amend. 12/12/74]

Affidavit of service

10.14.

(1) The service of any document may be proved by an affidavit, to which is attached as an exhibit a copy of all documents served, which shall state by whom the document was served, the day of the week, the time of day, and the date on which it was served, where it was served and how. [E. 65/8] [Amend. 31/1/98]

(2) A written acceptance of service of a document by a party's solicitor or his agent need not be verified by affidavit.

No service required in certain cases

10.15. Where under a rule, a document is required to be served on a person but is not required to be served personally, and, at the time when service is to be effected, the person is in default as to filing a defence or appearing on an application or has no address for service, the document need not be served on that person unless the court otherwise orders or a rule otherwise provides. [E. 65/9]

Service of order, judgment or notice on infant or incompetent person

10.16.

Where an order or judgment requires an infant or mentally incompetent person to do or refrain from doing an act, other than pursuant to a form of discovery, or where a notice is for the committal of such a person, the order, judgment or notice shall also be served on the infant or mentally incompetent person unless the court otherwise orders.

FORM 10.A(1) **(RULE 10.a(1))**

REQUEST FOR SERVICE ABROAD OF JUDICIAL OR EXTRAJUDICIAL DOCUMENTS

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, _____ 196 .

Identity and address of the applicant

Address of receiving authority

The undersigned applicant has the honour to transmit (in duplicate (the documents listed below and, in conformity with article 5 of the above-mentioned Convention, requests prompt service of one (1) copy thereof on the addressee, i.e.,

(identity and address) _____

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention*.

(b) in accordance with the following particular method (sub-paragraph (b) of the first paragraph 5)*.

(c) by delivery to the addressee, if he accepts it voluntarily (second paragraph of article 5)*.

The authority is requested to return or to have returned to the applicant a copy of the documents (and one of the annexes* (with a certificate as provided on the reverse side.

List of documents

_____ Done at _____ , the

_____ Signature and/or stamp.

FORM 10.A(2)
(RULE 10.a(1))

SUMMARY OF THE DOCUMENT TO BE SERVED

Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters, signed at The Hague, _____ 196 .

(article 5, fourth paragraph)

Name and address of the requesting authority: _____

Particulars of the parties*: _____

JUDICIAL DOCUMENT**

Nature and purpose of the document: _____

Nature and purpose of the proceedings and, where appropriate, the amount in dispute:

_____/FONT>

Date and place for entering appearance**: _____

_____ Court which has given
judgment**: _____

_____ Date of Judgment**:

Time limits stated in the document**: _____

EXTRAJUDICIAL DOCUMENT**

Nature and purpose of the document: _____

Time limits stated in the document**: _____

* If appropriate, identity and address of the person interested in the transmission of the document.

** Delete if inappropriate.

FORM 10.A(3)
(RULE 10.a(3))

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1) that the document has been served*

- the (date) _____

- at (place, street, number) _____

_____ - in one of the following methods authorized by article 5 -

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the

Convention*.

(b) in accordance with the following particular method*:

(c) by delivery to the addressee, who accepted it voluntarily*.

The documents referred to in the request have been delivered to:

- (identity and description of person) _____

- relationship to the addressee (family, business or other): _____

2) that the document has not been served, by reason of the following

facts*:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement*:

Annexes

Documents returned: _____

Done at _____, the _____

Signature and/or stamp.

In appropriate cases, documents establishing
the service:

*Delete if inappropriate.



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RULE 11

DEFENCES; FILING AND SERVICE; SETTING ASIDE ORIGINATING NOTICE

The defence

11.01. (1) A defence shall be in Form 11.01A and shall specify,

(a) the defendant's place of residence; and

(b) the name and business address of his solicitor, or if he has no solicitor or place of residence within the jurisdiction, an address for service within the jurisdiction.

(2) When a defendant fails to give an address for service or gives an address for service that is not genuine, the court may set aside the defence. [E. 12/3]

Filing a defence

11.02.

(1) Except as provided for in rule 14.24(3), when a defendant is served with an originating notice (action) in Form 9.04A the defendant shall

(a) within twenty (20) days after service of the statement of claim where the defendant is served in Nova Scotia;

(b) within forty (40) days after service of the statement of claim where the defendant is served elsewhere in Canada or in the United States of America; or

(c) within sixty (60) days after service of the statement of claim, where the defendant is served anywhere else,

file a defence and copy in the office of the prothonotary out of which the notice was issued.

[Amend. 29/11/96; 06/01]

(2) A defendant, that is a body corporate, shall file its defence by a solicitor or a duly authorized officer resident in the province. [E. 12/1(2)]

[Amend. 29/11/96]

(3) Two or more defendants, who defend by the same solicitor, need file only one defence. [E. 12/1(4)]

Duty of prothonotary on filing defence

11.03. Upon receipt of a defence and copy, the prothonotary shall,

- (a) insert on the defence and copy, the file number and date of filing,
- (b) file the defence in his office, and
- (c) return to the defendant the copy of the defence which shall bear the following certificate completed by the prothonotary or with his authority, [Amend. 6/90]

CERTIFIED COPY OF DEFENCE

I certify this is a true copy of the within defence filed in my office at , Nova Scotia, on the day of , 19 .

PROTHONOTARY (Seal)

Service of defence

11.04. A defendant shall serve the certified copy of the defence on the plaintiff on the same day he receives it from the prothonotary, by delivering it or by posting it by mail. [E. 12/4]

Application to set aside originating notice, etc.

11.05. A defendant may, at any time before filing a defence or appearing on an application, apply

to the court for an order,

- (a) setting aside the originating notice or service thereof on him;
- (b) declaring that the originating notice has not been duly served on him;
- (c) setting aside any order giving leave to serve the originating notice on him elsewhere than in Canada or one of the states of the United States of America;
- (d) extending the time for filing a defence or appearing on an application;

and the application shall not be deemed to be a submission to the jurisdiction of the court. [E. 12/8]

FORM 11.01a

DEFENCE

(rule 11.01)

[Insert title of originating notice]

TO THE PROTHONOTARY AND PLAINTIFF(S)

TAKE NOTICE that the Defence attached hereto is filed by the defendant whose address for service is _____ Street,

Nova Scotia, and who is defending [by , Solicitor for the defendant] [in person]. [Amend. 6/97]

AND FURTHER TAKE NOTICE that the address of the solicitor for the defendant is Street, , Nova Scotia, telephone/fax number , at which address service of documents in this proceeding may be served as effectively as if served upon the defendant personally.

[Where the defendant has no solicitor or place of residence within the province, give an address within the jurisdiction for service on the defendant].

DEFENCE

1. [Set out each allegation of the statement of claim that the Defendant admits.]

2. [Set out the allegations of fact in support of the defence of the defendant].

3. [Set out the allegations of law in support of the defence of the Defendant.]

COUNTERCLAIM

4. [Set out allegations in support of a counterclaim.]

Filed this _____ day of _____, 19 ____ .

(signed) O.P., of

_____ Street

_____, Nova Scotia,

telephone/fax number

Solicitor for the Defendant.

TO: M.N., of

_____ Street

_____, Nova Scotia,

_____, telephone/fax number

Solicitor for the Plaintiff.

[Amend. 29/11/96]

RULE 12

DEFAULT OF DEFENCE

Default of defence: Liquidated demands, damages, detention, etc.

12.01.

(1) Where an originating notice contains any one of the claims mentioned in paragraph (2) and a defendant fails to file a defence thereto within the time prescribed by rule 11.02 or within such time as the court may order, the plaintiff may enter judgment against the defendant and continue the proceeding against any other defendant.

[Amend. 06/01]

(2) The judgment may be for costs, and

(a) where a claim is for a liquidated demand only, for a sum not exceeding the claim, and where part of the claim is for interest at an unspecified rate, then for an additional sum for the interest to the date of entering judgment at the rate of six per cent (6%) per annum; [Amend. 12/12/74]

(b) where a claim is for unliquidated damages only, for damages to be assessed;

(c) where a claim relates to the detention of goods only, for the delivery of the goods or their value to be assessed;

(d) where a claim is for the possession of land only, for possession of the land, provided if there is more than one defendant judgment shall not be enforced against any defendant until judgment for possession of the land has been entered against all the defendants. [E. 13/1/2/3/4]

(3) Where interlocutory judgment is entered and the damages or value of the goods are assessed and costs taxed, a final judgment may be entered for the recovery of the damages, or the delivery of the goods or their value as assessed, and costs as taxed.

Default of defence: Mixed claims

12.02. Where an originating notice issued against any defendant is indorsed with two or more of the claims mentioned in rule 12.01 and no other claim and the defendant fails to file a defence, the plaintiff may, after the time limited for defending, enter against the defendant such judgment in respect of each such claim that he would be entitled to enter under those rules as if it was the only claim indorsed on the originating notice and continue the proceeding against the other defendants, if any. [E. 13/5]

Default of defence: Other claims

12.03.

(1) Where an originating notice issued against any defendant is indorsed with any claim not mentioned in rule 12.01, or any of the claims mentioned in rule 12.01 together with any other claim and the defendant, or all the defendants if there is more than one, fails or fail to file a defence or appear on the hearing under the originating notice, the plaintiff may, after the expiration of the time limited for defending or appearing apply to the court for judgment and the court shall give such judgment as is just. [Amend. 12/12/74]

(2) Where the plaintiff makes such a claim as is mentioned in paragraph (1) against more than one defendant, and any defendant makes default as mentioned in that paragraph and any other defendant defends or appears, the plaintiff may,

(a) when his claim against any defendant in default is severable from his claim against the other defendants, apply under that paragraph for judgment against the defendant in default and continue the proceeding against any other defendant;

(b) set the proceeding down for judgment against the defendant in default when the proceeding is set down for trial or hearing against any other defendant. [E. 19/7]

Default of defence: In mortgage actions

12.04.

(1) Where an originating notice contains a claim in respect of a mortgage and a defendant fails to file a defence, the plaintiff on the application for foreclosure or foreclosure, sale and possession, shall:

(a) produce a certificate of a Solicitor setting out all the registered instruments affecting the title of the lands being foreclosed as and from the date of the deed into the original mortgagor of the mortgage being foreclosed;

(b) establish by affidavit to the satisfaction of the court that:

(i) the originating notice has been served upon the defendant, or substituted service effected;

(ii) the defendant has not filed a defence within the time limited for filing it; and

(iii) the allegations contained in the originating notice are true;

(c) produce a statement of account verified by the affidavit of a person having personal knowledge of the facts, showing in detail all payments which have been made on account of principal, interest and any authorized charges since the date of the mortgage, the latest renewal or the latest assumption, whichever is latest, and the dates of the payments, and containing such other proof as the circumstances of the proceeding require, to entitle the plaintiff to the order

applied for; provided that

(i) where a statement of account or a settlement, which has been agreed in writing by any person then liable on the mortgage, is produced, it shall not be necessary to go farther back than the date thereof;

(ii) where the mortgage has been transmitted to an executor, administrator or assignee of the mortgagee, the statement of account up to the date of the transmission may be proved by information and belief on oath or by other proof to the satisfaction of the court, and an affidavit or oath shall not be required from the mortgagee or any intermediate assignee denying any payment to them of the principal or interest. [Amend. 07/95]

(2) On the application, the court may,

(a) require further and better proof of the statement of account when the mortgagor or assignee, or the party entitled to redeem, denies by affidavit or upon oath the correctness of the statement of account;

(b) ascertain and determine the amount due to the plaintiff or refer the matter to a referee to take an account; [Amend. 07/95]

(c) where it appears that there are persons other than the defendant, such as subsequent encumbrancers having an interest in the mortgaged property who ought to be present at the taking of the accounts, order the plaintiff or referee to give notice to such persons to attend the taking of the same;

(d) direct a sale of the mortgaged property on such terms as the court thinks fit without previously determining the priorities of encumbrancers or the amount due on their encumbrances;

(e) give such directions as are necessary with respect to continuing the proceeding against any defendant who has filed a defence in the proceeding;

(f) make such other order as is just.

(3) All subsequent accounts may from time to time be taken, subsequent costs taxed and necessary proceedings had for redemption, by any of the parties entitled to redeem the mortgaged property as if specific directions for this purpose were contained in the order made under paragraph (2).

(4) The court may, on the application of a purchaser of mortgaged property at a sale, grant a recovery order at any time to the applicant as a party or intervenor.

Proof on default

12.05.

(1) Judgment on default shall not be entered against a defendant under Rule 12 unless,

(a) an affidavit is filed by or on behalf of the plaintiff proving due service of the originating notice on the defendant; or

(b) the plaintiff produces the originating notice indorsed by the defendant's solicitor with a statement that he accepts service of the originating notice on the defendant's behalf.

(2) Where an application is made for an order affecting a defendant who has failed to file a defence or appear on a hearing under an originating notice, the court shall be satisfied in such manner as it thinks fit that the defendant has failed to defend or appear. [E. 13/7]

Setting aside default judgment

12.06. The court may, on such terms as it thinks just, set aside or vary any default judgment entered in pursuance of Rule 12. [E. 13/9]

Demand of notice

12.07. (1) In lieu of filing a defence or appearing on a hearing under an originating notice, a defendant may file and deliver a demand of notice.

(2) Upon receipt of a demand of notice, the plaintiff may proceed as if the defendant had failed to file a defence or appear on the hearing except that,

(a) the defendant, unless it is otherwise ordered, shall be entitled to receive notice of all subsequent steps taken in the proceeding against him; and

(b) final judgment may only be obtained on notice to him.

Right of defendant to notice

12.08. Unless the court otherwise orders or a rule otherwise provides, a defendant who fails to defend, appear on the hearing under an originating notice, or deliver a demand of notice, shall not

be entitled to receive notice of any subsequent steps taken in the proceeding against him, other than the assessment of damages when ten (10) days notice thereof by ordinary mail shall be given to the defendant.

Default of defence: Counterclaims and third party notice

12.09.

Where a party fails to file a defence to a counterclaim or third party notice, the provisions of Rule 12, with any necessary modification, shall apply.

RULE 13

SUMMARY JUDGMENT

Application for a summary judgment

13.01. After the close of pleadings, any party may apply to the court for judgment on the ground that:

- (a) there is no arguable issue to be tried with respect to the claim or any part thereof;
- (b) there is no arguable issue to be tried with respect to the defence or any part thereof; or
- (c) the only arguable issue to be tried is as to the amount of any damages claimed.

[Amend. 05/02]

Disposal of application

13.02.

On the hearing of an application under rule 13.01, the court may on such terms as it thinks just,

- (a) give such directions as may be required for the examination of any party or witness, or for the production of any books or document or copy thereof, or for the making of any further inquiries; [E. 14/4(4)]

- (b) grant judgment for any party on the claim or any part thereof; [Amend. 05/02]
- (c) impose terms upon the plaintiff, including in particular a stay of execution of any judgment until the determination of the defendant's counterclaim or third party proceeding; [E. 14/3(2)]
- (d) allow the defendant to defend the claim or part thereof, either unconditionally or on terms relating to giving security, time, the mode of trial, or otherwise; [E. 14/4(3)]
- (e) where the defence is to amount only, order an assessment of the amount or reference or accounting to determine the amount;
- (f) give directions as to the trial or hearing of the claim or part thereof; [E. 14/6]
- (g) with the consent of all the parties, dispose of the proceeding finally in a summary manner, with or without pleadings or affidavits and without appeal;
- (h) where the claim is for the delivery up of a specific article, order the delivery up of the article; [E. 14/9]
- (i) where the claim is for the possession of land on the ground of forfeiture for non-payment of rent, grant relief against the forfeiture; [E. 14/10]
- (j) award costs; [E. 14/7]
- (k) grant any other order or judgment as it thinks just.

Right to continue with residue of proceeding

13.03.

Where a party obtains judgment under rule 13.02, the plaintiff may continue the proceeding in respect of any remaining part of the claim or any other claim or against any other defendant. [Amend. 05/02]

Judgment on admission of facts or documents

13.04. The court may grant a summary judgment or order under rule 21.03 on an application based on admission of facts or documents in a pleading or otherwise.

Application to a counterclaim or third party proceeding

13.05. The provisions of this rule shall apply, with any necessary modification, to a counterclaim or third party proceeding to the same extent as if the counterclaim or third party proceeding was a separate proceeding. [E. 14/5]

Setting aside judgment

13.06.

Any judgment given against a party who does not appear at the hearing of an application under Rule 13 may be set aside or varied by the court on such terms as it thinks just. [E. 14/11]



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RULE 14

PLEADINGS

Service of pleadings

14.01.

(1) A statement of claim shall be served with an originating notice as provided in rules 10.02 to 10.10, a defence, as provided in rule 11.04; a counterclaim and defence thereto, as provided in rules 16.01 and 16.02; and a third party notice and defence thereto, as provided in rules 17.03 and 17.04 [E. 18/1/2/3]

(2) All other pleadings shall be served by filing the pleadings in the office of the prothonotary and serving a true copy on the opposing party, within ten (10) days after service of the pleading to be answered and excluding the day of such service.

(3) The time for serving any pleading may be extended on order of the court or the written consent of the parties.

Service of pleadings during vacation

14.02. Pleadings shall be served during the vacation. [E. 18/5]

Form of Pleadings

Pleadings: Formal requirements

14.03.

(1) Subject to the rules relating to a counterclaim and a third party notice, every pleading, or the notice to which it is attached, shall contain,

(a) at the beginning thereof,

(i) the title of the proceeding setting out the file number of the proceeding, the name and division of the court, the names in full, if known, of the parties but not their addresses or occupations, and when a party brings or opposes a proceeding in a representative capacity, the capacity in which the party brings or opposes the proceeding,

(ii) the name of the pleading; and

(b) at the end thereof,

(i) the date of issue by, or filing with, the prothonotary,

(A) where the party brings or opposes a proceeding by a solicitor, the name, the phone number, the fax number, and the address for service of his/her solicitor;

(B) where the party brings or opposes a proceeding in person, his/her name, phone and fax numbers (if available), and an address within the jurisdiction where documents may be served upon that party; and

(ii) the name and address of the solicitor or party on whom the pleading will be served. [Amend. 6/97]

(2) Every pleading shall, if necessary, be divided into paragraphs, numbered consecutively, and each allegation so far as convenient shall be contained in a separate paragraph.

(3) Dates, sums and other numbers may be expressed in a pleading in figures and not in words.

(4) Every pleading shall be signed by the party's solicitor, or by the party if he sues or defends in person. [E. 18/6]

Rules Applicable to All Pleadings

Facts, not evidence to be pleaded

14.04. Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, but not the evidence by which the facts are to be proved, and the statement shall be as brief as the nature of the case admits. [E. 18/7(1)]

[Amend. 12/12/74]

Law may be pleaded

14.05. A party by his pleading may raise any point of law. [E. 18/11]

Presumed facts need not be pleaded

14.06. Unless an opposing party has specifically denied it in his pleading, a party need not plead any fact if it is presumed by law to be true or the burden of disproving it lies on the other party. [E. 18/7(3)]

Conditions precedent

14.07.

An allegation of the performance or occurrence of all conditions precedent necessary for the case of a party is implied in his pleading and need not be set out, and when an opposing party intends to contest the performance or occurrence of any condition precedent he shall specify the condition and its non-performance in his pleading. [E. 18/7(4)]

Document or conversations

14.08.

The effect of any document or the purport of any conversation referred to in the pleading shall, if material, be briefly stated, and the precise words of the documents or conversation need not be stated except in so far as those words are themselves material. [E. 18/7(2)]

Pleading in the alternative

14.09. A party may plead claims or defences in the alternative.

Matter may be pleaded whenever arising

14.10. A party may in any pleading plead any matter that has arisen at any time, whether before or

after the issue of the originating notice. [E. 18/9]

Departure

14.11. Unless a party amends his pleading, he shall not in any pleading make any allegation of fact or raise any new ground or claim, inconsistent with a previous pleading of his. [E. 18/10]

Particulars of pleading

14.12.

(1) Subject to paragraph (2), every pleading shall contain the necessary particulars of any claim, defence or other matter pleaded, including

(a) particulars of any misrepresentation, fraud, breach of trust, wilful default or undue influence on which the party pleading relies, and

(b) where a party pleading alleges any condition of the mind of any person, including any disorder or disability of mind or any malice, or fraudulent intention, or other condition of mind except knowledge, particulars of the facts on which the party relies. [E. 18/12(1)(4)]

(2) Where it is necessary to give particulars of debt, expenses, or damages, and those particulars exceed three (3) folios, they may be set out in a separate document referred to in the pleading and the pleading shall state whether the document has already been served and, if so, when or whether it is to be served with the pleading. [E. 18/12(2)]

Additional Rules of Pleading Applicable to a Statement of Claim, Counterclaim and Third Party Notice

Claims for relief

14.13.

A statement of claim, counterclaim, and third party notice, shall state specifically,

(a) particulars of any damages, whether special or general, that are ascertained or ascertainable and capable of being calculated in terms of money, and these damages with the amount thereof shall be claimed as special damages;

(b) particulars of any other general damages, but the amount thereof need not be stated;

(c) any other specific relief or remedy being claimed, other than a claim for general or other relief, but costs need not be claimed. [E. 18.15]

Additional Rules of Pleading Applicable to a Defence and Any

Subsequent Pleading

Traverse and confession and avoidance

14.14.

Subject to rules 14.15 and 14.18, a party in his defence or in any subsequent pleading shall,

(a) specifically admit every material allegation of fact in a pleading of the opposite party which is not disputed by him, and all allegations of fact in the pleading which are not specifically admitted shall be deemed to be denied and need not be traversed, either specifically or generally; [E. 18/13]

(b) where it is intended to prove a different version of facts than that relied upon by the opposing party, plead his version of the facts; and

(c) specifically plead any matter, for example, performance, release, payment, any relevant statute of limitation, statute of frauds, fraud, or any act showing illegality that,

(i) might make any claim or defence of the opposing party not maintainable;

(ii) if not specifically pleaded, might take the opposing party by surprise;

(iii) raises issues of fact not arising out of the preceding pleadings. [E. 18/8(1)]

Specific denial of representative capacity, partnership or corporate existence

14.15.

Unless a party specifically denies,

(a) the right of any other party to claim in a representative capacity;

(b) the alleged constitution of a partnership or firm;

(c) the alleged incorporation of a corporate party;

it shall not be necessary for the other party to prove it.

Denial of contract, promise or agreement

14.16. Where a contract, promise or agreement is alleged in any pleading, a bare denial of the same by the opposing party or silence with respect thereto in a defence shall be construed only as a denial in fact of the express contract, promise or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of the contract, promise or agreement whether with reference to the statute of frauds or otherwise.

Denials in claims arising from debts, bills of exchange, etc.

14.17.

Where a proceeding involves any of the following claims, a party shall specifically deny any material allegation of fact made in support of the claim of the opposing party which he disputes:

(a) a claim for a debt or liquidated demand in money, for example, the order, contract, delivery or amount claimed in a claim for goods bargained and sold or sold and delivered, or the receipt of money in a claim for money had and received;

(b) a claim upon a bill of exchange, promissory note or cheque, for example, the making, drawing, endorsing, accepting, presenting or dishonouring of the document.

Defence (Claim for possession of land

14.18. A defendant to a proceeding for possession of land must plead specifically every ground of defence on which he relies, and a plea that he is in possession of the land by himself or his tenant is not sufficient. [E. 18/8(2)]

Defence of tender

14.19. Where a defence of tender before the commencement of a proceeding is pleaded, the defence may not be relied upon until the sum of money alleged to have been tendered is paid into court under rules 41.01 and 41.02 and notice of the payment is served upon the parties. [E. 18/16]

Defence of set-off

14.20. Where a claim by a party to a sum of money, whether the amount is ascertained or not, is relied on as a defence to the whole or part of a claim made by an opposing party, it may be included in a defence and set-off against the claim, whether or not it is also added as a counterclaim. [E. 18/17]

Costs of improper denials

14.21. Where the court is of opinion that any allegation of fact that is denied, or not admitted, whether in a pleading or after notice to admit facts or otherwise, ought to have been admitted, the court may make an order with respect to any extra costs occasioned by its having been denied or not admitted.

Rules of Pleading Applicable to Subsequent Pleadings and Close of Pleadings

Pleadings subsequent to the defence

14.22.

(1) No pleading subsequent to a defence, or a defence to a counterclaim or third party notice, shall be filed or served without the written consent of the parties or the leave of the court.

(2) Nothing in paragraph (1) shall be deemed to limit the right of a party to amend a pleading or to demand or file particulars.

Close of pleadings

14.23. (1) Unless the court otherwise orders, pleadings are deemed to be closed upon the filing and service of the defence or the defence to the counterclaim, and thereupon all material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. [E. 18/14/20]

(2) The pleadings in a proceeding are deemed to be closed as provided in paragraph (1) notwithstanding that any request or order for particulars has been made but has not been complied with at that time. [E. 18/20(2)]

Demand for Particulars

Demand for particulars

14.24. (1) Where a party, upon receipt of a notice in writing demanding a further and better statement of the nature of the claim or defence of the party, or further and better particulars of any matter stated in any pleading, affidavit or statement of facts of the party, fails to supply them within the time specified in the notice, which time shall not be less than ten (10) days, the court

may, upon such terms as are just, order the particulars to be delivered within a specified time, or, if no time is specified, then the particulars shall be delivered within ten (10) days from the date of the order. [E. 18/12(3)]

(2) The statement or particulars shall be filed and attached to the pleading, affidavit or statement of facts to which the same refers.

(3) The party demanding the statement or particulars shall, unless an order otherwise provides, have ten (10) days for pleading after delivery of the statement or particulars.

Striking out Pleadings

Striking out pleadings, etc.

14.25.

(1) The court may at any stage of a proceeding order any pleading, affidavit or statement of facts, or anything therein, to be struck out or amended on the ground that,

(a) it discloses no reasonable cause of action or defence;

(b) it is false, scandalous, frivolous or vexatious;

(c) it may prejudice, embarrass or delay the fair trial of the proceeding;

(d) it is otherwise an abuse of the process of the court; and may order the proceeding to be stayed or dismissed or judgment to be entered accordingly.

(2) Unless the court otherwise orders, no evidence shall be admissible by affidavit or otherwise on an application under paragraph (1)(a). [E. 18/19]

Res Judicata

RULE 15

AMENDMENT

Amendment of a document filed in a proceeding

15.01.

A party may amend any document filed by him in a proceeding, other than an order,

(a) once without the leave of the court, if the amendment is made at any time not later than twenty (20) days from the date the pleadings are deemed to be closed or five (5) days before the hearing under an originating notice;

(b) at any other time if the written consent of all the parties is filed;

(c) at any time with the leave of the court.

Amendments by the court

15.02.

(1) The court may grant an amendment under rule 15.01 at any time, in such manner, and on such terms as it thinks just. [E. 20/5(1)]

(2) Notwithstanding the expiry of any relevant period of limitation, the court may allow an amendment under paragraph (1),

(a) to correct the name of a party, notwithstanding it is alleged that the effect of the amendment will be to substitute a new party if the court is satisfied that the mistake was genuine and not misleading or such as to cause any reasonable doubt as to identity of the party intending to bring or oppose the proceeding; [E. 20/5(3)]

(b) to alter the capacity in which a party brings or opposes a proceeding if the capacity, after the amendment is made, is one in which at the date of issue of the originating notice, third party notice, or the making of the counterclaim, the party might have brought or opposed the proceeding. [E. 20/5(4)]

(3) The court may allow an amendment under paragraph (2) notwithstanding the effect of the amendment will be to add or substitute a new cause of action, if the new cause of action arises out of the same or substantially the same facts as the original cause of action. [E. 20/5(5)]

Form and service of the amended document

15.03.

(1) Where any amendment would make a document difficult or inconvenient to read, a new document, as amended, and bearing the date of the original document, shall be filed and served upon all the parties. [E. 20/10(1)]

(2) In any case, a copy of the original document with the amendments inserted thereon, or a new copy as amended under paragraph (1), shall be filed and served upon all the parties.

(3) Personal service on a party of an amended originating notice, counterclaim, or third party notice shall not be required if the original notice has been so served.

(4) When a document is amended, it shall be marked with the date on which the amendment was made and the date of the order and consent, if any, under which it was amended, in the following manner:

"Amended the _____ day of _____, 19____, by [order of _____] [consent of the parties] dated the _____ day of _____, 19____."

[E. 20/10(2)]

(5) Any amendment shall be underlined or otherwise designated to distinguish it from the original wording of the document.

(6) Where an amendment is granted by the court during a trial and it is incorporated into the record, an order need not be taken out and the amended document need not be filed or served unless the court so orders. The relevant extract from the record, certified as correct by the prothonotary, shall be evidence of the order and amendment.

Time limited for serving and filing an amended document

15.04. An amended document shall be filed and served,

(a) where the document is amended without the leave of the court, within the time allowed under rule 15.01 for amending the same or as agreed to by the parties;

(b) where the document is amended with the leave of the court, within the time limited by the order, or if not so limited within ten (10) days from the date of the order.

Filing defence to amend statement of claim, etc.

15.05.

(1) Where an amended statement of claim, counterclaim or third party notice is served on an opposing party,

(a) the opposing party, if he has already served his defence, may amend his defence, and

(b) the period for filing and serving his defence or amended defence, shall be either the period fixed by rules 11.02 and 11.04 for the service of the defence or the period of ten (10) days after the amended pleading is served on him, whichever period expires later. [E. 20/3(2)]

(2) Where a party has filed and served a defence to a statement of claim, counterclaim or third party notice which is subsequently amended and served on him, the party, if he does not serve an amended defence as provided in paragraph (1), shall be taken to rely upon his original defence in answer to the amended pleading served upon him. [E. 20/3(6)]

Application for disallowance of amendment made without leave

15.06.

Where a party has amended a document without leave, the opposing party may within ten (10) days after the service on him of the amended document apply to the court to disallow the amendment or any part thereof, and the court may grant such order as it thinks just. [E. 20/4]

Amendment of judgments and orders

15.07.

Clerical mistakes in judgments or orders, or errors arising therein from any accidental mistake or omission, or an amendment to provide for any matter which should have but was not adjudicated upon, may at any time be corrected or granted by the court without appeal. [E. 20/11]

Reversal or variation of order

15.08.

Where a party is entitled to:

- (a) maintain a proceeding for the reversal or variation of an order upon the ground of a matter arising or discovered subsequent to the making of the order;
- (b) impeach an order on the ground of fraud;
- (c) suspend the operation of an order;
- (d) carry an order into operation;
- (e) any further or other relief than that originally granted.

He may apply in the proceeding for the relief claimed.

Federal Business Development Bank v. Silver Spoon Desserts Enterprises Ltd. et al., S.H. 110272, Hood, J., February 28, 2000. S451/15. After a foreclosure and deficiency judgment, the mortgagor commenced an action against the mortgagee and others with respect to the sale of chattels. Information obtained in this second action led to an application by the mortgagors pursuant to r. 15.08(a) to vary or set aside the deficiency judgment, based upon "fresh

evidence". *Held*, application dismissed. The new evidence must meet three criteria to set aside the judgment:

1. it must be such as to have an important influence on the decision,
2. it must be apparently credible, and
3. it must be such as it could not have been obtained by reasonable diligence before the judgment.

Criteria 2 and 3 were met. The test of due diligence should not be applied as strictly where the material alleged to be fresh evidence was material in the hands of the other party; even absent impropriety. Using the least strict test under 1, the fresh evidence would not have had an important influence upon the court's assessment of market value of the property, given the court's reliance upon an expert appraisal.

Power to amend on appeal

15.09.

In appeals brought before it, the court shall have all the powers and duties in reference to amendments that are conferred on the court under Rule 15.

Costs of amendments

15.10.

The costs, if any, occasioned by an amendment shall be borne by the party making the same, unless the court otherwise orders.



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 16

COUNTERCLAIMS

Counterclaim against a plaintiff

16.01.

(1) Where a defendant has a claim against a plaintiff in respect of any cause of action, whenever and however arising, he may, instead of bringing a separate proceeding, make a counterclaim in respect of the claim. [E. 15/2(1)]

(2) Unless the court otherwise orders,

(a) a defendant shall add a counterclaim to his defence and file and serve it with the defence;

(b) a plaintiff shall serve and file the defence to the counterclaim within the time prescribed by rule 11.02 for the delivery of the statement of defence in the main action.

[Amend. 06/01]

Counterclaim against plaintiff and other person

16.02.

(1) Unless the court otherwise orders, where a defendant has a claim, in respect of the subject matter of the counterclaim or the original proceeding, against a plaintiff and any other person, whether or not a party, the defendant may join that person with the plaintiff as defendants to the counterclaim by,

(a) adding both names to the title of the proceedings as in Form 16.02A,

(b) with respect to the plaintiff, complying with the provisions of rule 16.01(2),

and

(c) with respect to the other person, by filing and personally serving the originating notice (counterclaim) in Form 16.02A on the person within thirty (30) days from the service of the originating notice in original proceeding on the defendant, or within such further time as the court may order. [E. 15/3]

[Amend 06/01]

(2) A person served with an originating notice (counterclaim) in Form 16.02A becomes a party to the counterclaim from the time of service with the same rights in respect of his defence to the counterclaim or otherwise as any defendant. [E. 15/3(2)] [Amend. 12/12/74]

Jurisdiction of court

16.03.

A counterclaim is a separate proceeding and the court may,

(a) proceed with the counterclaim notwithstanding that judgment is given for the plaintiff in the original proceeding, or the original proceeding is stayed, discontinued or dismissed; [E. 15/2(3)]

(b) pronounce a final judgment, both on the original claim and counterclaim;

(c) where a counterclaim is established against the claim of a plaintiff and there is a balance in favour of one of the parties, give judgment for the balance, but nothing herein shall affect the court's discretion with respect to costs; [E. 15/2(4)]

(d) where a counterclaim cannot be conveniently disposed of with the original proceeding, order the counterclaim to be excluded or tried separately, or make such other order as is just;

(e) where a defendant does not dispute the claim of a plaintiff in the original proceeding and sets up no defence thereto but sets up a counterclaim, the court may stay the original proceeding with or without terms until the counterclaim is disposed of;

(f) make such other order as is just.

Application of Rules to counterclaim and defence to counterclaim

16.04.

The provisions of these Rules shall apply, with any necessary modification, to a counterclaim as if

the counterclaim were a statement of claim and the defendant making it, the plaintiff, and to the defence to the counterclaim, as if it were a defence and the party making it, a defendant. [E. 18/18]

FORM 16.02a
[rule 16.02(1)]

ORIGINATING NOTICE (COUNTERCLAIM)

(Title of Court)

BETWEEN: A.B. PLAINTIFF,

and

C.D. DEFENDANT.

(original proceeding)

AND BETWEEN: C.D. PLAINTIFF,

and

A.B. and E.F. DEFENDANTS.

(counterclaim)

TAKE NOTICE that this counterclaim has been brought by the plaintiff (counterclaim) against you, the defendant (counterclaim) and A.B., in respect of the claim set out in the counterclaim attached to this notice.

AND TAKE NOTICE that the plaintiff (counterclaim) may enter judgment against you on the counterclaim without further notice to you, unless within (insert the period of time prescribed by the rules or order) days after the service of this notice and counterclaim upon you, excluding the day of service, you or your solicitor cause your defence to the counterclaim to be delivered by mail or personal delivery to,

(a) the office of the prothonotary at the Court House, _____ Street, in ,
Nova Scotia, and

(b) to the address given below for service of documents on the plaintiff; provided that if the counterclaim is for a debt or other liquidated demand and you or A.B., or both of you, pay the amount claimed in the counterclaim and the sum of \$_____

_____ (or such sum as may be allowed on taxation for costs) to the plaintiff (counterclaim) or his solicitor within six (6) days from the service of this notice on you, then this proceeding will be stayed.

ISSUED the _____ day of _____, 19 ____ .

[C.D.

plaintiff (counterclaim)]

or

[M.N.

Solicitor for the plaintiff (counterclaim)]

whose address for service is

_____ Street,

_____, Nova Scotia

TO: [E.F.

The Defendant (counterclaim) _____]

[ATTACH COUNTERCLAIM]

INDORSEMENTS

Received on _____, the _____ day of _____, 19 ____ .

This originating notice (including the counterclaim) was served by me on the defendant, at _____, on _____, the _____ day of _____ 19 ____ , before the hour of _____ o'clock in the _____ noon.

Indorsed on _____, the _____ day of _____, 19 ____ .

(signed)

(address)

[Amend. 12/12/74]

AFFIDAVIT OF SERVICE

I, _____, of _____ Street, (place)

, Nova Scotia, (occupation) (sheriff for the County of _____), make oath and say that I did on _____, the _____ day of _____, 19 _____, before the hour of o'clock in the _____ noon, serve _____ with the within originating notice (including the counterclaim) by leaving a true copy of the same with him personally at _____, and that I endorsed the date of the service thereon on _____, the _____ day of _____, 19 _____.

SWORN to at _____)

in the County of _____)

this _____ day of _____,)

19 _____, before me)

_____)

A COMMISSIONER OF THE SUPREME)

COURT OF NOVA SCOTIA)

[Amend. 12/12/74]

RULE 17

THIRD PARTY PROCEEDINGS

[Amend. 11/86]

Definition

17.01.

In this Rule, "main proceeding" means the proceeding commenced by a plaintiff against a defendant and "third party proceeding" includes any further proceeding commenced against a third or subsequent party.

Where available

17.02.

(1) A defendant may commence a third party proceeding against any person who is not a party to the main proceeding and who,

(a) is or may be liable to the defendant for all or part of the plaintiff's claim;

(b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,

(i) a transaction or occurrence or a series of transactions or occurrences involved in the main proceeding, or

(ii) a related transaction or occurrence or series of transactions or occurrences; or

(c) should be bound by the determination of an issue arising between the plaintiff and the defendant.

Time for Third Party Claim

Issuing

17.03.

(1) A defendant may commence a third party proceeding by originating notice (third party) in form 17.02A, filed and issued within the following times:

(a) where the main proceeding was commenced by originating notice (action), before the expiration of the time for filing a defence as prescribed by rule 11.02 or as extended by agreement or order; or

(b) where the main proceeding was commenced by originating notice (application), such time as the court may order.

[Amend. 05/02/03]

Service

(2) A third party proceeding shall be served on the third party personally or by an alternative to personal service under Rule 10, together with a copy of the originating notice and the pleadings, if

any, in the main proceeding or in any counter-claim, crossclaim or third or subsequent party claim in the main proceeding, within thirty (30) days after the third party claim is issued.

(3) A copy of the third party proceeding shall be delivered to every other party to the main proceeding within five (5) days after the service thereof on the third party but personal service is not required.

(4) Service of the third party proceeding outside the jurisdiction may be allowed by the court, and the provisions of rule 10.07 apply.

Third party may defend main proceeding

17.04.

(1) Where appropriate, the third party may defend against the plaintiff's claim against the defendant by delivering a statement of defence in the main proceeding in which the third party may raise any defence open to the defendant.

Consequence of defending main proceeding

(2) A third party who delivers a statement of defence in the main proceeding,

(a) has the same rights and obligations in the main proceeding, including those in respect of discovery, trial and appeal, as the defendant in the main proceeding; and

(b) is bound by any order or determination made in the main proceeding between the plaintiff and the defendant who initiated the third party proceeding.

Defence of third party

(3) Except as provided in rule 14.24(3), when a third party is served with an originating notice (third party) and the main proceeding was commenced by originating notice (action), the third party shall file and serve a defence within the following times:

(a) where the third party was served in Nova Scotia, within twenty days after service;

(b) where the third party was served elsewhere in Canada or in the United States of America, within forty days after service; or

(c) where the third party was served anywhere else, within sixty days after service.

[Amend. 05/02/03]

(4) When a third party does not dispute the liability of the defendant to the plaintiff in his defence

or on the trial or hearing, he shall be deemed to admit the validity of any judgment obtained against the defendant, whether obtained by consent or otherwise.

(5) When a third party does not dispute his liability to the defendant in his defence or on the trial or hearing, he shall be deemed to admit his liability to the extent claimed in the notice.

Consequence of not defending main proceeding

(6) A third party who fails to defend or appear on the trial or hearing within the time limited, may apply to the court for leave to defend or appear upon such terms as it thinks just.

Effect of third party defence

17.05.

(1) Where a third party has delivered a third party defence,

(a) The third party shall be served with all subsequent documents in the main proceeding;

(b) Judgement in the main proceeding on consent or after the defendant is in default may be obtained only on notice to the third party; and

(c) Where the defendant initiating the third party proceeding has also made a crossclaim against a co-defendant, the co-defendant and the third party have the same rights to discovery from each other as if they were parties to the same action.

Third party directions

17.06.

(1) Any party affected by a third party proceeding may move for directions in respect of any matter of procedure not otherwise provided for in these rules and the court may,

(a) where the liability of the third party to the defendant is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;

(b) order the proceeding to be tried in such manner as the court may direct;

(c) give the third party leave to defend the proceeding, either alone or jointly with any other defendant or third party, upon such terms as may be just;

(d) give the third party liberty to appear on the trial or hearing of the proceeding and to take such part therein as may be just;

(e) make such other orders as may appear to the court proper for having the rights and liabilities of the parties conveniently determined and enforced, or for determining the extent to which the third party is to be bound by any judgment or order in the main proceeding;

(f) dismiss or adjourn the application;

(g) set aside the third party proceeding. [E. 16/4]

(2) Any order made under paragraph (1) may be varied or rescinded by the court at any time. [E. 16/4(5)]

Default of third party

17.07. Where a third party fails to defend or appear on the hearing under the third party proceedings, the defendant may,

(a) on filing an affidavit of service of the notice and of the failure of the third party to serve a defence or appear on the hearing under the third party documents, have the prothonotary enter the judgment in the judgment book that the third party is in default, whereupon the third party shall not, without the leave of the court, file and serve a defence or appear on the hearing under the notice.

(b) on suffering judgment by default, at any time after satisfaction of the judgment or with leave of the court before satisfaction thereof, enter judgment against the third party to the extent of the claim in the notice, but the court may set aside or vary the judgment against the third party upon such terms as it thinks just.

(c) at or after the trial or hearing of the proceeding or the approval of a settlement by the court, apply for a judgment against the third party and the court may grant such judgment as it thinks just, provided that execution shall not issue thereon without the leave of the court until after the defendant satisfies the judgment against him. [E. 16/5/7]

Third party proceeding set aside or heard separately

17.08.

The court may at any time stop the trial or hearing of a third party proceeding and have each proceeding tried or heard separately or as the court may order. [E. 16/6]

Third and subsequent parties

17.09. (1) A third party may, by commencing a fourth proceeding, serve against any party not already a party to the third party proceeding any claim that is properly the subject matter of a third party proceeding, and rules 17.01 and 17.06 apply, with the necessary modifications, to the fourth party proceeding.

(2) The provisions of these Rules that apply to third party proceedings apply, with necessary modifications, to fourth and subsequent party claims.

RULE 17A

CROSSCLAIM

[Amend. 11/86]

Where available

17A.01.

(1) A defendant may crossclaim against a co-defendant who,

(a) is or may be liable to the defendant for all or part of the plaintiff's claim;

(b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,

(i) a transaction or occurrence of a series of transactions or occurrences involved in the main action, or

(ii) a related transaction or occurrence or series of transactions or occurrences; or

(iii) should be bound by the determination of an issue arising between the plaintiff and the defendant.

(2) A defendant who claims contribution from a co-defendant under paragraph 3(c) of the *Tortfeasors Act* shall do so by way of crossclaim. [Amend. 03/87] [Amend. 05/02/03]

Statement of defence and crossclaim

17A.02. A crossclaim (Form 17A.02A) shall be included in the same document as the statement of defence and the document shall be entitled a statement of defence and crossclaim.

Amending defence to add crossclaim

17A.03. A defendant who has delivered a statement of defence that does not contain a crossclaim and who wishes to crossclaim may amend the statement of defence in accordance with rule 14.22 in order to add the crossclaim, and rule 14.22 shall apply to the response to the amended statement of defence and crossclaim.

Time for delivery of statement of defence and crossclaim

17A.04.

(1) A statement of defence and crossclaim shall be delivered,

(a) within the time prescribed by rule 11.02 for delivery of the statement of defence in the main proceeding or at any time before the defendant is in default; or

(b) thereafter with leave of the court.

(2) A statement of defence and crossclaim shall be served personally on a defendant against whom a crossclaim is made, or by an alternative to personal service under Rule 10.

Time for delivery of defence to crossclaim

17A.05. Unless the court otherwise orders, a defence to a crossclaim shall be delivered within ten (10) days after service of the statement of defence and crossclaim.

May defend against crossclaim and against plaintiff's claim against co-defendant

17A.06.

(1) In a defence to a crossclaim, the defendant may,

(a) defend against a crossclaim; and

(b) where appropriate, defend against the plaintiff's claim against the crossclaiming defendant, in which case the defendant may raise any defence open to the crossclaiming defendant.

Separate part for defence against plaintiff

(2) Where such defendant defends against the plaintiff's claim against the crossclaiming defendant, the defence to the crossclaim shall contain a separate part entitled: Defence to the Plaintiff's claim against the crossclaiming defendant.

Consequence of defending against plaintiff

(3) A defendant who defends against the plaintiff's claim against the crossclaiming defendant,

(a) has the same rights and obligations in the action, including those in respect of discovery, trial and appeal, as a defendant to that claim; and

(b) is bound by an order or determination made in the main action between the plaintiff and the crossclaiming defendant.

Consequence of not defending against the plaintiff

(4) A defendant who does not defend against the plaintiff's claim against the crossclaiming defendant is bound by any order or determination made in the main action between the plaintiff and the crossclaiming defendant.

Effect of default of defence to crossclaim

17A.07.

Where a defendant against whom a crossclaim is made is in default in respect of the crossclaim, the crossclaiming defendant may obtain judgment against the other defendant only at the trial of the main proceeding or by application to the court.

Trial of crossclaim

17A.08.

A cross claim shall be tried at or immediately after the trial of the main proceeding, unless the court orders otherwise.

Prejudice or delay to plaintiff

17A.09.

A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a crossclaim, and on application by the plaintiff the court may make such order or impose such terms, including an order that the crossclaim proceed as a separate action, as are necessary to prevent prejudice or delay where that may be done without injustice to the parties to the crossclaim.

Application to counter-claims and third party proceedings

17A.10.

Rules 17A.01 to 17A.09 apply, with necessary modifications, to the assertion of a crossclaim between co-defendants to a counter-claim or between third parties to a third party proceeding.

(Rule 17.02)

ORIGINATING NOTICE (THIRD PARTY)

19 No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN: A.B. PLAINTIFF,

and

C.D. DEFENDANT,

and

E.F. THIRD PARTY.

TO THE THIRD PARTY:

TAKE NOTICE that this proceeding has been brought by the Plaintiff against the Defendant and by the Defendant against you as a Third Party. In the proceeding the Plaintiff claims against the Defendant (here state concisely the nature of the Plaintiff's claim) as appears from the Originating Notice, a copy of which is attached hereto as Schedule A.

AND TAKE NOTICE that the Defendant also claims against you in respect of the claim set out in the [statement of claim] [affidavit] attached hereto as Schedule B.

AND TAKE NOTICE that you will be deemed to admit the plaintiff's claim against the Defendant and the Defendant's claim against you, and the Defendant may enter judgment against you in accordance with his claim attached hereto as Schedule B without further notice to you, unless (where a defence is to be filed) [within

(insert the period of time prescribed by the rules or order in the latter case, add the following words "being the period prescribed by order dated the day of")

___ days after the service of this third party notice upon you, excluding the day of service,

(a) you or your solicitor cause your defence to the statement of claim to be filed in the office of the prothonotary of this court from which the statement of claim was issued by either handing or mailing the defence to that office; and

(b) within the same time, you or your solicitor cause a copy of your defence to be

served upon the defendant or his solicitor at the address given in the statement of claim for service by either delivering or mailing the copy to him at that address;] or,

(where the application is to court) ([unless you appear on the hearing of the originating notice.]

AND FURTHER TAKE NOTICE that this third party notice was issued out of the Office of the Prothonotary, at the Court House, Street,, Nova Scotia, this day of, 19

(signature)

PROTHONOTARY (Seal)

SCHEDULE A.

(Attach copy of originating notice in the proceeding between the plaintiff and defendant).

SCHEDULE B.

(Attach copy of the defendant's statement of claim or affidavit containing his claim against the third party).

INDORSEMENTS

Received on, the day of, 19

This originating notice (third party) was served by me on the defendant, at, on, the day of, 19, before the hour of o'clock in the noon.

Indorsed on, the day of, 19

(signed)

(address)

AFFIDAVIT OF SERVICE

I,, of Street, (place), Nova Scotia, (occupation) (sheriff for the County of), make oath and say that I did on, the day of, 19, before the hour of o'clock in the noon, serve with the within originating notice (third party) by leaving a true copy of the same with him personally at, and that I endorsed the date of the service thereon on, the day of, 19

SWORN to at _____)

in the County of _____)

this _____ day of _____)

19 __ , before me _____)

_____)

A COMMISSIONER OF THE)

SUPREME COURT OF)

NOVA SCOTIA)

FORM 17A.02A
(Rule 17A.02)

CROSSCLAIM

(Include the crossclaim in the same document as the statement of defence, and entitle the document STATEMENT OF DEFENCE AND CROSSCLAIM. The crossclaim is to follow the last paragraph of the statement of defence. Number the paragraphs in sequence commencing with the number following the number of the last paragraph of the statement of defence.)

CROSSCLAIM

The defendant (name) claims against the defendant (name):

(State here the precise relief claimed.)

(Then set out in separate, consecutively numbered paragraphs each allegation of material fact relied on to substantiate the crossclaim.)

(Where a defendant to the crossclaim is sued in a capacity other than that in which he or she is a party to the main action, set out the capacity.)

(Date) (Name, address and telephone number of

crossclaiming defendant's solicitor or

crossclaiming defendant _____)

TO: (Name and address of defendant
to crossclaim's solicitor or
defendant to crossclaim)



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 18

EXAMINATION FOR DISCOVERY

Persons who may be examined

18.01.

(1) Any person, who is within or without the jurisdiction, may without an order be orally examined on oath or affirmation by any party regarding any matter, not privileged, that is relevant to the subject matter of the proceeding.

(2) Where it is unnecessary, improper or vexatious, the court may limit the number of persons to be examined and set aside the appointment for the examination of any person.

(3) The costs of examining more than one person, other than a party, shall, unless the court otherwise orders, be borne by the party examining.

Time of examination

18.02.

Unless the court otherwise orders, an examination for discovery shall take place,

(a) when a proceeding is commenced by an originating notice (action), at any time after the close of pleadings under rule 14.23;

(b) when a proceeding is commenced by an originating notice (application inter partes), at any time after the service of the notice;

(c) where a proceeding has not been commenced, when the court orders.

Place of examination

18.03.

Unless the court otherwise orders, an examination for discovery shall take place,

(a) where a person resides in Nova Scotia, in the county in which the person resides;

(b) where a person resides outside Nova Scotia, in the place where the court orders.

Examiner

18.04.

Unless the court otherwise orders, an examination for discovery shall take place,

(a) where the person to be examined resides in the County of Halifax, before the prothonotary at Halifax, or a person appointed by him;

(b) where the person to be examined resides in any other county in Nova Scotia, before the local judge of the county in which the person to be examined resides, or a person appointed by him;

(c) where the person to be examined is in Nova Scotia but does not reside therein, before the prothonotary at Halifax, or a person appointed by him;

(d) where the person to be examined resides outside of Nova Scotia, before a person appointed by the court.

Notice of examination and attendance fee

18.05.

(1) Unless the court otherwise orders, a notice of examination in Form 18.05A, setting out the time and place of the examination, the name and address of each person to be examined, and issued by the prothonotary, together with the attendance fee, shall be served and paid at least five (5) days before the day appointed for the examination, as follows,

(a) where the person to be examined is a party, upon his solicitor, or if he has no solicitor, upon the party himself;

(b) where the person to be examined is not a party, upon that person, and a copy of the notice shall forthwith be served upon any opposing solicitor.

(2) The notice of examination shall specify whether the person to be examined shall produce any books, papers, documents and records on the examination.

(3) The attendance fee of a person to be examined shall be the same as that paid to a witness under subsection 2(1) of the the *Costs and Fees Act*. [Amend. 05/02/03]

Examination out of the jurisdiction

18.06.

(1) The court may order any person who is temporarily or permanently resident out of the jurisdiction to be examined before an examiner for such purposes, at such time and place, and in such manner as the court thinks just.

(2) Service of the order and all papers for the examination may be made upon the appropriate solicitor, and the attendance fee of the person to be examined may be paid to the solicitor.

Reporting

18.07.

(1) Unless the court otherwise orders, the evidence on the examination for discovery shall be recorded electronically or taken in shorthand by a court reporter, or by a shorthand reporter approved by the parties and duly sworn, in question and answer form, and it shall not be necessary for the depositions to be read over to and signed by the person examined.

(2) Where the examination is taken by an official court reporter, it shall not be necessary for an examiner to be present at the examination and the reporter shall be deemed to be an examiner within the meaning of this rule.

(3) The depositions so taken, when extended and certified by the person taking the same as correct, are deemed to be the original depositions.

(4) With leave of the court or on consent of the parties, a party or an examiner may cause the examination for discovery to be recorded audiovisually by such means as will provide an accurate display of time when the recording is viewed. [Amend. 05/02]

(5) With leave of the court, a party may tender in evidence the audiovisual recording of an examination for discovery or any part of it upon producing a transcript of the examination or the part certified by a court reporter. [Amend. 05/02]

Examination and re-examination

18.08. Any person examined for discovery may be further examined on his own behalf or on

behalf of any party and may then be re-examined, and any such further examination and re-examination shall be proceeded with immediately after his examination by the other party and may take the form of a cross-examination.

Scope of examination

18.09.

(1) Unless it is otherwise ordered, a person, being examined upon an examination for discovery, shall answer any question within his knowledge or means of knowledge regarding any matter, not privileged, that is relevant to the subject matter of the proceeding, even though it is not within the scope of the pleadings.

(2) In order to comply with paragraph (1), the person being examined may be required to inform himself and the examination may be adjourned for that purpose.

(3) When any person examined for discovery omits to answer or answers insufficiently, the court may grant an order requiring him to answer or to answer further and give such other directions as are just.

Exhibits

18.10.

The examiner may direct that any exhibit marked on an examination for discovery need not be filed with him, but in such a case the exhibits shall be produced at the trial or hearing of the proceeding without notice, or the examiner shall, at the request of any examining solicitor, cause copies thereof or extracts therefrom to be certified as true and attached to the depositions and the copies or extracts may be used in every way as the originals.

Production of books, papers or documents

18.11.

Anyone who admits upon an examination for discovery that he has in his custody or power any book, paper document or record relating to the matters in question in the proceeding, not privileged or protected from production, shall produce the same for the inspection of the party examining him upon the direction of the examiner or order of the court within a reasonable time as fixed by the direction or order.

Objections, and rulings of examiner

18.12.

(1) An examiner shall, upon an examination for discovery, cause every question and answer to be taken down and a note made upon the dispositions of any question objected to and the ground of

the objection, but the evidence objected to shall be taken subject to the objection

(2) No objection to any question shall be valid if made solely upon the ground that any answer thereto will disclose the name of a witness, or that the question will be inadmissible at the trial or hearing if the answer sought appears reasonably calculated to lead to the discovery of admissible evidence.

(3) Any ruling or direction of the examiner may be appealed to the court, and the examiner shall upon request certify under his hand the question raised, any answer thereto, and his ruling or direction thereon.

(4) The validity of an objection to any question, answer, ruling or direction shall be decided by the court, and the costs of and occasioned by the objection shall be in the discretion of the court and may be ordered to be paid by the person under examination.

Delivery of depositions

18.13.

(1) The examiner shall deliver a copy of the depositions, signed and certified by him, to any party who orders it and the copy shall, subject to the provisions of rule 18.14 and without proof of his signature, be received in evidence subject to all just exceptions, but the depositions shall not be filed with the prothonotary without the consent of the parties or an order of the court.

(2) The examiner may, and if need be shall, make a special report to the court touching an examination and the conduct or absence of any person, and the court may make such order upon the report as is just, including the granting of a contempt order.

Use of depositions as evidence

18.14.

(1) At a trial or upon a hearing of an application, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at an examination for discovery, or who received due notice thereof, for any of the following purposes:

(a) to contradict or impeach the testimony of the deponent as a witness;

(b) where the deponent was a party, or an officer, director or manager of a party that is a corporation, partnership or association, for any purpose by an adverse party;

(c) where the deponent is dead, or is unable to attend or testify because of age, infirmity, sickness, or imprisonment, or is out of the jurisdiction, or his attendance

cannot be secured by subpoena, or exceptional circumstances exist that make it desirable in the interest of justice to allow the deposition to be used, for any purpose by any party.

(2) If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which is relevant to the part introduced, and the other party may introduce any further part.

(3) Any part of a deposition received in evidence on a trial or hearing shall be placed on the record by,

(a) reading any agreed question and answer into the record;

(b) the parties agreeing that certain numbered questions and answers be inserted in the record;

(c) the parties filing, either during or after the trial or hearing, the questions and answers agreed upon;

(d) the direction of the court.

(4) Depositions previously taken in a proceeding may be used in the same or a subsequent proceeding,

(a) where any party has been substituted in the proceeding;

(b) when a proceeding has been discontinued and another proceeding involving the same subject matter is afterwards brought between the same parties or their representatives or successors in interest.

(5) The effect of taking or using depositions shall be as follows,

(a) a party shall not be deemed to make a person his own witness for any purpose by taking his deposition;

(b) the introduction in evidence of the deposition or any part thereof for any purpose, other than under clauses (a) and (b) of paragraph (1) hereof, makes the deponent the witness of the party introducing the deposition;

(c) at a trial or on a hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or any other party.

Penalty for refusal to attend, etc.

18.15.

(1) When any person refuses or neglects to attend at the time and place appointed for his examination or refuses to be sworn or answer any question properly put to him or produce any document which he is bound to produce, the court may

- (a) hold him guilty of contempt;
- (b) if he is a plaintiff, dismiss the proceeding;
- (c) if a defendant, strike out the defence;
- (d) grant such other order as is just.

(2) When the person so refusing or neglecting is an officer of a body corporate that is a party or is employed by a party, and the neglect or refusal is of a type for which the party ought to be held liable, the court may

- (a) if the party is a plaintiff, dismiss the proceeding;
- (b) if a defendant, strike out the defence;
- (c) grant such other order as is just.

Order to terminate or limit examination

18.16.

(1) Where an examination for discovery is being conducted in bad faith, or in an unreasonable manner so as to annoy, embarrass or oppress the deponent or any party, or where there is any other good cause, an examiner may stop the examination, or limit the scope of the examination or the manner of taking it, and may order any party to pay such costs as are just.

(2) Upon the demand of a party, an examiner shall suspend an examination for such time as is necessary to make an application under paragraph (1).

FORM 18.05
(Rule 18.05)

NOTICE OF EXAMINATION

(Title of proceeding)

TAKE NOTICE that you are required to attend for the purpose of being examined in the above proceeding on , the day of , 19 , at the hour of o'clock in the noon, at Street, in , Nova Scotia;

[AND FURTHER TAKE NOTICE that you are also required to produce and show at the examination all books, papers, documents and records in your custody, possession and power containing any entry, memorandum or minute relating to the matters in question in this proceeding, and in particular:]

ISSUED AT , Nova Scotia, this day of , 19 .

Prothonotary

TO:

RULE 19

INTERROGATORIES

Interrogatories to parties or persons

19.01.

(1) A party may serve upon an adverse party written interrogatories in Form 19.01A to be answered by the adverse party, or if the adverse party is a body corporate, partnership or association, by an officer or agent thereof, and subject to rule 19.03, the adverse party, officer or agent shall answer each interrogatory to the best of his personal knowledge or from information available to him through any person.

(2) A party may serve upon any person who is not a party, interrogatories to be answered by that person, or if that person is a body corporate, partnership or association, by an officer or agent thereof, and subject to rule 19.03, the person shall answer each interrogatory to the best of his personal knowledge and, if necessary, by adding any explanatory information, provided the party shall serve a copy of the interrogatories and answers upon any adverse party forthwith upon receipt of the same.

Form, number, etc. of interrogatories

19.02.

(1) Interrogatories shall relate to the same matters as may be dealt with by an examination for discovery under rule 18.09.

(2) Unless the court otherwise orders to protect a party or person interrogated from annoyance, expense, embarrassment or oppression, the number of interrogatories or sets of interrogatories to be served is not limited.

(3) Unless the court otherwise orders, the interrogatories may be served at any time after the pleadings are closed within the meaning of rule 14.23.

(4) Where interrogatories are to be served on two or more persons or are required to be answered by an officer or agent of a person, a note at the end of the interrogatories shall state which of the interrogatories each person is required to answer. [E. 26/3]

Answer to interrogatories

19.03.

(1) Unless the court otherwise orders, interrogatories shall be answered separately and fully under oath as in Form 19.03A, and the answer shall be served on the party giving the interrogatories within ten (10) days of their receipt. [Amend. 17/01/77]

(2) An objection to answering any interrogatory may only be taken on the ground of privilege or that it is not relevant to the subject matter involved in the proceeding, but not that it is outside of the scope of the pleadings, and the objection shall be made in the affidavit in answer. [E. 26/4]

Insufficient answer

19.04.

If a person on whom interrogatories have been served fails to answer any one or more of them or answers insufficiently, the court may, upon such terms as are just, make an order requiring him to answer or to answer further, either by affidavit or oral examination, or to answer any other interrogatory. [E. 26/5]

Failure to comply with order

19.05. If a person fails to comply with any order made under Rule 19, the provisions of rule 18.15 shall apply with any necessary modification. [E. 26/6]

Use of answers to interrogatories at trial

19.06.

(1) The answers to interrogatories may be used at a trial or hearing to the same extent as depositions are used under rule 18.14, subject to any necessary modification.

(2) A party may put in evidence at a trial or hearing any answer or part of any answer to an interrogatory and the court may direct that any related answer or part shall be put in evidence. [E. 26/7]

Revocation and variation of orders

19.07. Any order made under Rule 19, including an order made on appeal may, on sufficient cause being shown, be revoked or varied by a subsequent order of the court made or given at or before the trial or hearing of the proceeding in connection with which the original order was made. [E. 26/8]

FORM 19.01A
(Rule 19.01)

INTERROGATORIES

(Title of proceeding)

TO: the [Plaintiff] [Defendant] [other person],

_____Street,

_____, Nova Scotia.

It is hereby required that the following interrogatories be answered by [you] [any officer or agent competent to testify on your behalf who knows the facts about which the inquiry is made] and that the answers be served upon the [plaintiff] [defendant] within days from the time these interrogatories are served on you:

1. Did you _____ ? [Here set out the interrogatories in the form of concise questions, each interrogatory to be set out in a separate paragraph and numbered consecutively.]

2. Did you not? _____

3. (a) Were you _____ ?

(b) If nay, were you not?

[The defendant C.D. is required to answer all or the interrogatories numbered

_____ .]

[The defendant E.F. is required to answer the interrogatories numbered _____ .]

[G.H., a director, etc. of the defendant, the X. Co., Ltd., is required to answer the interrogatories numbered _____ .]

Dated at _____, Nova Scotia, this ___ day of _____, 20__.

A.B., of

_____ Street, _____, Nova Scotia

Solicitor for the [Plaintiff]

[Defendant]

FORM 19.03A
(Rule 19.03)

ANSWER TO INTERROGATORIES

(Title of proceeding)

In answer to the interrogatories served by the [Plaintiff] [Defendant] and dated the day of , 19 , I make oath and say as follows:

1. I am the [Plaintiff] [Defendant] (officer) (agent) of the (Plaintiff) (Defendant) and duly authorized to make this affidavit on its behalf].

2. [Set out interrogatory number one]

As to the [first] interrogatory, I say [state answer based on his knowledge].

3. [Set out interrogatory number two]

As to the [second] interrogatory, I say that I have no personal knowledge of any of the matters therein referred to, but to the best of my knowledge, information and belief after making proper inquiries I say that [state answer based on inquiries].

4. [Set out interrogatory number three]

As to the [third] interrogatory, I say that to the best of my knowledge, information and belief I am unable to answer the same. I do not know and cannot ascertain whether . . .

5. [Set out interrogatory number four]

As to the [fourth] interrogatory, I object to this interrogatory on the grounds that (state grounds of objection).

SWORN, etc.

[Amend. 17/1/77]

RULE 20

DISCOVERY AND INSPECTION OF DOCUMENTS

List of documents: Exchange

20.01.

(1) Unless the court otherwise orders, a party to a proceeding shall, within sixty (60) days after the close of the pleadings between an opposing party and himself, or within seven (7) days after the service of the originating notice where there are no pleadings, serve on the opposing party a list in Form 20.01A of the documents that are or have been in his possession, custody or control relating to every matter in question in the proceeding and file with the prothonotary the list without a copy of any document being attached thereto. [E. 24/1/2(1)/6] [Amend. 12/12/74]

(2) A list of documents under paragraph (1) shall enumerate the documents in a convenient order with a short description of each document or, in the case of bundles of documents of the same nature, of each bundle. [E. 24/5(1)]

(3) A claim that any document is privileged from production shall be made in the list of documents with a sufficient statement of the grounds of the privilege. [E. 24/5(2)]

(4) Unless the court otherwise orders, a list of documents shall state, with respect to any document on the list that is in the possession, custody or control of the party serving the list and for which privilege from production is not claimed,

(a) that a true copy of the document is attached to the list,

(b) that the party receiving it may, if it is necessary, inspect the document by

immediately communicating with the party serving the list, and

(c) that the party serving the list will produce the document at the trial or hearing of the proceeding.

Order for discovery of documents, etc.

20.02. The court may at any time,

(a) order any party to file and serve on any opposing party to a proceeding a list of documents in Form 20.01A, as provided by rule 20.01; [E. 24/3/6]

(b) order any party to make discovery, limited to certain documents or classes of documents only, or of documents related to the matters specified in the order; [E. 24/2(5)(a)/3(3)]

(c) where it appears that any issue or question in the proceeding should be determined before the discovery of all or any of the documents is made, order that the issue or question be determined;

[E. 24/2(5)(b)/8]

(d) where satisfied that discovery of all or any of the documents is not necessary at that time or later, dismiss or adjourn the application or make such other order as is just. [E. 24/2(5)(b)/8]

Admission and production of documents in list of documents

20.03. (1) Unless it is denied in a notice served within ten (10) days after a party receives a list of documents or in a pleading or when the court otherwise orders, a party receiving a list of documents shall be deemed to admit that any document listed therein as being in the possession, custody or control of the party serving the list for which privilege is not claimed, and which is described in the list,

(a) as an original document, is such a document and was printed, written, signed or executed as it purports respectively to have been, and

(b) as a copy, is a true copy.

(2) A party serving a list of documents under this Rule shall produce at the trial or hearing of the proceeding such of the documents specified in the list of documents as are in his possession, custody or control and for which privilege from production is not claimed.

(3) Nothing in paragraph (1) shall be deemed to prejudice the right of a party to object to the admissibility in evidence of any document. [E. 27/4]

Inspection of documents

20.04.

(1) Subject to rule 20.01(4), a party may at any time serve a notice in Form 20.04A on any other party in whose pleading, affidavit or list of documents reference is made to any document, requiring him to produce the document for inspection or further inspection and to permit him to make a copy thereof.

(2) The other party shall, within four (4) days of the receipt of the notice in paragraph (1), serve on the first party a notice stating a time within seven (7) days after the service thereof at which any document, that he does not object to produce, may be inspected at the place specified in the notice and a copy made thereof, and if he objects to produce any document, he shall state the grounds of his objection. [E. 24/10]

Production of documents on trial or hearing

20.05. Subject to rule 20.01(4), a party may at any time serve on any other party a notice in Form 20.05A requiring him to produce and show to the court on the trial or hearing any document referred to therein.

Order for production of documents

20.06.

(1) The court may order the production, for inspection by any party or the court, of any document relating to any matter in question in a proceeding at such time, place and manner as it thinks just. [E. 24/11/12]

(2) Where a document is in the possession, custody or control of a person who is not a party, and the production of the document might be compelled at a trial or hearing, the court may, on notice to the person and any opposing party, order the production and inspection thereof or the preparation of a certified copy that may be used in lieu of the original.

(3) An order for the production of any document for inspection by a party or the court shall not be made unless the court is of the opinion that the order is necessary for disposing fairly of the proceeding or for saving costs and is not injurious to the public interest. [E. 24/13/15]

Production of business books

20.07.

(1) Where the production of any business book for inspection is applied for, the court may, instead of ordering the production of the original book for inspection, order a copy of any entries therein to be supplied and certified by a person who has examined the copy with the original book, and the certificate shall state what erasures, interlineations or alterations there are, if any, in the original book.

(2) Notwithstanding that a copy of any entries in any book has been made, the court may order production of the book from which the copy was made. [E. 24/14]

Newly discovered documents

20.08. When, at any time after a list of documents has been delivered under Rule 20,

(a) it comes to the attention of the party delivering it that the list was inaccurate or incomplete;

(b) any document relating to any matter in question in the proceeding comes into the party's possession, custody or control after the time the list was delivered, the party shall file and serve a supplementary list with reference thereto.

Failure to comply with requirements for discovery, etc.

20.09.

(1) Where a party fails to make discovery of or produce for inspection any document under an order or Rule 20, he is liable to be punished for contempt, and if a plaintiff, to have the proceeding dismissed, or if a defendant, to have the defence struck out. [E. 24/6]

(2) Where it appears that there has been a failure on the part of a party or his solicitor or, in the case of the Crown or a body corporate, or an officer thereof, to make a reasonable effort to give full discovery of all documents that relate to any matter in a proceeding, the court may impose on the party, solicitor, or officer such terms or penalty as it thinks just.

Revocation and variations of orders

20.10.

Any order made under Rule 20, may be revoked or varied by a subsequent order on such terms as the court thinks just. [E. 24/17]

FORM 20.01A
(Rules 20.01 and 20.02)

LIST OF DOCUMENTS

(Title of proceeding)

The following is a list of the documents relating to any matter in question in this proceeding that are or have been in the possession, custody or control of the [plaintiff] [defendant] and it is served in compliance with [rule 20.01] [the order herein dated the day of , 19]:

1. the [plaintiff] [defendant] has in his possession, custody or control the documents in this proceeding enumerated in Part 1 of the Schedule attached hereto;
2. the [plaintiff] [defendant] objects to produce the documents enumerated in Part 2 of the Schedule on the ground that they are privileged from production for the reasons stated in the Schedule;
3. the [plaintiff] [defendant] has had, but has not now, in his possession, custody or control the documents enumerated in Part 3 of the Schedule which were last in his possession, custody or control as stated in the Schedule; and
4. neither the [plaintiff] [defendant], nor his solicitor nor any other person on his behalf, has now or ever had, in his possession, custody or control any document of any description whatever relating to any matter in question in this proceeding other than the documents enumerated in the Schedule.

AND TAKE NOTICE that a true copy of each of the documents listed in Part 1 of the Schedule, for which privilege from production is not claimed, is attached hereto and any of these documents may be inspected by immediately communicating with the undersigned;

AND FURTHER TAKE NOTICE that unless you deny it by serving a notice thereof on me within ten (10) days after being served with this list of documents, or it is denied in your pleading, or the court otherwise orders, you shall be deemed to admit that any document listed in Part 1 of the Schedule, a true copy of which has been served on you, and described,

(a) as an original document, is such a document and was printed, written, signed or executed as it purports respectively to have been; and

(b) as a copy, is a true copy.

AND FURTHER TAKE NOTICE that, unless you are otherwise advised in writing, the [plaintiff] [defendant] will produce at the trial or hearing of the proceeding the documents listed in Part 1 of

the Schedule, for which privilege from production is not claimed, without further notice from you.

SCHEDULE

Part 1

[Here enumerate in a convenient order the documents (or bundles of documents, if of the same nature, such as invoices) in the possession, custody or control of the party that he does not object to produce, with a short description of each document or bundle sufficient to identify it.]

Part 2

[Here enumerate the documents in the possession, custody or control of the party that he objects to produce on the ground of privilege, with the applicable reasons.]

Part 3

[Here enumerate the documents that at the date of service of the list, are not in the possession, custody or power of the party and give the respective dates the documents were last in his possession, custody or power.]

DATED the day of , 19 .

[A.B. [C.D.], of

_____ Street,

_____ , Nova Scotia,

Solicitor for the

[Plaintiff] [Defendant]

TO:

Solicitor for etc.

FORM 20.04a
(Rule 20.04)

NOTICE TO PRODUCE FOR INSPECTION

(Title of proceeding)

TAKE NOTICE that the [Plaintiff] [Defendant] requires you to produce for his inspection the following documents referred to in your [pleading] [affidavit] [list of documents] dated the day of ,

19 , viz: describe documents required), and to permit him to make a copy thereof.

DATED the day of , 19 .

(signed) of

_____ Street,

_____, Nova Scotia,

Solicitor for the

[Plaintiff] [Defendant]

TO:

Solicitor for etc.

FORM 20.05A

(Rule 20.05)

NOTICE TO PRODUCE AT THE TRIAL OR HEARING

(Title of proceeding)

TAKE NOTICE that you are hereby required to produce and show to the court on the [trial] [hearing] of this proceeding all books, papers, letters, copies of letters and other writings and documents in your custody, possession or control containing any entry, memorandum or minute relating to the matters in question in this proceeding, and in particular the following: (list the documents with dates and descriptions thereof).

DATED the day of , 19 .

(signed) of

_____ Street,

_____ , Nova Scotia,

Solicitor for the

[Plaintiff][Defendant]

TO:

Solicitor for, etc.

RULE 21

ADMISSIONS

Voluntary admissions

21.01.

A party may give notice, by his pleading or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. [E. 27/1]

Notice to admit facts or documents

21.02.

(1) A party may, by a notice to admit in Form 21.02A, request any other party to admit, for the purposes of the proceeding only, the truth of any relevant fact or the authenticity of any relevant document specified in the notice.

(2) Unless the court otherwise orders, the truth of any fact or the authenticity of any document specified in the notice to admit shall be deemed to be admitted for the purposes of the proceeding only unless, within the period specified in the notice, which shall not be less than ten (10) days, the party receiving the notice to admit serves upon the party giving the notice a statement that

(a) specifically denies the truth of any such fact or the authenticity of any such document and sets forth in detail the reasons why he cannot make the admissions;
or

(b) declares the admission of the truth of any such fact or the authenticity of any such document cannot be made on the grounds of privilege or irrelevancy or the request is otherwise improper, and sets forth in detail the reasons therefor. [E. 27/2/5]

(3) Unless the court otherwise orders, a true copy of any relevant document specified in the notice to admit shall be attached to the notice when served, and the notice shall also advise the other party that he may, if it is necessary, inspect the document by immediately communicating with the party giving the notice.

(4) The court may at any time allow any party to withdraw any admission or denial upon such terms as are just.

Judgment on admission of facts or documents

21.03. When an admission of the truth of any fact or the authenticity of any document is made by a party by his pleading or otherwise, any other party may apply to the court for such judgment or order as he may be entitled to on the admission without waiting for the determination of any other question between the parties, and the court may give such judgment or make such order as it thinks just. [E. 27/3]

Costs on refusal to admit

21.04. Where a party unreasonably denies or refuses to admit the truth of any fact or the authenticity of any document, the court may order the party to pay the costs of proving the truth of the fact or the authenticity of the document at a trial or hearing.

FORM 21.02A **(Rule 21.02)**

NOTICE TO ADMIT

(Title of proceeding)

TAKE NOTICE that the [Plaintiff] [Defendant] requests the [Defendant] [Plaintiff], within days after service of this notice, to admit for the purposes of this proceeding only and subject to all objections to admissibility that may be asserted at the trial or hearing,

1. that each of the facts set out in Schedule A is true;

2. that each of the documents listed in Schedule B (a true copy of which is attached hereto, and if it is necessary, the documents may be inspected by immediately communicating with the undersigned), that is specified to be

(a) an original was written, signed or executed as it purports to have been;

(b) that is specified to be a copy is a true copy; and

(c) that is stated to have been served, sent or delivered was so served, sent or delivered;

AND FURTHER TAKE NOTICE that, unless the court otherwise orders, the truth of any such fact and the authenticity of any such document will be deemed to be admitted, for the purposes of this proceeding only, unless you, within the above period, serve upon me a statement that

(a) specifically denies the truth of the fact or the authenticity of the document and sets forth in detail the reasons why you cannot make the admission, or

(b) declares that the admission of the truth of the fact or the authenticity of the document cannot be made on the ground of privilege, irrelevancy, or

(c) that the request is otherwise improper and sets forth in detail the reasons therefor.

DATED the day of , 19 .

A.B., of

_____ Street,

_____ , Nova Scotia.

Solicitor for the [Plaintiff]

[Defendant].

TO:

Schedule A.

(Here set out the facts to be admitted)

Schedule B.

(Here list and describe each attached document)

RULE 22

MEDICAL EXAMINATION

Order for examination

22.01.

(1) Where the physical or mental condition of a party is in issue, the court may, at any time on the application of an opposing party or on its own motion, order the party to submit to a physical or mental examination by a qualified medical practitioner.

(2) The order shall only be made on notice to all parties and shall specify the time, place, manner, conditions and scope of the examination and the medical practitioner by whom it is to be made, and unless it is otherwise ordered, the examination shall be at the expense of the party requesting the same.

(3) The court may order a further examination or examinations on such terms as to costs or otherwise as it deems just.

(4) Where the parties agree on the form of the order to be issued under paragraph (1), it may be issued by the prothonotary.

Scope of examination 22.02.

(1) A medical practitioner may, in conducting the examination of a party under rule 22.01, ask the party any relevant questions concerning his medical condition and history and the party shall answer the questions.

(2) Where a person to be examined consents in writing or the court so orders, the examining medical practitioner may examine hospital records and x-rays previously made or taken, have analyses made of samples of blood and body fluids and have any other tests recognized by medical science made including without restricting the generality of the foregoing, x-rays, electrocardiographs and electro-encephalographs.

Persons in attendance at examination 22.03.

Except with the consent of the court, no person other than the person being examined, a medical practitioner making the examination, his nurse or assistant and a medical practitioner nominated

by the party being examined, if any, shall be present at any examination made under rule 22.01.
[Amend. 12/12/74]

Medical reports

22.04.

(1) A party causing an examination to be made under rule 22.01 shall promptly serve on every other party a copy of any written report of the examination that the examining medical practitioner may make.

(2) The party causing an examination to be made under rule 22.01 shall be entitled upon written request to receive promptly from the party being examined, a report of any examination of that party previously made by any medical practitioner, relating to any relevant mental or physical condition of the party, and the report shall be made available to the medical practitioner making the examination.

22.05. [Repealed 10/85]

Penalty for failure to be examined, etc.

22.06. (1) When a party fails to submit to an examination or deliver a medical report as required by Rule 22, he shall, if a plaintiff, be liable to have his proceeding dismissed, or, if a defendant, to have his defence struck out.

(2) A medical practitioner who fails to make or supply a medical report under Rule 22 shall, unless the court otherwise orders, be excluded from giving evidence at a trial and his affidavit shall not be admissible on a hearing.

RULE 23

COURT EXPERTS

Appointment of expert to report on certain questions

23.01.

(1) Where independent technical evidence would appear to be required, the court may at any time appoint one or more independent experts to inquire and report on any question of fact or opinion not involving questions of law or construction.

(2) Unless the parties otherwise agree, a court expert shall be nominated by the court and his

instructions shall be settled by the court. [E. 40/1]

(3) The court may from time to time make such further orders as it deems necessary to enable the court expert to carry out its instructions, including the making of experiments and tests. [E. 40/3]

Report of court expert

23.02.

(1) The court expert shall send his report to the court, together with such number of copies thereof as the court may direct, and the prothonotary shall send copies of the report to the parties or their solicitors.

(2) The court may direct the court expert to make a further or supplemental report.

(3) Any part of a court expert's report that is not accepted by all the parties shall be treated as information furnished to the court and be given such weight as the court thinks fit. [E. 40/2(3)]

Cross-examination of court expert

23.03. A party may, within ten (10) days after receiving a copy of the court expert's report or within such further time as the court directs, apply to the court for leave to cross-examine the expert on his report, and the court shall

make an order for the cross-examination of the expert by any of the parties before or at the trial or hearing upon such terms as it thinks just. [E. 40/4]

Remuneration of court expert

23.04.

(1) The remuneration of a court expert shall be fixed by the court and shall include a fee for his report and a proper sum for each day during which he is required to be present in court.

(2) Without prejudice to any order providing for payment of a court expert's remuneration as part of the costs, the parties shall be jointly and severally liable to pay the amount fixed by the court for his remuneration, but where the appointment of a court expert is opposed, the court may, as a condition of making the appointment, require the party applying for the appointment to give such security for the remuneration of the expert as the court thinks fit. [E. 40/5]

Calling of expert witnesses

23.05.

Where a court expert is appointed, any party may, on giving reasonable notice to the other parties, call one (1) expert witness to give evidence on any question reported on by the court expert but no party may call more than one (1) such witness without the leave of the court. [E. 40/6]

RULE 24

INSPECTIONS OF REAL AND PERSONAL PROPERTY, ETC.

Order for inspection of real or personal property

24.01.

(1) The court may order any party to permit entry upon any designated real or personal property in his possession or control for the purpose of,

(a) inspecting, measuring, surveying or photographing the property or any designated object or operation thereon;

(b) taking any sample, or making any observation or conducting any experiment that may seem necessary for obtaining any relevant information or evidence;

(c) doing anything else that the court may specify,

(2) The order shall specify the time, place and manner of making the entry and performing the work, and may prescribe such other terms and conditions as are just.



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RULE 25

ORDERS: PRE-TRIAL OR PRE-HEARING

Preliminary determination of questions of law, etc.

25.01.

(1) The court may, on the application of any party or on its own motion, at any time prior to a trial or hearing,

- (a) determine any relevant question or issue of law or fact, or both;
- (b) determine any question as to the admissibility of any evidence;
- (c) order discovery or inspection to be delayed until the determination of any question or issue;
- (d) give directions as to the procedure to govern the future course of any proceeding, which directions shall govern the proceeding notwithstanding the provision of any rule to the contrary;
- (e) where the pleadings do not sufficiently define the issues of fact, direct the parties to define the issues or itself settle the issues to be tried, and give directions for the trial or hearing thereof;
- (f) order different questions or issues to be tried by different modes and at different places or times.

(2) Where in the opinion of the court, the determination of any question or issue under paragraph (1) substantially disposes of the whole proceeding, or any cause of action, ground of defence, counterclaim or reply, the court may thereupon grant such judgment or make such order, as is just. [E.33/7]

(3) Unless the court otherwise orders, a trial or hearing shall not be stayed pending an appeal from an order under Rule 25.

RULE 26

CONFERENCES: PRE-TRIAL OR PRE-HEARING

Conference procedure

26.01.

(1) In any proceeding, the court may itself or on the application of any party direct the parties to appear before it for a conference to consider,

(a) the simplification of the issues;

(b) the necessity or desirability of an amendment to any pleading, affidavit or notice;

(c) the possibility of obtaining admissions of fact and of documents that will avoid unnecessary proof;

(d) the limitation of the number of expert witnesses;

(e) any other matter that may aid in the disposition of the proceeding.

(2) Following the conference, the court may make an order reciting the results of the conference and giving such directions as the court deems advisable, and the order when entered shall control the subsequent course of the proceeding, unless modified at the trial or hearing to prevent injustice.

(3) The judge who presides at a conference shall not be deemed to be seized of the proceeding, and any trial or hearing therein may be heard by him or any other judge.

RULE 27

SPECIAL CASES

Special case

27.01. The parties may state any question of law or fact in the form of a special case for adjudication by the court before a trial or hearing.

Form of special case

27.02.

Every special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and set out or refer to such documents as may be necessary to enable the court to decide the questions raised thereby, and shall be signed by the parties or their solicitors.

Setting case down with leave

27.03.

A special case shall not be set down for hearing without the leave of the court granted after it is satisfied that the decision of the special case might facilitate the determination of the matters in issue in the proceeding.

Court may draw inferences

27.04.

Upon the hearing of a stated case the court and the parties may refer to the contents of any document referred to in the special case, and the court may draw from the stated facts and documents any inference, whether of fact or law, that might have been drawn therefrom if proved at trial or hearing.

Relief by agreement

27.05.

The parties may agree in writing that upon any question in a stated case being answered, the court may order specific relief to be granted or judgment to be entered.

Case stated by the court

27.06.

The court in any proceeding may itself or have the Attorney General state any question of law or fact in the form of a special case for adjudication by the Nova Scotia Court of Appeal and the provisions of Rule 27 shall apply with any necessary modification. [Amend. 20/6/94]



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RULE 28

PLACE AND MODE OF TRIAL AND SETTING DOWN

Application and interpretation

28.01.

This Rule applies to a proceeding commenced by an originating notice (action), and any reference in this Rule to a "proceeding" shall mean to a proceeding so commenced.

Place of trial

28.02.

(1) Unless the court otherwise orders, the place of trial of a proceeding, or of any question or issue arising therein, shall be at the place of trial named in the statement of claim, or if no place is named, at the place where the originating notice was issued.

(2) Upon satisfying the court that he has a good defence and

(a) all the plaintiffs reside out of the jurisdiction or

(b) it is just a defendant may obtain an order changing the place of trial to any place within the Province. [Amend. 3/92]

(3) When the court orders, any proceeding may be tried at any time or at any place in the Province.

Mode of trial

28.03.

(1) A proceeding, or any question or issue arising therein, shall be tried with a jury where required by the Act.

(2) When the court deems it expedient to do so, it may, in such manner and upon such terms as it thinks just, try any proceeding, or any question or issue therein, with the assistance of one or more

qualified assessors.

(3) The court may refer a proceeding, or any question or issue therein to a referee, with or without the assistance of assessors, as provided in Rule 35.

(4) In all other cases, a proceeding, or any question or issue therein, shall be tried by the court without a jury. [E. 33/2]

Time, etc. of trial of questions or issues

28.04.

The court may order any question or issue, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial, and may give directions as to the manner in which the question or issue shall be stated. [E. 33/3]

Setting down for trial without a jury

28.05.

(1) When the pleadings are closed, any party may, unless the court otherwise orders, set a proceeding, or any question or issue arising therein, down for trial without a jury by filing a notice of trial without a jury and certificate of readiness in Form 28.05A with the prothonotary, forthwith serving a copy of the notice on the other parties, and complying with the provisions of rule 28.06. [Amend. 3/92]

(2) Any party who has filed a notice of trial without a jury and certificate of readiness pursuant to Subsection (1) of this Rule, or who has consented to the filing of such a notice, shall not, after the filing of the notice, initiate or continue any interlocutory proceeding or form of discovery without leave of the court except discovery of expert witnesses within sixty (60) days of the issuance of the notice.

(3) Leave of the court pursuant to Subsection (2) of this Rule shall be granted only in exceptional circumstances.

(4) Upon receiving a notice of trial without a jury and certificate of readiness, a party shall be deemed to have consented to the filing of the notice unless, within ten (10) days from the filing of the notice, the party files a letter of objection with the court and the other party and requests a conference with a judge. [Amend. 29/03/96]

(5) Where more than one person files a notice of trial without a jury and certificate of readiness and no application pursuant to Subsection (2) of this Rule has been made, the proceeding shall be set down in accordance with the first notice filed.

(6) Unless the court otherwise orders, a notice of trial without a jury and certificate of readiness shall not be withdrawn.

(7) If all parties file a written agreement requesting that a trial date be fixed before the expiration of the sixty (60) day period required by the notice of trial without a jury and certificate of readiness, it shall be set down as soon as is convenient. [Amend. 10/89]

(8) When a new trial is ordered, the proceeding shall be set down for trial in the manner provided in paragraph (1). [E. 34/3] [Amend. 3/92]

Record for trial judge

28.06.

(1) When a party files a notice of trial, with or without a jury, he shall file with the prothonotary a record containing,

(a) a copy of the pleadings and any particulars thereof;

(b) any order containing directions for the trial;

(c) a memorandum signed by the party containing an indication of the number of witnesses he proposes to call, the number of documents he proposes to present, and an estimate of the number of hours or days required to present his case.

[Amend. 12/89]

(2) Any other party on receiving a notice of trial, shall mail to or file with the prothonotary a memorandum containing the information referred to in clause (c) of paragraph (1) relating to his case. [Amend. 12/12/74; 1/00]

(3) When a new trial is ordered, the proceeding shall be set down for trial in the manner provided in paragraph (1). [E. 34/3]

Brief for trial judge

28.07.

Where a proceeding has been entered for trial, each of the parties shall on or before the fourteenth (14th) day preceding the date of trial, de-liver to the trial judge and opposing counsel a brief containing a summary of the facts, issues and law. [Amend. 29/03/96]

Setting down of trial with or without a jury at Halifax

28.08.

(1) Upon receiving a copy of a notice of trial with or without a jury and certificate of readiness,

and after the expiration of the time period mentioned in rule 28.05(4) without an application having been made pursuant to that section, the prothonotary shall forthwith fix a date for trial that shall not, unless the court otherwise orders, be less than sixty (60) days from the filing of the notice, and the prothonotary shall place the proceeding on the Weekly List of Halifax and shall forthwith mail a notice of the date of trial to each of the parties at their address shown on the notice and to the prothonotary.

(2) The provisions of rule 28.05 apply to the filing of a notice of trial with or without a jury and certificate of readiness pursuant to subsection (1) of this rule with necessary modifications to include a notice of trial with a jury. [Amend. 3/92]

Setting down for trial without a jury outside of Halifax

28.09.

Upon receiving a copy of a notice of trial without a jury and a certificate of readiness at a place elsewhere than at Halifax, and after the expiration of the time mentioned in rule 28.05(4) without an application having been made pursuant to that section, the prothonotary shall set the proceeding down for trial on the first day of the sittings thereat that commence not less than sixty (60) days after the filing of the notice by placing it on the list of cases for trial at that sitting. [Amend. 10/89]

Setting down for trial with a jury outside of Halifax

28.10.

(1) Upon receiving a copy of a notice of trial with a jury and certificate of readiness in Form 28.10A for a trial of any proceeding required by the Act to be heard by a judge with a jury at a place elsewhere than at Halifax, and after the expiration of the time period mentioned in rule 28.05(4) without an application having been made pursuant to that section, the prothonotary shall set the proceeding, or any question of issue arising therein, down for trial on the first day of the sitting that commences not earlier than sixty (60) days after the filing of the order or notice by placing it on the list of cases for trial with jury at that sitting.

(2) The provisions of rule 28.05 apply to the filing of a notice of trial with a jury and certificate of readiness pursuant to subsection (1) of this Rule with necessary modifications. [Amend. 10/89]

General List of proceedings for trial

28.11.

(1) Each prothonotary shall maintain a General List that lists all proceedings in which the pleadings are closed and for which no date of trial has been fixed.

(2) Where a proceeding has been on a General List for a period of three (3) years, the prothonotary shall give the parties notice in Form 28.11A that they have thirty (30) days to file a notice of intention to proceed. [Amend. 1/00]

(3) Where the parties do not indicate their intention to proceed within the time set out in subsection 2, the prothonotary shall issue an order in Form 28.11C dismissing the proceeding. [Amend. 5/99; 1/00]

(4) Where the parties do file a notice of intention to proceed, they shall, within six (6) months from the date thereof or such further time as ordered by the court, file with the prothonotary a Notice of Trial in accordance with rules 28.08 and 28.10. [Amend. 12/88; 5/99; 1/00]

(5) Where the parties fail to file a Notice of Trial pursuant to rule 28.11(4) and where no extension of time has been granted by the court, the prothonotary shall give the parties twenty-one (21) days notice in Form 28.11B before issuing an order in Form 28.11C dismissing the proceeding. [Amend. 5/99; 1/00]

Trial List

28.12.

In making up a Trial List,

(a) trials with juries shall be listed first followed by trials without juries;

(b) the seniority of proceedings on the list shall be determined by the respective dates of issue of the originating notices;

(c) any proceeding on the Trial List of a previous sittings, that has not been tried, struck off or otherwise disposed of, shall, unless otherwise ordered by the court, be placed at the top of the list and it shall not be necessary to serve or file a further notice of trial

Dismissal for want of prosecution

28.13. Where a plaintiff does not set a proceeding down for trial, the defendant may set it down for trial, or apply to the court to dismiss the proceeding for want of prosecution and the court may order the proceeding to be dismissed or make such order as is just. [E. 34/2(2)]

Notification of settlement, etc., of proceeding

28.14. The parties shall immediately furnish the prothonotary with any information that may affect the estimated duration of a trial, or any information as to the settlement or discontinuance of a proceeding, and if settled or discontinued they shall take such steps as are necessary to discontinue or dismiss the proceeding. [E. 34/8(2)]

Abatement, etc., of proceeding

28.15. Where a proceeding becomes abated or the interest or liability of any party is assigned or transmitted to or devolves on some other person, the plaintiff or party having the conduct of the proceeding shall immediately notify the prothonotary in writing of any such change, who shall make the appropriate entry in his records. [E. 34/91]

Order for separate trials, etc.

28.16. Where claims in respect of two or more causes of action are included in the same proceeding, or if two or more plaintiffs or defendants are parties to the same proceeding, and it appears to the court that the joinder of the causes of action or parties may embarrass or delay the trial or is otherwise inconvenient, the court may order separate trials or make such other order as is just.

FORM 28.05a **(Rule 28.05(1) and Rule 28.08(1))**

NOTICE OF TRIAL WITHOUT JURY AND CERTIFICATE OF READINESS

or

NOTICE OF TRIAL WITH OR WITHOUT JURY AT HALIFAX AND CERTIFICATE OF READINESS

(Title of proceeding)

TAKE NOTICE that the trial of [this proceeding] [the following question or issue in this proceeding, namely,] by a judge without a jury at Halifax] will be held at [Halifax, Nova Scotia, on a date to be forthwith fixed by the chief clerk but not earlier than sixty (60) days from the date of the filing of this notice] [, Nova Scotia, on the first day of the sittings of the court thereat that commences not less than sixty (60) days from the date of the filing of this notice].

No expert evidence will be adduced on behalf of my client

OR

Expert evidence will be adduced on behalf of my client and an expert's report prepared by in accordance with rule 31.08 is enclosed.

All discoveries (except in discovery of expert witnesses) and interlocutory proceedings required to be taken by me prior to trial have been completed, and I shall not have the right to initiate or continue discoveries or interlocutory proceedings after the filing of this notice without the leave

of the court pursuant to rule 28.05(2) and (3), except for the discovery of expert witnesses, within sixty (60) days from the issuance of this Notice.

I estimate that it could take days to present my client's case and it is estimated that the other parties will take days to present their case. The other parties shall be deemed to have agreed with this estimation unless, within ten (10) days from the filing of the notice, they advise the chief clerk of their disagreement.

The names and addresses of counsel for the other parties are as follows:

DATED at , Nova Scotia, this day of _____, 20__ .

M.N., of _____ St.,

_____, Nova Scotia.

Solicitor for the [plaintiff] [defendant]

TO: The Prothonotary at

_____, Nova Scotia

AND TO: O.P., of

_____ St.,

_____, Nova Scotia.

Solicitor for the [defendant] [plaintiff]

FORM 28.10A

(Rule 28.10)

NOTICE OF TRIAL WITH A JURY AND CERTIFICATE OF READINESS

(Title of proceeding)

TAKE NOTICE that the trial of [this proceeding] [the following question or issue in this proceeding, namely,] by a judge with a jury will be held at the next sittings of the court at , Nova

Scotia, that commences not earlier than sixty (60) days from the date of the filing of this notice, namely, the day of , 19 .

No expert evidence will be adduced on behalf of my client

OR

Expert evidence will be adduced on behalf of my client and an expert's report prepared by in accordance with rule 31.08 is enclosed.

All discoveries (except in discovery of expert witnesses) and interlocutory proceedings required to be taken by me prior to trial have been completed, and I shall not have the right to initiate or continue discoveries or interlocutory proceedings after the filing of this notice without the leave

of the court pursuant to rule 28.05(2) and (3), except for the discovery of expert witnesses, within sixty (60) days from the issuance of this Notice.

I estimate that it could take days to present my client's case and it is estimated that the other parties will take days to present their case. The other parties shall be deemed to have agreed with this estimation unless, within ten (10) days from the filing of the notice, they advise the chief clerk of their disagreement.

The names and addresses of counsel for the other parties are as follows:

DATED at _____, Nova Scotia, this ___ day of _____, 20__ .

M.N., of _____ St., Solicitor for the [plaintiff] [defendant]

TO: The Prothonotary at

_____, Nova Scotia

AND TO: O.P., of

_____ St.,

_____, Nova Scotia.

_____ Solicitor for the [defendant] [plaintiff]

FORM 28.11a

(Rule 28.11)

20 No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

A.B.Plaintiff

- and -

C.B.Defendant

NOTICE OF INTENTION TO PROCEED

TAKE NOTICE that pursuant to Civil Procedure Rule 28.11 you have thirty (30) days from the date of this Notice to file with the prothonotary a notice of your intention to proceed with this matter;

AND FURTHER TAKE NOTICE that within six (6) months of advising the prothonotary of your intention to proceed you must file with the prothonotary a notice of trial in accordance with rules 28.08 and 28.10;

FAILURE TO COMPLY will result in your action being dismissed.

DATED at , Nova Scotia, this day of, 20 .

PROTHONOTARY

TO: Solicitor for Plaintiff

AND TO: Solicitor for Defendant [Amend. 1/00]

FORM 28.11b
(Rule 28.11)

20 No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

A.B.Plaintiff

- and -

C.B.Defendant

NOTICE OF ORDER DISMISSING ACTION

TAKE NOTICE that pursuant to Civil Procedure Rule 28.11 an order in Form 28.11C dismissing the above noted action will be issued upon the expiration of twenty-one (21) days from the date of this Notice.

DATED at _____, Nova Scotia, this ____ day of ____, 20__.

PROTHONOTARY

TO: _____ Solicitor for Plaintiff

AND TO: _____ Solicitor for Defendant [Amend. 1/00]

**FORM 28.11C
(Rule 28.11)**

20 No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

A.B.Plaintiff

- and -

C.B.Defendant

ORDER**BEFORE THE PROTHONOTARY**

WHEREAS three (3) years have passed since this matter was placed on the General List of Cases, and no (*insert rule wording to reflect case specific circumstance*) has been filed in this proceeding;

IT IS ORDERED that this action be hereby dismissed.

DATED at _____, Nova Scotia, this ____ day of _____, 20__ .

PROTHONOTARY

[Amend. 1/00]

RULE 29**TRIAL SITTINGS****Dates and places of sittings**

29.01. The court shall sit at the following places commencing in each place on the date set opposite the name of the place, and, unless otherwise specified, a sittings of the court shall be for the trial of criminal proceedings and for the trial of civil proceedings, with or without a jury.

Place	Opening Date
Halifax County, Halifax--civil sittings with or without a jury	The second day of January until the last day of June. The first Wednesday after Labour Day in September until the last day of December.
Halifax criminal sittings	The second day of January and the first Monday of each of the months of February, March, April, May, June, October and November and the first Wednesday after Labour Day in September.

Cape Breton County Sydney	The second Tuesday of January, first Tuesday of February, March, April, May and June, second Tuesday of September and the first Tuesday of October and November.
Antigonish County Antigonish	First Tuesday of April and October.
Annapolis County, Annapolis Royal	Third Tuesday of April and October.
Colchester County - Truro	First Tuesday of March and June, the first Wednesday after Labour Day in September and the third Tuesday of November.
Cumberland County - Amherst	First Tuesday of February, April, June and October.
Digby County - Digby	First Tuesday of April and October.
Guysborough County - Guysborough	Third Tuesday of May and October.
Hants County - Windsor	First Tuesday of May and third Tuesday of November.
Inverness County - Port Hood	First Tuesday of May and the third Tuesday of November.
Kings County - Kentville	First Tuesday of March, May, first Wednesday after Labour Day in September and the first Tuesday of November.
Lunenburg County - Bridgewater	First Tuesday of March, May, first Wednesday after Labour Day in September and the third Tuesday of November.
Pictou County - Pictou	Second Tuesday of January, third Tuesday of April and first Wednesday after Labour Day in September and the first Tuesday of November.
Queens County - Liverpool	Third Tuesday of June and the first Tuesday of November.
Richmond County - Arichat	First Tuesday of June and November.
Shelburne County - Shelburne	First Tuesday of June and the fourth Tuesday of October.
Victoria County - Baddeck	Third Tuesday of June and third Wednesday of October.
Yarmouth County - Yarmouth	Third Tuesday of May and the first Tuesday of October

[Amend. 10/89]

29.02

The foregoing sittings shall continue as follows:

- (a) Each Halifax sittings until and including the last day of such sittings.
- (b) Each Halifax criminal sittings, until the end of the calendar month, in which it commences, provided, however, that the December sittings will be of two (2) weeks duration.
- (c) Sydney sittings for four (4) weeks.
- (d) In Colchester, Cumberland, Kings, Lunenburg and Pictou for three (3) weeks.
- (e) Sittings in Yarmouth, Antigonish, Hants, Digby, Inverness, Richmond and Queens for two (2) weeks.
- (f) Sittings in Annapolis, Guysborough, Shelburne, and Victoria for one (1) week.
[Amend. 10/89]

Right of court to extend sittings.

29.03

Notwithstanding any other rule the court may extend the time for any sittings or may try any proceeding at any time. [Amend. 3/85]

RULE 30

TRIAL PROCEDURES

Failure of all or any party to attend at trial

30.01.

(1) When a proceeding is called for trial and all the parties fail to attend the court may order the proceeding to be struck off the list of cases for trial.

(2) When a proceeding is called for trial and any party fails to appear, the court may,

- (a) proceed with the trial of the proceeding, or counterclaim, or any issue therein, in the absence of the party;

(b) if the plaintiff appears and the defendant fails to appear, allow the plaintiff to prove his claim and dismiss any counterclaim;

(c) if the plaintiff fails to appear and the defendant appears, dismiss the plaintiff's claim and allow the defendant to prove his counterclaim, if any; [E. 35/1]

(d) make such other order as is just.

(3) Any judgment, order, or verdict given under paragraphs (1) and (2) may be set aside by the court on such terms as it thinks just, upon an application made to it within ten (10) days after the judgment, order, or verdict has been given. [E. 35/2]

Adjournment of trial

30.02. The court may adjourn a trial to such time and place, and upon such terms as it thinks just. [E. 35/3]

Change of place of trial

30.03. Where a trial cannot be conveniently heard or completed at a sitting, the court may change the place of trial to Halifax or some other place, or adjourn the trial to another sitting. [E. 35/4]

Order of speeches

30.04.

(1) The court before whom a proceeding is tried, whether with or without a jury, may direct which party is to begin and the order of speeches at the trial, and, subject to such directions, the party to begin and the order of speeches shall be governed by this rule.

(2) Subject to paragraph (6), a plaintiff shall begin by opening his case.

(3) If a defendant elects not to adduce evidence, then, whether or not the defendant has, in the course of cross-examination of a witness for the plaintiff or otherwise, put in a document, the plaintiff may, after the evidence on his behalf has been given, make a speech closing his case and the defendant shall then state his case.

(4) If the defendant elects to adduce evidence, the defendant may, after any evidence on behalf of the plaintiff has been given, open his case and, after the evidence on behalf of the defendant has been given and the plaintiff has had the opportunity to adduce evidence in rebuttal, make a speech closing his case, and at the close of the defendant's case the plaintiff may make a speech in reply.

(5) Where there are two or more defendants who appear separately or are separately represented, then

(a) if none of them elects to adduce evidence, each of them shall state his case in the order in which his name appears on the record;

(b) if each of them elects to adduce evidence, each of them may open his case and the evidence on behalf of each of them shall be given in the order in which his name appears on the record and the speech of each of them closing his case shall be made in that order after the evidence on behalf of all the defendants has been given;

(c) if some of them elect to adduce evidence and some do not, those who do not shall state their cases in the order their names appear on the record and after the speech of the plaintiff in reply to the other defendants.

(6) Where the burden of proof of all the issues in the proceeding lies on the defendant or, where there are two or more defendants and they appear separately or are separately represented, on one of the defendants, the defendant or that defendant, as the case may be, shall be entitled to begin, and in that case paragraphs (2), (3) and (4) shall have effect, in relation to, and as between, him and the plaintiff, as if for references to the plaintiff and the defendant there were substituted references to the defendant and the plaintiff respectively.

(7) Where, as between the plaintiff and any defendant, the party who would, but for this paragraph, be entitled to make the final speech raises any fresh point of law in that speech or cites in that speech any authority not previously cited, the opposite party may make a further speech in reply, but only in relation to that point of law or that authority, as the case may be. [E. 35/7]

Inspection by court

30.05.

The court may inspect any place or thing with respect to which any question arises in a proceeding. [E. 35/8]

Exclusion of witnesses, etc.

30.06.

The court at a trial may,

(a) order any witness to be excluded from the court until called;

(b) where a party intends to give evidence, order him to be examined before any

other witness on his behalf;

(c) order any party or witness not to communicate with any other witness before the latter witness gives evidence;

(d) where there has been an improper communication, exclude the testimony of any party or witness.

Death of party before giving judgment

30.07.

Where a party dies after the verdict or finding of the issues of fact and before judgment is given, judgment may be given notwithstanding the death, but the foregoing provision shall not be taken as affecting the power of the court to make an order under rule 5.05 before giving judgment. [E. 35/9] [Amend. 12/12/74]

Right of defendant to move for dismissal

30.08.

At the close of the plaintiff's case, the defendant may, without being called upon to elect whether he will call evidence, move for dismissal of the proceeding on the ground that upon the facts and the law no case has been made out. [Amend. 12/12/74]

Judgment

30.09.

The court may, at or after the trial, direct judgment to be entered as it thinks right.

Record of trial

30.10.

The prothonotary shall enter in the proceedings book kept for the purpose,

(a) the times when a trial commences and terminates respectively on each day it takes place,

(b) the names of the presiding judge, reporter, counsel and for whom they appear, parties appearing without counsel, and each witness,

- (c) any order made, and all findings of fact and directions which the court directs to be entered,
- (d) the number and description of each exhibit, and
- (e) the verdict and judgment.

Exhibits

30.11.

- (1) The prothonotary during the trial shall,
 - (a) take charge of each document or object put in as an exhibit during the trial,
 - (b) mark or label each exhibit with a number so that all exhibits are numbered consecutively, and
 - (c) make a list of the exhibits that sets out the title of the proceeding and a description of each exhibit with the respective numbers of the exhibits.
- (2) For the purposes of this rule, a bundle of documents may be treated as one (1) exhibit.
- (3) The list of exhibits, when completed, shall be attached to the pleadings and shall form part of the record.
- (4) The exhibits shall remain in the possession of the prothonotary or the prothonotary or registrar of the court to which an appeal is taken,
 - (a) until the time for all appeals has expired; or
 - (b) where an appeal has been taken, until it has been disposed of.
- (5) Notwithstanding sub-rule (4), at any time following the trial judgment, on requisition by the solicitor or party who put an exhibit in evidence or the person who produced it and on the filing of the consent of all parties represented at the trial, the prothonotary or registrar may return the exhibit to the person making the requisition.
- (6) On the expiration of the time for appeal or on the disposition of the appeal, the prothonotary or registrar on his or her own initiative shall return the exhibits to the respective solicitors or parties who put the exhibits in evidence at the trial. If the prothonotary or registrar cannot effect delivery he or she may apply *ex parte* to the court for an order to destroy or otherwise deal with the exhibits. [Amend. 10/85]

Impounded documents

30.12.

Any document impounded by an order of the court shall not be delivered out of the custody of the court or inspected by any person without obtaining a court order. [E. 35/13]

Trial with jury

30.13.

Where a trial is with a jury, the provisions of Rule 34 shall also apply.

RULE 31

EVIDENCE: TRIAL

Interpretation

31.01. In this rule, "affidavit", includes a statutory declaration.

Evidence by witnesses

31.02.

(1) Unless it is otherwise ordered or an enactment or rule otherwise provides, a witness shall be examined orally and in open court. [E. 38/1]

(2) The court may at any stage of a trial direct that a witness may be recalled for further examination.

Scope of examination and cross-examination of witnesses

31.03.

(1) The court shall exercise reasonable control over the mode of interrogation of a witness so as,

(a) to make such interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and

(b) to protect the witness from undue harassment or embarrassment.

(2) A party may interrogate an unwilling or hostile witness by leading questions.

(3) A party may call an adverse party or an officer, director, or managing agent of a public or private body corporate or of a partnership or association that is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, but may be cross-examined by the adverse party only upon the subject matter of the examination in chief.

(4) The court may disallow any question put in cross-examination of any party witness that appears to the court to be vexatious and not relevant to any matter proper to be inquired into in the proceeding.

Evidence by affidavit

31.04.

(1) The court may by order permit,

(a) any fact to be proved by affidavit;

(b) the affidavit of any witness to be read at a trial; and unless the court otherwise orders, the deponent shall not be subject to cross-examination and need not attend the trial.

(2) An order under paragraph (1) may be made on such terms as to filing and service of the affidavit and to the production of the deponent for cross-examination as the court thinks just. [E. 38/2]

Evidence of particular facts

31.05.

The court may by order, permit the evidence of any particular fact to be given,

(a) by affidavit as provided in rule 31.04;

(b) by the production of documents or entries in books, or of true copies thereof;

(c) where the fact is or was a matter of common knowledge either generally or in a particular district, by the production of a specific newspaper which contains a statement of that fact.

Limitation of expert evidence**31.06.**

The court may order that the number of expert witnesses, including medical witnesses, to be called at a trial shall be limited. [E. 38/4]

Limitation of plans, etc., in evidence**31.07.**

Unless an opposite party, at least ten (10) days before the commencement of a trial, has been given an opportunity to inspect any plan, photograph or model and to agree to its admission without further proof, the plan, photograph, or model shall not be admissible in evidence at the trial without the approval of the court, which may be granted on such terms as are just. [E. 38/5]

Expert witness: Evidence of and report [Amend. 3/83]**31.08.**

(1) Unless a copy of a report containing the full opinion of an expert, including the essential facts on which the opinion is based, a summary of his qualifications and a summary of the grounds for each opinion expressed, has been

(a) served on each opposite party and filed with the court by the party filing the notice of trial at the time the notice is filed, and

(b) served on each opposite party by the person receiving the notice within thirty (30) days of the filing of the notice of trial, the evidence of the expert shall not be admissible on the trial without leave of the court. [Amend. 5/10/96]

(2) Where an opposite party wishes to conduct discovery examination of an expert, the opposite party shall pay the expert a reasonable fee for his attendance at the examination. If the fee is not paid in advance, the opposite party shall have no right to discover the expert. Unless otherwise ordered, if the opposite party is awarded costs following the trial, that party shall be entitled to recover as a disbursement the amount paid to the expert for his attendance at discovery.

(3) If the report of an expert does not comply with the requirements of rule 31.08(1), a judge may on the application of an opposite party make an order requiring the party providing the report to comply with rule 31.08(1) and if such an order is granted, the applicant shall have costs in any event.

(4) Where a copy of the report has been filed and delivered as provided in rule 31.08(1), the expert shall be required to attend at the trial unless the person receiving the report gives notice that he does not require the attendance of the expert at the trial.

(5) Where no notice as provided for in rule 31.08(4) has been given and the court is of the opinion that any evidence obtained from the expert at the trial does not materially add to the information in the report served under rule 31.08(1), the court may order the party failing to dispense with the attendance of the expert at the trial to pay, as costs, such sum as the court considers just. [Amend. 10/89]

Proof of any fact or document subsequent to trial

31.09.

Where through an accident, mistake or other cause a party fails to prove any material fact or document, the court may, subject to such terms as may be just,

(a) on a trial without a jury, proceed with the trial subject to the fact or document being subsequently proved in such manner and at such time and place as the court directs;

(b) on a trial with a jury,

(i) adjourn the trial and require the attendance of the jury upon a date to be fixed by him;

(ii) direct the jury to find a verdict as if such fact or document had been proved before them, and the verdict shall take effect on such fact or document being subsequently proved as directed by him, and if not so proved, judgment shall be entered for the opposite party unless the court otherwise orders.

General power of court regarding evidence

31.10. (1) The court may, at a trial, make an order concerning the method of proving any fact or document or of adducing any evidence if it appears that the order can be safely made having due regard to the interests of justice.

(2) The rate of interest to be used in determining the capitalized value of an award in respect of future pecuniary damages, to the extent that it reflects the difference between estimated investment and price inflation rates, is two and one-half per cent (2 ½%) per annum. [Amend. 24/11/80]

Revocation or variation of orders made under foregoing rules

31.11. Any order made under the foregoing rules, including an order made on appeal, may be revoked or varied by a subsequent order of the court made before or at the trial, and on such terms

as are just. [E. 38/7]

Depositions: When receivable in evidence at trial

31.12.

(1) No deposition shall be received in evidence at a trial unless,

(a) the deposition was taken under rule 32.01, and

(b) it is admissible as provided in rule 18.14.

(2) A party intending to use any deposition in evidence at a trial shall, at least two (2) days before the trial, give notice of his intention to do so to the other party. [E. 38/9(2)]

(3) A deposition purporting to be signed by the person before whom it was taken shall be receivable in evidence without proof of signature. [E. 38/9(3)]

Use of evidence obtained on discovery

31.13.

A party at the trial may use,

(a) all or any part of a deposition taken on an examination for discovery as provided by rule 18.14;

(b) any answer or part of any answer to an interrogatory as provided by rule 19.06;

(c) any medical report as provided by rule 22.05;

(d) any report of a court expert as provided by rule 23.02(3).

Use of evidence taken in another proceeding

31.14.

Evidence taken in another proceeding may, if admissible, be read,

(a) on an *ex parte* application, by leave of the court obtained at the time of making the application; and

(b) in any other case, upon the party desiring to use the evidence giving two (2)

days' previous notice to every opposing party of his intention to read the evidence.

Limitations on admissibility of documents

31.15.

(1) Unless the court orders, no document shall be admissible in evidence on behalf of a party unless,

(a) reference to it appears in the pleadings, or in a list of documents filed and served under rule 20.01 by any party;

(b) it has been produced by any party or an officer, director or managing agent of a party that is a body corporate, partnership or association, on an examination for discovery;

(c) it has been produced by a witness who is not, in the opinion of the court, under control of the party;

(d) it is a plan, photograph, or model in respect of which the requirement of rule 31.07 has been satisfied.

(2) Paragraph (1) does not apply to a document that is used solely as a foundation for, or as part of a question in, cross-examination or re-examination.

Documents received in evidence under *Evidence Act*

31.16. Repealed [Amend. 05/02/03]

Evidence of consent of new trustee to act

31.17.

A document purporting to contain the written consent of a person to act as trustee, and to bear his signature verified by some other person, shall be evidence of the consent.

Service of notice

31.18.

Service of a document may, in the absence of an admission of service, be proved by affidavit as provided in rule 10.14(1).

Evidence at trial may be used at subsequent stage of the proceeding

31.19.

Any evidence taken at a trial may be used at any subsequent stage of the proceeding. [E. 38/12]

Order to produce documents at a trial

31.20.

Where a person may be compelled to produce a document at a trial, the court may order him to attend at any time to produce the document. [E. 38/14]

Objections to questions

31.21.

(1) When on a trial, an objection to a question asked a witness is sustained by the court, the examining solicitor may, out of the hearing of a jury if there is one, state what he expects to prove by the answer of the witness, or what the witness would answer to the question excluded, and the court may enter on the record a further statement which sets out the character of the evidence, the questions and answers or other evidence, the objection made, and the ruling thereon.

(2) When the ruling of the court is one admitting any evidence, despite a timely objection, the court shall, on the request of any party or on its own motion, cause the objection and ruling thereon to be entered on the record.

Interpreters

31.22.

The court may appoint an interpreter, fix his reasonable compensation, and order the compensation to be paid out of funds provided by law for that purpose or by one or more of the parties as costs.

Determination of foreign law

31.23.

(1) A party who intends to raise an issue concerning the law of a foreign jurisdiction shall give notice of it in his pleadings or otherwise in writing at least ten (10) days before the trial or hearing. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 31. The court's determination shall be treated as a ruling on a question of law. [Amend. 12/12/74]

- (2) When the law of a foreign jurisdiction cannot be determined in a proceeding, the court may,
- (a) assume that the parties acquiesced in the application of the law of the forum and apply that law; or
 - (b) dismiss the proceeding and reserve the right of any plaintiff to recommence it. [Amend. 12/12/74]
-

Subpoena

31.24.

(1) When a party desires to call any person as a witness at a trial, he may serve him with a subpoena in Form 31.24A requiring him to attend at the time and place stated therein and, if required, to produce certain documents at the trial. [E. 38/14]

(2) A subpoena shall be issued by the prothonotary after a copy is filed in his office.

(3) The names of any number of persons may be included in a subpoena. [E. 38/15]

(4) No person is bound to appear pursuant to a subpoena or give evidence unless he is paid or tendered the witness fees provided for in subsection 2(1) of the *Costs and Fees Act*. [Amend. 05/02/03]

(5) No subpoena shall, without the leave of the court, be issued for the production of an original record or document that may be proved by a certified copy.

(6) The court may make an order in Form 31.24B for the attendance of a witness who is in the custody of any other person, including the custodian of any penal institution.

Amendment of a subpoena

31.25.

(1) Where a subpoena has been issued but not served, any mistake therein may be corrected by filing a notice thereof with the prothonotary, withdrawing the original subpoena and issuing a new subpoena.

(2) Where a subpoena has been served, it may be amended by filing an amended subpoena, indorsed with the words "amended and reissued", with the prothonotary for reissue and serving a copy thereof on each person who has been served with the original subpoena. [E. 38/16]

31.26.

(1) A subpoena shall be served by serving a copy on the witness personally and at the same time

tendering the witness fees to him, and if the witness so requests the original subpoena shall be shown to him.

(2) A subpoena shall be served within ten (10) weeks after the date of its issue. [E. 38/17]

(3) Service of a subpoena and payment or tender of the witness fees may be proved by affidavit.

Duration of subpoena

31.27.

A subpoena continues to have effect until the conclusion of the trial at which the attendance of the witness is required. [E. 38/18]

Subpoena of opposing party

31.28.

A party who desires to call an opposing party as a witness at a trial shall serve him or his solicitor at least five (5) days prior to the trial with a subpoena and tender to him or his solicitor, the proper witness fees, and if the opposing party does not attend the trial, the court may pronounce judgment against him or postpone the trial upon such terms as it thinks just.

Subpoena in aid of inferior court or tribunal

31.29.

(1) A prothonotary may issue a subpoena in aid of an inferior court or tribunal.

(2) A subpoena in aid of an inferior court or tribunal continues to have effect until the disposal of the proceeding before the inferior court or tribunal.

(3) Unless a subpoena issued in aid of an inferior court or tribunal is personally served on a witness and the witness fees tendered to him not less than four (4) days, or such other period as the court may fix, before the day on which the attendance of the witness before the court or tribunal is required, the witness shall not be liable to any penalty or process for failing to obey the subpoena.

Failure to obey subpoena

31.30.

Where a witness fails to obey a subpoena, he may be dealt with as provided in section 54 of the **Evidence Act** and the court may issue a warrant as in Form 31.30A.

[Amend. 01/01]

Application to trials of issues, references, etc.

31.31.

The foregoing rules of Rule 31 shall, with any necessary modification, apply to trials of issues or questions of fact or law, references, inquiries and assessments of damages as they apply to the trial of a proceeding. [E. 38/8]

FORM 31.24a

[Rule 31.24(1)]

SUBPOENA

(Title of proceeding)

TO: [names and addresses of witnesses]

You are required to attend the trial of the above proceeding in the Supreme Court, to be held at the Court House, in _____, Nova Scotia, on _____, the ___ day of ____, 20__, at ___ o'clock in noon and so on from day to day until the end of the trial, to give evidence on behalf of the [plaintiff] [defendant].

[You are also required to bring with you and to produce at the above trial the following documents or things;

(here describe the documents or things).]

Failure by you without adequate excuse to obey this subpoena may be deemed a contempt of court and render you liable to arrest and imprisonment.

Issued at _____, Nova Scotia, this ___ day of ____, 20__ .

Prothonotary

[Amend. 29/03/96]

FORM 31.24B

[Rule 31.24(6)]

ORDER TO BRING PRISONER AS WITNESS

(Title of proceeding)

TO: The Sheriff of the County of _____ (or as the court may order)

We order you to bring before this court at the Court House in

_____, Nova Scotia, on ____, the ____ day of ____, 20__ , H.N., who is being detained in the custody of _____, to give evidence on behalf of [plaintiff] [defendant], and so on from day to day until the end of the trial when you shall take him back without delay to the custody from which he was brought.

And we order the person having custody of H.N. to deliver H.N. to the sheriff for the purposes of this order.

Given under my hand this ____ day of _____, 2-__ .

_____ A Judge of the Supreme Court

Issued at _____, Nova Scotia, this ____ day of ____, 20__ .

Prothonotary.

FORM 31.30A
[Rule 31.30]

WARRANT FOR ARREST OF A DEFAULTING WITNESS

(Title of proceeding)

TO: E.F., Sheriff of the County of , etc.,

Whereas it has been made to appear to me that H.N. has been duly served with a subpoena or order requiring him to attend and give evidence on behalf of the [plaintiff] [defendant] at the trial of this proceeding which commenced on the day of , 19 , that his fees for travel and attendance have been paid or tendered to him, that the witness refuses or neglects to attend to give evidence as required by the subpoena or order, and that his evidence is material.

You are therefore directed to arrest H.N. and bring him before the Court on the ____ day of ____, 20__, for the purpose of giving evidence in the proceeding, and to be further dealt with according

to the law.

Given under my hand this __ day of __, 20__ .

_____ A Judge of the Supreme Court

Issued at _____, Nova Scotia, this __ day of __, 20__ .

_____ Prothonotary.

[Amend. 01/01]

RULE 32

EVIDENCE BY DEPOSITION

Power to order deposition to be taken

32.01.

(1) The court may grant an order for an examination on oath or affirmation of any person, at any place, before a judge, officer of the court, or other person. [Amend. 12/12/74]

(2) The court under paragraph (1) may, on such terms as the court thinks just including directions as to discovery before the examination, grant,

(a) where the person to be examined resides within the jurisdiction, an order in Form 32.01A;

(b) where the person to be examined resides outside the jurisdiction and in a country with a government that allows a person in that country to be examined before a person appointed by the court, an order in Form 32.01B;

(c) where a person resides in any other country, an order in Form 32.01C, that shall authorize the issue of a letter of request in Form 32.01D to the judicial authorities of the country to take, or cause to be taken, the evidence of the person in that country. [E. 39/1/2]

(3) Any person within the jurisdiction

(a) who is about to leave the jurisdiction; or

(b) who from illness or other infirmity is unable to travel; may be examined without an order before a commissioner after five (5) clear days notice of the time and place of the examination has been given to the person and all other parties.

(4) When a person, who receives a notice under paragraph (3), refuses to give evidence, the court may grant an order under paragraph (1) for his examination.

Letter of request

32.02.

(1) Where an order is granted under rule 32.01(2)(c) for the issue of a letter of request, the letter of request shall be sent by the party obtaining the order to the Under Secretary of State for External Affairs of Canada and shall have attached to it,

(a) the pleadings, if any, and such other documents as will inform the examiner of the material facts and questions in issue in the proceeding; [E. 39/7]

(b) any interrogatories and cross-interrogatories, if any, to be put to the person being examined; [E. 39/3(3)]

(c) the names, addresses and telephone numbers of each solicitor or agent of the parties;

(d) a copy of each of the documents so attached, translated into the official language of the country where the examination is to take place, or if there is more than one official language, the language appropriate to the place where the examination is to take place, and bearing the certificate of the translator that it is a true translation and giving his full name, address and qualifications to make the translation. [E. 39/3(4)]

(2) The party obtaining the order shall file with the Under-Secretary of State for External Affairs of Canada an undertaking by the party or his solicitor to be personally responsible for all the charges and expenses incurred by the Under-Secretary in respect of the letter of request and to pay the same on receiving notification of their amount. [E. 39/3(6)]

Enforcing attendance of persons at examination

32.03.

(1) The attendance of any person to be examined within the jurisdiction under rule 32.01 and the production by him of any document at the examination may be enforced by a subpoena. [E. 39/4]

(2) A person is not bound to attend at an examination within the jurisdiction or elsewhere or to

produce any document thereat, unless he is paid or tendered the witness fees provided for in subsection 2(1) of the *Costs and Fees Act*. [Amend. 05/02/03]

(3) Where a person, subpoenaed under paragraph (1) and tendered the proper fees, refuses or fails to attend the examination, or refuses to be sworn or answer any lawful question or produce any document thereat, the examiner shall file a certificate to that effect with the prothonotary, whereupon any party may apply ex parte to the court for an order requiring the person to attend or be sworn or answer any question or produce any document. [E. 39/5(1)]

(4) In granting an order under paragraph (3), the court may order the person against whom the order was made to pay costs. [E. 39/5(3)]

(5) A person who wilfully disobeys any order made under paragraph (4) is guilty of contempt of court. [E. 39/5(4)]

Appointment of time and place for examination

32.04.

(1) The examiner shall, having regard to the convenience of the parties and of any person to be examined, appoint a time and place for the examination and cause reasonable notice thereof to be given to any such person and to the parties, their solicitors or agents, present within the jurisdiction where the examination is to take place. [E. 39/6]

(2) Where no solicitor or agent is named, or the name or address given for any solicitor or agent proves to be illusory or fictitious, or if any party, his solicitor or agent so notified fails to attend pursuant to the notice, the examination may be carried out ex parte.

Conduct of examination

32.05. (1) Subject to the directions contained in an order or letter of request, any person to be examined shall be examined upon oath or affirmation, and he may be

(a) examined, cross-examined and re-examined in the same manner as a witness at a trial, and

(b) examined by the examiner as to the meaning of any answer made by him or of any matter arising in the course of the examination. [E. 39/8(1)(2)]

(2) Unless otherwise directed by the order or letter of request, an examination of a witness shall be by oral questions, and the questions and the answers thereto shall be reduced into writing and returned with the order or letter of request.

(3) Where an order or letter of request directs an examination to take place upon written interrogatories, the interrogatories in chief shall, unless it is otherwise ordered, be delivered to the opposite party at least ten (10) days before the dispatch of the order or letter, and any cross-interrogatories shall be delivered to the opposite party within five (5) days after the receipt of the interrogatories in chief, and in default of cross-interrogatories being delivered the prothonotary or opposite party may dispatch the order or letter of request without cross-interrogatories.

(4) The parties, their solicitors or agents shall be entitled to be present during the examination of any person.

(5) The examiner may adjourn an examination from time to time. [E. 39/8(3)]

Examination of additional persons

32.06.

With the written consent of the parties or an order of the court, the examiner may take the examination of any other person in addition to those named in the order for examination and shall annex the consent or order to the original deposition of the person. [E. 39/9]

Objection to questions

32.07.

(1) Where a person objects on an examination to answer any question put to him, or objection is taken to any such question, the question, the ground of the objection, and the answer to the question shall be set out in the deposition of the person. [E. 39/10(1)]

(2) The validity of any objection shall be decided by the court, and the court, if it decides against the person taking the objection, may order him to pay the costs occasioned by the objection. [E. 39/10(2)(3)]

Production of documents

32.08.

Where a person on an examination produces a book, letter, paper or other document and refuses for good cause, to be stated in the deposition, to part with the original, then a copy or extract thereof certified by the examiner to be a true copy or extract, shall be annexed to the deposition of the person.

Taking of depositions

32.09.

- (1) Unless it is otherwise ordered by the court, a deposition shall be recorded or taken down by a reporter.
- (2) Unless the person examined so requests, a deposition taken in shorthand need not be read over and signed by him, but shall be certified and signed by the reporter and examiner.
- (3) When a deposition is not taken down in shorthand, it shall be examined and signed by the person examined and the examiner, or if the person examined refuses or fails to examine and sign the deposition, the examiner shall certify and sign it.
- (4) A copy of the deposition certified by the examiner or signed by the person examined shall have the same effect as the original deposition.
- (5) The depositions, any interrogatories and cross interrogatories, and any exhibits or certified copies thereof or extracts therefrom shall be sent to the prothonotary. [E. 39/11]

Special report by examiner

32.10.

The examiner may make a special report to the court with regard to any examination taken before him and the absence or conduct of any person thereat, and the court may make such order on the report as it thinks just. [E. 39/13]

Transfer of examination

32.11.

Where an examiner is unable or declines to take or complete an examination, the court may appoint another person to act as the examiner in his place and give such directions as are just. [E. 39/17(2)]

Use of deposition in evidence

32.12.

A deposition may be used in evidence on the trial or hearing as provided for in rule 31.12.

Order for further examination

32.13.

The court may order a further examination of any person before the same or any other examiner, and if the party on whose behalf the person gave evidence refuses or fails to have the further examination conducted, the court may decline to act on the evidence in the initial deposition.

Order for payment of examiners fees

32.14.

Where an examiner reports to the court that his fees and expenses of an examination have not been paid, the court may order each party to pay the fees and expenses resulting from the examination of his own witnesses, but the order shall not prejudice any subsequent order as to costs. [E. 39/14]

Depositions before proceeding commenced

32.15.

(1) A person, who desires to perpetuate the testimony of himself or any other person regarding any cause of action within the jurisdiction of the court, may apply to the court on an originating notice in an intended proceeding to perpetuate any testimony that may be material to establish or defend the cause of action. [E. 39/15] [Amend. 12/12/74]

(2) The applicant in his affidavit shall set out,

(a) that he expects to be a party to a proceeding within the jurisdiction of the court, but is presently unable to bring, or cause it to be brought, for the reasons stated in his affidavit;

(b) the subject matter of the intended proceeding and his interest therein;

(c) the facts that he desires to establish by the proposed testimony and his reasons for desiring to perpetuate it;

(d) the name and address of any person he expects will be an adverse party and that person's interest in the proceeding;

(e) the name and address as far as is known of any person to be examined and the substance of the testimony which he expects to elicit from such person.

(3) The originating notice shall be served personally or by publication or otherwise on any person or his representative, who is expected to be an adverse party in any subsequent proceeding, as the court may on ex parte application direct, and the court may direct a solicitor to represent any person who is unrepresented on the hearing.

(4) Where the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it may make an order designating any person whose deposition may be taken, specifying the subject matter of the examination, whether the deposition shall be taken upon oral examination or by written interrogatories, and such other terms and conditions as may be just.

(5) Any deposition taken to perpetuate testimony may be used in any subsequent proceeding

involving the same subject matter in accordance with the provisions of rule 31.13.

(6) The preceding provisions of Rule 32 shall apply with any necessary modification, to any depositions taken to perpetuate testimony.

FORM 32.01A

[Rule 32.01(2)(a)]

ORDER FOR EXAMINATION OF PERSONS WITHIN JURISDICTION

(Title of proceeding)

Before the Honourable Mr. Justice _____ in Chambers.

On hearing _____, and on reading the affidavit of _____, sworn to on the _____ day of _____, 20__.

It is ordered that A.B., of _____, and C.D., of _____, persons to be examined on behalf of the [plaintiff] [defendant] and any other person as the solicitors or agents of the parties mutually request the examiner in writing to examine, be orally examined, cross-examined and re-examined on oath or affirmation, before Mr. _____, Esquire of _____, as Examiner.

And it is ordered that the examiner appoint a time and place for the examination and give ___ days notice in writing of the time and place to each person to be examined and to each party, his solicitor or agent, unless the notice is waived.

And it is ordered that the depositions taken at the examination, together with any book, letter, paper or document referred to therein, or certified copies of the same or extracts therefrom be filed in the office of the prothonotary at _____, Nova Scotia, and that a certified copy thereof may be read and used in evidence at the [trial] [hearing] of this proceeding, saving all just exceptions, without any further proof of the absence at the [trial] [hearing] of any of the persons examined than the affidavit of the solicitor or agent of the party using the same, as to his belief, and that the costs of this application and the examination be _____

Dated this _____ day of _____, 20__.

_____ Prothonotary.

FORM 32.01b

[Rule 32.01(2)(b)]

ORDER FOR EXAMINATION OF PERSONS OUT OF JURISDICTION

(Title of proceeding)

Before the Honourable Mr. Justice _____ in Chambers.

On hearing , and on reading the affidavit of _____, sworn to on the _____ day of _____ , 20__.

It is ordered that _____ Esq. of _____ , is appointed an examiner for the purpose of taking the examination, cross-examination and re-examination orally, on oath or affirmation, of A. B., of _____ , and C.D. of _____ , persons to be examined on the part of the [plaintiff] [defendant], and of any other persons as the solicitors or agents of the parties shall mutually request the examiner in writing to examine, at _____ in [name of country].

And it is ordered that the solicitor for the applicant give to the solicitor of each of the other parties ___ days notice in writing of the date on which he proposes to send out this order to the examiner for execution, and that days after the service of the notice the solicitors for the parties respectively do exchange the names of their solicitors or agents at _____, to whom notice relating to the examination of the persons may be sent.

And it is ordered that _____ days (exclusive of Saturday and Sunday) before the examination of any person hereunder notice of an examination shall be given by the examiner to the solicitor or agent of each of the parties and to each person to be examined unless the notice is waived.

And it is ordered that the examination be conducted in accordance with the enclosed instructions, with such modifications as may be necessary.

And it is further ordered that the depositions when taken, together with any book, letter, paper or document, referred to therein, or certified copies of the same or extracts therefrom, be sent by the examiner, under seal, to the prothonotary of the Supreme Court of Nova Scotia at (insert address), on or before the day of _____ next, or such further or other day as may be ordered, there to be filed.

And it is further ordered that either party be at liberty to read and use the depositions in evidence on the [trial] [hearing] of this proceeding, saving all just exceptions, without any further proof of the absence at the [trial] [hearing] of the persons examined than the affidavit of the solicitor or agent of the party using the same as to his belief.

And it is ordered that the [trial] [hearing] of this proceeding is stayed until the filing of the depositions, and that the costs of and incidental to this order and the examination be

Dated the _____ day of _____, 20__.

_____ Prothonotary.

FORM 32.01c
[Rule 32.01(2)(c)]

ORDER FOR ISSUE OF A LETTER OF REQUEST TO JUDICIAL AUTHORITY OUT OF JURISDICTION

(Title of proceeding)

Before the Honourable Mr. Justice _____ in Chambers.

On hearing and on reading the affidavit of _____, sworn to on the _____ day of _____, 20__.

It is ordered that a letter of request be issued directed to the proper judicial authority for the examination of the following persons, namely:

E.F. of _____,

G.H of _____;

and such other persons as the solicitors or agents of the parties shall mutually request the judicial authority in writing to examine.

And it is ordered that the depositions taken pursuant thereto, when received, be filed in the office of the prothonotary of the Supreme Court of Nova Scotia at _____, Nova Scotia and the certified copy thereof may be read and used in evidence on the [trial] [hearing] of this proceeding, saving all just exceptions, without any further proof of the absence at the [trial] [hearing] of any of the persons examined than the affidavit of the solicitor or agent of the party using the same as to his belief.

And it is ordered that the [trial] [hearing] of this proceeding be stayed until the depositions have been filed, and that the costs of and incidental to this application, letter of request and examination be

Dated the _____ day of _____, 20__.

_____ Prothonotary.

FORM 32.01d
[Rule 32.01(2)(c)]

LETTER OF REQUEST FOR EXAMINATION OF WITNESS OUT OF JURISDICTION

To the Judicial Authority of _____ in the _____ of _____ .

Whereas a proceeding is now pending in the Supreme Court of Nova Scotia, in which A.B., is plaintiff and C.D., is defendant, and in which the plaintiff claims

And whereas it has been represented to the Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties that the following persons should be examined, upon oath or affirmation touching such matters, namely A.B. of _____ , and C.D. of _____ , and such other persons as the solicitors or agents of the parties shall mutually request you in writing to examine, and it appears that such persons are resident within your jurisdiction.

Now I, _____, a Judge of the Supreme Court of Nova Scotia, hereby request that for the reasons aforesaid and for the assistance of the Court, you will be pleased to summon the solicitors or agents of the parties and the persons to be examined, to attend at such time and place as you shall appoint, either before you or such other person as according to your procedure is competent to take the examination of witnesses, and that you will cause such person to be examined orally or by interrogatories touching the matters in question, in the presence of the solicitors or agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend the examination.

And I further request that you will permit the solicitors or agents of any party, or such of them as shall be present to examine orally or by interrogatories, any person, as may, after due notice in writing, be produced on his behalf, and the opposing party to cross-examine the person orally or by interrogatories, and the party producing the person for examination to re-examine him orally or by interrogatories.

And I further request that you will be pleased to cause the evidence of any such person to be reduced into writing, and any book, letter, paper and document produced on the examination to be duly marked for identification, and that you will be further pleased to authenticate the depositions taken on the examination and any book, letter, paper or document, or a certified copy of the same or any extract therefrom by the seal of your tribunal or in such other ways as is in accordance with your procedure, and to return the same, together with any interrogatories and a note of the charges and expenses payable in respect of the execution of this request to the Under-Secretary of State for External Affairs of Canada at Ottawa, Canada, for transmission to the Prothonotary of the Supreme Court of Nova Scotia, at _____, Nova Scotia.

And I further request that you will cause the examination to be conducted in accordance with the enclosed instructions, with such modifications as may be necessary.

Dated this ____ day of _____, 20__.

_____ A Judge of the Supreme Court of Nova Scotia.

RULE 33

ASSESSMENT OF DAMAGES

Assessment of damages on a trial, etc.

33.01.

(1) On a trial or hearing, the court may [Amend. 12/12/74]

(a) assess the damages, in whole or in part, and give judgment for the damages so assessed;

(b) order the assessment of damages, in whole or in part, to be referred to a referee or local judge for inquiry or report under Rule 35, or to any other person;

(c) grant liberty to any party to have the court subsequently assess all or any damages and give judgment with damages to be so assessed;

(d) give judgment for any damages agreed upon by the parties;

(e) give judgment with damages to be assessed, with or without directions as to how or when the damages, or any part of them, are to be assessed, and

(f) give such other directions as it thinks just. [E. 37/4]

(2) The court may, at any time prior to a trial or hearing, give directions as to the exercise of any of its powers under paragraph (1), and may direct the assessment of damages, in whole or in part, before the trial. [Amend. 12/12/74]

(3) A judgment given under paragraph (1) shall be deemed to be final, subject however to any right of appeal, unless liberty is reserved to assess all or any of the damages, or judgment is given with damages to be assessed.

Interim payment

33.01 (A)

(1) Notwithstanding the provisions of rule 33.01, the court may order the defendant to make an interim payment of such amount as it thinks just, not exceeding a reasonable proportion of the damages which in the opinion of the court are likely to be recovered by the plaintiff after taking

into account any relevant contributory negligence and any set off, cross-claim or counter-claim on which the defendant may be entitled to rely, if the court is satisfied:

(a) that the defendant against whom the order is sought has admitted liability for the plaintiff's damages, or

(b) the plaintiff has obtained judgment against the defendant for damages to be assessed.

(2) No order shall be made under subsection (1) in an action for personal injuries if it appears to the court that the defendant is not a person falling within one of the following categories:

(a) a person who is a party to a contract of insurance pursuant to which the insurer is obliged to contribute or to indemnify the plaintiff in the event that the defendant is found liable to the plaintiff,

(b) a public authority, or

(c) a person whose means and resources are such as to enable the person to make the interim payments. [Amend. 29/11/96]

Assessment of damages in chambers

33.02.

(1) Where judgment has been given on a trial or entered on default with liberty to assess all or any of the damages or with damages to be assessed, or the court has directed damages, in whole or in part, to be assessed before the trial, the damages may be assessed by a judge in chambers.

(2) A prothonotary may on ex parte application fix a date for the assessment of damages and, unless it is otherwise ordered, notice of the assessment of damages shall be served on any party against whom damages are to be assessed at least ten (10) days before the date of the assessment. [Amend. 12/12/74]

(3) On the assessment of damages in chambers, a judge shall assess them in the same manner and with the same powers as the court on a trial. [E. 37/1]

Default judgment against some but not all defendants

33.03.

Where a judgment is given on default of defence with damages to be assessed and the proceeding continues against the other defendants, the damages under the default judgment shall be assessed at the trial unless the court otherwise orders. [E. 37/3]

Assessment of damages to time of assessment

33.04.

Where damages are to be assessed, whether under Rule 33 or otherwise in respect of any continuing cause of action, they shall be assessed down to the time of the assessment. [E.37/6]

Assessment of value

33.05.

The foregoing provisions of Rule 33 shall apply, with any necessary modification, in relation to a judgment for value of goods to be assessed, with or without damages to be assessed, as they apply to a judgment for damages to be assessed. [E. 37/5]

Assessment of damages by jury

33.06.

The provisions of Rule 34.13 shall apply to the assessment of damages by a jury and the provisions of Rule 33 shall apply thereto with any necessary modification.

RULE 34

TRIALS WITH JURY

Trial by jury

34.01.

Where required by the Act, the issues of fact and the assessment of damages in a proceeding shall be tried by a judge with a jury.

Setting down of trial with jury

34.02.

A proceeding within the provisions of rule 34.01 may be set down for trial with a jury in the manner provided in rule 28.10.

34.03. [Repealed 20/6/94]

Roll call of jurors

34.04.

The prothonotary shall, on each day on which the jurors are required to attend, call

(a) upon the opening of the court, the names of all the jurors; and

(b) upon any proceeding to be tried with a jury being called for trial, the names of the jurors comprising the jury; and shall make an entry of the fact when any juror does not answer to his name.

Size of jury

34.05.

Subject to rule 34.08 a jury shall consist of seven (7) persons, of whom five (5), after deliberating for at least four (4) hours, may return a verdict. [Amend. 01/88]

Selection of jury

34.06.

A jury shall be selected in the manner provided by sections 15 to 17 of the **Juries Act**. [Amend. 05/02/03]

Challenges

34.07.

(1) The plaintiff or plaintiffs on one side, and the defendant or defendants on the other, may on each side peremptorily challenge four (4) jurors.

(2) Any party may challenge a juror for cause and the burden is on the party to state and establish the cause.

Illness of juror at trial

34.08.

Where in the course of a trial the judge is satisfied that a juror should not, because of illness or other reasonable cause, continue to act, the judge may discharge the juror and, if the number of jurors is not reduced below six (6), the trial may proceed and the verdict given shall be valid. [Amend. 01/88]

Directions to jury

34.09.

(1) Unless the court directs the jury to give a special verdict or to answer any question of fact, the jury may give either a general or special verdict.

(2) Except in a proceeding for defamation, the court may in lieu of a general or special verdict,

direct the jury to answer any question of fact raised by the issues.

(3) Any question of fact may be stated to the jury by the court, and counsel may require the court to direct the jury to answer any other question of fact raised by the issues or necessary to be answered by the jury in order to obtain a complete determination of all matters involved in the proceeding.

(4) The jury shall answer any questions of fact without giving a verdict, and the court shall give a judgment in the proceeding not inconsistent with the answers of the jury.

(5) A refusal of the court to direct the jury to answer any question that counsel requires it to submit to the jury may be used as a ground for a new trial.

Communication to jury of payment into court

34.10.

A payment of money into court, or the amount thereof, shall not be communicated to the jury before the verdict is given or questions answered.

Inspection by jury

34.11.

The court may, on the application of any party or on its own motion, authorize the jury to inspect any place or thing involved in a proceeding and make the necessary order therefore.

Objections to a question at a trial with a jury

34.12. Any objection to a question at a trial with a jury shall be governed by the provisions of rule 31.21.

Assessment of damages by jury

34.13.

The foregoing provisions of Rule 34 shall, with any necessary modification, apply to the assessment of damages by a jury. [Amend. 12/12/74]

Order of speeches

34.14. The order of speeches at a trial with a jury are governed by the provisions of rule 30.04.

Answers of jury

34.15.

(1) Where a jury disagrees, the proceeding may be retried at the same or any subsequent sittings as the court may direct.

(2) Where a jury answers some but not all of the questions directed to it, or where the answers are conflicting so that judgment cannot be entered upon such findings, the proceeding shall be retried as provided for in paragraph (1),

(3) Where the answers of the jury entitle either party to judgment in respect of some but not all the causes of action, the court may direct judgment to be entered on the causes of action as to which the answers are sufficient and the issues upon the remaining causes of action shall then be retried as provided in paragraph (1).

Costs of trial by jury

34.16. Unless it is otherwise ordered, where a proceeding is tried with a jury, the costs shall follow the event.

RULE 35

TRIALS BEFORE, AND INQUIRIES BY, REFEREES OR LOCAL JUDGES

Trial or inquiry before a referee

35.01.

(1) Where it is in the interest of any party, the court may, subject to any right to a trial with a jury, order a proceeding or any question, or issue of fact arising therein, to be referred to the person it appoints as a referee, with or without the assistance of assessors, for

(a) trial and report; or

(b) inquiry and report;

and the court may give such directions as it thinks just. [E. 36/1/2]

(2) The party who applies for a reference shall furnish to the referee a true copy of the order for the reference, and any documents directed therein to be furnished to the referee.

Powers, etc. of a referee

35.02.

- (1) Subject to any direction contained in the order for a reference, a referee shall on a reference,
 - (a) have the same jurisdiction as the court, other than for the issuance of a contempt order;
 - (b) conduct the trial or inquiry of the reference as far as the circumstances permit, in a like manner as a like proceeding before the court;
 - (c) exercise the same powers as the court with respect to claims relating to or connected with the reference, including the right to order any counterclaim or third party proceeding to be struck out or tried separately;
 - (d) hold the trial or inquiry of the reference before him at any convenient time and place with power to adjourn the same as he thinks just; [E. 36/4]
 - (e) when requested by any party in writing or on its own motion, obtain by an application in chambers the opinion of the court upon any matter arising during the course of the reference.

(2) The provisions of the Rules shall, with any necessary modification, apply to a trial or inquiry by a referee.

Report of referee

35.03.

- (1) The report of a referee and any exhibits used at the trial or inquiry shall be filed with the prothonotary, and a copy of the report served on each party.
- (2) A referee in his report may submit any question or issue arising therein for the decision of the court, or make a special statement of facts from which the court may draw such inferences as it thinks just.
- (3) On receipt of a referee's report, the court may itself or on the application of any party,
 - (a) adopt the report in whole or in part;
 - (b) vary or reverse the report or any finding therein;
 - (c) require a supplemental report from the referee;
 - (d) remit the reference or any part thereof for further consideration to the same or any other referee;

(e) decide any question or issue referred to the referee on the evidence taken before the referee, with or without any additional evidence;

(f) vary or reverse any previous direction of the court;

(g) give such judgment based on the report or otherwise as it thinks just. [E. 36/3]
[Amend. 20/6/94]

Transfer from one referee to another

35.04.

The court may order the transfer of a reference or any part thereof from one referee to another on such terms and conditions as it thinks just. [E. 36/7]

Trial or inquiry before a local judge

35.05. The court may order any proceeding, or any question or fact arising therein, to be referred to a local judge instead of a referee, and the provisions of Rule 35 with any necessary modification shall apply. [E. 36/9]

Assessment of damages or taking of account by referee or local judge

35.06.

(1) The provisions of Rule 33, with any necessary modification, shall also apply to the assessment of damages referred to a referee or local judge for inquiry and report.

(2) The provisions of Rule 45, with any necessary modification, shall also apply to an account taken or inquiry made thereof by a referee or local judge, and where an account is taken on a foreclosure of a mortgagee, the provisions of rule 12.04, with any necessary modification, shall apply.



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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[Note: **RULE 36** Repealed 20/6/94]

RULE 37

APPLICATIONS

37.01

(1) Unless the court otherwise orders, a proceeding commenced by an originating notice (application inter partes) or an originating notice (ex parte application), or an interlocutory application in a proceeding, shall be heard on application to

- (a) a judge of the Supreme Court of Nova Scotia sitting in chambers; or
- (b) the court when sitting during a trial or pursuant to an order.

(2) When the court orders, a proceeding commenced by an originating notice (action) may be heard on application to a judge of the Supreme Court of Nova Scotia sitting in chambers.

(3) An application may be heard by the Nova Scotia Court of Appeal when it is expressly authorized by an enactment, rule or order of the court.

Notice of application: Form, filing and issue

37.02.

(1) A notice of application shall set forth with sufficient particularity the nature of any claim being made or of any question sought to be determined, and of any relief or order claimed, and have attached thereto a true copy of any affidavit to be used in support of the application, but it shall not be necessary to claim for general or other relief, or for costs. [Amend. 12/12/74]

(2) When a notice of application originates a proceeding, an originating notice (application inter partes or ex parte) in Form 9.02A or 9.02B, with any supporting affidavit, shall be filed and issued by the prothonotary before the notice is served or the application is heard.

(3) When a notice of application is given in an existing proceeding, an interlocutory notice (application inter partes or ex parte) in Form 37.02A or 37.02B, with any supporting affidavit, shall be filed and issued by the prothonotary, but it may be served before it is filed or issued.

(4) A notice of application may be amended pursuant to Rule 15. [E. 32/2(2)]

Place of hearing of application

37.03.

Unless the court otherwise orders, the place of hearing of an application shall be at the place named in the notice of application.

Ex parte applications

37.04.

(1) An application may be made ex parte where,

- (a) under an enactment or rule, notice is not required;
- (b) the application is made before any party is served;
- (c) the applicant is the only party;
- (d) the application is made during the course of a trial or hearing;
- (e) the court is satisfied that the delay caused by giving notice would or might entail serious mischief, or that notice is not necessary.

(2) Where an intended application could result in a long hearing, the intended applicant may, before filing or serving a notice of application, apply ex parte to have the court fix a special day for the hearing and the court may set the day and give such direction as to the conduct of the intended application as it considers just.

Service of notice

37.05.

(1) A notice of application and any supporting affidavit shall be served,

- (a) where the application is inter partes, by serving the notice and affidavit as provided by Rule 10 and paragraph (2) of this rule,
- (b) where the application is ex parte, by filing the notice and affidavit with the prothonotary before the hearing.

(2) Where a notice of application is to be served upon an opposing party or person, the notice and any supporting affidavit shall be served before a hearing as follows,

(a) when the application is made pursuant to an originating notice at least ten (10) clear days; except where an application is made pursuant to Rule 56 or for judicial review of an award made under the **Arbitration Act** at least fourteen (14) clear days unless otherwise ordered by the court; [Amend. 9/84]

(b) when the application is made pursuant to an interlocutory notice, at least four (4) clear days, unless the application is only for an extension or abridgment of a period of time when the notice and affidavit may be served on the day preceding the application; [Amend. 09/91]

(c) when the notice is to be served on a party outside the jurisdiction, at least thirty (30) clear days or as ordered by the court.

(3) The court may, on such terms as it thinks just, order

(a) a notice of application and any attached affidavit to be served upon any party or person in such manner and at such time as it may direct, and may adjourn any hearing to permit the service;

(b) the service of a notice of application and any attached affidavit on a party or person to be dispensed with;

(c) an application to be adjourned, continued, discontinued or dismissed when any person, who ought to have been served, has not been served. [Amend. 1/91]

Service of other affidavits

37.06.

(1) Subject to paragraph (3) an opposing party shall, before a hearing, serve on any application a copy of any affidavit to be used by him on an application as follows,

(a) when the application is made pursuant to an originating notice, at least three (3) clear days; except where an application is made pursuant to Rule 56 or for judicial review of an award made under the **Arbitration Act** at least seven (7) clear days unless otherwise ordered by the court; [Amend. 09/91]

(b) when the application is made pursuant to an interlocutory notice, at least two (2) clear days. [Amend. 09/91]

(2) An applicant shall serve a copy of any affidavit, containing supplementary material to be used by him on an application, on every opposing party before a hearing as follows,

(a) when the application is made pursuant to an originating notice, at least three (3) clear days;

(b) when the application is made pursuant to an interlocutory notice, at least one (1) clear day.

(3) An opposing party shall, before a hearing, serve on any applicant a copy of any affidavit prepared by him in reply to any supplementary affidavit as follows,

(a) when the application is made pursuant to an originating notice, at least one (1) clear day;

(b) where the hearing is pursuant to an interlocutory notice, at any time before or on the hearing.

(4) An affidavit, that is not served as provided by the preceding paragraphs of this rule, may only be used on a hearing with the leave of the court which may be granted on such terms as are just.

Counterclaims and third party proceedings

37.07.

A defendant may, with the leave of the court, counterclaim or commence a third party proceeding in a proceeding commenced by an originating notice. [E. 28/7]

Filing of documents for use of the court

37.08.

(1) An applicant shall, as provided in paragraph (3), mail to or file with the prothonotary the following documents for the use of the court,

(a) a copy of the originating or interlocutory notice and any supporting affidavit;

(b) a memorandum listing any authority and the applicable provisions of any enactment, regulation or rule that are to be relied upon by him on the application;

(c) a copy of any material document, including three (3) copies of any proposed order. [Amend. 29/03/96]

(2) An opposing party shall, as provided in paragraph (4), mail to or file with the prothonotary the

following documents for the use of the court,

(a) a copy of any affidavit or other material document to be used by him on the application;

(b) a memorandum listing any authority and the applicable provisions of any enactment, regulation or rule that are to be relied upon by him on the application.

(3) Unless the court otherwise orders, the documents required to be filed by the applicant pursuant to paragraph (1) shall be filed with the prothonotary as follows:

(a) on a contested application, at least four (4) clear days before the hearing; except where an application is made pursuant to Rule 56 or for judicial review of an award made under the **Arbitration Act** at least seven (7) clear days;

(b) on an ex parte application, at least one (1) clear day preceding the hearing; [Amend. 5/10/96]

(c) a copy of any supplementary affidavit as provided for in rule 37.06(2) shall be filed with the prothonotary by noon of the day prior to the day of the hearing. [Amend. 3/92]

(4) Unless the court otherwise orders, the documents required to be filed by the opposing party pursuant to paragraph (2) shall be filed with the prothonotary, on a contested application, at least two (2) clear days before the hearing; except where an application is made pursuant to Rule 56 or for judicial review of an award made under the **Arbitration Act** at least five (5) clear days. [Amend. 09/91]

(5) A copy of any document filed under paragraph (3) that is not in the possession of any opposing party, shall be served on that party not later than twelve o'clock noon of the day preceding the hearing. [Amend. 10/92]

Evidence on hearing of application

37.09.

(1) Evidence on a hearing may be given,

(a) by an affidavit or statutory declaration made pursuant to Rule 38;

(b) by a statement of facts agreed upon in writing by all the parties;

(c) with leave of the court, by any witness in person;

(d) by any evidence obtained on discovery and admissible under the applicable rule.

(2) Where there is or may be a dispute on a hearing as to the facts, the court may, before or on the hearing, order that the application shall be heard on oral evidence, either alone or with any other form of evidence, and may give such other directions relating to any pre-hearing procedure and the conduct of the application as it considers just. [E. 28/4(3)]

(3) The attendance of any witness and the production of any document on a hearing may be compelled by a subpoena as provided in rule 31.24 with any necessary modification. [E. 32/7]

(4) The court may order that all or part of an application be conducted by means of a telephone or video conference. [Amend. 05/02]

(5) Rules 18 to 26 on discovery procedures shall, with any necessary modification, apply to an application.

Powers of court on hearing of application

37.10.

On a hearing of an application, the court may on such terms as it thinks just,

(a) summarily dispose of any cause of action or question arising on the application, and make such order as is just;

(b) appoint one or more independent experts under Rule 23; [E. 32/16]

(c) adjourn the application from time to time, either to a particular date or generally, and when the hearing is adjourned generally, any party may apply to have it heard on a particular date; [E. 28/5; 32/4]

(d) adjourn or transfer the hearing from chambers into court or from court into chambers, or to the Nova Scotia Court of Appeal, or to a local judge; [E. 28/4(2); 32/18/19]

(e) notwithstanding rule 9.02, order the application to be continued in court as if the proceeding had begun by an originating notice (action) and order the notice and affidavits to stand as pleadings, with liberty to any party to amend or add thereto or apply for particulars thereof, and to give any other direction as is applicable; [E. 28/8]

(f) make such order as is deemed necessary to secure an early hearing or trial, either at the place named for the hearing or trial or any other convenient place;

(g) exercise such jurisdiction and grant any other order as it deems just. [Amend. 20/6/94]

Proceeding in absence of party failing to attend

37.11.

(1) When a party fails to attend on a hearing of an application or on any adjournment thereof after being served with a notice of application, the court may proceed in his absence. [E. 32/5(1)]

(2) A party who has failed to appear on an application through accident, mistake, insufficient notice or other just cause may, within ten (10) days from the time when the order granted on the application comes to his attention, apply on notice to set aside or vary the order and the court may do so on such terms as it thinks just. [E. 28/4(1); 32/5(4)]

Failure to prosecute application, etc. with dispatch

37.12.

(1) Where a party fails to comply with any order or direction of the court as to the conduct of an application or fails to prosecute or oppose an application with due dispatch, the court may order the application to be dismissed or granted or make such other order as is just. [E. 28/10]

(2) Paragraph (1) shall, with any necessary modification, apply in relation to any counterclaim or third party proceeding under rule 37.07. [E. 28/10]

(3) Where an application has been dismissed or granted under paragraphs (1) or (2), the court may allow the application to be reheard upon such terms as it thinks just. [E. 28/4(1)]

Setting aside order

37.13. The court may set aside or vary an order made ex parte on such terms as it thinks just. [E. 32/6]

Order for separate hearings

37.14.

Where claims in respect of two or more causes of action are included in the same proceeding, or if two or more plaintiffs or defendants are parties to the same proceeding, and it appears to the court that the joinder of the causes of action or parties may embarrass or delay the hearing or is otherwise inconvenient, the court may order separate hearings or make such other order as is just.

Filing of notice and affidavit

37.15.

Any notice, affidavit or other document used on a hearing of an application shall be filed with the prothonotary before the order is issued.

Record of applications

37.16.

A prothonotary shall keep a record of all applications heard by the court and shall list the applications in chronological order with the dates of hearing thereof, the names of counsel, the directions or orders given thereon, and such other matters of record as are necessary. [E. 32/22]

Abatement

37.17.

Rule 28.15 on abatement shall, with any necessary modification, apply to an application begun by an originating notice. [E. 28/11]

Application of rules to applications

37.18.

The provisions of these Rules shall, with any necessary modification, apply to any application.

FORM 37.02A

(Rule 37.02)

INTERLOCUTORY NOTICE

(APPLICATION INTER PARTES)

20__ No.

IN THE SUPREME COURT OF NOVA SCOTIA

(Title of proceeding)

TAKE NOTICE that an application will be made on behalf of the [plaintiff] [defendant] to the judge presiding in chambers at the Court House, in _____, Nova Scotia, on _____ day, the _____ day of _____, 20__ , at the hour of __ o'clock in the _____ noon, or so soon thereafter as the application can be made for [set out a statement of the nature of the application being made].

AND TAKE NOTICE that in support of the application will be read the affidavit of _____, etc., a true copy of which is hereto attached, [and such other material as counsel may advise, a true copy of which will be delivered to you or your solicitor not later than one (1) clear day before the hearing of the application.]

IF YOU DO NOT RESPOND TO THIS APPLICATION IN ACCORDANCE WITH THE NOVA SCOTIA CIVIL PROCEDURE RULES, AND DO NOT APPEAR AT THE ABOVE NOTED TIME, THE COURT MAY MAKE AN ORDER AGAINST YOU IN YOUR ABSENCE.

DATED at _____, Nova Scotia, this _____ day of _____, 20__.

_____ Solicitor for the [plaintiff] [defendant] whose address for service is _____ and whose telephone number is _____ and whose fax number is _____.

or

[A.B. plaintiff] [C.D. defendant] whose address for service is _____ and _____ whose telephone and fax numbers (if available) are _____.

TO: _____ Solicitor for the [plaintiff] [defendant] whose address for service is _____ and whose telephone number is _____ and whose fax number is _____.

or

[A.B. plaintiff] [C.D. defendant] whose address for service is _____ and whose telephone and fax numbers (if available) are _____.
[Amend. 6/97]

FORM 37.02b
(Rule 37.02)

INTERLOCUTORY NOTICE

(EX PARTE APPLICATION)

19 No.

IN THE SUPREME COURT OF NOVA SCOTIA

(Title of proceeding)

[Amend. 12/12/74]

TAKE NOTICE that an application will be made by the applicant to the judge presiding in chambers at the Court House, in _____, Nova Scotia, on _____ day, the ____ day of _____, 20__, at the hour of __ o'clock in the ____noon, or as soon thereafter as the application can be made for (set out a statement of the nature of the application being made).

AND TAKE NOTICE that on the hearing of the application will be read the affidavit of _____, etc., which is filed with this notice, and such other material as counsel may advise, a true copy of which will be filed.

DATED at _____, Nova Scotia, this day of _____, 20__.

(signed) _____, of

_____ Street,

_____, Nova Scotia,

Solicitor for the Applicant.

RULE 38
AFFIDAVITS

Form of affidavits

38.01.

(1) An affidavit used in a proceeding shall be,

(a) entitled in the proceeding, except where there is more than one plaintiff or defendant or proceeding when it shall be sufficient to state the name of the first plaintiff, defendant and proceeding followed by the words "and others" or "and other proceedings", as the case may be; [E. 41/(1)(2)(3)]

(b) expressed in the first person and state the name in full, place of residence and occupation of the deponent, and if he is a party, or the solicitor, agent or employee of a party it shall state that fact; [E. 41/1(4)]

(c) divided into paragraphs numbered consecutively, with each paragraph being

confined as far as possible to a distinct portion of the subject, and any dates, sum, and other numbers may be expressed in figures; [E. 41/1(6)(7)] and

(d) signed by the deponent with the jurat completed and signed by the person before whom it is sworn. [E. 41/1(8)]

Contents of affidavit

38.02.

(1) An affidavit used on an application may contain statements as to the belief of the deponent with the sources and grounds thereof. [E. 41/5(2)]

(2) Unless the court otherwise orders, an affidavit used on a trial shall contain only such facts as the deponent is able of his own knowledge to prove. [E. 41/5(1)]

Exhibits

38.03.

(1) An exhibit, referred to in an affidavit as being produced, attached or otherwise annexed, shall be identified by the person before whom it is sworn with a certificate in the following form:

20__ , No.

This is Exhibit " " referred to in the affidavit of , sworn before me this ____ day of _____, 20__ .

.....

[A _____ of the Supreme Court of Nova Scotia.]
[E. 41/11]

(2) An exhibit referred to in an affidavit, that is not stated to be attached or otherwise annexed and that bears the certificate of the person before whom it is sworn, shall be left with the prothonotary for the use of the court and, unless it otherwise orders, shall be returned on the disposal of the application, provided that, when possible, a true copy of the exhibit shall be attached to the affidavit when it is filed and served.

Affidavit by two or more deponents

38.04.

Where an affidavit is made by two or more deponents, the name of each deponent shall be inserted in the jurat or jurats, unless all the deponents are sworn before the same person at the same time when the words "above named deponents" may be used. [E. 41/2]

Affidavit of body corporate or partnership

38.05.

(1) An affidavit may be made on behalf of a body corporate or association by any officer, servant or agent thereof.

(2) An affidavit may be made on behalf of a partnership by any member of the partnership or any servant or agent thereof.

Affidavit by illiterate or blind person

38.06.

Where it appears to a person before whom an affidavit is sworn that a deponent is illiterate or blind, he shall certify in the jurat that,

(a) the affidavit was read in his presence to the deponent who seemed to understand it, and

(b) the deponent signed the affidavit or placed his mark on it in his presence, and unless it is so certified the affidavit shall not be used without the leave of the court. [E. 41/3]

Interpreter

38.07.

Where it appears to a person before whom an affidavit is sworn that a deponent does not understand the language used in the affidavit,

(a) the contents of the affidavit before it is sworn shall be interpreted to the deponent by a competent interpreter, who before doing so shall be sworn by the person administering the oath to correctly interpret the affidavit, and

(b) the person administering the oath shall in the jurat certify that the affidavit was in his belief correctly interpreted to the deponent by the sworn interpreter named in the jurat.

Alterations in affidavits

38.08.

Any interlineation, erasure or other alteration in an affidavit shall be initialled by the person before whom the affidavit is sworn, and unless so initialled the affidavit shall not be used or filed in a proceeding without the leave of the court. [E. 41/7]

Service and filing of affidavits

38.09.

An affidavit shall be served in the manner provided by rules 10.12, 37.05 and 37.06 and filed as provided by rule 37.08.

Cross-examination of deponent of an affidavit

38.10.

A deponent of an affidavit to be used on a trial or hearing may be examined, cross-examined and re-examined on,

(a) an examination for discovery, in the same manner as a party and Rule 18 shall apply with any necessary modification;

(b) a trial under rule 31.04;

(c) a hearing under rule 37.09(1)(c). [Amend. 12/88]

Scandalous, etc., matter in affidavit

38.11.

The court may order any matter that is scandalous, irrelevant or otherwise oppressive to be struck out of an affidavit. [E. 41/6]

Use of defective affidavit

With the leave of the court, an affidavit may be used in evidence and filed notwithstanding any irregularity in the form thereof or of the certificate on any exhibit. [E. 41(4)]

Proof of signature and seal of functionary taking affidavit

38.13.

An affidavit, purporting to have affixed or impressed thereon the signature, seal or stamp, if required, of a person authorized by section 66 or 67 of the *Evidence Act* to administer oaths in or out of the Province, shall be admitted in evidence without proof of the signature of, or the seal or stamp used by, the functionary, or of his official character. [E. 41/12] [Amend. 05/02/03]

Use of affidavit in subsequent applications

38.14.

An affidavit that has been used and filed in a proceeding, may be used on any other application in the proceeding.

Filing of affidavits

38.15.

(1) Every affidavit shall be filed with the prothonotary before an order is issued in a proceeding. [E. 41/9]

(2) When an affidavit has been filed, a copy thereof may be used in a proceeding. [E. 41/10(4)]

RULE 39

TRANSFER AND CONSOLIDATION OF A PROCEEDING AND EXERCISE OF JURISDICTION BY ANOTHER JUDGE

Transfer of a proceeding

39.01.

The court may at any time order a proceeding to be transferred to the office of another prothonotary, and when transferred the proceeding shall be intitled and continued in the latter office. [E. 4/6]

Consolidation, etc., proceeding

39.02. Where two or more proceedings are pending in the court and it appears to the court that,

- (a) some common question of law or fact arises in both or all of them;
- (b) the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions;
- (c) for some other reason it is desirable to make an order under this rule; the court may order the proceedings to be consolidated on such terms as it thinks just, or may order them to be tried at the same time, or one immediately after another, or may order any of them to be stayed until after the determination of any other of them. [E. 4/10]

Exercise of one judge's jurisdiction by another

39.03.

(1) Where an application ought to be made to, or any jurisdiction exercised by, a judge of the Supreme Court of Nova Scotia by whom a proceeding has been heard or tried in whole or in part, and the judge dies, retires or ceases for any reason to be a judge of that court, or for any other reason it is impossible or inconvenient for the judge to act in the proceeding, the Chief Justice of the Supreme Court of Nova Scotia may, either by a special order in the proceeding, or by a general order applicable to any class of proceeding, nominate another judge to whom the application may be made or by whom the jurisdiction may be exercised. [E. 4/8]

(2) A judge nominated under paragraph (1) may make an order or render a judgment in a proceeding on the evidence already adduced or may take further evidence before doing so. [Amend. 20/6/94]

(3) Repealed

Separate trials or hearings in a proceeding

39.04.

When two or more causes of actions or parties are joined in a proceeding, the court may order separate trials therein under rule 28.16 or separate hearings under rule 37.14.

RULE 40

DISCONTINUANCE AND WITHDRAWAL

Discontinuance of proceeding, etc., without leave

40.01.

At any time before a proceeding is entered for trial or its hearing is commenced in chambers,

(a) a plaintiff may discontinue the proceeding or withdraw any cause of action therein against any defendant;

(b) a defendant may withdraw his defence or any part thereof against any plaintiff; by filing and serving a notice of discontinuance or withdrawal on any party concerned. [E. 21/2]

Discontinuance of proceeding, etc., with leave

40.02.

At any time after a proceeding is entered for trial or its hearing is commenced in chambers,

(a) a plaintiff may discontinue the proceeding or withdraw any cause of action therein, against any defendant;

(b) a defendant may withdraw his defence or any part thereof against any plaintiff; with the leave of the court, and the order may contain such terms as to costs, the bringing of any subsequent proceeding, or otherwise, as are just. [E. 21/3]

Costs

40.03.

(1) Subject to rule 40.02, a party, discontinuing a proceeding or withdrawing any cause of action therein, or withdrawing his defence or any part thereof, shall pay the costs of any opposing party to the date of giving notice of discontinuance or withdrawal to the party, and if before payment of the costs he subsequently brings a proceeding for the same, or substantially the same claim, the court may order the proceeding to be stayed until the costs are paid. [Amend. 12/12/74]

(2) When an opposing party produces a notice of discontinuance or withdrawal that was served on him, he may tax his costs and enter judgment for the costs.

Effect of discontinuance

40.04.

Subject to the terms of an order granted by the court, the discontinuance of a proceeding or withdrawal of a cause of action therein shall not be a defence to a subsequent proceeding for the same, or substantially the same cause of action. [E. 21/4]

Counterclaims and third party proceedings

40.05.

The provisions of Rule 40 shall apply with any necessary modification to a counterclaim or third party proceeding.

RULE 41

PAYMENT INTO AND OUT OF COURT AND TENDER

Payment into court in satisfaction

41.01.

(1) A defendant may pay into court at any time a sum of money in satisfaction of a cause of action

in respect of which a plaintiff claims, or where there is more than one cause of action in satisfaction of any or all of them, and he may increase any payment already made. [E. 22/1(1)]

(2) Money may be paid into court under paragraph (1) by one or more of several defendants sued jointly or in the alternative.

(3) On making a payment into court under Rule 41, a defendant shall forthwith file with the prothonotary and serve on every other party a notice of payment in Form 41.01A stating the cause of action in satisfaction of which payment is made and the amount paid, or where there is more than one cause of action stating whether the payment is in satisfaction of all the causes of action and the amount paid, or if in satisfaction of one or more of them, stating the causes of action and the amount paid in respect of each of them. [E. 22/1(2)(4)]

(4) Where a single sum of money is paid into court in respect of two or more causes of action and a defendant on written demand fails to specify in writing the amount paid in respect of each cause of action and a plaintiff is embarrassed by the failure, the court may order the defendant to amend the notice of payment so as to specify the amounts. [E. 22/1(5)]

(5) Subject to the right of a defendant to increase any payment already made into court, a notice of payment shall not be withdrawn or amended without the leave of the court or the written consent of the parties. [E. 22/1(3)]

(6) Unless a notice of payment otherwise provides, a payment into court under Rule 41 shall be deemed to be an offer of compromise made without prejudice and not an admission of the defendant's liability for the cause of action in respect of which it is paid.

Payment into court of money tendered

41.02.

Where a defence of tender before the commencement of a proceeding is pleaded, the defence may not be relied upon until the money alleged to have been tendered is paid into court and notice of the payment is served upon the parties. [E. 18/16]

Acceptance and payment out of money paid into court in satisfaction

41.03.

(1) Where money is paid into court under rules 41.01, 41.02 and 41.05, a plaintiff may, while the money remains in court but before the commencement of the trial or hearing, accept the whole or any portion thereof in satisfaction of all or any of the specific causes of action in respect of which the money was paid in by giving notice of the acceptance thereof in Form 41.03A to every other party and thereupon all proceedings in respect of these causes of action shall be stayed as against the defendant making the payment and any other defendant sued jointly or in the alternative with him. [E. 22/3]

(2) With leave of the court, the money so accepted in satisfaction of the causes of action specified in the notice of acceptance shall be paid out to the plaintiff or his solicitor. [E. 22/4]

Costs on payment of money out of court

41.04.

(1) Where a defendant has pleaded a defence of tender before the commencement of a proceeding in respect of a cause or causes of action and paid the amount allegedly tendered into court, and

(a) the plaintiff accepts the amount paid in in satisfaction of the cause or causes of action, the defendant shall recover his costs of defending the cause or causes of action and may have them paid out of the money paid in or may enter judgment therefor;

(b) the defence of tender is not proved and the plaintiff does not accept the amount paid in, the plaintiff shall, if successful, be entitled to his costs of the cause or causes of action although he does not recover more than the amount paid in.

(2) Where money has been paid into court and paragraph (1) does not apply and [Amend. 12/12/74]

(a) the plaintiff accepts the money in satisfaction of the cause or causes of action with respect to which it was paid in, or

(b) the amount adjudged due to the plaintiff on the cause or causes of action with respect to which the money was paid in is not more than the money paid in, the plaintiff shall recover his costs in respect of the cause or causes of action to the time of receiving notice of the payment in and the cost of taking the money out and the defendant shall recover his costs of defending the cause or causes of action after that time, and the costs shall be set off and judgment entered for the balance.

(3) An order authorizing payment of the money so accepted shall provide for the costs relating to the causes of action to which the payment relates and judgment may be entered for the costs, or when a defendant has alleged tender before commencement of a proceeding and a compliance with rule 41.02, the order may also provide for payment of the costs of the defendant out of the money in court. [E. 22/4]

Payment into court by defendant with counterclaim

41.05. (1) Where a counterclaim is asserted, a defendant in the notice of payment in Form 41.01A shall, in addition to complying with rule 41.01(3), state whether or not the payment into court has been reduced by an offer to surrender all or any of the causes of action in the counterclaim, and if so, the amount of the reduction made in respect of all or each of the causes of action being

surrendered.

(2) Where a surrender of all or any of the causes of action in a counterclaim is accepted in full or part satisfaction, any proceeding with respect to any such cause of action shall be stayed. [E. 22/2/3(5)]

Payment of money out of court to defendant

41.06.

When the court orders or when a period of thirty (30) days has expired from the payment of any money into court under the preceding rules and a defendant has given to all the parties ten (10) days notice in writing of his intention to take the money out of court, the defendant upon filing the order or an affidavit of compliance with the provisions hereof, shall be entitled to receive payment from the prothonotary of any money remaining in court which has not been accepted by the plaintiff. [E. 22/5]

Non-disclosure of payment into court

41.07.

Except in a proceeding where the defence of tender before the commencement of the proceeding is pleaded, the fact that money has been paid into court under the foregoing provisions of this Rule shall not be pleaded, or communicated to the court or jury at or before the trial or hearing of the proceeding until all questions of liability and the amount of debt and damages have been decided, or the proceeding has been stayed under rules 41.03(1) or 41.05(2). [E. 22/7]

Counterclaims and third party proceedings

41.08.

A party opposing a counterclaim and a third party may pay money into court in satisfaction of the counterclaim or third party proceeding and the provisions of Rule 41 shall apply with any necessary modification. [E. 22/6]

Payment into court under Trustee Act

41.09.

(1) A payment into court under section 46 of the *Trustee Act* shall be accompanied by an affidavit of any trustee setting forth [Amend. 05/02/03]

(a) a short description of the trust and of the instrument creating it or of the circumstances in which it arose,

(b) the names of the persons interested in or entitled to the money or securities to be paid into court with their addresses so far as known, and

(c) an address for service.

(2) Notice of an application to pay money into court or of the payment into court, as the case may be, shall be given to the persons referred to in paragraph (1)(b).

Money of infants and mentally incompetent persons

41.10.

Money paid into court shall not be paid out to or on behalf of a person under disability without an order of the court. [E. 80/10]

Method of payment of money into court

41.11.

(1) Unless the court otherwise orders, any money paid into court shall be paid to the prothonotary who shall

(a) give a receipt for the payment which shall contain a notation of the proceeding and purpose for which the payment was made,

(b) maintain a ledger account in his records respecting the payment, and

(c) deposit, invest and pay out the money in accordance with the *Payment into Court Act*. [Amend. 05/02/03]

Investment of money paid into court by the Accountant General

41.12.

(1) When it is ordered that money paid into court shall be invested by the Accountant General pursuant to the **Accountant General of the Supreme Court Act**, the money shall be paid over to the Accountant General who shall make the investment according to the order of the court, and forthwith report his doings in relation to the investment to the court.

(2) The dividends, interest, or income derived from the investments in which the moneys are placed shall be placed to the credit of the proceeding in which the money was originally paid in.

(3) When investments are to be sold, transferred, assigned, or in any manner realized, the Accountant General shall, on receipt of an order from the court, cause the necessary sale, transfer, assignment or realization to be made, and the proceeds resulting therefrom shall be placed to the credit of the proceeding mentioned in the order, and the Accountant General shall forthwith report to the court what he has done under it.

(4) Where any money in court is to be invested and the court fails to direct how all or any part

thereof is to be invested, the Accountant General shall invest it in the manner prescribed by section 3 of the *Trustee Act* and not in any investment proscribed by section 4 of that Act.
[Amend. 05/02/03]

(5) The books kept by a prothonotary and the Accountant General relating to the payment of money into and out of court, shall be open at all times for inspection by such persons as the Governor-in-Council may appoint to inspect the same.

Money paid into court under order, etc.

41.13.

(1) Subject to rules 41.03 and 41.06 money paid into court shall not be paid out except in accordance with an order of the court [E. 22/8]

(2) No order shall be made for payment out of court without the production of a certificate of the prothonotary that the moneys are in court.

(3) The interest earned on money in court shall be paid to the person entitled thereto on payment out of the principal, subject, however, to a deduction by the prothonotary of five per cent (5%) of such interest as compensation for handling and investing the money paid into court.

Payment of money to estate of a deceased person

41.14.

When the estate of a deceased person, who has died intestate, is entitled to any moneys in court, and no administration has been taken out and the assets of the estate are under \$2,500.00, including the amount in court to which such estate is entitled, the court may direct that the amount shall be paid or transferred to the person or persons beneficially entitled thereto.

Unclaimed balances paid to Accountant General

41.15.

Unless the court otherwise orders, a prothonotary shall transfer to the Accountant General the balance remaining to the credit of a proceeding

(a) when the balance does not exceed \$500.00 and two (2) years have elapsed without the balance being closed, or

(b) in any case, when six (6) years have elapsed after the last payment into court in the proceeding, but the transfer shall not prejudice the right of any person entitled to the balance to obtain payment.

[Rule 41.01(3)]

NOTICE OF PAYMENT INTO COURT

(Title of proceeding)

TAKE NOTICE that the defendant has paid the sum of _____ dollars into court in satisfaction of, _____ [(the cause) (all the causes) of action for which the plaintiff claims;] or

[the following causes of action for which the plaintiff claims and the following amounts are paid in respect thereof;

(set out the causes of action and amount or amounts)]

(and where there is a counterclaim)

AND FURTHER TAKE NOTICE that the defendant has offered to surrender the following [cause] [all the causes] of action in the counterclaim and has reduced the sum paid into court by the sum of _____ dollars in allowance therefor;

[set out the cause or causes of action of the counterclaim and the amount or amounts]

DATED the _____ day of _____, 20____.

_____, of

_____ Street,

_____, Nova Scotia,

_____ Solicitor for the Defendant

TO: The Parties or their solicitors

FORM 41.03A

[Rule 41.03(1)]

NOTICE OF ACCEPTANCE OF MONEY PAID INTO COURT

(Title of proceeding)

TAKE NOTICE that the plaintiff, A.B., accepts the sum of \$_____ paid by the defendant C.D., into court in satisfaction of the [cause] [causes] of action for which it was paid in and agrees that all further proceedings relating to the [cause] [causes] of action shall be abandoned.

DATED the _____ day of _____, 20__.

_____, of

_____ Street,

_____, Nova Scotia,

_____ Solicitor for the Plaintiff

TO: The Parties or their solicitors

RULE 41A

OFFERS TO SETTLE

Definitions

41A.01.

In this rule, "defendant" includes respondent; "plaintiff" includes applicant.

Where available

41A.02. A party may serve upon an adverse party an Offer to Settle (Form 41A(A)) any claim between them in the proceeding and, where there is more than one claim between them, to settle one or more of them, on the terms therein specified.

Time for making offer

41A.03. An offer to settle may be made at any time before the commencement of the trial or hearing; but, where an offer to settle is made less than seven (7) days before the day on which the trial or hearing is commenced, the cost consequences prescribed by this rule shall not apply unless the offer to settle is accepted before the commencement of the trial or hearing. [Amend. 12/86]

When offer to settle may be revoked

41A.04.

(1) A party may revoke an offer to settle at any time before acceptance by serving upon the party to whom the offer was made a notice of revocation (Form 41A(B)).

(2) Where an offer to settle stipulates a time for acceptance and is not accepted within that time, it shall be deemed to have been revoked.

(3) The cost consequences prescribed by this rule shall not apply to an offer to settle that has not been accepted and which has been revoked before the commencement of the trial or hearing.

Effect of offer

41A.05.

(1) An offer to settle shall be deemed to be an offer of compromise made without prejudice, and shall not be taken as an admission of liability, unless the offer to settle provides otherwise.

(2) A statement of the fact that an offer to settle has been made shall not be contained in the pleadings, and a communication of that fact shall not be made to the court on the trial or hearing of the proceeding until after all questions of liability and the relief to be granted have been decided.

Acceptance of offer

41A.06. Where an offer to settle has been served, the party to whom the offer is made may accept it by serving notice of acceptance (Form 41A(C)) on the party who made the offer.

Time for acceptance

41A.07. Notice of acceptance may be delivered at any time before the commencement of the trial or hearing unless, in the meantime, the offer has been revoked.

Effect of acceptance

41A.08.

(1) Where a party to an accepted offer to settle fails to comply with the terms thereof, the other party may, subject to the provisions of paragraph (2), apply to the court

(a) for judgment in the terms of the accepted offer, or

(b) where the defaulting party is a plaintiff, to have his proceeding dismissed or, where the defaulting party is a defendant, to have his defence to the proceeding struck out.

(2) Where the accepted offer to settle is the settlement or compromise of a claim made by or on behalf of a person under disability, the provisions of paragraph (1) shall not apply until the settlement or compromise has been approved as provided in rule 6.08.

(3) Where the accepted offer is silent as to costs, and the offer was made by the defendant and accepted by the plaintiff, the plaintiff may tax the party and party costs of the proceeding to the date when he was served with the offer to settle and, unless the defendant pays those costs within seven (7) days after assessment, issue execution therefor.

(4) Where the accepted offer is silent as to costs, and the offer was made by the plaintiff and accepted by the defendant, the plaintiff may tax his party and party costs of the proceeding to the date he was served with the notice of acceptance and, unless the defendant pays those costs within seven (7) days after assessment, issue execution therefor.

Effect of failure to accept

41A.09.

(1) Unless ordered otherwise, where an offer to settle was made by a plaintiff at least seven (7) days before the commencement of the trial or hearing of the proceeding and was not revoked or accepted prior to the commencement of the trial or hearing, and where that plaintiff obtains a judgment as favourable or more favourable than the terms of the offer to settle, that plaintiff shall be entitled to party and party costs plus taxed disbursements to the date of the service of the offer to settle and thereafter to taxed disbursements and double the party and party costs.

(2) Unless ordered otherwise, where an offer to settle was made by a defendant at least seven (7) days before the commencement of the trial or hearing of the proceeding and was not revoked or accepted prior to the commencement of the trial or hearing, and where the plaintiff fails to obtain a judgment more favourable than the terms of the offer to settle, the plaintiff shall be entitled only to party and party costs plus taxed disbursements to the date of service of the offer to settle and the defendant shall be entitled to party and party costs plus taxed disbursements from the date of such service.

[Amend. 12/86]

Multiple defendants

41A.10.

Where there are two or more defendants, the plaintiff may offer to settle with any defendant and any defendant may offer to settle with the plaintiff, but where the defendants are alleged to be jointly, or jointly and severally liable to the plaintiff in respect of a claim and rights of contribution or indemnity may exist between the defendants, the costs consequences prescribed by rule 41A.09 shall not apply to an offer to settle unless,

(a) in the case of an offer made by the plaintiff, the offer is made to all the defendants, and is an offer to settle the claim against all the defendants; or

(b) in the case of an offer made to the plaintiff,

(i) the offer is an offer to settle the plaintiff's claim against all the defendants and to pay the costs of any defendant who does not join in making the offer; or

(ii) the offer is made by all the defendants and is an offer to settle the claim against all the defendants, and, by the terms of the offer, they are made jointly and severally liable to the plaintiff for the whole amount of the offer. [Amend. 12/86]

Discretion of court

41A.11.

Notwithstanding the provisions of this rule, the court, in exercising its discretion as to costs, may take into account any offer to settle made in writing, the date the offer to settle was served, the terms thereof and any other relevant matters.

Offer to contribute

41A.12.

(1) Where two or more defendants are alleged to be jointly, or jointly and severally liable to the plaintiff in respect of a claim, any defendant may make to any other defendant an offer to contribute (Form 41A(D)) toward a settlement of the claim.

(2) The court may take an offer to contribute into account in determining whether another defendant should be ordered,

(a) to pay the costs of the defendant who made the offer, or

(b) to indemnify the defendant who made the offer for any costs he or she is liable to pay to the plaintiff, or to do both.

(3) Rules 41A.04, 41A.05 and 41A.11 apply to an offer to contribute as if it were an offer to settle. [Amend. 12/86]

Application to counterclaims, cross-claims, or third party claims

41A.13.

This rule applies, with any necessary modification, to a counterclaim, cross-claim, third party

claim, and to proceedings under the **Matrimonial Property Act** or the **Divorce Act**. [Amend. 9/97]

FORM 41a(a)

OFFER TO SETTLE

(Court, Court File Number, Style of Proceeding)

OFFER TO SETTLE

TO: The plaintiff (or as may be)

The defendant (or as may be),

offers to settle your claim inclusive of pre-judgment interest for the sum of \$_____ and costs to be taxed.

OR The defendant (or as may be),

offers to settle your various claims listed hereunder for the amounts set out opposite each claim inclusive of pre-judgment interest and costs to be taxed.

OR The defendant (or as may be),

offers to settle your claim on the following terms:

OR The plaintiff (or as may be),

offers to accept the sum of \$_____ in full settlement of his claim and costs on condition that payment of that amount be made in cash or by certified cheque at the time of acceptance of this offer.

DATED at _____, this _____ day of _____, 19 _____

.....

Solicitor for plaintiff

(or as may be)

FORM 41a(b)

REVOCACTION OF OFFER TO SETTLE

(Court, Court File Number, Style of Proceeding)

REVOCACTION OF OFFER TO SETTLE

TO: The plaintiff (or as may be),

The defendant (or as may be), ,

revoked his offer to settle dated the day of,19

DATED at, this day of, 19

.....

Solicitor for defendant

(or as may be)

FORM 41a(C)

ACCEPTANCE OF OFFER TO SETTLE

(Court, Court File Number, Style of Proceeding)

ACCEPTANCE OF OFFER TO SETTLE

TO: The defendant (or as may be),

The plaintiff (or as may be), ,

accepts your offer to settle dated the day of,19

DATED at, this day of, 19

.....

Solicitor for plaintiff

(or as may be)

FORM 41A(D)

offer to contribute

(court, Court File Number, Style of Proceeding)

OFFER TO CONTRIBUTE

TO: The defendant,

The defendant, , offers to contribute \$

as his proportionate share towards a settlement of the plaintiff's claim.

This offer to contribute is made under rule 41A.12 of the Rules of Court.

DATED at, this day of, 19

.....

Solicitor for defendant

RULE 42

SECURITY FOR COSTS

Security for costs

42.01.

(1) The court may order security for costs to be given in a proceeding whenever it deems it just, and without limiting the generality of the foregoing, it may order security to be given where,

(a) a plaintiff resides out of the jurisdiction; [E.23/1(1)]

(b) a plaintiff is ordinarily resident out of the jurisdiction, though he is temporarily within the jurisdiction;

(c) a plaintiff commences a proceeding to enforce a cause of action that is the subject matter of an earlier proceeding commenced by the plaintiff and still pending;

(d) a plaintiff, or any person through or under whom he claims, has a judgement or order against him for costs that have not been paid;

(e) a proceeding is brought by a nominal plaintiff; [E. 21/1(1)]

(f) upon the examination of a plaintiff it appears that there is good reason to believe that the proceeding is frivolous and vexatious, and that the plaintiff is not possessed of sufficient property within the jurisdiction to pay costs;

(g) a proceeding is brought on behalf of a class and the plaintiff is not possessed of sufficient property to answer the costs, and it appears that the plaintiff is put forward or instigated to sue by others;

(h) by an enactment, a party is entitled to security for costs;

(i) a plaintiff, with the view to evading the consequences of the litigation, has not stated his address in the originating notice, or stated it incorrectly therein, or changed his address during the course of the proceeding. [E. 23/1(1)]

(2) Where it appears from an originating notice that a plaintiff resides out of the jurisdiction and in the belief of the defendant the plaintiff has not sufficient property within the jurisdiction to secure the defendant's costs, the defendant may obtain an order for security of costs on an ex parte application.

Manner of giving security

42.02.

(1) Security for costs shall be given in such manner, at such time, and on such terms, if any, as are provided in an order of the court. [E. 23/2]

(2) Where security for costs is ordered, the proceeding shall be stayed upon service of the order until the security is given.

(3) Upon default in giving security, the proceeding may, on an ex parte application, be dismissed with costs.

(4) The amount of security may be increased or diminished from time to time by the court.

Release of security

42.03. Security given for costs may be paid out or released on an order of the court.

Counterclaims and third party proceedings

42.04. The provisions of Rule 42 shall apply to counterclaims and third party proceedings, with any necessary modification.

RULE 43

INJUNCTIONS, INTERIM PRESERVATION OF PROPERTY, SAMPLES, ETC.

Injunctions

43.01.

(1) An application for an injunction may be made by a party before or after the commencement of a proceeding, whether or not the claim for the injunction was included in the party's statement of claim, counterclaim, third party notice or originating notice. [E. 29/1(1)]

(2) Except in a case of urgency when an application for an injunction may be made ex parte, an application for an injunction shall be made upon notice. [E. 29/1(2)]

(3) When an urgency exists, an intended plaintiff may make an application for an injunction before the commencement of a proceeding, and an interim injunction may be granted on terms providing for the commencement of the proceeding and such other matters as are just. [E. 29/1(3)]

(4) An application for an interim or interlocutory injunction may be granted, refused or otherwise dealt with by the court on such terms as are just.

(5) On two (2) days notice or on such shorter notice as the court may prescribe an opposing party may apply for the dissolution or modification of an order for an interim injunction, and the court shall hear and determine the application as expeditiously as is just.

Detention, preservation or inspection of property

43.02.

(1) The court may, on such terms as it thinks just, make an order for the detention, custody or preservation of any property that is the subject matter of a proceeding, or as to which any question may arise therein, or which may be used as evidence therein, or for the inspection of any such property in the possession of a party. [E. 29/2(1)]

(2) For the purpose of enabling an order under paragraph (1) to be carried out, the court may authorize a person to enter any land or building of a party.

(3) Where the right of a party to a specific fund or to any amount of money is in dispute in a proceeding, the court may order the fund or the amount to be paid into court or otherwise secured. [E. 29/2(3)]

Samples, experiments or photographs

43.03.

(1) The court may, on such terms as it thinks just, by order, authorize or require,

(a) a sample to be taken of any property that is the subject matter of a proceeding, or as to which any question may arise;

(b) an observation to be made of or on any such property or an experiment to be tried on or with the property;

(c) a photograph to be made of or on any such property. [E. 29/3(1)]

(2) For the purpose of enabling an order under paragraph (1) to be carried out, the court may, by order, authorize any person to enter any property of a party. [E. 29/3(2)]

Sale of perishable property, etc.

43.04.

The court may, at any time, order the sale, in such manner and on such terms as are just, of any property, other than land, that is of a perishable nature or likely to deteriorate, or that for any other reason it is desirable to sell at once. [E. 29/4]

Recovery of personal property subject to lien, etc.

43.05.

Where a party claims the recovery of specific property other than land, and the opposing party does not dispute the title of the party claimant but claims to be entitled to retain the property, by virtue of a lien or otherwise, as security for a sum of money, the court may order that the party claimant be at liberty to pay into court, to abide the event of the proceeding, the amount of money in respect of which the security is claimed and any further amount for interest and costs as the court may direct, and upon the payment being made, the property claimed be given up to the party claimant. [E. 29/6]

Allowance of income of property pendente lite

43.06.

Where real or personal property forms the subject-matter of a proceeding and the court is satisfied that it will be more than sufficient to answer all the claims thereon in the proceeding, the court may at any time allow the whole or part of the income of the property to be paid, during such period as it may direct, to any party who has an interest therein or may direct that any part of the personal property be transferred or delivered to any party. [E. 29/8]

Order for early trial, etc.

43.07.

Where on the hearing of an application under Rule 43 it appears to the court that the matter in dispute can be better dealt with at an early trial, the court may make an order accordingly, including fixing the time, place and mode of trial, and giving such other directions as are just. [E. 29/5]

RULE 44

CHANGE OF SOLICITOR

Notice of change of solicitor

44.01.

(1) A party who sues or defends by a solicitor may change his solicitor without an order, but until notice of the change is filed with the prothonotary and served on every other party, the former solicitor shall, subject to rules 44.05 and 44.06, be considered the solicitor of the party until the conclusion of the proceeding. [E. 67/1]

(2) The notice of change of solicitor may be signed on behalf of the party by the former solicitor or by the solicitor taking his place. [Amend. 12/12/74]

Notice of change of agent of solicitor

44.02.

Where a solicitor changes a solicitor who is acting as his agent in a proceeding, notice of the change shall be filed and served as provided in rule 44.01 and the provisions thereof shall apply with any necessary modification. [E. 67/2]

Notice of appointment of solicitor

44.03.

Where a party, after having sued or defended in person, appoints a solicitor to act on his behalf, the change may be made without an order, and rule 44.01 shall apply with any necessary modification. [E. 67/3]

Notice of intention to act in person

44.04.

Where a party, after having sued or defended by a solicitor, intends to act in person, the change may be made without an order and the provisions of rule 44.01 shall apply with any necessary modification, except that the notice of intention to act in person shall contain an address for service of the party giving it. [E. 67/4]

Removal of solicitor from record at instance of another party

44.05.

(1) Where,

(a) a solicitor of a party has died, become bankrupt, cannot be found, or for any reason is unable to practice, and

(b) the party has not given notice of change of solicitor or of intention to act in person in accordance with Rule 44, any other party may apply to the court, or, if an appeal is pending, to the Nova Scotia Court of Appeal, for an order declaring that the solicitor has ceased to be the solicitor of the first mentioned party, and an order may be made accordingly and contain such other terms as are just.

(2) Where an order is made under paragraph (1), the applicant shall serve, on every other party a copy of the order and file it with the prothonotary.

(3) An order made under rule 44.05 shall not affect the rights of the solicitor and party for whom he acted as between themselves.

Withdrawal of solicitor who has ceased to act for party

44.06.

(1) Where a solicitor, who has acted for a party in a proceeding has ceased so to act and the party has not given notice of change in accordance with rule 44.01, or notice of intention to act in person in accordance with rule 44.04, the solicitor may apply to the court for an order declaring that he has ceased to be the solicitor acting for the party, and the court or Nova Scotia Court of Appeal, as the case may be, may so order, but unless and until the solicitor files the order with the prothonotary and serves a copy of the order on every party, the solicitor shall be considered the solicitor of the party until the conclusion of the proceeding.

(2) An order made under rule 44.06 shall not affect the rights of the solicitor and the party for whom he acted as between themselves. [E.67/6]

Advising the presiding judge

44.07.

The prothonotary shall advise the presiding judge of any change of solicitor. [E. 67/8]

RULE 45

ACCOUNTS

Summary order for account

45.01.

Where a claim in a proceeding is for an account or involves taking an account, a plaintiff may, at any time after the defence has been filed or the time for filing it has expired, apply for an order under Rule 45. [E. 43/1(1)]

Order of the court

45.02.

On the hearing of an application under Rule 45 the court may, notwithstanding that any other relief is sought or other issue is to be tried,

- (a) try any preliminary question;
- (b) direct any account or inquiry to be taken or made; [E. 43/2(1)]
- (c) appoint a referee, local judge or any other person to take or inquire into any account, and the provisions of Rule 35 or 36 shall respectively apply with any necessary modification;
- (d) give directions as to the manner in which an account is to be taken or vouched, including the right to direct that any relevant book of account be evidence of the truth of any matter contained therein, with liberty for an opposing party to take such objection thereto as he thinks fit; [E. 43/3]
- (e) permit an accounting party to be examined on discovery to ascertain what is admitted or contested between the parties;
- (f) direct any voucher to be produced at a convenient place for inspection by an opposing party who shall have the right to make copies thereof;
- (g) where there has been an undue delay in the prosecution of an account or inquiry, require the party or person involved to explain the delay, with power to make an order staying or expediting the proceeding or for the other conduct

thereof and costs; [E. 43/7(1)]

(h) where undue difficulty or delay has occurred or is liable to occur in ascertaining whether any person is entitled to share in a fund, order the payment of the share of any ascertained person without re-serving any part of the share to meet the subsequent costs of ascertaining the share or whereabouts of any other person; [E. 43/8]

(i) direct any party or person to take over the conduct of a proceeding upon such terms and conditions as it thinks just; [E. 43/7(2)]

(j) disallow in whole or in part the salary or compensation of an accounting party for his services;

(k) order any amount, certified on the taking of the account to be due to any party, to be paid to him within a specified time; [E. 43/1(3)]

(l) make such other order, including an order for costs, as is just.

Accounts to be made, verified, etc.

45.03.

(1) Where an account has been ordered to be taken, the accounting party shall, unless it is otherwise ordered,

(a) make out his account;

(b) verify the account by affidavit;

(c) number the items consecutively on each side of the account; and

(d) file the account and affidavit with the prothonotary and notify any other party that he has done so. [E. 43/4]

Notice of alleged omissions or errors

45.04.

Where a party seeks to charge an accounting party with an amount beyond that admitted in an account to have been received or alleges that any item of an account is erroneous as to amount or otherwise, the party shall give him notice thereof stating, as far as he is able, the amount sought to be charged with particulars thereof or the grounds for alleging any item is erroneous. [E. 43/5]

Allowances

45.05.

In taking an account, all just allowances shall be made without any direction to that effect. [E. 43/6]

RULE 46

RECEIVERS

Appointment of receiver and injunction

46.01.

(1) The court may appoint a receiver in any proceeding in which it appears to be just or convenient, and the appointment may be made either unconditionally or upon such terms and conditions as the court thinks just.

(2) When appointing a receiver, the court may grant an injunction restraining the party beneficially entitled to any interest in the property of which a receiver is sought from assigning, charging or otherwise dealing with that property until after the hearing of the application for the appointment of the receiver. [E. 30/1(4)]

(3) Where an applicant wishes to apply for the immediate grant of such an injunction, he may do so ex parte. [E. 30/1(3)]

(4) Where on a hearing of an application for the appointment of a receiver, it appears that the matter in dispute should be dealt with by an early trial, the court may order accordingly and fix the place and mode of trial, and make such other order as is just. [E. 29/5]

Giving of security by receiver

46.02.

(1) Unless the court otherwise orders or an enactment otherwise provides, a receiver shall give security approved by the court to account for any property received by him as receiver, and he shall deal with the property as the court directs. [E. 30/2(1)(2)]

(2) The security shall be filed in the office of the prothonotary. [E. 30/2(4)]

Remuneration of receiver

46.03.

A receiver shall be allowed such proper remuneration, if any, as may be fixed by the court. [E. 30/3]

Receiver's accounts

46.04.

A receiver shall submit his accounts, verified by affidavit, to the court, annually or at such intervals as the court may order, for approval and when approved the accounts shall be filed and any balance disbursed in accordance with the order. [E. 30/4/5]

Default by receiver

46.05.

Where a receiver fails to attend on the passing of any account, submit an account, make an affidavit, or do any other thing that he is required to do, he and any party or person may be required to attend in chambers to show cause for the failure, and the court may make such order as is just, including ordering the discharge of the receiver and the appointment of another, the disallowance of any remuneration claimed by the receiver or any part thereof, and the payment of such interest and costs by the receiver or any party or person as is just. [E. 30/6]

RULE 47

SALES BY THE COURT

I. Estate of Person under Disability

Application for sale, etc. [Amend. 12/12/74]

47.01.

A person under disability, entitled to any interest in property, may by his guardian apply to the court for an order to sell, mortgage, lease or otherwise dispose of the property.

Consent of infant

47.02.

(1) Where the person under disability is an infant over the age of sixteen (16) years, his consent to the application, verified by an affidavit of a solicitor stating that the consent was read over and fully explained by him to the infant who apparently understood it, shall be filed.

(2) When directed by the court, an infant shall be produced and examined by the court as to his consent.

(3) Where an infant is out of the jurisdiction, the court may direct an inquiry to be made as to the infant's consent in such manner as it considers proper.

Order of sale, etc.

47.03.

(1) Where it appears that,

(a) a disposal of any property is necessary for the maintenance, support or education of a person under disability, and any infant child, wife or dependant thereof;

(b) the interest of a person under disability, and any infant child, wife or dependant thereof, will be substantially promoted by the disposal because of the property being exposed to waste, dilapidation, or being wholly unproductive;

(c) there is any other reasonable cause for the disposal;

the court may make an order for the sale, mortgage, lease or other disposal of the property in such manner, on such terms, and with such restrictions, as it considers just.

(2) The order of the court may provide,

(a) for the investment, disposal, and application of the proceeds of the sale, mortgage, lease or other disposal of the property and of any capital appreciation and income arising therefrom, for the benefit of the person under disability and of any infant child, wife or dependant thereof;

(b) for the maintenance, support or education of the person under disability and of any infant child, wife or dependant thereof;

(c) that any sale, mortgage, lease or other disposal of the property be made by the guardian or person appointed by the court;

(d) unless an enactment otherwise provides, that the guardian or person appointed by the court file a bond to be approved by the court that contains such terms and conditions as are ordered;

(e) for the submission and filing of the accounts of the guardian or other person, relating to the investment and application of the proceeds of the sale, mortgage, lease or other disposal of the property, with the court for approval annually or at such times and in such manner as the court may from time to time order;

(f) for the remuneration of the guardian or other person;

(g) for such other terms or conditions as the court thinks just.

[Amend. 12/12/74]

(3) Unless it is necessary for the maintenance, support or education of the person under disability and any infant child, wife or dependant thereof, a sale, mortgage, lease or other disposal shall not be ordered to be made that is contrary to the provisions of any last will, transfer, or conveyance by which the property was devised, transferred or conveyed.

Form of conveyance or transfer

47.04.

A conveyance or transfer shall refer to the order authorizing the sale, mortgaging, leasing or other disposal of the property and the person making the sale, mortgage, lease or other disposal shall file a report thereof with the prothonotary immediately after the conveyance or transfer.

Interest in proceeds

47.05.

No sale, mortgage or lease or other disposal of property made under Rule 47 shall give to a person under disability any other or greater interest or estate in the proceeds of the sale than he had in the property at the time of the conveyance or transfer.

Effect of conveyance or transfer

47.06.

(1) Every conveyance or transfer purporting to be made under Rule 47 shall be evidence that all the provisions of Rule 47 have been complied with.

(2) A conveyance or transfer by way of sale, mortgage, lease or other disposal under Rule 47 that was made in good faith, and executed by any guardian, or person appointed by the court in pursuance of an order, shall be as effectual as if the person under disability had ceased to be under disability and had made and executed the conveyance or transfer.

Default of guardian or other person

47.07.

Where a guardian or other person fails to attend on the passing of his accounts, submit any account, make an affidavit, or do any other thing which he is required under an order to submit, make or do, he and any other person may be required to attend in court to show cause for the failure, and the court may make such order as is just, including ordering the discharge of the guardian or other person and the appointment of another, the disallowance of any remuneration claimed by the guardian or other person or any part thereof, and the payment of such interest and costs by the guardian, other person and any party as are just.

II. Foreclosure, Sale and Possession

Sale of mortgaged property on default

47.08.

- (1) Where in a proceeding for foreclosure or foreclosure, sale and possession, the court under rule 12.04 or otherwise, directs a sale, the mortgaged property shall be sold in accordance with an advertisement of sale by the sheriff of the county in which the lands lie, or by any other person authorized by the court to conduct the sale in the county, and the sheriff, or nominee, or person so authorized shall conduct the sale and execute the deed of the property to be given to the purchaser.
- (2) Whenever any mortgaged property is situated in adjoining counties, the sheriff of either county, or other person authorized by the court, may sell the mortgaged property under the order of foreclosure or foreclosure, sale and possession, but subject to such terms and conditions as the court may impose.
- (3) In a proceeding for foreclosure or foreclosure, sale and possession, it shall not be necessary in an advertisement of sale to describe the mortgaged property by metes and bounds or as described in the mortgage, provided the description for the advertisement is approved by the court.
- (4) The sheriff, or nominee or person authorized shall conduct the sale in accordance with the standard procedure for sheriff's sale adopted from time to time by the court and set forth in a Practice Memorandum.
- (5) The sheriff, or person conducting the sale, shall prepare and forthwith file with the prothonotary, a report verified by certificate of the results of the sale.
- (6) The report, as filed, shall be verified as to its correctness by the solicitor of the party or party having conducted the sale.

Order for amount due on mortgage

47.09.

- (1) Unless the court otherwise orders, in a proceeding for foreclosure, sale and possession, default judgment shall occur on the earlier of twenty (20) days after the date of sale by public auction or payment to the sheriff, but judgment for any amount due shall not be entered before the proceeds of sale have been realized and a deficiency, if any, has been determined by the court.
- (2) Interest on any judgment shall be pursuant to the **Interest on Judgments Act**.

Order for deficiency judgment

47.10.

- (1) Where in the case of sale pursuant to rule 47.08 the amount realized is insufficient to pay the

amount found to be due to a plaintiff for principal, interest, and disbursements, as authorized by the mortgage instruments, and costs, and the person against whom the deficiency is claimed is a defendant, the plaintiff may be entitled, if such relief was claimed in the Originating Notice, to an order for payment of the deficiency.

(2) Where a plaintiff or a party related in interest is the purchaser at a sale pursuant to rule 47.08, and it appears that the price paid was less than the fair market value of the property at the time of the sale, the court, in determining the amount of the deficiency, may deem the sale price to have been the fair market value of the property at the time of the sale.

(3) An application for deficiency judgment shall be made to the court within six (6) months from the date of the Sheriff's Sale, on ten (10) days notice.

Order for distribution of surplus

47.11. Where the purchase money on a sale exceeds what is found to be due to a plaintiff, all accounts may be taken, inquiries made, costs taxed, and necessary proceedings had to distribute the surplus among the persons entitled thereto according to their priorities.

Foreclosure of subsequent mortgages

47.12.

Where in a proceeding for foreclosure or foreclosure, sale and possession, the sale of the mortgaged property is sought by a subsequent mortgagee or encumbrancer, or by the mortgagor, or by any person claiming under them respectively, the court shall not direct a sale without the consent of all prior mortgagees, or the persons claiming under them, except upon such terms as the court thinks fit and proper, which terms may include the deposit of money in court.

Payment of amount due on mortgage

47.13.

In a proceeding for foreclosure or foreclosure, sale and possession, upon payment by the defendant, or in a proceeding for redemption, upon payment by the plaintiff of the amount found due, the plaintiff or defendant, as the case may be, shall, unless the court otherwise directs, convey the mortgaged property in question to the party making the payment, or to its nominee, free and clear of all encumbrances created by it, and deliver up all deeds and writings in its custody or power, relating thereto. [Amend. 07/95]

III. Sales: General

Power to order sale, etc., of property

47.14.

Where it appears necessary or expedient in a proceeding that any property be sold, the court may order the property to be sold and any party, bound by the order and having any interest therein, or who is in possession of the property or in receipt of the rents, profits or income thereof, shall, if the court so orders, join in the sale, conveyance or transfer, or deliver up the possession or receipts thereof, to the purchaser or person designated by the court. [E. 31/1]

Power to order sale in debenture holders' proceeding

47.15.

Where the holders of debentures or bonds in a proceeding brought by or on their behalf are entitled to a charge on any property, the court may, if it is of the opinion that there must eventually be a sale of the property, order the sale before or after judgment and whether or not all interested persons are ascertained or served.

Manner of carrying out sale

47.16.

(1) Where an order is made directing a property to be sold, the court may permit any party or person having the conduct of the sale to sell the property in such manner as he thinks fit, or as the court directs, for the best price that can be obtained. (2) The court may give such directions as it thinks fit for the purpose of effecting a sale, including, without restricting the generality of the foregoing, directions,

- (a) appointing the party or person who is to have the conduct of the sale;
- (b) fixing the manner of sale, whether by contract conditional on the approval of the court, private treaty, public auction, sheriff's sale, tender or some other manner;
- (c) fixing a reserve or minimum price;
- (d) requiring payment of the purchase price into court or to trustees or other persons;
- (e) for settling the particulars or conditions of sale;
- (f) for obtaining evidence of the value of the property;
- (g) fixing the remuneration to be paid to the party or person having the conduct of the sale;
- (h) requiring an abstract of title to be prepared for the use of the court. [E. 31/2]

Report of result of sale

47.17.

(1) A report, verified by affidavit, of the result of a sale made under an order of the court shall be prepared by the sheriff or person conducting the sale and shall be filed immediately after the sale with the prothonotary.

(2) The report as filed shall be verified as to its correctness by the solicitor of the party or person having the conduct of the sale. [E. 31/3]

Mortgage, exchange, partition, etc., under order of court

47.18.

The provisions of Rule 47 shall, as far as applicable and with any necessary modification, apply in relation to a mortgage, exchange, partition, lease, or other disposal of any property under an order of the court as they apply in relation to the sale of any property under such an order. [E. 31/4]

RULE 48

RECOVERY ORDERS

Application for an interlocutory order

48.01.

(1) Any party or intervenor in a proceeding may apply for an interlocutory order to recover possession of property that was unlawfully taken or is unlawfully detained from him by any other party, or is held by an officer under any legal process issued in the proceeding.

(2) When an applicant applies to recover possession of personal property and files an affidavit that complies with rule 48.02 and a bond that complies with rule 48.03, the prothonotary, on an ex parte application, shall, unless the court otherwise orders, grant and issue an interlocutory recovery order in Form 48.04A.

(3) When an applicant applies to recover possession of real property and files an affidavit that complies with rule 48.02, the court may, on an ex parte application, grant an interlocutory recovery order in Form 48.04A on such terms as it thinks just, including the filing of a bond in Form 48.03A in such amount as it deems advisable.

(4) When it is sought to enforce an order for the recovery of possession of property, a final recovery order may be obtained as provided in rule 48.13.

(5) A recovery order may be granted, issued or served on a Saturday, Sunday or other holiday, if

it is set out in an affidavit that the applicant who seeks to recover possession of property may not be able to do so unless the order is granted, issued or served on that day.

Affidavit in support of interlocutory recovery order

48.02.

The affidavit of an applicant or his agent in support of an interlocutory recovery order shall,

- (a) sufficiently describe any property claimed and the value thereof,
- (b) set out facts showing that,
 - (i) the applicant is the owner or lawfully entitled to the possession of the property;
 - (ii) the property was unlawfully taken or is unlawfully detained from the applicant by the other party or is held by an officer under any legal process issued in the proceeding;
 - (iii) the applicant or his agent has made a demand for the property which has been refused; and
- (c) state the applicant was advised by his solicitor, naming him, and verily believes he is lawfully entitled to recover possession of the property.

Bond in support of interlocutory recovery order

48.03.

(1) Unless the court otherwise orders, a prothonotary, before issuing an interlocutory recovery order, shall take a bond in Form 48.03A from an applicant, in an amount equal to one and one-quarter (1 $\frac{1}{4}$) times the value of the property sought to be recovered, as stated in his affidavit, with two sufficient sureties who are approved by the prothonotary and who shall justify, or other form of sufficient security, approved by the court or by the prothonotary. [Amend 31/1/98]

(2) Unless the court otherwise orders, the conditions of bond shall be that the applicant shall,

- (a) obtain, without delay, an order settling who is entitled to the ownership or possession of the property;
- (b) return the property to the party or person from whom it was taken if he fails to obtain the order referred to in paragraph (a), without delay, or when the court so orders; and
- (c) pay such damages and costs awarded by the court against the applicant,

resulting from the issuance of the interlocutory recovery order.

(3) When a bond is defective or insufficient, or any surety dies or moves out of the jurisdiction or becomes insolvent, or the other form of security is insufficient, or for any other just cause, the court may, on notice, order another bond or further security to be given and, if the provisions of the order are not complied with within the time prescribed therein, the court may dissolve the interlocutory recovery order and order the property to be returned to the party or person from whom the property was recovered, and may grant such other order as is just.

(4) The bond and any security taken thereunder may, by leave of the court granted on such terms as are just, be assigned by the prothonotary to the party from whom the property was recovered and when so assigned that party may realize on the security and commence a proceeding to enforce the bond on his own name against all or any of the persons who executed it.

Recovery order

48.04.

(1) Unless the court otherwise orders, an interlocutory recovery order in Form 48.04A shall,

(a) contain a description of the property sought to be recovered sufficient to describe it, and the value thereof as set out in the applicant's affidavit;

(b) direct any sheriff to take immediate possession of the property or any part thereof, to make an inventory of any property so recovered, and to serve a true copy of the order,

(i) on the party from whom recovery of the property is sought; and

(ii) on any adult person in possession of the property at the time possession is taken; and

(iii) when real property is to be recovered, to post a true copy of the order in a conspicuous place thereon, and to register a true copy of the order, with a full description of the real property endorsed therein, in the office of the Registrar of Deeds for the registration district where the real property is situate;

(c) when the party, from whom the property is recovered, does not deliver to the sheriff, within three (3) days after a true copy of the order is served on him, a certificate from the prothonotary stating the party has filed with him a bond pursuant to rule 48.06, direct the sheriff to deliver possession of the property so recovered to the applicant;

(d) when possession of the property is delivered to the applicant or a bond is filed

as provided by clause (c), direct the applicant to continue forthwith the proceeding until judgment is obtained;

(e) be endorsed with the name and address of the solicitor of the applicant and prothonotary.

(2) Any share, bond, debenture or other interest of an applicant in a body corporate is deemed to be property and may be recovered as provided in rule 48.07.

(3) Unless the court otherwise orders, after the expiration of ninety (90) days after the issue of an interlocutory recovery order, no property may be recovered under the order, but nothing herein shall be deemed to limit the validity of the order in respect of anything previously done thereunder or to limit the right of the court or prothonotary to issue a further recovery order in respect of the same or other property.

Sheriff's duty under interlocutory recovery order

48.05.

(1) Upon receipt of an interlocutory order, a sheriff shall forthwith, and not later than ninety (90) days after its issue, or within such further period of time as the court may order, comply with the provisions of the order.

(2) A sheriff shall hold and safely keep any property taken by him under an interlocutory recovery order for a period of three (3) days after a true copy of the order is served upon the party from whom the recovery of property is sought or other person in possession of the property at the time of taking, and then deliver the property to the applicant unless,

(a) the party from whom recovery of the property is sought, or other person from whose possession the property was taken, retains or regains possession of the property by filing a bond as provided by rule 48.06;

(b) the applicant, subject to the payment of the fees and expenses of the sheriff, authorizes in writing the property to be returned to the other party or person entitled thereto;

(c) the court orders the property to be returned to the other party or person entitled thereto as provided by rule 48.08.

(3) Where personal property is secured or concealed in a building or enclosure and it is not delivered pursuant to his demand, the sheriff shall break open or cause the building or enclosure to be broken open and take possession of the property pursuant to the interlocutory recovery order.

(4) Before the expiration of ninety (90) days from the date of the issue of an interlocutory recovery order or when directed by the court, the sheriff shall file the order with the prothonotary

with a report of any action taken by him thereunder.

Retention or repossession of property taken under an interlocutory recovery order

48.06.

(1) Any party or person, claiming to be the owner or entitled to possession of any property recoverable under an interlocutory recovery order, is entitled to retain or regain possession of the property if he files with the prothonotary, and delivers to the sheriff as his agent, not later than three (3) days after a true copy of the order is served on him,

(a) an affidavit stating he is entitled to possession of the property by virtue of the facts set forth therein; and

(b) unless the court otherwise orders, a bond in Form 48.06A, in an amount equal to one and one-quarter (1¼) times the value of the property recovered, as determined by the sheriff, with two sufficient sureties who are approved by the sheriff and who shall justify, or other form of sufficient security, approved by the sheriff.

[Amend. 29/03/96]

(2) Unless the court otherwise orders, the condition of the bond shall be that the party or other person giving the bond shall deliver the property to the applicant if it is so adjudged, or pay to the applicant when ordered by the court an amount equal to the value of the property retained or regained under the bond, which payment shall not exceed the amount secured by the bond.

(3) When a bond is defective or insufficient, or any surety dies or moves out of the jurisdiction or becomes insolvent, or the other form of security is insufficient, or for any other just cause, the court may, on notice, order another bond or further security to be given and, if the provisions of the order are not complied with within the time prescribed therein, the court may grant a further interlocutory recovery order on such terms as are just and any property specified therein may be recovered thereunder.

(4) A bond and any security taken thereunder may, with the leave of the court or consent of the parties, be assigned by the prothonotary to the applicant, and when so assigned the applicant may realize on the security and commence a proceeding to enforce the bond in his own name against all or any of the persons who executed it.

(5) If more than one party or person files a bond under paragraph (1), a sheriff shall retain possession of the property and apply to the court for an interpleader order under Rule 50.

(6) Where the person or party entitled to retain the property under paragraph (1) is a public officer, board or government agency, such officer, board or public agency may, in lieu of giving a bond in Form 48.04A, retain possession of any property seized by filing with the prothonotary, within the time limited by the paragraph, a writing certifying that the public health, safety or

welfare would be jeopardized or impaired if the applicant acquired possession of the property prior to judgment or order, but the applicant may apply to the court to determine whether the public interest requires the property to be so retained.

Recovery of shares, bonds, etc., of a body corporate

48.07.

(1) A sheriff may recover any share, bond, debenture or other interest of an applicant in a body corporate by serving an interlocutory recovery order upon the body corporate as provided in rule 10.03(1)(b).

(2) When an interlocutory recovery order is served upon a body corporate, the body corporate and its transfer agent shall,

(a) not transfer the title to or deliver possession of any share, bond, debenture or other interest of an applicant therein to any person until the court otherwise orders, and

(b) forthwith file with the prothonotary, or deliver to the sheriff as agent of the prothonotary, a certificate setting out,

(i) the number and class of any share so retained with the certificate number and the name and address of any registered owner thereof;

(ii) the number, face value, and description of any bond or debenture with the serial number thereof, and the name and address of any registered owner thereof;

(iii) a description of any other interest of the defendant in the body corporate so retained.

(3) The court may order any share, bond, debenture or other interest of an applicant in a body corporate to be held, released, transferred or otherwise disposed of upon such terms and conditions as it may order, and any such holding, release, transfer or disposal pursuant to the terms of the order shall relieve the body corporate from liability to any person claiming the share, bond, debenture or other interest.

Remedies of any party or person in relation to an interlocutory recovery order

48.08.

Any party or person, claiming an interest in any property taken under an interlocutory recovery

order or claiming that the order was wrongfully granted or issued, may

(a) give written notice of his claim to the sheriff as provided in rule 50.02 and the provisions of Rule 50 shall apply with any necessary modification to any interpleader proceeding taken thereunder;

(b) make an application in the proceeding as a party or intervenor, and the court may on the hearing thereof;

(i) grant the applicant a reasonable opportunity to amend any affidavit or bond used in support of the grant of the order;

(ii) upon such terms as it thinks just, vary or modify or set aside the order or stay the proceeding;

(iii) order any property taken under the order to be held by the sheriff pending judgment or further order of the court or to be returned or disposed of upon such terms as it thinks just, or to grant any other relief with respect to the return, safety, or sale of the property, or any part thereof;

(iv) order any bond to be released or given;

(v) grant such other order as it thinks just.

Sale or other disposition of property by court

48.09.

(1) When any property, taken by a sheriff under an interlocutory recovery order, is likely to perish or materially depreciate in value before the probable termination of the proceeding, or the keeping of the property could result in unreasonable loss or expense, or for other just cause, the court may order the sale or other disposal of all or any part of the property in such manner and upon such terms as are just.

(2) Unless the court otherwise orders, a sheriff shall forthwith on the sale of a property file a report thereon with the prothonotary and pay the proceeds, less his fees and expenses, into court to be held pending further order.

Recovery of unique property

48.10.

Where any property sought to be recovered under an interlocutory recovery order is unique, the court may also grant a restraining order providing that the property shall not be removed from

the jurisdiction, transferred, sold, pledged, assigned or otherwise disposed of until further order of the court.

Disclosure

48.11.

The court may, at any time after the granting of a recovery order, order a person to disclose any information he possesses regarding any property which an applicant seeks to recover under the order.

Judgment or final order in the proceeding

48.12.

- (1) In a proceeding or on an application to recover possession of property, the final order may direct possession of the property to be given to the applicant or, where possession cannot be given, order the value thereof to be recovered by him, and award damages for the wrongful taking or withholding of the same.
 - (2) When in a proceeding or on an application in paragraph (1), another party claims the return of any property recovered by an applicant under an interlocutory recovery order, the final order may direct the property to be returned to the other party or, where the property cannot be returned, may order the value thereof to be paid to him, and award damages for the wrongful taking and withholding of the same.
 - (3) Where a party to a proceeding to recover possession of property is entitled to obtain judgment by default against any other party, he may enter interlocutory judgment to recover possession of the property and apply to have the damages assessed, or enter final judgment to recover possession of the property, and the sum of one dollar (\$1) as damages with costs to be taxed or, when the other party consents to the amount of damages, for that amount of damages and costs to be taxed.
-

Application for a final recovery order after judgment or order

48.13.

- (1) Where it is sought to enforce a final order for the recovery of possession of property, the prothonotary may, on an ex parte application supported by affidavit, grant an order in Form 48.13A for the sheriff to deliver possession of the property as provided in the order.
- (2) The sheriff, upon receipt of an order in Form 48.13A, shall take immediate possession of the property described therein or such part thereof as is available, and the person in possession of the property shall not have the right to retain possession of it by filing a bond or otherwise.

(3) When the sheriff is unable to take possession of any property referred to in the order, he shall forthwith file the order with the prothonotary with his report endorsed thereon or attached thereto, and the court may grant such further order as is just.

FORM 48.03A
(Rule 48.03)

APPLICANT'S BOND FOR A RECOVERY ORDER

(Title of proceeding)

WHEREAS the applicant, _____, seeks to obtain a recovery order herein against _____, to recover the property described in the schedule;

NOW KNOW ALL MEN by these presents that I, _____, as applicant, and [_____ and _____ as sureties] [upon the applicant depositing with the (prothonotary) (sheriff as agent of the prothonotary) at _____, Nova Scotia, the money or securities listed below as security hereunder] firmly [bind myself], [jointly and severally bind ourselves] to C.D., his executors, administrators or assigns, to pay to him or them the penal sum of dollars upon breach of the following conditions, namely that the applicant shall,

(a) on the delivery of the property to the applicant, or the filing of a bond under rule 48.06 of the Civil Procedure Rules obtain, without delay, an order settling who is entitled to the ownership or possession of the property;

(b) return the property to the party or person from whom it was taken if the applicant fails without delay to obtain the order referred to in paragraph (a), or the court so orders;

(c) pay such damages and costs awarded by the court against the applicant as the result of the issue of the recovery order;

and upon the applicant fulfilling these conditions, or if the sheriff fails to recovery any part of the property sought to be recovered herein and deliver the same to the applicant, this bond shall be void, but unless the court otherwise orders, it shall remain in full force and effect.

This bond shall enure to the benefit of and be binding upon the parties hereto, their and each of their heirs, executors, administrators, successors and assigns.

DATED at _____, Nova Scotia, this ____ day of _____, 20__ .

SIGNED, SEALED AND DELIVERED

in the presence of: _____

Schedule

(Insert a description of the property sufficient to identify it)

[Add affidavit of justification]

FORM 48.04A **(Rule 48.01(2) and 48.04)**

INTERLOCUTORY RECOVERY ORDER

(Title of proceeding)

TO ANY SHERIFF OR INTERESTED PERSON:

UPON being satisfied that the applicant, [_____], has filed with _____, prothonotary of this Honourable Court, an affidavit and bond in compliance with the Civil Procedure Rules which documents are open for inspection by any person upon payment of the prescribed fees.

IT IS ORDERED that,

1. any sheriff shall recover and take immediate possession of the following property described in the schedule which is of the value of \$_____, (insert description of the property sought to be recovered in the schedule thereof, and make an inventory of the property so recovered);
2. when the property or any part is recovered, the sheriff shall serve a true copy of this order on the party from whom the property is recovered, and on any adult person in possession of the property at the time possession is taken, and, where real property is recovered, shall post a true copy of this order in a conspicuous place thereon, and register a true copy of this order, with a full description of the real property endorsed thereon, in the office of the Registrar of Deeds for the registration district where the real property is situated;
3. if the party from whom the property was recovered files a bond with the prothonotary pursuant to rule 48.06 of the Civil Procedure Rules, the prothonotary shall deliver a certificate to the party stating the bond has been filed, and, on this certificate being delivered to the sheriff within three (3) days after the service of this order on the party, the sheriff shall return the property to the party, otherwise the sheriff shall deliver possession of the property to the applicant;
4. upon delivery of the property to the applicant or upon filing the bond with the prothonotary as

provided in the preceding paragraph, the applicant shall forthwith continue the proceeding until judgment is obtained;

5. before the expiration of ninety (90) days after the issue of this order, or within such further time as the court orders, the sheriff shall file this order, with a report of any action taken by him hereunder, endorsed thereon or attached thereto, with the prothonotary.

Granted and issued at _____, Nova Scotia, this _____ day of _____, 20__.

The Solicitor of the Applicant _____,

is _____, of _____ Street,

Prothonotary

_____, Nova Scotia

The Court House,

_____ Street

_____, Nova Scotia.

SCHEDULE

(insert description of property sought to be recovered, and on recovery the sheriff shall make an inventory of the property so recovered.)

FORM 48.06A
(Rule 48.06)

BOND TO RETAIN PROPERTY UNDER AN INTERLOCUTORY RECOVERY ORDER

(Title of proceeding)

WHEREAS _____ seeks to retain or recover property taken from him under the interlocutory recovery order issued herein on the _____ day of _____, 20__ , and is filing this bond with the prothonotary of this Honourable Court in compliance with rule 48.06 of the Civil Procedure Rules,

NOW KNOW ALL MEN by these presents that I, _____, as principal, and [_____ and _____ as sureties] [upon _____ depositing with the (prothonotary) (sheriff as agent of the prothonotary) at _____, Nova Scotia, the money or securities listed below as security hereunder] firmly [bind myself], [jointly and severally bind ourselves] to A.B., the applicant, for the interlocutory recovery order herein, his executors, administrators and assigns, to pay to him or them the penal sum of dollars upon breach of the condition that I, C.D., shall,

(a) deliver the property retained or recovered by me from the sheriff herein, as listed in the inventory attached hereto, to the applicant if it is so adjudged; or

(b) pay to the applicant when ordered by the court, an amount equal to the value of the property so retained or recovered which payment shall not exceed the amount secured by the bond;

and upon _____ fulfilling these conditions this bond shall be void, but unless the court otherwise orders, it shall remain in full force and effect.

This bond shall enure to the benefit of and be binding upon the parties hereto, their and each of their heirs, executors, administrators, successors and assigns.

DATED at _____, Nova Scotia, this ____ day of _____, 20__ .

SIGNED, SEALED AND DELIVERED

in the presence of: _____

[Add affidavit of justification and attach inventory]

FORM 48.13A
(Rule 48.13)

ORDER FOR SHERIFF TO DELIVER POSSESSION OF PROPERTY

(Title of proceeding)

TO: _____

Sheriff of the County of _____ :

Upon reading the order of Mr. Justice _____, dated the ____ day of _____, 20__ , and on file herein, that the plaintiff, A.B., recover from the defendant, C.D., possession of (or as the case may be and describing the property that was ordered to be recovered from the defendant);

It is ordered that you, as sheriff for the County of _____, enter upon the lands of and cause the plaintiff, or as the case may be, to have possession of the above described property;

It is further ordered that upon the execution of this order, you shall forthwith file it in my office with a report of your doings under the order endorsed thereon.

Granted and issued at _____, Nova Scotia, this ____ day of _____, 20__.

_____,

Prothonotary,

The Court House.

_____ Street,

_____, Nova Scotia.

RULE 49

ATTACHMENT ORDERS

Grounds of application for attachment order

49.01.

(1) Where a defendant,

(a) resides out of the jurisdiction, or is a corporation that is not registered under the **Corporations Registration Act**;

(b) conceals himself or absconds within the jurisdiction with intent to avoid service on him of any document;

(c) is about to leave or has left the jurisdiction with intent to change his domicile, defraud his creditors, or avoid service of a document;

(d) is about to remove or has removed his property or any part thereof permanently out of the jurisdiction;

(e) has concealed, removed, assigned, transferred, conveyed, converted or otherwise disposed of all or any part of his property with intent to hinder or delay his creditors, or is about to do so;

(f) has fraudulently incurred a debt or liability in issue in a proceeding;

a plaintiff may, at or after the commencement of the proceeding and before judgment and as an incident of the relief claimed, make application for an attachment order in Form 49.04A.

(2) When a plaintiff files an affidavit which complies with rule 49.02 and a bond that complies

with rule 49.03, a prothonotary on an ex parte application shall, unless the court otherwise orders, grant and issue an attachment order in Form 49.04A.

(3) When a proceeding is commenced for a debt or demand not yet due, an attachment order may be granted therein in any case mentioned in paragraph (1), but judgment shall not be granted against a defendant until maturity of the debt or demand.

(4) An attachment order may be granted, issued, or served on a Saturday, Sunday or other holiday if the affidavit sets out that a plaintiff will lose the benefit of the attachment unless the order is granted, issued or served on that day.

Affidavit in support of attachment order

49.02. The affidavit of a plaintiff or his agent in support of an attachment order shall,

(a) set out facts showing

(i) the plaintiff has a good cause of action against a defendant whose property is to be attached, and

(ii) the existence of one or more grounds of attachment as set out in rule 49.01(1);

(b) state the amount of the claim that the plaintiff seeks to recover from the defendant, including the amount of probable costs, after allowing for all just credits, set-offs and counter-claims known to him; and

(c) state he was advised by the plaintiff's solicitor, naming him, and verily believes he is lawfully entitled to attach the property.

[Amend. 12/12/74]

Bond in support of attachment order

49.03. (1) Unless the court otherwise orders, a prothonotary, before issuing an attachment order, shall take a bond in Form 49.03A from a plaintiff in an amount equal to one and one-quarter (1 $\frac{1}{4}$) times the value of the property sought to be attached which the plaintiff seeks to recover from a defendant as stated in the plaintiff's affidavit, with two sufficient sureties, who shall justify, or other form of sufficient security approved by the prothonotary. [Amend. 12/12/74]

(2) Unless the court otherwise orders, the conditions of the bond shall be that,

(a) the plaintiff shall prosecute the proceeding without delay to judgment; and

(b) when ordered by the court,

(i) the sheriff shall return the attached property, or the proceeds thereof if sold under rule 49.09, to the defendant or other person from whom it was attached, and

(ii) the plaintiff shall pay to the defendant or other person the damages and costs that either of them has sustained by reason of the wrongful issue of the attachment order, or the wrongful making of any attachment thereunder, or if the plaintiff fails to recover judgment against the defendant in the proceeding, or as the court may order.

(3) When a bond is defective or insufficient, or any surety dies or moves out of the jurisdiction or becomes insolvent, or the other form of security is insufficient, or for any other just cause, the court may, on notice, order another bond or further security to be given and, if the provisions of the order are not complied with within the time prescribed therein, the court may dissolve the attachment order and order the attached property to be returned to the defendant and grant such other order as is just.

(4) A bond and any security taken thereunder may, with leave of the court granted on such terms as are just, be assigned to the defendant by the prothonotary, and when so assigned the defendant may realize on the security and commence a proceeding to enforce the bond in his own name against all or any of the persons who executed it.

Attachment order

49.04. (1) Unless the court otherwise orders, an attachment order in Form 49.04A shall direct any sheriff within ninety (90) days of its issue or within such further time as the court orders,

(a) to attach, accept as a receiver, hold and dispose of as provided by this Rule, any property in which a defendant has an interest, including any debt, rent, legacy, share, bond, debenture or other security, currency, or other demand, due or accruing due at any time while the order is valid, whether in the possession of the defendant or any other person and not exempt by law from seizure, as will secure in whole or in part the amount of the claim which a plaintiff seeks to recover from the defendant as stated in the attachment order;

(b) to serve a true copy of the attachment order on the defendant and such other person;

(c)

(i) to make forthwith a true inventory and valuation of the attached property and interest of the defendant therein, and to serve a true copy thereof on the defendant and such other person; and

(ii) to permit the defendant, and such other person, or their respective agents, to

make, within the period of twenty-four (24) hours after receiving the sheriff's inventory and valuation, an inventory and valuation of the attached property;

(d) upon receipt of a bond as provided in rule 49.06, to return the attached property to the possession of the defendant or such other person;

(e) where a bond is not delivered as provided in paragraph (d);

(i) to leave the property in the place where it was attached in the custody of the defendant or person in whose possession it had been at the time of attachment, as the sheriff's agent; or

(ii) when the plaintiff instructs the sheriff in writing to do so or the sheriff deems it advisable, to remove the property from the place where it was attached to such other place as is considered safe by the sheriff;

(f) where there is any property in the possession of a third person which cannot be directly attached, to serve a copy of the attachment order on the third person, and the order shall provide that the property, in an amount of the plaintiff's claim against the defendant as stated in the order, is deemed to have been attached upon the service of the order, and shall direct the third person, within ten (10) days of the service of the order on him and from time to time thereafter as any such additional property is available for delivery or payment,

(i) to deliver the property to the sheriff and any such delivery shall release the third person from any liability to the defendant with respect to the value of the property so delivered; or

(ii) when the delivery is not made under sub-paragraph (i), or the value of any property so delivered is not sufficient to satisfy the claim, or when the sheriff in writing demands it,

(A) to file with the sheriff a statement that describes and gives the location of any such property in the possession of the third person, state the approximate value of the interest of the defendant therein and when any payment in respect thereof becomes payable to the defendant, and gives the name and address of any other person with an interest in the property and the nature of that interest; and

(B) pending further order of the court, to retain possession of the property and withhold payment of any debt, rent, legacy, share, bond, debenture or other security, currency, or other demand, and the amount of the claim shall become a lien on the property held by the third person from the time of the service of the order on him or on the subsequent acquisition of any property by him;

(g) where real property is to be attached and a bond is not delivered as provided in rule 49.06, to serve on the occupant of the real property, or, if there is no occupant of the real property, to post in a conspicuous place thereon, a true copy of the attachment order and in every case to register in the office of the Registrar of Deeds for the registration district in which the real property is situate a true copy of the attachment order with a full description of the attached land endorsed thereon, whereupon the interest of the defendant in the land shall be deemed to be attached to the extent of the plaintiff's claim against the defendant as shown in the attachment order.

(2) An attachment order shall

(a) state the amount of the claim that a plaintiff seeks to recover from a defendant, as set out in the plaintiff's affidavit; and

(b) be endorsed with the name and address of the plaintiff's solicitor and prothonotary.

(3) Any share, bond, debenture, or other interest of a defendant in a body corporate is deemed to be property and may be attached as provided in rule 49.07.

(4) On the expiration of ninety (90) days from the issue of an attachment order or within such further period of time as the court may order, no property shall be attached under the order, but nothing herein shall be deemed to limit the validity of the order in respect of anything previously done thereunder or to limit the right of the court or a prothonotary to grant and issue a further attachment order in respect of the same or other property.

Sheriff's duty under attachment order

49.05.

(1) Upon receipt of an attachment order, a sheriff shall forthwith and not later than ninety (90) days after its issue, or within such further period of time as the court may order, comply with the provisions of the order.

(2) A sheriff shall hold and safely keep any property attached by him to satisfy any execution order issued to enforce any order obtained against a defendant in the proceeding unless,

(a) the defendant, or other person entitled to the possession of the property, retains or regains possession of the property by filing a bond as provided by rule 49.06;

(b) the plaintiff who obtained the attachment order, subject to the payment of the fees and expenses of the sheriff, authorizes in writing the attached property to be returned to the defendant or other person entitled thereto;

(c) the court orders the attached property to be sold or otherwise disposed of as provided in rule 49.09;

(d) the court orders the property returned to the defendant or other person entitled thereto as provided in rule 49.10(3).

(3) Within ten (10) days after attaching any property, the sheriff shall file with the prothonotary,

(a) a true copy of the inventory and valuation prepared under rule 49.04(1)(c), together with a description of any real property attached; and

(b) the name and address of any person served with the attachment order and inventory and valuation pursuant to rules 49.04(1)(b) and (c).

(4) Before the expiration of ninety (90) days from the issue of an attachment order or when directed by the court, the sheriff shall file the order with the prothonotary with a report of any action taken by him thereunder.

(5) Any one or more sheriffs may from time to time attach different items of property under an attachment order.

Retention or repossession of attached property by defendant or other person

49.06.

(1) A defendant, or person claiming to be the owner or entitled to the possession of any attached property is entitled to retain or regain possession thereof at any time before final judgment or the sale of the property under an order of the court, if he delivers to the prothonotary, or to the sheriff as his agent, a bond in Form 49.06A in an amount equal to one and one quarter (1¼) times the valuation of the attached property with two sufficient sureties, or other form of sufficient security, approved by the prothonotary.

(2) Unless the court otherwise orders, the condition of the bond shall be that the defendant or other person giving the bond shall, on the plaintiff obtaining judgment against the defendant in the proceeding, forth-with pay to the plaintiff on account of the judgment all or such portion of the amount as is secured by the bond, or comply with any other order of the court.

(3) When a bond is defective or insufficient, or any surety dies or moves out of the jurisdiction or becomes insolvent, or the other form of security is inadequate, or for any other just cause, the court may, on notice, order another bond or further security to be given and, if the provisions of the order are not complied with within the time prescribed therein, the court may grant a further attachment order on such terms as are just and any property of the defendant may be attached thereunder.

(4) A bond and any security taken thereunder may, with the leave of the court or consent of the parties, be assigned by the prothonotary to the plaintiff, and when so assigned the plaintiff may realize on the security and commence a proceeding to enforce the bond in his own name against all or any of the persons who executed it.

Attachment of shares, bonds, etc., of a body corporate

49.07.

(1) A sheriff may attach any share, bond, debenture or other interest of a defendant in a body corporate by serving the attachment order upon the body corporate as provided in rule 10.03(1)(b).

(2) When an attachment order is served on a body corporate, the body corporate and its transfer agent shall,

(a) not transfer the title to or deliver possession of any share, bond, debenture or other interest of the defendant therein to any person until the court otherwise orders; and

(b) forthwith file with the prothonotary, or deliver to the sheriff as agent of the prothonotary, a certificate setting out,

(i) the number and class of any attached share, with the certificate number and the name and address of any registered owner thereof;

(ii) the number, face value and description of any attached bond or debenture, with the serial number thereof and the name and address of any registered owner thereof;

(iii) a description of any other attached interest of the defendant in the body corporate.

(3) The court may order any attached share, bond, debenture or other interest of a defendant in a body corporate to be held, released, transferred or otherwise disposed of upon such terms and conditions as it may order, and any such holding, release, transfer or disposal pursuant to the terms of the order shall relieve the body corporate from liability to any person claiming the share, bond, debenture or other interest.

Appointment of a receiver

49.08. When a sheriff acts as a receiver under an attachment order the provisions of Rule 54, with any necessary modification, shall apply.

Sale or other disposition of attached property by court prior to

execution

49.09.

(1) When any attached personal property is likely to perish or materially depreciate in value

before the probable termination of the proceeding, or the keeping of the property could result in unreasonable loss or expense, or for other just cause, the court may order the sale or other disposal of all or any part of the property in such manner and upon such terms as are just.

(2) Unless the court otherwise orders a sheriff shall, forthwith on the sale of the attached personal property, file a report thereon with the prothonotary and pay the proceeds, less his fees and expenses, into court pending further order.

Conflicting claims on attachment

49.10.

(1) A sheriff, having several attachment orders to attach the same property, shall attach the property in the sequence in which the orders were received by him.

(2) A person, not subject to the provisions of an attachment order, who claims an interest in any attached property, or any defendant who claims that an attachment order was wrongfully granted or issued, or an attachment was wrongfully made, may,

(a) give written notice of his claim to the sheriff as provided in rule 50.02 and the provisions of Rule 50 shall apply with any necessary modification to any interpleader proceeding taken thereunder; or

(b) recover the attached property pursuant to the provisions of Rule 48 that shall apply with any necessary modification.

(3) On an application arising under paragraph (2) the court may, in addition to exercising the powers conferred by Rules 48 and 50, order,

(a) any attachment order or attachment, or both, to be set aside upon such terms as it thinks just;

(b) any attached property to be returned or disposed of upon such terms as it thinks just;

(c) any bond to be provided or released;

(d) damages to be awarded; and

(e) any other matter to be done as it thinks just.

(4) When attachment orders are issued out of the Supreme and any other court with respect to the same property, any interpleader or recovery proceeding with respect thereto shall be taken in the first proceeding in the Supreme Court in which the attachment order was executed.

(5) Where a party fails to assert any right or defence available to him and the failure to do so prejudices the rights of any other party, the latter may assert the right or defence for the protection of his own interest.

Disclosure

49.11. The court may, at any time after the granting of an attachment order and prior to final judgment, order a person to disclose any information he possesses regarding any property that a plaintiff seeks to attach under the order.

Application to modify, vacate, etc., an attachment order or attachment

49.12. When an attachment order has been granted, the court may on notice,

(a) grant a plaintiff a reasonable opportunity to amend any affidavit or bond used in support of the grant of an attachment order;

(b) amend or modify the attachment order or any attachment made thereunder;

(c) upon being satisfied that the attachment order is not necessary for the security of a plaintiff, or a plaintiff has failed to bring the proceeding to trial and judgment promptly, or the proceeding has been discontinued or dismissed as against a defendant, or a plaintiff's claim against a defendant has been fully satisfied, or for other just cause, vacate or dissolve in whole or in part, the attachment order and any attachment made thereunder;

(d) direct a sheriff to account for, transfer, return or release any attached property or the proceeds thereof;

(e) make such other order as is just.

Execution against attached property

49.13. (1) When a plaintiff obtains an order against a defendant whose property has been attached and an execution order has been granted thereunder, a sheriff may levy execution against the attached property in accordance with the provisions of Rule 53.

(2) Any attached property or the proceeds thereof that are not seized under an execution order within sixty (60) days of the granting of the order shall, unless the court otherwise orders, be returned by the sheriff to the defendant or other person who had possession of the property at the time it was attached.

FORM 49.03A

(Rule 49.03)

PLAINTIFF'S BOND ON ATTACHMENT

(Title of proceeding)

WHEREAS the plaintiff, _____, wishes to obtain an attachment order herein against the defendant, _____;

NOW KNOW ALL MEN by these presents that I, _____, plaintiff, as principal, and [_____ and _____ as sureties] [upon the plaintiff depositing with the (prothonotary) (sheriff as agent of the prothonotary) at _____, Nova Scotia, the money or securities listed below as security hereunder] firmly [bind myself], [jointly and severally bind ourselves] to the defendant, his executors, administrators or assigns, to pay to him or them the penal sum of _____ dollars, upon breach of the following conditions, namely,

(a) the plaintiff shall prosecute the proceeding herein without delay to judgment; and

(b) when ordered by the court,

(i) the sheriff shall return and pay the attached property, or the proceeds thereof if sold under rule 49.09, to the defendant or other person from whom it was attached; and

(ii) the plaintiff shall pay to the defendant or other person such damages and costs which either of them sustained by reason of the wrongful issue of the attachment order, or the wrongful making of any attachment hereunder, or if the plaintiff fails to recover judgment against the defendant in the proceeding, or as the court may order;

and upon the plaintiff fulfilling these conditions, this bond shall be void, but otherwise shall remain in full force and effect.

This bond shall enure to the benefit of and be binding upon the parties hereto, their and each of their heirs, executors, administrators, successors and assigns.

DATED at _____, Nova Scotia, this ____ day of _____, 20__ .

SIGNED, SEALED AND DELIVERED

in the presence of: _____

[Add affidavit of justification]

FORM 49.04A
(Rule 49.04)

ATTACHMENT ORDER

(Title of proceeding)

TO ANY SHERIFF OR INTERESTED PERSON:

UPON being satisfied that the plaintiff, A.B., has filed with the prothonotary of this Honourable Court, an affidavit and bond in compliance with the Civil Procedure Rules, which documents are open for inspection by any person upon payment of the prescribed fee;

IT IS ORDERED that,

1. any sheriff may attach, accept as a receiver, hold and dispose of, as provided by the Rules any property in which the defendant, C.D., has an interest, including any debt, rent, legacy, share, bond, debenture or other security, currency, or other demand, due or accruing due, at any time while the order is valid, whether in the possession of the defendant or any other person and not exempted by law from seizure, as will secure the plaintiff's claim in the amount of \$_____ and probable costs of \$ _____ ;
[Amend. 12/12/74]

2. the sheriff at the time of making an attachment under this order shall, unless the court otherwise orders,

(a) make forthwith a true inventory and valuation of the attached property and interest of the defendant therein, and serve a true copy thereof on the defendant and such other person; and

(b) permit the defendant, such other person, or their respective agents, to make, within twenty-four (24) hours after receiving the sheriff's inventory and appraisal, an inventory and appraisal of the attached property;

3. where property is attached and the defendant or such other person in possession of the property at the time of the attachment delivers to the prothonotary or the sheriff as his agent, a bond in Form 49.06A in an amount equal to one and one-quarter (1¼) times the valuation of the attached property as determined by the sheriff, with two sufficient sureties, who shall justify, or other form of sufficient security as approved by the prothonotary, return the attached property to the possession of the defendant or such other person;

4. where there is any property in the possession of a third person that cannot be immediately attached, the sheriff shall serve a copy of this order on the third person, whereupon the property,

in an amount as will secure in whole or in part the amount of the plaintiff's claim against the defendant as stated herein, is deemed to have been attached, and the third person shall, within ten (10) days of the service of the order on him and from time to time thereafter as any such additional property is available for delivery or payment,

(a) deliver the property to the sheriff and any such delivery shall release the third person from any liability to the defendant with respect to the value of the property so delivered; or

(b) when the delivery is not made under sub-paragraph (a), or the value of any property so delivered is not sufficient to satisfy the claim, or when a sheriff in writing demands it,

(i) the third person shall file with the sheriff a statement that describes and gives the location of any such property in the possession of the third person, stating the approximate value of the interest of the defendant therein and when any payment in respect thereof becomes payable to the defendant, and gives the name and address of any other person with an interest in the property and the nature of that interest;

(ii) pending further order of the court, the third person shall retain possession of the property and withhold payment of any debt, rent, legacy, currency or other demand, and the amount of the claim shall become a lien on the property held by the third person from the time of the service of the order on him or on the subsequent acquisition of any such property by him; and

(iii) when the sheriff serves the attachment on a body corporate with the intention of attaching any share, bond, debenture or other interest of the defendant therein, the body corporate or any transfer agent thereof shall,

(A) not transfer the title to or deliver possession of any such share, bond, debenture or other interest to any person until the court otherwise orders; and

(B) forthwith file with the sheriff, a certificate setting out

(i) the number and class of any attached share with the certificate number, and the name and address of any registered owner;

(ii) the number, face value and description of any attached bond or debenture with the serial number, and the name and address of any registered owner; and

(iii) any other attached interest of the defendant in the body corporate;

5. any person who fails to comply with the provisions of paragraph 4 may be held to be in contempt of the court and may be dealt with as the court thinks just;

6. where real property is to be attached and a bond is not filed as provided in paragraph 3 hereof, the sheriff shall serve on the occupant of the real property, or if there is no occupant, post in a conspicuous place thereon, a true copy of the attachment order, and in every case register a true copy thereof in the office of the Registrar of Deeds for the registration district where the real property is situated with a full description of the attached land endorsed thereon, whereupon the interest of the defendant in the land shall be deemed to be attached to the extent of the plaintiff's claim against the defendant as stated herein;

7. the sheriff shall file this attachment order with the prothonotary not later than ninety days from the date of issue or when directed by the court, with a report of any action taken by him thereunder endorsed thereon or attached thereto.

Granted and issued at _____, Nova Scotia, this ____ day of _____, 20__.

_____,

Prothonotary

The Court House,

_____ Street,

_____, Nova Scotia.

The solicitor of the Plaintiff

is _____, of _____ Street,

_____, Nova Scotia.

FORM 49.06A

(Rule 49.06)

BOND TO RETAIN PROPERTY UNDER AN ATTACHMENT ORDER

(Title of proceeding)

WHEREAS _____ seeks to retain or regain possession of property taken from him under the attachment order issued herein on the

____ day of _____, 20__ , and is delivering this bond to the prothonotary of this Honourable Court, or to the sheriff as his agent, in compliance with rule 49.06 of the Civil Procedure Rules,

NOW KNOW ALL MEN by these presents that I, _____, as principal, and [_____ and _____ as sureties] [upon _____ depositing with the (prothonotary) (sheriff as agent of the prothonotary) at _____, Nova Scotia, the money or securities listed below as security hereunder] firmly [bind myself], [jointly and severally bind ourselves] to A.B., the plaintiff, his executors, administrators and assigns, to pay to him or them the penal sum of dollars upon breach of the condition that I, _____, shall, on the plaintiff obtaining judgment against the defendant in this proceeding, forthwith pay to the plaintiff on account of the judgment all or any portion of the amount as is secured by the bond, or comply with any other order of the court; and upon C.D. fulfilling these conditions this bond shall be void, but unless the court otherwise orders, it shall remain in full force and effect.

This bond shall enure to the benefit of and be binding upon the parties hereto, their and each of their heirs, executors, administrators, successors and assigns.

Dated at _____, Nova Scotia, this ____ day of _____, 20__.

SIGNED, SEALED AND DELIVERED

in the presence of _____

[Add affidavit of justification]

RULE 50

INTERPLEADER

Entitlement to relief by way of interpleader

50.01.

Where a person, hereinafter called the "applicant", is sued or expects to be sued in respect of any property in his possession or under his control, or to the proceeds thereof, or receives a claim thereto, by or from two or more persons, hereinafter called the "claimants" making adverse claims thereto, and the applicant claims no beneficial interest in the property, the applicant may apply to the court for relief by way of interpleader. [E. 17/1]

Claim to real or personal property taken by sheriff

50.02.

(1) A person, who makes a claim to or in respect of any property taken or intended to be taken by a sheriff in the execution of any process or to the proceeds thereof, shall give written notice of his claim and address to the sheriff, and the address shall be his address for service.

(2) On receipt of a claim, a sheriff shall forthwith give notice to any person who authorized the process to issue, and that person shall, within four (4) days after receiving the notice, give the sheriff notice in writing whether he admits or disputes the claim.

(3)

(a) A sheriff upon receipt of a notice admitting a claim shall withdraw from possession of any property claimed and the court may grant an order restraining the bringing of a proceeding against him for or in respect of his having taken possession of the property, and

(b) a person who admits the claim shall only be liable to the sheriff for any fees and expenses incurred by the sheriff before receipt of the notice admitting the claim under paragraph (a).

(4) Upon receipt of a notice disputing the claim from a person who authorized the process to issue, or upon the failure of that person to give the sheriff the required notice within the prescribed time, the sheriff may apply for interpleader relief. [E. 17/2]

Mode of application

50.03.

(1) An application for interpleader relief shall be made by originating notice, (inter partes) unless made in a pending proceeding when it shall be made by interlocutory notice (inter partes).

(2) Notice of an application shall be served upon every party and claimant, all of whom may attend on the hearing.

(3) An application shall be supported by an affidavit showing that the applicant,

- (a) claims no beneficial interest in the property in dispute, other than for charges or costs,
- (b) does not collude with any claimant of the property, and
- (c) is willing to deliver the property to the court or to dispose of it as the court may direct. [E. 17/3]

Powers of court on hearing application

50.04.

(1) On the hearing of an application for interpleader relief, the court may,

- (a) order a claimant to be made a defendant in the proceedings in substitution for or in addition to the applicant; [E. 17/5(1)(a)]
- (b) order an issue between the claimants to be stated and tried and may direct which claimant is to be plaintiff and which defendant; [E. 17/5(1)(b)]
- (c) where a claimant was served with the notice of the application and failed to appear, or appears and fails or refuses to comply with an order made in the proceeding, make an order declaring the claimant, and all persons claiming under him be forever barred from prosecuting his claim against the applicant and all persons claiming under him, but the order shall not affect the rights of the claimants as between themselves; [E. 17/5(3)]
- (d) stay any further step in the proceeding; [E. 17/7]
- (e) make such other order as it thinks just; [E. 17/8]
- (f) where there are interpleader applications pending in several proceedings, make an order, that shall be binding upon all the parties to the various proceedings and the order shall be entitled in all the proceedings. [E. 17/9]

Summary determination of application by court

50.05.

Where

- (a) the applicant is a sheriff;
- (b) all the claimants consent or any of them so requests; or

(c) the question at issue between the claimants is a question of law and the facts are not in dispute;

the court may summarily determine the question at issue between the claimants and make such order as is just. [E. 17/5(2)]

Power to order sale of goods taken in execution

50.06. Where an application for relief under Rule 50 is made by a sheriff, and a claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels taken by a plaintiff, the court may order the goods or chattels or any part thereof to be sold and may direct that the proceeds of sale be applied in such manner and on such terms as may be just. [E. 17/6]



CIVIL PROCEDURE RULES - NOVA SCOTIA

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RULE 51 ORDERS Form of order

51.01.

(1) An order shall contain,

- (a) the title of the proceeding;
- (b) the name of the judge or officer who granted it;
- (c) recitals of the proceedings on which it is based;
- (d) the operative parts of the order divided into convenient paragraphs and numbered consecutively;
- (e) the date of the order; and
- (f) the name and seal of the prothonotary who issued it.

(2) An order may be in Forms 51.01A to 51.01E, where applicable, with any variation that the circumstances require. [E. 42/1]

(3) It is not necessary in any interlocutory order to reserve liberty to apply, but any party may apply to the court from time to time.

Order requiring an act to be done, etc.

51.02.

(1) Subject to paragraph (2), an order that requires a person to do or refrain from doing an act, shall specify the time within which the person is to do or refrain from doing the act.

(2) Where a person is required by an order to pay money, give possession of any land, or deliver any goods, the time for doing so need not be expressed in the order, but the court may specify such a time either in the order or subsequently. [E. 42/2]

Drawing up of order

51.03.

(1) Subject to paragraph (2), an order shall be drawn by the successful party, settled as provided by rule 51.05(1), and entered with the prothonotary, provided that when an order is not entered within ten (10) days after the judgment, decision or direction is given, any other party may draw up, settle and enter the order.

(2) Unless the court otherwise orders, an order need not be drawn up that, in addition to providing for costs, if any, merely grants leave to,

(a) extend the time within which a person is required or authorized by a rule, order or direction to do or refrain from doing any act;

(b) issue an originating notice, other than one for service out of the jurisdiction;

(c) amend an originating notice or pleading;

(d) file a document; [E. 42/4]

Settlement of form and entry of order

51.04.

(1) The form of an order shall be settled,

(a) by the court that heard the proceeding;

(b) where there has been a trial with a jury, by the court;

(c) by the prothonotary pursuant to rule 51.05;

(d) where an enactment or rule permits an order to be entered upon the filing of an affidavit or other document, by the prothonotary after being satisfied that the documents filed comply with the enactment or rule;

(e) by the officer authorized by an enactment or rule to grant the order;

(f) where a judge dies, retires, ceases to be a judge of the Supreme Court of Nova Scotia or for any other reason fails to settle an order, by another judge pursuant to rule 39.03.

(2) A prothonotary may refer the settlement of any order to the court, that may either dispose of

the matter or refer it back to the prothonotary with such directions as it considers appropriate.

(3) When an order has been settled and filed, the prothonotary shall sign, seal and file the original copy and enter it in the cause book, provided no order shall be entered more than one (1) year after it has been granted or settled without the leave of the court.

(4) An order of the Nova Scotia Court of Appeal shall be entered in the prothonotary's office at Halifax and in the office of the prothonotary where the order appealed from was entered.

(5) A copy of an order, certified as a true copy and bearing the seal of the prothonotary, shall be received for all purposes and have the same force and effect as the original order.

Orders made by a prothonotary

51.05. (1) Notwithstanding the provisions of any other rule, a prothonotary may make and enter an order,

(a) where the form of the order has been consented to by all the parties and it purports to,

(i) change a solicitor on the record;

(ii) amend any pleading;

(iii) appoint a special examiner to take evidence abroad or issue a letter of request pursuant to rule 32.01;

(iv) fix a date, approved by the prothonotary for

(A) the assessment of damages;

(B) accounts to be taken;

(C) advertising for creditors or other claimants;

(v) release any exhibit;

(vi) confirm a verbal order made by the court and noted on the record;

(vii) discontinue a proceeding;

(viii) dismiss a proceeding of any party, who is not a person under disability;

(ix) waive the provision of any rule;

(b) where the order is applied for ex parte and it purports to

(i) grant leave to issue and serve a petition in a matrimonial cause out of the jurisdiction as provided by rule 57.11;

(ii) fix a date, approved by the prothonotary, for,

(A) the assessment of damages after interlocutory judgment has been entered following default of defence, or of appearance on a hearing;

(B) accounts to be taken;

(C) advertising for creditors or other claimants;

(iii) grant leave to renew an originating notice for a further period of six (6) months, provided the application is made within six (6) months from the date of the issue of the originating notice or within six (6) months from the date of any renewal thereof; [Amend. 29/5/98]

(c) where the order is applied for ex parte and it purports to be an order

(i) for examination;

(ii) confirming a sheriff's report when not combined with an order for deficiency judgment;

(iii) adding a defendant or defendants;

(iv) amending a statement of claim;

(v) renewing an execution order;

(vi) registering a judgment;

(vii) fixing the remuneration of a receiver under rules 46.03 or 46.04. [Amend. 12/86]

(d) where the order is an interlocutory or final judgment under rules 12.01 or 12.02. [Amend. 6/97]

(2) A prothonotary may refer any order to the court, which may make such order as is just or refer it back to the prothonotary with such directions as are necessary.

(3) Any person affected by an order of a prothonotary made pursuant to Rule 51.05(1)(b), Rule 51.05(1)(c) or Rule 28.11(3) may appeal therefrom to a judge in chambers within ten (10) days after the order complained of has been served upon him in cases where service is required, and within ten (10) days after the making of the order in all other cases, and the judge may make such order as is just.

[Amend. 07/03]

Date on which order takes effect

51.06.

Unless the court otherwise orders, an order shall be dated and take effect,

(a) when the order is not appealed from, on the date it is pronounced, given or made;

(b) when an order is varied on appeal, from the date when the order granted on the appeal is pronounced, given or made;

(c) when an order is sustained on appeal, on the date when the order was originally pronounced, given or made.

Costs

51.07.

Costs shall be allowed in an order as provided in Rule 63. [Amend. 12/12/74]

Default and summary judgments

51.08.

A party may apply for a default order under Rule 12, and for a summary order before trial under Rule 13 and rule 28.13.

Conditional order

51.09.

Where an order is obtained upon a condition that is not complied with, unless the court otherwise orders the order shall be deemed to have been waived or abandoned as far as it is beneficial to the person obtaining it, and any person interested in the matter on the breach or non-performance of the condition may take such proceedings as the order warrants or as might have been taken if the

order had not been made.

Amendment of orders

51.10.

An order may be amended as provided in rule 15.07.

Satisfaction of judgment

51.11.

A prothonotary shall enter that an order has been satisfied when there is filed with him,

(a) a satisfaction piece in Form 51.11A, signed by the judgment creditor, or his solicitor on the record, or by any other person entitled to the benefit thereof who attaches to the satisfaction piece an affidavit establishing his entitlement thereto;
or

(b) an order of the court releasing the order.

Appeals from orders

51.12.

A party may appeal from an order in the manner provided in Rule 62. [Amend. 12/12/74]

Service of order on person not a party

51.13.

(1) Where in a proceeding for,

(a) the administration of the estate of a deceased person;

(b) the execution of a trust; or

(c) the sale of any property;

the court grants an order that affects the rights or interests of any person who is not a party or directs an account to be taken or inquiry made, the court may in the order, or at any stage of the proceeding thereafter,

(i) direct a copy of the order with a memorandum in Form 51.13A attached thereto, to be served either personally or in such other manner as the court specifies, upon any person interested in the estate, trust or property, and the person served shall, subject to

paragraph (2), be bound by the order to the same extent as he would have been if he had been a party; or

(ii) where it is impractical to serve the order on any person, direct that service of the order be dispensed with and that the person shall, subject to paragraph (2), be bound by the order to the same extent as if he had been served with a copy thereof under clause (1). [E. 44/3]

(2) A person referred to in paragraph (1) may, within thirty (30) days from the date of service of the order on him or from the date on which he otherwise received notice of the order, apply to the court to amend or discharge the order, or be permitted to attend any further hearing arising in the proceeding, and the court may make such other order as it considers just. [E. 44/3(5)]

Powers on hearing of an application

51.14.

On the hearing of an application relating to any proceeding taken or to be taken under an order, the court may give directions with respect to,

(a) the measures to be taken and the conduct thereof, including

(i) the manner in which an account or inquiry is to be prosecuted;

(ii) the evidence to be adduced;

(iii) the parties or persons required to attend;

(iv) the time within which any measure is to be taken;

(v) fixing the day or days for the further attendance of any party or person;

(vi) revoking or varying any direction; [E. 44/4]

(b) requiring the parties constituting each or any class to be represented by the same solicitor, or, where the parties constituting a class cannot agree on a solicitor, to nominate a solicitor to represent the class; [E. 44/5]

(c) requiring any parties with a common solicitor to be separately represented with power to adjourn the hearing until they are; [E. 44/6]

(d) permitting any party, who has not been directed to attend on the hearing, to attend at the cost of the estate or other property to which the proceeding relates

and to have the conduct thereof in addition to or in substitution for any other party; [E. 44/7]

(e) any other matter as it deems necessary.

Order requiring deed or document to be settled

51.15. Where an order directs the form of a deed or other document to be settled by the court, the court may

(a) direct the party required to prepare a draft of the deed or other document, to serve a copy of the draft upon every other party thereto within a specified time;

(b) direct a party, who receives a copy of the draft, to serve his written objections to the form thereof on the party who prepared the draft within ten (10) days, or such other time as is specified, with liberty to apply to the court for further directions if the form cannot be agreed upon;

(c) give such other directions as are just. [E. 44/8]

Advertising for creditors and other claimants

51.16. (1) On an application to advertise for creditors and other claimants, including heirs, next of kin or other unascertained persons, the court may,

(a) authorize the applicant or any other person to advertise in such manner and at such times as it deems necessary;

(b) fix the time within which, and appoint the person to whom, any creditor or claimant shall send his name, address and particulars of his claim, and the time, name and address of the person shall be stated in the advertisement; [E. 44/10(3)]

(c) direct that, unless the court otherwise orders, any person, who fails to send in full particulars of his claim to the person named in the advertisement within the time specified, shall be excluded from the benefit of any order that may be granted; [E. 44/11]

(d) subject to rules 51.17 and 51.18, direct how, when, and by whom, any claims are to be examined and disposed of;

(e) make such other order as is just.

(2) Unless the court otherwise orders, the advertisement in paragraph (1) shall be prepared by the applicant. [E. 44/10(2)]

Examination of claims

51.17. On the expiration of the time fixed under rule 51.16 for the filing of claims, a person appointed to receive the claims shall,

(a) examine each claim filed with him and determine, so far as he is able, the validity of the claim;

(b) at least ten (10) days before the time appointed by the court to adjudicate the claims, make an affidavit listing,

(i) the claims sent in pursuance of any advertisement, and

(ii) the claims received other than in pursuance to an advertisement, or that have come to his knowledge, and specifying with respect to each claim, whether or not it is a valid claim, in whole or in part, giving the reasons for such belief. [E. 44/12]

Adjudication of claims

51.18.

(1) On the adjudication of a claim, including any part thereof, the court may,

(a) allow or disallow any claim or part after or without proof thereof;

(b) direct any claim or part to be investigated in such manner as it thinks fit; [E. 44/13(1)]

(c) require a claimant, on not less than ten (10) days notice, to attend and prove his claim or part, or to furnish further particulars or evidence of it by affidavit or in such other manner as the court orders, or to produce such documents in support of the claim or part as may be specified; [E. 44/13(2)]

(d) require a person claiming to be a secured creditor to produce his security; [E. 44/13(6)]

(e) adjourn the adjudication of any claim or part and, if required, fix the time within which any evidence in support of or in opposition of the claim or part shall be filed; [E. 44/14]

(f) give such other directions or make such other order as is just.

(2) The court may direct any claimant, who did not attend on the adjudication under paragraph (1) and whose claim or any part thereof has been allowed or disallowed, to be served with a notice in Form 51.18A informing him of that fact and stating that, if the claimant is dissatisfied with the

amount allowed or the disallowance of his claim, he must within ten (10) days from the receipt of the notice apply to the prothonotary for a rehearing of his claim, otherwise the adjudication shall be final. [E. 44/16]

(3) Service of a notice on any claimant under paragraph (2) shall be at the address stated in his claim, or if he is represented by a solicitor at the business address of the solicitor. [E. 44/17]

Certificate of judgment of Supreme Court of Canada

51.19. When a judgment of the Supreme Court of Canada on appeal is certified by the Registrar thereof and filed with a prothonotary, the prothonotary shall enter the same and all subsequent proceedings may be taken thereon as if the judgment had been given or pronounced by the court.

FORM 51.01A

(Rule 51.01)

DEFAULT ORDERS

(Title of proceeding)

As the defendant has not served a defence on the plaintiff, it is this day ordered that,

For a liquidated demand:	the defendant pay to the plaintiff the sum of \$_____ and costs of \$_____ .
For unliquidated damages:	the defendant pay to the plaintiff damages to be assessed.
Relating to detention of goods:	[the defendant deliver to the plaintiff the goods described in the statement of claim as, _____ or pay to the plaintiff the value of the goods to be assessed (and also damages for their detention to be assessed)]. (or) [the defendant pay to the plaintiff the value of the goods described in the statement of claim to be assessed (and also damages for their detention to be assessed)].

For possession of land:	the defendant give to the plaintiff possession of the land described in the statement of claim as _____, and pay to the plaintiff the sum of \$_____ costs.
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DATED at _____, Nova Scotia, the ___ day of _____, 20__ .

PROTHONOTARY.

FORM 51.01B

(Rule 51.01)

FINAL ORDER AFTER ASSESSMENT OF DAMAGES, ETC.

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS:

Upon it appearing that the plaintiff on the day of _____, 20__ , obtained an interlocutory order herein against the defendant for damages to be assessed (or as the case may be);

It is this day ordered that the defendant pay to the plaintiff the sum of \$_____ and costs to be taxed (or as the case may be).

DATED at _____, Nova Scotia, the ___ day of _____, 20__.

_____: PROTHONOTARY.

FORM 51.01C

(Rule 51.01)

SUMMARY ORDER UNDER RULE 13.02

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS:

Upon it appearing that the plaintiff has made application under rule 13.02 for a summary order against the defendant on the claim herein;

It is ordered that the defendant do [pay to the plaintiff the sum of \$_____ and \$_____ costs (costs to be taxed.)]

or

[pay to the plaintiff damages to be assessed.]

or

[deliver to the plaintiff the goods described in the statement of claim as _____, (or pay the plaintiff the value of the goods to be assessed) (and also damages for their detention to be assessed) and costs to be taxed.]

or

[give to the plaintiff possession of the land described in the statement of the claim as and costs to be taxed.]

DATED at _____, Nova Scotia, the ___ day of _____, 20__.

_____: PROTHONOTARY.

FORM 51.01D
(Rule 51.01)

ORDER AFTER TRIAL WITHOUT A JURY

(Title of proceeding)

This proceeding having come on for trial before the Honourable Justice _____, at the Court House in _____, Nova Scotia, on the ___ day of _____, 20__, and evidence having been adduced and counsel having been heard on behalf of the plaintiff and defendant respectively, the learned judge was pleased to reserve his decision and by a written decision dated and filed the ___ day of ___, 20__, found, etc.

NOW UPON HEARING Mr./Ms._____, on behalf of the plaintiff and Mr./Ms._____, on behalf of the defendant, [consenting as to form],

It is ordered that the defendant pay to the plaintiff the sum of \$_____ and his costs of action to be taxed (or as may be according to the judge's order).

[It is further ordered that execution be stayed for ___ days and if within that time the gives notice of appeal and sets down the appeal, execution be further stayed until the determination of

the appeal (or as may be according to the judge's direction)].

DATED at _____, Nova Scotia, the ___ day of _____, 20__.

_____: PROTHONOTARY.

FORM 51.01E
(Rule 51.01)

ORDER AFTER TRIAL WITH JURY

(Title of proceeding)

This proceeding having come on for trial before the Honourable Justice _____, with a jury, at the Court House at _____, Nova Scotia, on the day of _____, 20__, and evidence having been adduced and counsel having been heard on behalf of the plaintiff and defendant respectively, the learned judge submitted the following questions to the jury that returned the following answers:

(set out the questions and answers)

and the Justice having ordered that judgment be entered for the plaintiff for \$_____ and costs to be taxed (or as the case may be);

NOW UPON HEARING Mr./Ms. _____, on behalf of the plaintiff, and Mr./Ms. _____, on behalf of the defendant (consenting as to form),

It is ordered that the defendant pay to the plaintiff the sum of \$_____ and his costs to be taxed (or as the case may be) .

DATED at _____, Nova Scotia, the ___ day of _____, 20__.

PROTHONOTARY.

FORM 51.11A
(Rule 51.11)

SATISFACTION PIECE

(Title of proceeding)

Satisfaction is acknowledged of the order entered by the [plaintiff] [defendant] against the [defendant] [plaintiff] on the ___ day of _____, 20__ , for the sum of \$_____ and costs of \$_____.

Dated at _____, Nova Scotia, this ___ day of _____, 20__.

[plaintiff] [defendant]

[solicitor for A.B., the]

FORM 51.13A
[Rule 51.13(1)(c)]

NOTICE TO A NON-PARTY

(Title of proceeding)

Take notice that if you, as the [executor] [administrator] [trustee] of the Estate of A.B., deceased, (or as the case may be), wish to have the order of the Honourable Justice _____, dated the ___ day of _____, 20__, amended or discharged, you must make application to amend or discharge the order to the Judge of this Honourable Court presiding in chambers at the Court House at , Nova Scotia, within thirty (30) days from the service of the order on you or from the date you first receive notice of the order, otherwise you will be bound by the order to the same extent as if you had been a party to the proceeding.

Dated at _____, Nova Scotia, this ___ day of _____, 20__.

_____: PROTHONOTARY.

FORM 51.18A
[Rule 51.18(2)]

NOTICE OF DISALLOWANCE

(Title of proceeding)

Take notice that, on the adjudication of the claims of creditors and other claimants (or as the case may be) in the above proceeding, the Honourable Mr. Justice , by order dated the ___ day of _____, 20__, [allowed your claim in the amount of \$____ .] [disallowed your claim.]

And take notice that, if you are dissatisfied with the amount allowed or the disallowment of your claim, you must, within ten (10) days from the receipt of this notice, apply to me, the

prothonotary at my address below, for a further rehearing of your claim otherwise the above adjudication will be final and binding upon you.

Dated at _____, Nova Scotia, this ____ day of _____, 20__.

My address is: _____ Prothonotary,

Court House,

_____, Nova Scotia.

RULE 52

ENFORCEMENT OF ORDERS: GENERAL

Enforcement of order for the payment or recovery of money

52.01. (1) An order for the payment of money, other than the payment of money into court, may be enforced by one or more of the following orders,

- (a) an execution order as provided in Rule 53;
- (b) a receivership order as provided in Rule 54;
- (c) a contempt order as provided in Rule 55. [E. 45/1(1)]

(2) An order for the payment of money into court may be enforced by one or more of the following orders.

- (a) a receivership order under Rule 54;
- (b) a contempt order under Rule 55. [E. 45/1(2)]

(3) An order for the recovery of money may be enforced by one or more of the following orders,

- (a) an execution order as provided in Rule 53;
 - (b) a receivership order as provided in Rule 54. [E. 45/13(1)]
-

Enforcement of order for possession of real or personal property

52.02. (1) An order for the giving of possession of real property or the delivery of any personal property may be enforced by any one or more of the following orders:

- (a) a recovery order as provided by rule 48.13;
- (b) a contempt order as provided by Rule 55. [E. 45/3/4]

(2) An order for the recovery of possession of real property, or for the return of any personal property, or in lieu thereof the recovery of the assessed value thereof, may be enforced by a recovery order as provided by rule 48.13. [E. 45/13(2)(3)]

Enforcement of an order to do or abstain from doing an act

52.03.

(1)

- (a) When a person, who is required by an order to do an act with-
in a specified time, refuses or neglects to do it within that time; or
- (b) when a person disobeys an order requiring him to abstain from doing an act;

then the order may, subject to paragraph (3), be enforced by a contempt order as provided by Rule 55. [E. 45/5]

(2) The court may from time to time vary an order referred to in paragraph (1), by requiring any act to be done or abstained from,

- (a) when the order specifies the time when the act was to be done or abstained from, at any other time; or
- (b) when the order does not specify any time, within such time as may be specified in the order. [E. 45/6]

(3) An order in paragraph (1) or (2) may not be enforced by a contempt order, unless a copy of the order has been served,

- (a) on the person required by the order to do or abstain from doing any act; or
- (b) where the person is a body corporate, on any officer, director, employee or

agent thereof against whose property or person leave is to be sought to issue a contempt order pursuant to rule 55.06; and

(c) where the act is to be done or abstained from within a specified period of time, before the expiration of that time. [E. 45/7]

(4) Where an order made under paragraph (1) (a) is not complied with, the court may,

(a) order the act to be done at the expense of the disobedient party by the party who obtained the order or any other person appointed by the court, and upon the act being done and the expense thereof ascertained, direct an execution order to issue against the disobedient party for the amount so ascertained and costs;

(b) make such other order as is just. [E. 45/8]

When leave to issue execution orders, etc., is necessary

52.04. (1) A prothonotary shall not issue an execution, receivership or contempt order to enforce an order without first obtaining the leave of the court where,

(a) six (6) years or more have elapsed since the date of the order;

(b) a change has taken place, whether by death or otherwise, in the parties entitled or liable under the order;

(c) any goods sought to be seized under an execution order are in the hands of a receiver appointed by the court;

(d) where under the order, any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled. [E. 46/2(1)]

(2) Where the court grants leave, whether under this rule or otherwise, to issue an order under paragraph (1) and the order is not issued within one (1) year from the date of the order granting such leave, the order granting leave shall cease to have effect, but nothing shall limit the making of a further order granting leave. [E. 46/2(3)]

Duration and renewal of execution, etc., orders

52.05. (1) A receivership or contempt order is valid for a period of twelve (12) months from the date of its issue. [Amend. 29/5/98]

(2) An execution order is effective for a period of six years from the date of the judgment.

[Amend. 29/5/98]

(3) Where an order referred to in paragraph 52.05(1) or (2) has not been wholly executed, the court may extend or fix the effective period of the order, or of any order so renewed, for a further period of twelve (12) months commencing from the date of the order granting the extension.

[Amend. 29/5/98]

(4) Any priorities under an order referred to in paragraph (1), or any renewal thereof, shall be determined by reference to the date on which the original order was delivered to the sheriff. [E. 46/8(4)] [Amend. 29/5/98]

Return of execution, etc., orders

52.06. (1) A sheriff shall, on the expiration of an execution, receivership, or contempt order, or when requested by the court, file the order forthwith with the prothonotary with a report of any action taken by him thereunder endorsed thereon or attached thereto.

(2) When requested in writing by a party at whose instance an order referred to in paragraph (1) was granted or by the prothonotary, the sheriff shall indorse on the order a statement of the manner in which he has executed it and send a copy of the statement to the party or prothonotary.

(3) When a sheriff fails to comply with the provisions of paragraph (2), the court may grant an order directing the sheriff to comply with the notice. [E. 46/9]

Execution by or against a person not a party

52.07. (1) When a person, who is not a party, obtains an order or an order is made in his favour, that person shall be entitled to enforce obedience to the order by the same process as if he were a party.

(2) When an order may be enforced against a person who is not a party, that person shall be liable to the same process for enforcing obedience to the order as if he were a party. [E. 45/9]

Waiver of conditional judgment or order

52.08. When a party, who is entitled to any relief under an order upon the fulfilment of a condition, fails to fulfil the condition, that party is deemed to have abandoned the benefit of the order and, unless the court otherwise orders, any other interested person may take any steps warranted by the order or that might have been taken if the order had not been granted. [E. 45/10]

Stay of execution for matter occurring after judgment or order

52.09. When a party against whom an order has been granted, or any person against whom obedience thereof may be enforced, applies to the court for a stay of execution thereunder because

of a matter that occurred after the date of the order, the court may grant the stay and any other relief upon such terms as it thinks just. [E. 45/11]

RULE 53

EXECUTION ORDERS

Application for execution order

53.01.

(1) When a judgment creditor has filed an order for the payment or recovery of money in a proceeding, a prothonotary shall, unless the court otherwise orders and subject to rule 52.04,

(a) grant and issue an execution order in Form 53.02A to the judgment creditor;

(b) when an execution order has ceased to be valid under rule 52.05 or for any other reason, grant a further execution order.

(2) A prothonotary may grant and issue an execution order to enforce payment of any money payable or recoverable under an order before costs are taxed, and subsequently on the taxation of the costs grant and issue a further execution order to enforce payment of the taxed costs. [E. 47/3

(1)]

(3) Where a party obtains an order for the recovery of possession of any property, other than money, a prothonotary may issue an execution order to enforce payment of any damages or costs, or both, awarded under the order. [E. 47/3(2)]

(4) A prothonotary may grant and issue an execution order to enforce the payment of costs alone when taxed pursuant to an order.

Execution order

53.02.

(1) Unless the court otherwise orders, an execution order in Form 53.02A shall direct any sheriff within the effective period of the execution order or within such further time as the court orders, [Amend. 29/5/98]

(a) to seize, accept as a receiver, hold and sell at public auction any property in which the judgment debtor has an interest, including any debt, rent, legacy, share, bond, debenture or other security, currency, wages, or other demand, due or accruing due at any time while the order is valid, whether in the possession or custody of the judgment debtor or other person and not exempt by law from seizure, as will satisfy in whole or in part the amount of the claim which the

judgment creditor seeks to recover from the judgment debtor as stated in the execution order, and to disburse the proceeds thereof as provided by law;

(b) to serve a true copy of the execution order on the judgment debtor or other person in possession of the property at the time of the seizure;

(c) to make forthwith a true inventory and appraisalment of the seized property and the interest of the judgment debtor therein;

(d) where there is any property in the possession of a third person which cannot be seized under the execution order, to serve a copy of the execution order on the third person, and the order shall provide that the property, in an amount as will satisfy in whole or in part the amount of the judgment creditor's claim against the judgment debtor as stated in the order, shall be deemed to have been seized upon the service of the order, and direct the third person, within ten (10) days of the service of the order on him and from time to time thereafter as such additional property is available for delivery,

(i) to deliver the property to the sheriff and the delivery shall release the third person from any liability to the judgment debtor with respect to the value of the property so delivered; or

(ii) when delivery is not made under sub-paragraph (i), or the value of any property so delivered is not sufficient to satisfy the amount of the judgment creditor's claim, or when a sheriff in writing demands it,

(A) to file with the sheriff a certificate that, describes and gives the location of any such property in the possession of the third person, states the approximate value of the interest of the judgment debtor therein and when any payment in respect thereof becomes payable to the judgment debtor, and gives the name and address of any other person with an interest in the property and the nature of that interest; and

(B) pending further order of the court, to retain possession of the property referred to in clause (A) and withhold payment of any debt, rent, legacy, share, bond, debenture or other security, currency, wages, or other demand, and the amount of the claim shall become a lien on the property held by the third person from the time of the service of the order on him or of the subsequent acquisition of

any such property by him;

(e) where real property is seized under an execution order, to sell the real property as provided by the **Sale of Land under Execution Act**.

(2) An execution order shall,

(a) state the amount payable by the judgment debtor to the judgment creditor under the order; and

(b) be endorsed with the name and address of the solicitor of the judgment creditor and prothonotary.

(3) Any share, bond, debenture or other interest of a judgment debtor in a body corporate may be seized as provided in rule 53.04, and wages may be seized as provided in rule 53.05.

(4) On the expiration of the effective period of an execution order, no property shall be seized under the execution order, but nothing herein shall be deemed to limit the validity of the order in respect of anything previously done thereunder or to limit the right of the court or prothonotary to issue a further execution order in respect of the same or other property.

[Amend. 29/5/98]

Sheriff's duty under execution order

53.03.

(1) Upon receipt of an execution order, a sheriff shall forthwith, and not later than twelve (12) months from the date of its issue or within such further time as the court may order, comply with the provisions of the order.

(2) Where personal property is secured or concealed in a building or enclosure and it is not delivered pursuant to his demand, a sheriff shall break open or cause the building or enclosure to be broken open and shall take possession of the property pursuant to an execution order.

(3) Any one or more sheriffs may, from time to time, attach different items of property under the same execution order.

(4) Where a sheriff under an execution order seizes, or is requested by the judgment creditor to seize, property claimed by a person other than the judgment debtor, the sheriff may, before proceeding further, require the judgment creditor to give him a bond with two sufficient sureties or other form of sufficient security, to pay all costs and damages that the sheriff may sustain by reason of the seizure, detention or sale of the property.

(5) When a sheriff acts as a receiver under an execution order, the provisions of Rule 54, with any

necessary modification, shall apply.

Seizure of shares, bonds, etc., of a body corporate

53.04. (1) A sheriff may seize any share, bond, debenture or other interest of a judgment debtor in a body corporate by serving an execution order upon the body corporate as provided in rule 10.03 (1)(b). [Amend 12/12/74]

(2) When an execution order is served upon a body corporate, the body corporate or its transfer agent shall,

(a) not transfer the title to or deliver possession of any share, bond, debenture or other interest of the judgment debtor therein to any person until the court otherwise orders; and

(b) file forthwith with the sheriff a certificate setting out,

(i) the number and class of any share so seized, with the certificate number and the name and address of the registered owner thereof;

(ii) the number, face value and description of any seized bond or debenture with the serial number and the name and address of any registered owner thereof; and

(iii) a description of any other interest of a judgment debtor in the body corporate so retained.

(3) The court may order any seized share, bond, debenture or other interest of a judgment debtor in a body corporate to be held, released, transferred or otherwise disposed of upon such terms and conditions as it may order, and any such holding, release, transfer or disposal pursuant to the terms of the order shall relieve the body corporate and transfer agent from any liability to any person claiming an interest in any such share, bond, debenture or other interest.

Payment of wages to a sheriff

53.05. Unless the court otherwise orders, the following provisions shall apply to the payment of wages, from time to time, to a sheriff under an execution order,

(a) an employer shall only be required to pay to the sheriff fifteen per cent (15%) of the gross wages of an employee, provided that when the payment would reduce the net amount of wages payable to the employee, after the deduction of all amounts required by law to be deducted from such wages, to the amount of four hundred and fifteen dollars (\$415) per week payable to an employee supporting a family, or two hundred and seventy-five dollars (\$275) per week to any

other employee, then only the difference by which the payment of the fifteen per cent (15%) exceeds these respective amounts shall be paid to the sheriff; [Amend. 10/89; 01/01]

(b) an employer shall pay to a sheriff the wages under paragraph (a) once every month or as otherwise agreed upon by the employer and the sheriff;

(c) wages accrue from day to day as provided by the **Apportionment Act**;

(d) an employer shall forthwith answer any written interrogatory sent to him by a sheriff with respect to any wages due or accruing due to an employee who is a judgment debtor;

(e) an employer who dismisses or suspends or otherwise penalizes an employee because of the seizure of his wages under an execution order or receivership order, shall be subject to punishment for contempt. [Amend. 2/4/79]

(f) wages or income deposited in any bank account, electronically or otherwise, which are not liable to seizure pursuant to this rule or are exempt by law from seizure, shall not be liable to seizure from such bank account. [Amend. 09/91]

Money in court

53.06. Where money is standing to the credit of a judgment debtor in court, the court may, on application of the judgment creditor or sheriff and on notice, make such order with respect to the money in court as it thinks just.

Execution against a partnership or any partner

53.07. An execution order against a partnership or any partner may be issued and enforced as provided in rule 7.05.

Conflicting claims to property seized under execution order

53.08.

(1) A sheriff, having several execution orders to seize the same property, shall seize the property in the sequence in which the orders were received by him.

(2) Any person, not subject to the provisions of the execution order, who claims an interest in any seized property, or any defendant who claims that an execution order was wrongfully granted or issued or an execution was wrongfully made, may,

(a) give written notice of his claim to the sheriff as provided in rule 50.02 and the

provisions of Rule 50 shall apply with any necessary modification to any interpleader proceeding taken thereunder; or

(b) recover the seized property pursuant to the provisions of Rule 48, which shall apply with any necessary modification.

(3) On an application arising under paragraph (2), the court may, in addition to exercising the powers conferred by Rules 48 and 50, order

(a) any execution order or execution thereunder, or both, to be set aside upon such terms as it thinks just;

(b) any property seized under an execution order to be returned or disposed of upon such terms as it thinks just;

(c) damages to be awarded;

and grant such other order as it thinks just.

(4) When execution orders are issued out of the Supreme Court and any other court with respect to the same property, any interpleader or recovery proceeding with respect thereto shall be taken in the first proceeding in the Supreme Court or other court in which an execution order was executed.

(5) Where a party fails to assert any right or defence available to him and the failure to do so prejudices the rights of any other party, the latter may assert the right or defence for the protection of his own interest.

Sale of personal property under execution order

53.09.

(1) A sheriff who seizes personal property under an execution order shall, before he proceeds to sell the interest of the judgment debtor therein at public sale to the highest bidder, cause public notice of the time and place of the sale to be given for at least ten (10) days before the day of sale by,

(a) an advertisement published at least twice in a newspaper printed or circulating in the county in which the sale is to take place, the last advertisement to be inserted within three (3) days of the date of the sale;

(b) posting an advertisement in at least five (5) public places and on the notice board established for the posting of public notices in the court house; and

(c) causing a copy of the advertisement to be mailed, postage prepaid by ordinary mail, to the judgment debtor and person in possession of the property at the time it was seized under the execution order.

(2) Where a person, who possesses an interest senior to that of the judgment debtor in any personal property to be sold under an execution order, advises the sheriff in writing that he consents to the sale of the property including his interest therein, the sheriff shall proceed to sell the interest of that person and the judgment debtor in the property.

(3) When a sale is completed under paragraph (2), the net proceeds shall, unless the court otherwise orders, be applied in satisfaction of the senior interest in full and the balance applied on the judgment debt.

(4) A sheriff shall execute to the highest bidder at a sale or his nominee, a bill of sale of any personal property so sold that shall be sufficient to transfer to the purchaser named in the bill of sale,

(a) all the interest of the judgment debtor in the property so sold; or

(b) where the interest of any other person is sold under paragraph (2), all the interest of that person and the judgment debtor in the property so sold.

(5) When personal property is not sold at a sheriff's sale for want of bidders, the court may grant an order permitting a second sale under the same execution order upon such terms and conditions as it thinks just.

Sale of real property under execution order

53.10. A sheriff shall sell real property under an execution order in the manner provided in the **Sale of Land under Execution Act**.

Sale or other disposition of perishable, etc., property by court

53.11. (1) When any property taken by a sheriff under an execution order is likely to perish or materially depreciate in value before the probable sale of the property under the execution order, or the keeping of the property could result in unreasonable loss or expense, or for other just cause, the court may order the sale or other disposal of all or any part of the property in such manner and upon such terms as are just.

(2) Unless the court otherwise orders, a sheriff shall forthwith on the sale of property pursuant to paragraph (1), file a report thereon with the prothonotary, and after deducting his fees and expenses, shall dispose of the proceeds as if they had been received pursuant to a sale of the

property under the execution order.

Sale of unique property under execution order

53.12. Where any personal property sought to be sold under an execution order is unique, the court may, on an ex parte application, grant an order providing that the property shall not be sold until further order of the court or upon such other terms as it considers just.

Power of court to stay execution order

53.13.

(1) Where the court is satisfied that,

(a) special circumstances exist that render it inexpedient to enforce an order for the payment or recovery of money;

(b) the applicant is for any reason unable to pay any money payable or recoverable under an order;

(c) for any other just cause;

the court may order the issue or enforcement of an execution order to be stayed, either absolutely or for such period and subject to such conditions as the court thinks just. [E. 47/1(1)]

(2) An application under paragraph (1) shall be made on notice supported by affidavit, and may be made by a judgment debtor notwithstanding that judgment was entered against him by default. [E. 47/2]

(3) An order staying execution may be varied or revoked by a subsequent order.

Assignee of judgment creditor [Amend. 12/12/74]

53.14. Where a person satisfies the court that he is the assignee of the interest of a judgment creditor under an order, the court may order that the assignee is entitled to all the rights and remedies available to the judgment creditor and to enforce the order in his own name as such assignee, and the order may so provide.

Disclosure

53.15. The court may, at any time after the issue of an execution order, order any judgment debtor or other person by oral discovery or otherwise to disclose any information he possesses, regarding any property in which the judgment debtor has an interest or which he disposed of since contracting the debt or incurring the liability in respect of which an order was obtained.

[Amend. 6/90]

FORM 53.02A

(Rule 53.02)

EXECUTION ORDER

(Title of proceeding)

TO ANY SHERIFF OR INTERESTED PERSON:

Judgment debt: \$ _____
Judgment cost: \$ _____
Less any credits: \$ (_____)
Judgment Amount: \$ _____

Solicitor's fees & disbursements on registering judgment, notice of judgment, and on execution: \$ _____
Interest to date of Execution Order: \$ _____
Total Fees and Interest: \$ _____
Total Claim: \$ _____

FOR OFFICE USE ONLY

Sheriff's fees: \$ _____
Additional Interest: \$ _____
Less Additional credits: \$ (_____)
Total Due: \$ _____

Judgment (date) _____ effective for six (6) years from judgment date.
Order renewed or reissued (date) _____ for twelve (12) months.

UPON being satisfied that the judgment creditor has entered judgment against the judgment debtor on the ___ day of ___, A.D., 20__.
IT IS ORDERED THAT, Any sheriff shall seize, accept as a receiver, hold and sell at public auction, any real or personal property in which the judgment debtor has an interest including any debt, rent, legacy, share, bond, debenture or other security, currency, wages, or other demand, due or accruing due at any time while this order is valid, whether in the possession of the judgment debtor or other person and not

exempt by law from seizure, that will satisfy the **Judgment Amount**, together with interest at the rate provided in the **Interest on Judgments Act**, from the date of judgment to the date of satisfaction, and to reimburse the judgment creditor for **Solicitors' fees and Sheriff's fees** together with interest at the same rate from the date the fees are incurred until the date of reimbursement, and to disburse the proceeds as provided by law.
[Amend. 29/5/98]

2. The sheriff, at the time of making a seizure under this order, shall, unless the court otherwise orders,

(a) serve a true copy of this order on the judgment debtor or other person in possession of the property at the time of the seizure, and

(b) make forthwith a true inventory and appraisalment of the seized property and the interest of the judgment debtor therein.

3. Where there is any property in the possession of a third person that cannot be seized immediately, the sheriff shall serve a copy of this order on the third person whereupon the property, in an amount as will secure in whole or in part the amount of the judgment creditor's claim against the judgment debtor as stated herein, shall be deemed to have been seized, and the third person shall, within ten (10) days of service of the order on him and from time to time thereafter as any such additional property is available for delivery,

(a) deliver the property to the sheriff and the delivery shall release the third person from any liability to the judgment debtor with respect to the value of the property

so delivered; or

(b) when delivery is not made under clause (a), or the value of any property so delivered is not sufficient to satisfy the judgment creditor's claim, or when a sheriff in writing demands it,

(A) the third person shall file with the sheriff a certificate that describes and gives the location of any such property in the possession of the third person, states the approximate value of the interest of the judgment debtor therein and when any payment in respect thereof becomes payable to the judgment debtor, and gives the name and address of any other person with an interest in the property and the nature of that interest; and

(B) pending further order of the court, the third person shall retain possession of the property referred to in clause (A) and withhold payment of any debt, rent, legacy, share, bond, debenture or other currency, wages, or other demand, and the amount of the claim shall become a lien on the property held by the third person from the time of the service of the order on him or of the subsequent acquisition of any such property by him;

4. When the sheriff serves this execution order on a body corporate with the intention of seizing any share, bond, debenture or other interest of the judgment debtor therein, the body corporate or any transfer agent thereof shall,

(a) not transfer the title or deliver possession of any such share, bond, debenture or other interest to any person until the court otherwise orders; and

(b) forthwith file with the sheriff a certificate setting out,

(i) the number and class of any share so seized, with the certificate number and the name and address of any registered owner thereof;

(ii) the number, face value and description of any seized bond or debenture, with the serial number and the name and address of any registered owner thereof; and

(iii) a description of any other seized interest of the judgment debtor in the body corporate so retained.

5. When a sheriff serves this execution order on an employer with the intention of seizing any wages or a judgment debtor hereunder, the employer shall,

(a) pay to the sheriff fifteen per cent (15%) of the gross wages of the judgment debtor, provided that when the payment would reduce the net amount of wages, payable to the judgment debtor, after the deduction of all amounts required by law to be deducted from such wages, to an amount of four hundred and fifteen dollars (\$415) per week payable to a judgment debtor supporting a family, or two hundred and seventy-five dollars (\$275) per week to any other judgment debtor; then only the difference by which the payment of the fifteen per cent (15%) exceeds these respective amounts, shall be paid to the sheriff hereunder;

[Amend. 6/90; 01/01]

(b) pay the wages to the sheriff hereunder once every month or as otherwise agreed upon by the employer and the sheriff; and

(c) forthwith answer any written interrogatory sent to him by the sheriff with respect to any wages due or accruing due to the judgment debtor;

[Amend. 2/4/79]

6. Any person who fails to comply with the provisions of paragraphs 3, 4 and 5 may be deemed to be in contempt of the court and may be dealt with as the court thinks just.

7. Where real property is seized under an execution order, the sheriff shall proceed to sell the property as provided by the **Sale of Land under Execution Act**.

8. The Sheriff shall file this execution order with the prothonotary within ten (10) days after the execution thereof and not later than the expiry of the effective date of the execution order or when directed by the court, with his/her report endorsed thereon or attached thereto. [Amend. 29/5/98]

Granted and issued at _____, Nova Scotia, this ___ day of _____, 20__.

PROTHONOTARY,

The Court House,

_____ Street,

_____, Nova Scotia,

The Solicitor of the Plaintiff

is _____, of _____ Street,

_____, Nova Scotia.

RULE 54

RECEIVERSHIP ORDERS

Application of Rule

54.01. The provisions of Rule 54 shall apply, with any necessary modification, to

- (a) any person appointed a receiver under Rule 54;
 - (b) a sheriff, when he acts as a receiver under an attachment order granted under Rule 49 or execution order granted under Rule 53.
-

Appointment of a receiver to enforce a judgment or order

54.02.

(1) On an ex parte application to have a person appointed a receiver, the court may, upon being satisfied that it is just and convenient to do so and upon obtaining a satisfactory undertaking, grant an order in Form 54.02A to,

- (a) fix a day for the hearing of the application in paragraph (2); and
- (b) grant an injunction that is ancillary or incidental to the appointment.

(2) On an application made on notice to have a person appointed a receiver, the court may, upon being satisfied that it is just and convenient to do so and upon obtaining satisfactory security, by a receivership order in Form 54.02B,

- (a) appoint a receiver;
- (b) grant an injunction that is ancillary or incidental to the appointment;
- (c) grant such other relief as is just. [E. 51/1]

(3) On an application under paragraphs (1) or (2) the court, in determining whether it is just or convenient that a receiver be appointed, shall have regard to,

- (a) the amount of the judgment debt or other demand claimed by the applicant;

(b) the amount that may probably be obtained by the receiver;

(c) the probable costs.

(4) The provisions of Rule 46 shall apply to a receiver appointed under Rule 54, subject to any necessary modification. [E. 51/3]

(5) Unless the court otherwise orders, a bond or other security that a receiver gives under rule 46.02 shall be approved by the court and filed with the prothonotary before a receivership order is issued.

A.G. Canada v. Rahey et al. (1981), 59 N.S.R. (2d) 319 (S.C.T.D.); S.SN. 01641, Burchell, J., January 9, 1981. S127/1. An application under r. 54 for the appointment of a receiver in aid of execution of judgments under the *Income Tax Act* against the respondent was granted. The indebtedness of the respondent exceeded \$1,000,000. The application was granted because the complexity of the respondent's business affairs was such that it constituted a substantial impediment to ordinary modes of recovery and because it was likely that a receiver would be able to realize upon very considerable assets that would otherwise be unavailable. Since the respondent was appealing the assessments on which the judgments were based, it was stated that as far as possible the receiver should not deal with the ongoing businesses in an irreversible manner.

Powers of a receiver

54.03.

(1) The court may, in a receivership order or by any subsequent order, direct that a receiver,

(a) may have the same powers as a sheriff under an execution order granted under the provisions of rule 53.02;

(b) may pay any claim or prior encumbrance or other lawful expense in order to protect any property received by him or any property of the judgment debtor held by any other person as security, and be allowed any such payment on the passing of his accounts;

(c) may sell any property received by him in the same manner as if it were being sold under an execution order, or otherwise to dispose of the same as ordered by the court;

(d) keep accounts which shall be approved and disbursed as provided in rule 46.04;

(e) do or abstain from doing such other acts or things as the court thinks just.

(2) A receiver shall forthwith on receiving any property of a judgment debtor under a receivership order, or a certificate from a third person listing property of a judgment debtor in his possession, send by ordinary mail to the judgment debtor at his last known address details of the property or a

copy of the certificate.

Summary application to the court

54.04.

(1) Where a judgment debtor or other person retains possession or control of any property contrary to the provisions of a receivership order, or fails to file a certificate as required by any rule or order, or an adverse claimant claims to be entitled to the property or to have a charge or lien on it, the court may, on notice,

(a) summarily determine whether the judgment debtor or other person shall deliver the property to the receiver or whether the property should be released from the seizure;

(b) order any question at issue between the claimants to be summarily determined or tried at such time and in such manner as it thinks just;

(c) permit any person to deduct from any property of a judgment debtor in his possession or custody any offsetting debt or demand due to that person by the judgment debtor, whether the same is due or accruing due, or is liquidated or unliquidated;

(d) order a judgment debtor or any other person, to be examined or to answer any interrogatory with respect to any property, charge or lien;

(e) award costs or grant such other order as it thinks just.

(2) Unless the court otherwise orders, when an adverse claimant files a claim with the receiver and serves a copy thereof on the judgment creditor and judgment debtor, the adverse claimant shall be deemed to have become a party to the proceeding and entitled to have his claim determined as provided in paragraph (1).

Costs

54.05. The costs of an application for any order under Rule 54 and of any proceeding arising therefrom or incidental thereto shall, unless the court otherwise orders, be retained by the judgment creditor out of the property recovered by him under any receivership order and in priority to the judgment debt.

FORM 54.02A (Rule 54.02)

INTERIM RECEIVERSHIP ORDER

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS:

Upon hearing _____, for the plaintiff and upon reading the affidavit of _____, sworn the ___ day of ___, 20___, and on file herein, and upon the plaintiff by his solicitor hereby undertaking to abide by any order the court may make as to damages in case the court should hereafter be of the opinion that the defendant shall have sustained any by reason of this order;

It is ordered that the hearing of the application by the plaintiff for the appointment of _____, as the receiver in this proceeding to [receive the rents, profits and moneys payable in respect of the defendant's interest in the following property, namely (describe it), in or towards satisfaction of an order herein, dated the ___ day of _____, 20___, that ordered the defendant to pay to the plaintiff the sum of _____ dollars debt and the sum of dollars costs, together with interest on the order] or [as the case may be], be held at the Court House in _____, Nova Scotia, on the ___ day of _____, 20___, at the hour of ___ o'clock in the noon, or as soon thereafter as counsel can be heard.

It is further ordered that the defendant, by himself, his servants or agents, is restrained, and an injunction is hereby granted restraining them, or any of them until the completion of the hearing of the above application from [selling, charging or otherwise dealing with the property]. [or as the case may be].

DATED at Halifax, Nova Scotia, this ___ day of _____, 20___.

_____: PROTHONOTARY.

FORM 54.02B

(Rule 54.02)

RECEIVERSHIP ORDER

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS:

Upon hearing _____, for the plaintiff and _____, for the defendant, and upon reading the affidavit of, etc.

It is ordered that _____ is appointed a receiver, upon first giving security as herein

provided, to [receive the rents, profits and moneys receivable in respect of the defendant's interest in the following property, namely (describe property) in or towards satisfaction of the order herein, and dated the ____ day of ____, 20__, that ordered the defendant to pay to the plaintiff the sum of _____ dollars debt and the sum of ____ dollars costs, together with interest on the order]. or [as the case may be].

It is further ordered that ____ shall not act as a receiver hereunder until he files with the prothonotary a bond in an amount equal to one and one quarter (1¼) times the amount of the judgment herein, with two sufficient sureties or other sufficient security approved by the court, on condition that the receiver will comply with all terms and conditions of this order;

It is further ordered that the appointment of the receiver herein is made without prejudice to the right of any prior encumbrancer to take possession of the property by virtue of his lien or security;

It is further ordered that the receiver may, if he considers it necessary, [out of the rents, profits and moneys to be received by him, pay the interest due upon any prior encumbrance, according to its priorities, and be allowed the payments on the passing of his accounts]. [or as the case may be].

[It is further ordered that the tenants of the property attorn and pay their rents, in arrear or due in the future, to the receiver until the termination of this order];

It is further ordered that the receiver shall, on the ____ day of ____, 20__, and at such further and other times as may be ordered by the court, file his accounts with the prothonotary and have them passed by the court;

It is further ordered that the costs of the receiver, including his remuneration, shall not exceed ____ per cent of the amount recovered by the receiver hereunder, which costs shall be approved by the court;

And it is further ordered that the balance remaining in the hands of the receiver shall, unless it is otherwise ordered by the court, be paid forthwith by the receiver into court to the credit of the proceeding, subject to further order.

And it is further ordered that the defendant, by himself or his servants or agents, is restrained and an injunction is hereby granted restraining them, or any of them, until the court otherwise orders, from [selling, charging or otherwise dealing with the above property] or [as the case may be].

And it is further ordered that any of the parties or the receiver may apply to the court from time to time for a further order.

DATED at Halifax, Nova Scotia, this ____ day of ____, 20__.

_____: PROTHONOTARY.

RULE 55**CONTEMPT ORDERS****Power to grant contempt order**

55.01. The power of the court to punish for contempt of court may be exercised by a contempt order, which may be granted by the court, upon notice under rule 55.02 or upon order under rule 55.03. [E. 52/1/5]

Application for leave to apply for a contempt order

55.02. (1) An application shall not be made to the court for a contempt order unless the court on an ex parte application first grants leave to make the application. [E. 52/2(1)]

(2) An application for an order granting leave under paragraph (1) shall be supported by an affidavit setting out,

- (a) the name, address and description of the applicant;
- (b) the name, address and description of the person sought to be committed; and
- (c) the facts in support of the grounds on which the contempt order is sought. [E. 52/2(2)]

(3) On the hearing of an application under paragraph (1), the court may,

- (a) order a notice of application for a contempt order and any supporting affidavit to be served upon any person sought to be committed at least five (5) days before the hearing, or as the court otherwise orders; [E. 52/3(1)]
- (b) dispense with service on any person of a notice of application and any supporting affidavit; [E. 52/3(4)]
- (c) order service of a notice of application and any supporting affidavit to be made by substituted service as provided by rule 10.10.

(4) Unless the court otherwise orders, an order granting leave under paragraph (1) shall lapse unless notice of the application is personally served upon any person sought to be committed within twenty (20) days from the date of the granting of the order. [E. 52/3(2)]

(5) A refusal of the court to grant leave under paragraph (1) shall not prevent an applicant from

subsequently making a fresh application to the court for such order. [E. 52/2(4)]

Power of court to order person to appear in court

55.03. The court may, on its own motion or on application, make an order in Form 55.03A directing a sheriff to cause any person to appear before the court to show cause why he should not be held in contempt of court and, if required, to perform or abide by such order as the court may make, and the sheriff shall have power to take the person into custody and to hold him if required by the order.

Hearing of an application for a contempt order

55.04.

(1) The court shall hear an application for a contempt order in open court unless,

(a) the application arises out of a proceeding,

(i) relating to an infant or mentally incompetent person; or

(ii) in which a secret process, discovery or invention is in issue; or

(b) it appears to the court, that in the interest of the administration of justice or for reasons of public security, the application should be heard in private. [E. 52/6(1)]

(2) A person sought to be committed shall be entitled to give oral evidence on his own behalf on the hearing of an application for a contempt order. [E. 52/6(4)]

The contempt order

55.05. (1) The court may make a contempt order in Form 55.05A which may order that,

(a) a person cited for contempt be imprisoned as ordered or until further order;

(b) when a person cited for contempt fails to comply with any term or condition in an order, he be imprisoned as ordered therein;

(c) a sheriff enter upon and take possession of any property of a person cited for contempt and receive and collect the rents, profits or income thereof until the person shall clear his contempt by complying with the terms of the order;

(d) direct a person cited for contempt to pay a fine, give security for good behaviour, pay such costs and expenses or comply with such other order as the court may grant under rule 55.09.

(2) The court may order the execution of a contempt order to be modified or suspended for such period, or on such terms or conditions, as it thinks just, and, unless the court otherwise orders, a copy of the order shall forthwith be served by the applicant on any person affected by it.

(3) When a person, pursuant to a contempt order, has been detained in custody or his property taken thereunder and he continues to disobey the terms of the order, the court may make a further contempt order upon such terms as it thinks just.

(4) Where a person cannot be served with a contempt order because he is out of the jurisdiction or cannot be found by the sheriff after exercising due diligence, the court may, on an ex parte application, issue a contempt order against the property of the person and the sheriff may execute the order in the absence of the person.

Contempt by a body corporate

55.06. Where a body corporate is guilty of a contempt of court,

(a) it may be fined by the court, and the fine may be imposed in addition to any other punishment that may be imposed for contempt;

(b) a contempt order may also be made against any officer, director, employee or agent of the body corporate who directed, authorized, assented to, acquiesced or participated in the contempt.

Contempt by a person not a party

55.07. Any person not a party, who is subject to an order and disobeys it, or who commits any other contempt, is subject to the same punishment for contempt as if he were a party.

Variation of contempt order

55.08. The court may, on the application of any person committed to prison under a contempt order, and on such terms as it thinks just,

(a) modify the contempt order;

(b) limit the term of imprisonment or discharge the committed person;

(c) give direction with respect to any property of which a sheriff has taken possession under the contempt order;

(d) grant such other relief or make such other order as the court thinks just. [E. 52/8]

Other powers of court on contempt proceeding

55.09.

Nothing in Rule 55 shall limit the powers of the court to make an order requiring a person found guilty of contempt under this rule to,

(a) pay a fine;

(b) give security for his good behaviour;

(c) pay such costs and expenses as it thinks just;

(d) when he is a party to a proceeding,

(i) have his pleading, or any part thereof, struck out;

(ii) have the proceeding stayed or dismissed, or have judgment entered against him;

(iii) prohibit him from introducing into evidence any designated document, thing or testimony;

(e) do or refrain from doing any other act as the court thinks just. [E. 52/9]

FORM 55.03A

(Rule 55.03)

ORDER FOR APPEARANCE

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ [in chambers],

UPON the application of _____, and upon reading the affidavit of _____, sworn the day of ____, 20__.

It is ordered that the sheriff of , cause A.B. to appear before the court [forthwith] [on the day of _____, 20___, at the hour of ___ o'clock in the noon], to show cause why _____ should not be held in contempt of court and, if required, to perform or abide by such other order as the court may make.

It is further ordered that the sheriff may take A.B. into custody and hold him if required hereunder.

Dated at _____, Nova Scotia, this ___ day of _____, 20__.

_____: Prothonotary.

FORM 55.05A
(Rule 55.05)

CONTEMPT ORDER

(Title of proceeding)

BEFORE THE HONOURABLE JUSTICE _____ [in chambers],

UPON the application of _____ of Counsel for the [plaintiff][defendant] and upon reading the affidavit of _____, sworn etc., and the affidavit of _____, sworn etc., of service on the [defendant] [plaintiff] of a [copy of the order of this court, dated etc.], [notice of this application and any supporting affidavit].

AND UPON it appearing to the satisfaction of the court that the [defendant] [plaintiff] has been guilty of contempt of court in that [state the contempt];

[It is ordered that for his contempt, the (defendant) (plaintiff) be committed to the Prison to be there imprisoned until _____];

[It is ordered that this order shall not be executed if the (defendant) (plaintiff) complies with the following terms,] [state the terms];

[It is ordered that the sheriff (_____) enter upon and take possession of all the following property of the (defendant) (plaintiff) and collect and receive the rents, profits and income thereof until the (defendant) (plaintiff) clears his contempt by complying with the following provisions of the order of the Honourable Justice _____, dated the _____ day of _____, 20__, namely, etc.]

Dated at _____, Nova Scotia, this ___ day of _____, 20__.

_____: Prothonotary.



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 56

CROWN PRACTICE RULES IN CIVIL MATTERS

Rules to apply

56.01.

All other Civil Procedure Rules, with any necessary modification, including any rule relating to the abridgment or extension of time, apply in all matters not provided for in Rule 56.

Order not writ shall issue

56.02.

(1) An order in the nature of mandamus, prohibition, certiorari, habeas corpus or quo warranto may be granted by the court upon application by an originating notice.

(2) No writ of mandamus, prohibition, certiorari, habeas corpus or quo warranto shall be issued, but all necessary directions shall be made by order.

Service of originating notice

56.03.

(1) An originating notice shall be served upon every person who appears to be interested or likely to be affected by a proceeding under Rule 56.

(2) The court may order an originating notice to be served upon any interested person not served.

(3) Where it is sought to quash a judgment, order, warrant or inquiry and on any application for an order in the nature of prohibition, an originating notice shall also be served, at least seven (7) days before the return date thereof, upon

(a) the Attorney General, and

(b) the person making the judgment or order, or issuing the warrant, or holding the inquiry.

(4) A person who has not been served with an originating notice may show that he is affected by a proceeding and, with the leave of the court, may take part in the proceeding as though served.

Appeals

56.04. An appeal shall lie from an order of the court to the Nova Scotia Court of Appeal. [Amend. 20/6/94]

Power of a judge of the Nova Scotia Court of Appeal

56.05. Any direction required to give effect to an order of the Nova Scotia Court of Appeal may be made by a judge of the court. [Amend. 20/6/94]

I. Certiorari

Notice filed and served within six months

56.06. An originating notice for an order in the nature of certiorari shall be filed and served within six (6) months after the judgment, order, warrant or inquiry to which it relates, and rule 3.03 does not apply hereto.

Endorsement on originating notice

56.07.

(1) There shall be endorsed upon an originating notice for an order in the nature of certiorari a notice to the following effect, adapted as may be necessary and addressed to the judge, magistrate, justice or justices, officer, clerk or tribunal,

"You are hereby required forthwith after service of this originating notice on you to return to the prothonotary at , Nova Scotia, the judgment, order, decision or reasons for judgment, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all things touching the proceeding as fully and entirely as they remain in your custody, together with this notice."

Dated at _____, Nova Scotia, this ___ day of ___, 20__.

TO: _____

_____, of _____ Street,

_____, Nova Scotia,

Solicitor for the Applicant."

(2) All things required by paragraph (1) to be returned to a prothonotary shall, for the purposes of an application for an order in the nature of certiorari, be deemed to be part of the record.

Return of lower court

56.08. (1) Upon receiving an originating notice so endorsed, the judge, magistrate, justice or justices, officer, clerk or tribunal, shall return forthwith to the prothonotary the judgment, order, warrant, decision or reasons for judgment, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all other things in the proceeding, together with the originating notice served upon him, with a certificate endorsed thereon in the following form,

"Pursuant to the accompanying notice I herewith return to this Honourable Court the following papers and

documents, that is to say,

- (i) the judgment, order or decision (or as the case may be) and the reasons therefor;
- (ii) the process commencing the proceeding and the warrant issued thereon;
- (iii) the evidence taken at the hearing and all exhibits filed; and
- (iv) all other papers or documents in the proceeding.

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody and power in the proceeding set forth in the originating notice."

(2) If the papers and documents, or any of them, are not in the possession of the person required to transmit them, he shall in lieu of or in addition to the certificate, so state and explain the circumstances.

(3) When the papers and documents have not been received by the prothonotary as provided in paragraph (1), the prothonotary shall return a certificate of the fact to the court.

(4) The return and certificate prescribed in paragraph (1) or (2) shall have the same effect as a return to a writ of certiorari.

(5) The court may dispense with the return of the evidence or exhibits or any part of them.

(6) A copy of this rule shall appear upon or be annexed to the originating notice served upon the judge, magistrate, justice or justices, clerk, officer or tribunal from whom the return is required.

II. Quo Warranto

Application of rules

56.09. Rules 56.10 to 56.14, inclusive, apply to the extent that an application in the nature of quo warranto in a particular case is not governed by any enactment.

Leave of court required

56.10. An application in the nature of quo warranto, except an ex officio application, shall only be made with the leave of the court and supported by an affidavit of a person who deposes that the application is made at his instance as relator, and he shall be named as the relator on the application and in the order.

Objection to title to be specific

56.11. Every objection to the title of a defendant on an application shall be specified in the originating notice, and no other objection shall be raised by the relator without the special leave of the court.

Substitution of relator

56.12. A new relator may, by leave of the court, be substituted for the one first named in the originating notice when special circumstances are shown.

Consolidation of applications

56.13.

(1) Where applications have been made against several persons for the usurpation of the same office with the same or like grounds or objections, the court may order the applications to be consolidated, or may order all the proceedings, but one, to be stayed until judgment be given in that one.

(2) An order shall not be made to consolidate or stay any proceeding against a defendant unless he gives an undertaking to disclaim if judgment be given for the Crown upon an application which proceeds.

Disclaimer

56.14.

(1) When a defendant does not intend to defend, he may, to prevent judgment by default, file a disclaimer with the prothonotary and deliver a copy to the relator or his solicitor.

(2) When a disclaimer is filed, judgment of ouster may be entered and the costs taxed as in a judgment by default.

III. Mandamus

Affidavit of prosecutor

56.15. An order in the nature of mandamus shall not be made unless it is supported by an affidavit of a person who deposes that the application is made at his instance as prosecutor, and his name appears as the person at whose instance the application is made.

Mandamus issued by the court

56.16. A proceeding shall not be commenced or prosecuted against any person under Rule 56 in respect of anything done in obedience to a mandamus issued by the court.

Effect of order

56.17. An order may compel the performance of a duty forthwith, or upon the expiration of a fixed time, or subject to specified terms.

RULE 57

[Made 26/5/86]

MATRIMONIAL CAUSES [Amend. 6/97]

Interpretation

57.01. In this Rule,

(a) **Repealed** [Amend. 05/02/03]

(b) "court" means the Supreme Court of Nova Scotia or a judge thereof;

(c) "financial statements" include the Statement of Financial Information in Form 57.13A and the Statement of Property in Form 67.03;

(d) "Guidelines" means the Federal Child Support Guidelines, SOR/97-175 as amended; [Amend. 6/97] [Amend. 05/02/03]

(e) "Guideline income information" is the financial information a person is required to provide by the Guidelines, including but not limited to annual income and the information provided by Section 21 of the Guidelines; [Amend. 6/97] [Amend. 05/02/03]

(f) "matrimonial cause" means a proceeding under the **Divorce Act**; [Amend. 6/97]

(g) "petition" means a petition for divorce and includes a counter-petition or an amended petition; [Amend. 6/97]

(h) "prothonotary" means a prothonotary of the Supreme Court; [Amend. 6/97]

(i) "regulations" means the regulations made under the **Divorce Act**; [Amend. 6/97]

Application of the Rules

57.02. Where any matter of practice or procedure is not governed by statute or by Rule 57, the rules and relevant forms relating to civil proceedings, other than matrimonial causes, shall apply with any necessary modification.

Commencement of pleadings and parties

57.03. (1) The party commencing the proceeding shall be called the petitioner and the opposite party shall be called the respondent.

(2) A person with whom it is alleged adultery has been committed need not be named in the petition, but if named in a petition or other documentation filed with the court, that person shall receive notice in accordance with rule 57.10 as if that person had been named in the petition.

Joinder of causes

57.04. Any cause of action which is joined with a petition or application shall be specifically pleaded in the petition or application.

Place of proceeding

57.05. (1) A divorce proceeding under this rule shall be commenced, dealt with and heard in the judicial district in which the petitioner resides or in another judicial district where the Supreme Court (Family Division) does not have jurisdiction.

(2) Subject to sub-rule (1), the place of hearing of the petition shall be the place of trial named in the petition.

(3) Unless the court otherwise orders and subject to sub-rule (1), the place of hearing of an application in a divorce proceeding shall be at the place named in the notice of application, including an application to vary under rule 57.30.

(4) Where a divorce proceeding or an application concerns the custody of, access to or parenting of a child and the proceeding or application is contested, a judge may, upon the application of a party or on the court's own motion, order that the proceeding be transferred to the office of a court officer or a prothonotary in another judicial district in which the child ordinarily resides.

(5) Where it is substantially more convenient to deal with a proceeding or any step in the proceeding in another judicial district, the court may order that the proceeding, or any step in the proceeding be transferred to the office of a court officer or a prothonotary in another judicial district. [Amend. 29/01/99]

Commencement of a marital cause

57.06. (1) A divorce proceeding shall be commenced by filing with the prothonotary a petition for divorce in Form 57.06 to which shall be attached, where practicable, a certificate of the marriage. [Amend. 31/1/98]

(2) The petition shall be sealed with the seal of the court and shall be signed by the prothonotary and state the date and place of issue.

(3) Repealed [Amend. 29/03/96]

(4) A corollary relief proceeding shall be commenced by application to the court.

(5) A variation proceeding shall be commenced in accordance with rule 57.30. [Amend. 20/6/94]

(6) Where divorce proceeding has been commenced, a subsequent petition in the same matter may not be issued unless the previous petition has been discontinued or deemed discontinued. [Amend. 31/1/98]

Amendment of petition

57.07.

(1) A petition may be amended once without leave before the close of pleadings by filing a new petition entitled "Amended Petition".

(2) Subject to sub-paragraph (3), a petition for divorce may be amended without leave at any time to add an allegation of breakdown of marriage pursuant to paragraph 8(2)(a) of the **Divorce Act**. [Amend. 05/02/03]

(3) Where amended, the petition shall be served upon the respondent at least twenty (20) days prior to the hearing of the matter, unless the court otherwise orders or the parties consent. [Amend. 31/1/98]

Service of petition

57.08.

(1) A petition shall be served.

(2) Where a minor is a party to a petition for divorce or a person named therein, service on the minor only shall be deemed good service. [Amend. 20/6/94]

Time limits on service

57.09.

(1) A petition, or an amended petition, as the case may be, shall be served upon the respondent spouse, within sixty (60) days of the filing of the petition, or the making of the amendment, or within such further time as the court may allow on an ex parte application made before or after the expiration of the time of service.

(2) Where service has not been made according to sub-rule (1), a petition shall be deemed to have been discontinued on the expiration of six (6) months from the date of filing the petition. [Amend. 20/6/94]

Method of service

57.10.

(1) Unless an affidavit is filed acknowledging receipt of the petition by the respondent or unless otherwise ordered by the court, a petition to person named, as the case may be, and all papers required to be served therewith, shall be served personally on the respondent spouse and all persons named in the petition.

(2) The service shall be made by a person other than the petitioner.

(3) A person who serves the petition shall, at the time of service, request the person served to complete and sign in his presence the acknowledgement of service and the statement of mailing address endorsed on the petition and shall sign his name as witness to any signature thereto.

(4) An affidavit of service in Form 57.10 shall state fully the means of knowledge of the deponent as to the identity of the person served, that the person served has been requested to complete the acknowledgement of service and statement of mailing address, giving the result of such request. [Amend. 20/6/94]

Substituted service and service out of jurisdiction

57.11.

(1) An order for substituted service in a matrimonial cause shall be made by the court.

(2) Service may be made out of the jurisdiction of a notice of petition and petition.

(3) Except where service is to be made within Canada or within one of the states of the United States of America, service shall be pursuant to order of the court or prothonotary, made on an ex-parte application supported by an affidavit showing in what place or country the person to be served is or probably may be found.

Answer and counter-petition

57.12. (1) A respondent spouse who wishes to be heard on a petition shall, within the time prescribed in paragraph

(3), issue and serve an answer in Form 57.12A or Form 57.12B. [Amend. 29/03/96]

(2) Any person, other than a respondent spouse, who is named in a petition or counter-petition may issue and serve an answer and shall be entitled to appear and to be heard as if that person were a party, but there shall be no reference to that person in the title of the proceeding. [Amend. 29/03/96]

(3) An answer shall be issued and served,

(a) where the notice of petition and the petition are served within the jurisdiction, within twenty (20) days after service thereof, inclusive of the day of the service;

(b) where the notice of petition and the petition are served elsewhere within Canada or within one of the states of the United States of America, within forty (40) days after service thereof, inclusive of the day of the service; and

(c) in all other cases within such time, inclusive of the day of service of the notice of petition and the petition as is provided by the order of the court allowing the service. [Amend. 29/03/96]

(4) Where a respondent spouse alleges in a counter-petition that another person committed adultery with the petitioner and names that other person, the respondent spouse shall deliver his or her answer and counter-petition to the petitioner within the time limited for the answer and within the same time serve the same upon the other person alleged to have been involved in such adultery, together with a notice to that person in Form 57.12(C) issued by the prothonotary.

(5) The rules relating to a matrimonial cause apply to a counter-petition, with any necessary modification. [Amend. 20/6/94]

Financial statements

57.13.

(1) Where a claim is made for division of matrimonial property, custody, spousal support or child support, the parties shall, whether or not the claim is contested, file and effect personal service of financial statements in Forms 57.13A and 67.03, and unless the court otherwise orders, the parties shall do so within the following periods after one party serves a written demand in Form 57.13B upon the other party:

(a) twenty (20) days if the demand is served within Nova Scotia;

(b) forty (40) days if it is served elsewhere in Canada or it is served in the United States, and

(c) sixty (60) days if it is served in any other place. [r. 57.13(1)] [Amend. 29/01/99]

(2) Where the only financial issue between the parties is the amount of child support and where the amount of child support sought or proposed to be paid is in accordance with the applicable table set out in Schedule I to the Guidelines:

(a) the custodial parent is not required to file or serve any financial statements; and

(b) the non-custodial parent is only required to file and serve a statement of financial information in Form 57.13A. [r. 57.13.1(3)] [Amend. 29/01/99]

(3) Where any information that would be contained in a financial statement is relevant to an issue in an application

to be heard before the expiry of the period prescribed by rule 57.13(1), each party shall file the financial statements and shall effect personal service of true copies of them upon the other party at least two (2) days before the hearing. [Amend. 29/01/99]

(4) Notwithstanding rule 57.13(1), where there are no children of the marriage and the parties have agreed upon corollary relief to be granted with respect to support and division of property, and both parties have filed a Waiver of Financial Statements in Form 57.13C, financial statements are not required unless otherwise ordered. [Amend. 29/01/99]

(5) If a party fails to file and serve a financial statement as required by this rule the court may, on ex parte application, order the defaulting party to file and serve the financial statement within a specified time. [Amend. 29/01/99]

(6) A party may be cross-examined on the financial statements provided by that party. [Amend. 29/01/99]

(7) In any divorce proceeding where there are children of the marriage but no claim is made for child support, the petitioner shall produce at the hearing of the petition or shall exhibit to an affidavit under rule 57.19(a) all relevant Guideline income information of the parties. [Amend. 29/01/99]

Pre-trial conference

57.14. (1) The prothonotary shall not set a date for hearing until a date for a pre-trial conference is assigned except:

- (a) in the case of an undefended proceeding, or
- (b) if a pre-trial conference is waived by the court.

(2) No divorce action shall be tried and no judgment in a divorce action issued until the prothonotary has received and filed a certificate or report with respect to prior pending proceedings commenced by either spouse, issued under the Divorce Regulations (Canada) after the petition was filed. [Amend. 06/87]

Hearing

57.15.

The petitioner shall include in the petition a notice that in default of answer a divorce may be granted and judgment pronounced without further notice. [Amend. 07/95]

Resumption after adjournment

57.16.

(1) Where, after proceeding to the hearing of evidence, a judge grants an adjournment of the proceeding under subsection 10(2) of the *Divorce Act*, an application for resumption of the proceeding under subsection 10(3) shall be to the same judge. [Amend.05/02/03]

(2) Where, before proceeding to the hearing of the evidence, a judge grants an adjournment of the proceeding under subsection 10(2) of the *Divorce Act*, an application for resumption of the proceeding under subsection 10(3) shall be [Amend.05/02/03]

- (a) to the same judge,
- (b) to a judge presiding at the place where the adjournment was granted; or

(c) to a judge in Chambers.

Evidence

57.17.

(1) The court may try an issue on viva voce or affidavit evidence or otherwise as the judge conducting the hearing may direct.

(2) A document purporting to be proof of marriage in a foreign jurisdiction may be admissible as prima facie proof of the marriage.

Undefended proceeding

57.18.

(1) In an undefended proceeding the petitioner shall file and the prothonotary shall place before the court

(a) a notice in Form 57.18 that the action is set down for hearing as an undefended proceeding to be tried on the basis of affidavit evidence;

(b) the pleadings and proceedings filed in the action, including the financial statements and Guideline income information where required;

(c) an affidavit of the petitioner setting forth;

(i) the present address of the respondent where he or she may be served with a copy of the judgment;

(ii) particulars of the ground on which the claim is based, and evidence to support the claim;

(iii) confirmation that all the information contained in the petition, and the financial statements and Guideline income information, if filed, continues to remain true and accurate, subject only to such corrections or subsequent changes as are noted;

(iv) where costs are claimed, particulars of the amount and basis for the claim.

(d) any other affidavits or supporting materials that may be required in the particular proceeding.
[Amend. 6/97]

(2) In the case of an undefended proceeding, any information or evidence required to enable the court to perform its duties, and the evidence required to prove the claim, may be presented by affidavit, unless the judge hearing the matter otherwise orders.

(3) At the hearing of an undefended proceeding, where the evidence and information are to be presented by affidavit, the judge may

(a) conduct the hearing and grant a judgment without an appearance by counsel or the parties; or

(b) direct that counsel or the petitioner appear or that oral evidence be presented.

57.19.

In an undefended divorce proceeding under rule 57.18, the petitioner shall also file

- (a) an affidavit of the petitioner setting forth evidence on which the court can satisfy itself:
- (i) that there is no possibility of reconciliation of the spouses;
 - (ii) that there has been no collusion in relation to the proceedings for divorce;
 - (iii) that reasonable arrangements have been or can be made for the support of any children of the marriage;
 - (iv) where a divorce is sought pursuant to paragraph 8(2)(a) of the **Divorce Act**, that the spouses have lived separate and apart for at least one (1) year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding;
 - (v) where a divorce is sought pursuant to paragraph 8(2)(b) of the **Divorce Act**, that there has been no condonation or connivance with respect to the conduct which is the basis for the claim;
 - (vi) where a divorce is sought pursuant to subparagraph 8(2)(b)(ii), that the conduct of the respondent spouse has rendered continued cohabitation intolerable;
 - (vii) where a written agreement between the spouses or a previous court order is in existence, of the fact of its existence with a copy of the agreement or order exhibited;
 - (viii) where a support order is claimed, of the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought;
 - (ix) where an order respecting the custody of and/or access to any or all children of the marriage is claimed, of the particulars of the present and proposed arrangements with respect to custody and access and evidence as to the condition, means, needs and other circumstances of the child or children;
- (b) where a divorce is sought pursuant to subparagraph 8(2)(b)(i) of the **Divorce Act**,
- (i) an affidavit of the respondent spouse or person named admitting adultery, with particulars, or
 - (ii) certified extracts of transcripts of the examinations for discovery of the respondent spouse or person named admitting adultery, with particulars.

Joint petition**57.20.**

(1) Where both spouses jointly commence the proceedings under the **Divorce Act** they shall be called Co-Petitioners.

(2) Where both spouses jointly petition for divorce, the Petition need not be served on either of them.

(3) In an undefended divorce proceeding under this rule, the co-petitioners shall file and the prothonotary shall place before the court

(a) an application in Form 57.18 signed by both spouses, and

(b) the materials required under rules 57.18 and 57.19, with necessary modifications.

Pronouncement of judgment upon default

57.21. Where there has been default of answer, a divorce judgment shall not be pronounced unless the court is satisfied at the hearing that the respondent spouse and all persons required to be served in the proceeding were duly served.

Issue of judgment

57.22. Upon the court being satisfied that the grounds for divorce have been established, it may issue a divorce judgment in Form 57.22A and where corollary relief has been ordered, a corollary relief judgment in Form 57.22B or Form 57.22C. [Amend. 29/01/99]

Service of judgment

57.23. (1) At the time of setting a petition down for hearing, the applicant shall leave with the court:

(a) draft judgments in Form 57.22A and where appropriate, in Form 57.22B or Form 57.22C.

a stamped envelope addressed to the respondent. [Amend. 29/01/99]

(2) Upon a divorce judgment being rendered, an officer of the court shall forthwith mail a copy of the divorce judgment to the respondent in the envelope supplied by the applicant.

Certificate

57.24.

(1) On or after the thirty-first (31st) day after the divorce judgment is rendered, upon request in Form 57.24A the court shall issue a certificate of divorce in Form 57.24B.

(2) The prothonotary shall not issue a Certificate of Divorce if an appeal of the divorce judgment is pending.

Setting down for hearing

57.25. (1) A petitioner or a respondent spouse upon notice may apply to have the cause set down for hearing before the court. [Amend. 9/97]

(2) When twelve (12) months have elapsed after service of the notice of petition and petition in a matrimonial cause and a divorce judgment has not been pronounced, the prothonotary shall, when

(a) an answer has not been filed, or

(b) more than six (6) months have elapsed since the filing of an answer, set the cause down for hearing before the court sitting anywhere within the jurisdiction by granting and filing an order in Form 57.25A, and shall, unless otherwise ordered by the court, serve notice of the hearing on the petitioner and respondent and their respective solicitors, if any, by mailing a notice of hearing in Form 57.25B to them by ordinary mail at least thirty (30) days prior to the date of the hearing. [Amend. 9/97]

(3) Upon the notice of hearing shall be endorsed a copy of rule 57.25. [Amend. 9/97]

(4) The prothonotary shall, prior to the hearing, complete and file an affidavit of service of the notice of hearing. [Amend. 9/97]

(5) Upon the hearing the court, whether or not the parties or any of them appear, shall have power, [Amend. 9/97]

(a) where a divorce judgment has not been issued, to grant the divorce judgment;

(b) to dismiss the petition for want of prosecution;

(c) to adjourn the hearing to a future date;

(d) to require further inquiry or otherwise deal with the cause as the court thinks just.

Mentally incompetent persons

57.26.

Any affidavit required of a party by these rules is not necessary if the party is a mentally incompetent person or a person who has been declared incapable, but the next friend or guardian of the party shall, in lieu thereof, file an affidavit showing that he has made careful inquiry into the facts, and to his knowledge, information and belief, the facts required to be deposed to, if the party were mentally competent, are true.

Costs

57.27.

(1) Where the proceeding is for a divorce or matrimonial cause, the court may from time to time make such order as it thinks fit against a party for payment or security for the costs of the other of such parties.

(2) The costs of a matrimonial cause shall be recovered in the same way as in an ordinary proceeding.

Application for suit money

57.28.

A petitioner, after service of the petition upon the respondent, or a respondent who has been served with a petition, may apply to the court for suit money, on at least seven (7) days' notice to the other party to the matrimonial cause.

Suit money

57.29.

On an application under rule 57.28 the court shall ascertain what is a sufficient sum of money to be paid to cover the costs of the applicant incidental to the matrimonial cause, and may order the other party to pay such sum of money for the applicant's costs up to any stage of the proceeding, and may from time to time thereafter order the other party to pay such further sums as the court deems necessary to enable the applicant to continue the cause.

Application to vary, rescind or suspend order for corollary relief**57.30.**

- (1) An application to vary, rescind or suspend an order for corollary relief shall be to the court on at least twenty (20) days notice when the application involves a proposed change in child support and on at least seven (7) days notice when the application does not involve a proposed change in child support and shall be commenced by an application in Form 57.30A with an affidavit and with the financial statements in support except as provided in paragraph (3), all of which shall be personally served by a person other than the applicant. [Amend. 29/01/99]
- (2) Where an application under this section involves a proposed change in child support or spousal support, the respondent shall file his or her financial statements, except as provided in paragraph (3), four (4) days prior to the hearing of the matter. [Amend. 29/01/99]
- (3) When the only issue between the parties is the amount of child support and where the amount of child support sought or proposed to be paid is in accordance with the applicable table set out in Schedule I to the Guidelines:
- (a) the custodial parent is not required to file or serve any financial statements, and
 - (b) the non-custodial parent is only required to file and serve the statement of financial information and only to the extent that is has not been previously filed and served. [Amend. 29/01/99]
- (4) Every such affidavit shall, where applicable, include:
- (a) the current marital status of the parties,
 - (b) the ordinary residence of the parties and the children of the marriage,
 - (c) particulars of current custody and access arrangements and particulars of any proposed change,
 - (d) particulars of current support arrangements and particulars of any proposed change,
 - (e) the amount of any arrears under any prior support order,
 - (f) particulars of any change in circumstance of the parties or the children since the date of any prior order of corollary relief. [Amend. 6/97]
- (5) Prior to the hearing of an application to vary copies of the original divorce pleadings and all corollary relief orders shall be filed with the court. [Amend. 6/97]
- (6) An execution order to enforce an order for corollary relief shall be issued by the prothonotary and the application for the order shall be accompanied by an affidavit containing [Amend. 6/97]
- (a) the date of issue and terms of the order for corollary relief and of any amending order, and of any execution order previously issued;
 - (b) particulars of the arrears claimed, including the respective due dates and amount of any payment in arrears;
 - (c) the last known addresses of the execution creditor and execution debtor. [Amend. 6/97]
- (7) Where the arrears claimed on an application for an execution order exceed the aggregate of payments payable

for a period in excess of twelve (12) months, leave of the court is required to issue the execution order and the court shall fix the maximum amount to be collected under the order. [Amend. 6/97]

(8) On any application to vary or rescind an order for corollary relief, or for leave to issue an execution order to enforce such an order, the court may,

- (a) vary, rescind or suspend the order for corollary relief;
- (b) cancel all or any portion of arrears of payment of periodic sums;
- (c) grant or refuse leave to issue an execution order;
- (d) grant leave to issue an execution order, limited to such maximum amount to be collected under the execution order as the court fixes;
- (e) grant such other order as is just. [Amend. 6/97]

(9) An application to the court to vary or rescind an order for corollary relief or for leave to issue an execution order to enforce such an order may be made by filing an application in form 57.30A, an affidavit and financial statements with the Family Court on such terms as to notice, if any, as the Family Court may determine. [Amend. 29/01/99]

(10) With respect to the hearing of an application under rule 57.30(9), where any matter of practice or procedure is not provided by the rules of the Family Court or this rule, the Civil Procedure Rules and the provisions of Rule 57, the Matrimonial Causes rules of the Supreme Court shall apply with any necessary modification. [Amend. 31/1/98]

(11) Where the Family Court, on an application under rule 57.30(9), is satisfied that

- (a) the circumstances have changed, and
- (b) the order for corollary relief should be varied, rescinded or suspended, or
- (c) an execution order should issue, limited to such maximum amount to be collected under the execution order as the Family Court recommends,

the Family Court shall file the application and a report thereon with the prothonotary within thirty (30) days of the hearing and at the same time, except in a provisional proceeding, serve a copy of the application and of the report and a copy of the notice in Form 57.30B on the parties as provided by rule 10.12. The notice and report are deemed to be received by a party on the date they are filed with the prothonotary. [Amend. 31/1/98]

(11)(A) A party who objects to the recommendations contained in the report of the Family Court may, before the expiration of twenty (20) days from the date the prothonotary receives the report, file a written Notice of Objection with the prothonotary and shall serve a copy upon the other party. The Notice of Objection must contain the grounds for objection. [Amend. 6/97]

(12)(a) Except in a provisional proceeding where the court may immediately deal with the report, after a period of twenty (20) days has expired from the date the prothonotary receives the report of the Family Court, the court may deal with the report in the same manner as a report of a referee as provided in rule 35.03. [Amend. 6/97]

(12)(b)(i) Notwithstanding Civil Procedure Rule 57.30(9), where the court is satisfied, based on affidavit or other sworn evidence, that a party who wishes to object to the recommendations contained in the report of the Family Court did not receive a copy of that report before the expiry of the time set out in rule 57.30(9)(A) for filing a notice

of objection, the court may, on application, extend the time for filing a notice of objection on conditions which the court deems appropriate; [Amend. 6/97]

(12)(b)(ii) The court shall not extend the time for filing a notice of objection if the person objecting does not make application to extend the time for filing the notice of objection within five (5) working days of the date on which the applicant actually received the report of the Family Court. [Amend. 6/97]

(13) Where the court varies an order made by another court, other than provisionally, an officer of the court shall forward a certified copy of the variation order to the court that made the original order, and to any other court that has varied the original order. [Amend. 6/97]

Provisional proceedings -- provisional hearing

57.31.

(1) An application for a provisional order shall be accompanied by a statement of the applicant providing any available information respecting the identification, location, income and assets of the respondent. [Amend. 29/03/96]

(2) Upon the pronouncement and filing of a provisional variation order, an officer of the court shall send to the Attorney General for the province:

- (a) three (3) copies of the provisional order certified by an officer of the court;
- (b) a copy of the evidence filed in support of the application for provisional relief;
- (c) a statement giving any available information respecting the identification, location, income and assets of the respondent.

(3) Where a provisional variation order is remitted back to the court for further evidence an officer of the court shall give notice of the requirement for further evidence, in Form 57.31 to the applicant.

(4) Where further evidence is received under sub-rule (3) an officer of the court shall forward to the confirmation court a copy of the evidence tendered together with such recommendations as the court considers appropriate.

Provisional proceedings -- confirmation hearing

57.32.

(1) Where the court receives a provisional variation order for confirmation an officer of the court shall cause to be served on the respondent a copy of the documents received from the court that made the provisional order, and on both the applicant and the respondent, a notice of hearing in Form 57.32A.

(2) Unless otherwise ordered, a notice to submit further evidence and notice of hearing shall be served upon the applicant by ordinary mail.

(3) Unless otherwise ordered, the notice of hearing and documents required to be served upon the respondent shall be served personally.

(4) The Family Court may conduct a confirmation hearing and file a report thereon with the prothonotary within thirty (30) days of the hearing and serve a copy of the notice with such variations as may be required in Form 57.30B on the parties as provided by rule 10.12 and thereafter the court may deal with the report as provided in rule 57.30(10).

(5) Upon completion of the confirmation hearing an officer of the court shall forward a certified copy of the order in Form 57.32B to the Attorney General, to the court that made the provisional variation order and where that court is not the court that made the support order in respect of which the provisional variation order was made, a certified copy of the confirming order shall also be sent to the court that made the support order.

(6) Where the confirming order varies or the court refuses to confirm the provisional variation order an officer of the court shall forward a copy of the judge's reasons to the Attorney General and to the court that made the provisional variation order.

(7) A copy of the confirming order shall be filed by an officer of the court.

Order of another court

57.33.

An order that has legal effect throughout Canada pursuant to subsection 20(2) of the *Divorce Act* may be registered under subsection 20(3) of the *Divorce Act* by filing a certified copy of the order in the office of the prothonotary and a request that it be registered. [Amend. 05/02/03]

Duties of prothonotary -- appeals

57.34.

On the filing of a notice of appeal from a judgment granting a divorce or on the making of an order extending the time for such an appeal, the Registrar of the Court of Appeal shall record the same.

Prothonotary

57.35.

(1) The prothonotary shall maintain a record of proceedings for divorce in Nova Scotia, including,

(a) as to a petition,

(i) the names of the parties,

(ii) the place and date of filing thereof,

(iii) a short statement of the alleged basis upon which the ground is intended to be established; and

(b) as to divorce judgment,

(i) the names of the parties,

(ii) the date of the granting of the divorce judgment and date of issue, and

(iii) the basis upon which the ground was established.

(2) The prothonotary shall complete the forms required by the regulations under the **Divorce Act** and forward the same to the Central Divorce Registry at Ottawa as required by the regulations.

(3) The prothonotary shall forward copies of any judgment to the appropriate official of any court affected by that judgment.

Transitional

57.36.

Proceedings commenced pursuant to the rules and forms as they existed before the day upon which these rules and forms come into force, shall be dealt with and disposed of in accordance with the rules and forms as they were immediately before that day, as though they had not been repealed.

NAME OF DOCUMENT & FORM NO.

1. Petition for Divorce - Form# 57.06
3. Affidavit of Service of a Petition for Divorce - Form# 57.10
4. Answer - Form# 57.12A
5. Answer and Counter-Petition for Divorce - Form# 57.12B
6. Notice to Person Named - Form# 57.12C
7. Statement of Financial Information - Form# 57.13A
8. Notice to File Financial Information - Form# 57.13B
9. Waiver of Financial Statements - Form# 57.13C
12. Application for Judgment - Form# 57.18
13. Divorce Judgment - Form# 57.22A
14. Corollary Relief Judgment - Form# 57.22B
15. Corollary Relief Judgment - Form# 57.22C
16. Application for Certificate of Divorce - Form# 57.24A
17. Certificate of Divorce - Form# 57.24B
18. Order Setting Down - Form# 57.25A
19. Notice of Hearing - Form# 57.25B
20. Application to Vary, Rescind or Suspend Order for Corollary Relief - Form# 57.30A
21. Notice of Report of Family Court Judge - Form# 57.30B
22. Notice of Taking of Further Evidence for Maintenance Order - Form# 57.31
23. Notice to File Guideline Income Information - Form# 57.31.1

24. Notice of Confirmation Hearing - Form# 57.32A

25. Order after Confirmation Hearing - Form# 57.32.B

FORM 57.06

PETITION FOR DIVORCE

19_____ No. _____

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

PETITION FOR DIVORCE

TO THE RESPONDENT:

A LEGAL PROCEEDING FOR DIVORCE HAS BEEN COMMENCED AGAINST YOU by the Petitioner. The claim made against you appears on the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, and if you are served in Nova Scotia, you or a Nova Scotia lawyer acting for you must prepare an Answer in Form 57.12A prescribed by the Civil Procedure Rules, serve it on the Petitioner's lawyer at the address indicated at the end of this petition or, where the Petitioner does not have a lawyer, serve it on the Petitioner, and file it, with proof of service, in this court office, WITHIN TWENTY (20) DAYS after this petition is served on you.

Where you are served elsewhere in Canada or within the United States of America, the period for serving and filing your Answer is within forty (40) days after this petition is served on you.

Where you are served outside Canada and outside the United States of America, the period for serving and filing your Answer is within sixty (60) days after this petition is served on you, or as provided in the order of the court authorizing such service.

IF YOU FAIL TO SERVE AND FILE AN ANSWER, A DIVORCE MAY BE GRANTED IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU, JUDGMENT MAY BE GRANTED AGAINST YOU ON ANY OTHER CLAIM IN THIS PETITION AND YOU MAY LOSE YOUR RIGHT TO SUPPORT OR DIVISION OF PROPERTY.

NEITHER SPOUSE IS FREE TO REMARRY until a divorce has been granted and the time for filing an appeal has expired. Once a divorce has taken effect, normally on the thirty-first (31st) day after the judgment was granted, you may obtain a certificate of divorce from this court office.

DETAILS OF THE CLAIM

1. The Petitioner seeks an order for the following relief pursuant to the **Divorce Act, 1985**:

Divorce Spousal Support

Custody Child Support

Access Costs

2. A. The Petitioner seeks an order for the following relief pursuant to other legislation:

Matrimonial Property Act

Pension Benefits Act

Pensions Benefits Division Act (Canada)

Other (specify)

Change of Name Act

B. The relief sought under the other legislation is:

Exclusive possession of the matrimonial home

Change of Name to:

Division of Assets

Other (specify)

3. I/We seek a divorce on the ground that there has been a permanent breakdown of the marriage, and in particular:

(i)The spouses have been living separate and apart since _____ and will have lived separate and apart for at least one (1) year immediately preceding the determination of the divorce.

(ii)If adultery or cruelty is alleged, brief particulars

4. Reconciliation: There is no possibility of reconciliation.

5. There has been no collusion, condonation or connivance in relation to this Petition.

6. Particulars of marriage:

A. Date of marriage: _____

B. Place of marriage: _____

C. Date cohabitation ceased: _____

D. Surname of wife before this marriage: _____

E. Birth certificate surname of: _____

wife: _____ husband: _____

F. Marital status of spouses at time of marriage:

wife: _____ husband: _____

G. The wife was born at: _____ on

(Month) _____, (Day) _____, 19 ____.

H. The husband was born at: _____ on

(Month) _____, (Day) _____, 19 ____.

7. Jurisdiction: A. The wife's address is:

B. The husband's address is:

C. The _____ has been ordinarily resident in the Province of Nova Scotia for at least one (1) year preceding the date hereof, and in particular, since _____, 19 ____.

8. **Children:**

A. Full names and dates of birth of the children of the marriage as defined by the **Divorce Act**, 1985:

B. Present custody and financial arrangements with respect to the children are:

C. I seek custody of:

9. The particulars of all written or oral separation, financial, custody or property agreements between the parties are:

10. The particulars of all court proceedings between the parties or affecting the children of the marriage are:

11. If there are no children of the marriage and the parties have executed a Waiver of Financial Statements in Form 57.13C, a copy of such should be attached to this Petition, otherwise the Petitioner shall attach the Petitioner's Statement of Financial Information in form 57.13A, Statement of Property in Form 67.03 and Guideline income information if required under rule 57.13.1; or an undertaking to file financial statements within twenty (20) days of receipt of notice to file financial information in Form 57.13B. [Amend. 6/97]

12. Declaration of Petitioner:

I/We _____ say that the contents of the within petition are true to the best of my/our information and belief.

DATED at _____, Nova Scotia, this _____ day of _____, 19_____.

Signature of Petitioner Signature of Co-Petitioner

Place of Hearing: _____

The Petition was issued on behalf of the Petitioner by _____, solicitor, whose address is:

I, _____, the solicitor for the Petitioner, certify to this court that I have complied with the requirements of s. 9 of the **Divorce Act**, 1985.

ISSUED at _____, Nova Scotia, this _____ day of _____, 19_____.

Prothonotary

Acknowledgement of Service:

I, _____, named as Respondent in this Petition have received a copy of the within Petition this _____ day of _____, 19_____ and my mailing address for further service is:

Witness Signature of Respondent

FORM 57.10

AFFIDAVIT OF SERVICE OF A PETITION FOR DIVORCE

19_____ No. _____

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

(and)

RESPONDENT

AFFIDAVIT OF SERVICE

I, _____ of the _____ of _____ in the

_____ of _____ make oath and say as follows:

1. I did on _____ the _____ day of _____ ,

19____, at the hour of _____ o'clock in the _____ noon, personally serve the above-noted (Respondent or other person as the case may be) with the Petition for divorce and marked Exhibit "A" to this affidavit, by delivering a true copy to and leaving it with the (Respondent or other person as the case may be) on the day aforesaid at _____.

2. At the time of service a true copy of the original petition was served.

3. At the time of service I requested the person served to complete and sign the acknowledgement of service and statement of mailing address endorsed on the Petition, and my request was complied with and I witnessed the signature and signed the endorsement accordingly (or my request was refused as the case may be).

4. My means of knowledge as to the identity of the person served were as follows:-

(It is usually sufficient to indicate a Social Insurance Card was produced with the party's name and recite the Social Insurance Number, or other means which will accurately identify the person served).

Sworn to at _____

in the County of _____

Province of Nova Scotia

this _____ day of _____

A.D., 19 ____, before me,

A Barrister, Notary or Commissioner of

Oaths for the Province of Nova Scotia

Form 57.12A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

OR

CO-PETITIONER

ANSWER

1. The facts and allegations in the Petition for Divorce are admitted with the exception of:

(identify paragraph(s) of Petition for Divorce and particulars)

2. I hereby seek an order for the following relief pursuant to the **Divorce Act**, 1985:

_____ Divorce

_____ Custody

_____ Access

_____ Spousal support

_____ Child support

_____ Costs

3. (i) I join in this Answer a request for relief under the following additional legislation:

_____ Matrimonial Property Act

_____ Other (specify) _____

_____ No additional relief requested

(ii) In particular, I seek an order for the following relief under the additional legislation:

_____ Custody

_____ Access

_____ Support for the child

_____ Exclusive possession of the matrimonial home

_____ A division of assets

_____ Costs

_____ Other (specify) _____

4. The particulars of all written or oral separation, financial, custody or property agreements between the parties are:

5. The particulars of all court proceedings between the parties or affecting the children of the marriage are:

6. Financial Particulars:

_____ Attached as Schedule "A" to this Answer is the Respondent's Statement of Financial Information in Form 57.13A, Statement of Property in Form 67.03 and Guideline income information if required under rule 57.13.1; or

_____ If there are no children of the marriage, attached to this Answer is a Waiver of Financial Statements in Form 57.13C and signed by the Petitioner and the Respondent (or Co-Petitioner); or

_____ The Respondent's financial statements, Statement of Property and Guideline income information if required under rule 57.13.1 will be filed within twenty (20) days of receipt of notice to file financial information in Form 57.13B. [Amend. 6/97]

I, _____, say that the contents of the within Answer are true to the best of my information and belief.

Dated at _____, this _____ day of _____, 19_____.

SIGNATURE OF RESPONDENT

ADDRESS

Place of hearing: _____

Statement of Solicitor:

I, _____, the solicitor for _____, the Respondent herein, certify to this Court that I have complied with the requirements of Section 9 of the **Divorce Act, 1985**.

DATED at _____, this _____ day of _____, 19_____.

SIGNATURE OF SOLICITOR

ADDRESS OF SOLICITOR

Form 57.12B

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

OR

CO-PETITIONER

ANSWER AND COUNTER-PETITION FOR DIVORCE

1. The facts and allegations in the Petition for Divorce are admitted with the exception of:

(identify paragraph(s) of the Petition for Divorce and particulars)

2. I hereby seek an order for the following relief pursuant to the **Divorce Act**, 1985:

_____ Divorce

_____ Custody

_____ Access

_____ Spousal support

_____ Child support

_____ Costs

3. (i) I join in this Answer and Counter-Petition a request for relief under the following additional legislation:

_____ Matrimonial Property Act

_____ Other (specify) _____

_____ No additional relief requested

(ii) In particular, I seek an order for the following relief under the additional legislation:

_____ Custody

_____ Access

_____ Support for the child

_____ Exclusive possession of the matrimonial home

_____ A division of assets

_____ Costs

_____ Other (specify) _____

4. The Respondent seeks a divorce on the ground that the marriage has broken down, and in particular:

(i) The spouses have been living separate and apart since _____ and will have lived separate and apart for at least one (1) year immediately preceding the determination of the divorce (and in the alternative):

5. Reconciliation:

There is no possibility of reconciliation.

6. There has been no collusion, condonation or connivance in relation to this Answer and Counter-Petition.

7. The particulars of all court proceedings between the parties or affecting the children of the marriage are:

8. Financial Particulars:

_____ Attached as Schedule "A" to this Answer and Counter Petition is the Respondent's Statement of Financial Information in Form 57.13A, Statement of Property in Form 67.03 and Guideline income information if required under rule 57.13.1; or

_____ If there are no children of the marriage, attached to this Answer is a Waiver of Financial Statements in Form 57.13C and signed by the Petitioner and the Respondent (or Co-Petitioner); or

_____ The Respondent's financial statements, Statement of Property and Guideline income information if required

under rule 57.13.1 will be filed within twenty (20) days of receipt of notice to file financial information in Form 57.13B. [Amend. 6/97]

I, _____, say that the contents of the within Answer and Counter-Petition are true to the best of my information and belief.

DATED at _____, this _____ day of _____, 19_____.

SIGNATURE OF THE

RESPONDENT

ADDRESS

PLACE OF HEARING: _____

Statement of Solicitor:

I, _____, the solicitor for _____, the Respondent herein, certify to this Court that I have complied with the requirements of Section 9 of the **Divorce Act**, 1985.

DATED at _____, this _____ day of _____, 19_____.

SIGNATURE OF SOLICITOR

ADDRESS

Form 57.12C

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

NOTICE TO PERSON NAMED

TO:

TAKE NOTICE that a (Petition or Answer and Counter-Petition) for judgment of divorce has been presented to this court by (_____ or _____) and you are named in that (Petition or Answer and Counter-Petition);

AND FURTHER TAKE NOTICE that if you wish to take issue with the allegation made against you in the (Petition or Answer and Counter-Petition) then you must, within twenty (20) days after service on you of this Notice, inclusive of the day of such service, cause your Answer to be served on both the Petitioner and Respondent and file your Answer with proof of service in the office of the undersigned Prothonotary.

AND FURTHER TAKE NOTICE that if you do not serve and file your Answer within the time prescribed above, you will not be entitled to notice of any further proceedings and the judgment for divorce and other relief may be given in your absence.

ISSUED at _____ this _____ day of _____, 19_____.

PROTHONOTARY

The Law Courts

The address of _____ is: _____

The address of _____ is: _____

This Notice to Person Named was issued on behalf of the (Petitioner or Answer and Counter-Petitioner) by _____ solicitor(s) whose address is:

NOTE 1: Unless otherwise ordered, this Notice is to be served:

- (a) Where the person is named in a petition, within sixty (60) days from the date of issuing the petition; or
- (b) Where the person is named in an answer and counter-petition, within the time permitted for filing the answer and counter-petition.

NOTE 2: The person who serves this Notice shall at the time of service request the person named to complete and sign in his presence the following form of acknowledgement of service and statement of mailing address and shall

sign his name as a witness to any signature thereto.

I am the person named as _____ in the (Petition or Answer and Counter-Petition) referred to in this Notice. I have this day received a copy of the within Notice, the attached (Petition or Answer and Counter-Petition) and my mailing address for further service of documents is

WITNESS:

(date)

Form 57.13A

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER/APPLICANT

-- and --

RESPONDENT

STATEMENT OF FINANCIAL INFORMATION

OF *[name]

Attached are the following:

PART A: Income information to be completed in every case by the party from whom child support is being sought and by a party seeking a contribution from the opposing party to any expense listed in Section 7 of the Child Support Guidelines and by all parties if either the Applicant or the Respondent is making a claim for undue hardship pursuant to Section 10 of the Child Support Guidelines.

PART B: To be completed by a party if that party is seeking a contribution from the opposing party to any expense listed in Section 7 of the Child Support Guidelines.

PART C: To be completed if either party is making a claim for spousal support or undue hardship pursuant to Section 10 of the Child Support Guidelines or if your total gross income per year is over \$150,000.00 or if any child for whom child support is being sought is nineteen years of age or over or if you stand in the place of a parent to a

child the support for whom is the subject of these proceedings or if you or the opposing party have or are proposing a shared custody arrangement whereby a child who is the subject of these proceedings is or may be in the care of both parties for not less than forty percent of the time over the course of a year.

PART D: To be completed if either party is making a claim for undue hardship pursuant to Section 10 of the Child Support Guidelines or is making a claim for spousal support.

TAX CALCULATIONS (To be completed if Part C is required.)

I, _____, of _____, Province of Nova Scotia, make oath and say that:

PART A - Income information to be completed in every case by the party from whom child support is being sought and by a party seeking a contribution from the opposing party to any expense listed in Section 7 of the Child Support Guidelines and by all parties if either the Applicant or the Respondent is making a claim for undue hardship pursuant to Section 10 of the Child Support Guidelines.

1. Attached are true copies of my personal income tax returns filed with Revenue Canada for the three most recent taxation years.
2. Attached are true copies of Notices of Assessment (or Re-Assessment) issued by Revenue Canada for each of the three most recent taxation years.

IF YOU ARE AN EMPLOYEE:

3. Attached is a true copy of my most recent statement of earnings indicating my total earnings paid in the year to date, including overtime (*or alternatively*, a letter from my employer setting out my annual salary or remuneration, my earnings to date for this year, including overtime).

CHECK ONE: I am paid weekly () every second week () twice a month () monthly

(or) IF YOU ARE UNEMPLOYED:

3. Attached is a statement of my income to date this year from (*include particulars of all income received by way of employment insurance benefits, social assistance, pension income, Workers' Compensation, disability or such other benefits or income as may apply. If a statement of income is not available, provide a letter from the applicable source of income stating the required information*).

(and/or) IF YOU ARE SELF-EMPLOYED:

3. I am self-employed and attached are:

(a) true copies of the financial statements of my business *or professional practice (other than a partnership)* for the three most recent taxation years; and

(b) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom I do not deal at arms length.

(and/or) IF YOU ARE A MEMBER OF A PARTNERSHIP:

3. I am a partner in the partnership known as *[name] and attached hereto is confirmation of my current income and

draw from that partnership and my capital in the partnership for the three most recent taxation years.

(and/or) IF YOU CONTROL A CORPORATION:

3. (a) Attached are true copies of the financial statements for the corporation *[name], in which I have a controlling interest, for the three most recent taxation years. [Where a party controls a corporation, the financial statements for the three most recent taxation years for that corporation must be provided as well as the financial statements for that company's subsidiaries].

(b) Attached is a statement showing a breakdown of all salaries, wages, management fees and other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation does not deal at arms length.

(and/or) IF YOU ARE A BENEFICIARY UNDER A TRUST:

3. Attached is a true copy of the trust settlement agreement of which I am a beneficiary as well as true copies of the three most recent financial statements of the trust.

4. The following is a statement of my current monthly income from all sources including all source deductions except income tax.

CURRENT MONTHLY INCOME

For _____ [name]

Prepared _____ [date]

GROSS MONTHLY INCOME

BUDGET COMMENTS

- A) Gross Salary or Wages or Net Professional Income
- B) Overtime/Commissions/Bonuses
- C) Employment Insurance Benefits
- D) Social Assistance/Family Benefits
- E) Pension Income
- F) Actual Dividends Received Before Gross-up For Tax Purposes
- G) Income from Trust
- H) Investment Income
- I) Other
- J) Other
- K) Other
- Subtotal:**
- L) Guidelines Schedule III Adjustments, if any
- M) Other

Total Income for Child Support

Guideline Purposes:

- N) Child Tax Benefit

TOTAL INCOME BEFORE TAX

PART B - To be completed by a party if that party is seeking a contribution from the opposing party to any expense listed in Section 7 of the Child Support Guidelines.

5. I am claiming an amount to cover special or extraordinary expenses for one or more of the following reasons (indicate which of the following you are claiming):

- a) child care expenses incurred as a result of my employment, illness, disability or education or training for employment;
- b) that portion of the medical and dental insurance premiums attributable to the child;
- c) health-related expenses that exceed insurance reimbursement by at least \$100 annually per illness or event, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- d) extraordinary expenses for primary or secondary school education or for any educational programs that meet the child's particular needs;
- e) expenses for post-secondary education; or
- f) extraordinary expenses for extracurricular activities.

IF YES, please state the child's name that each expense relates to, the details of each type of expense you are claiming, and the total amount of each expense per month:

Child's Name Details of Each Expense Total Amount of Expense

- 1. _____ \$_____ per month
- 2. _____ \$_____ per month
- 3. _____ \$_____ per month
- 4. _____ \$_____ per month
- 5. _____ \$_____ per month

IF YOU ARE CLAIMING ANY OF THESE EXPENSES, you must attach receipts or other documentation which shows the amount of the expenses you are claiming for each child. If there is some of this information you cannot obtain, please explain why:

6. I am eligible to claim or I receive the following subsidies, benefits or income tax deductions or credits relating to the above expenses: (provide details)

PART C - To be completed if either party:

I. is making a claim for spousal support; or

II. is making a claim for undue hardship pursuant to Section 10 of the Child Support Guidelines; or

III. if your total gross income per year is over \$150,000.00; or

IV. if any child for whom child support is being sought is nineteen years of age or over; or

V. if you stand in the place of a parent to a child the support for whom is the subject of these proceedings; or

VI. if you or the opposing party have or are proposing a shared custody arrangement whereby a child who is the subject of these proceedings is or may be in the care of both parties for not less than forty percent of the time over the course of a year.

7. The following are my current average monthly expenses: *(If you reside with another person with whom you share living expenses, list only your expenses, not the expenses paid by the person with whom you reside).*

EXPENSES	BUDGET	COMMENTS
1. Rent/Mortgage		
2. Municipal Taxes		
3. Property-Fire Insurance		
4. Heat		
5. Electricity		
6. Water		
7. Telephone, Postage		

EXPENSES	BUDGET	COMMENTS
8. Cable		
9. House Repairs, Maintenance, Appliance & Furniture Repairs and Replacement		
10. Food		
11. Toiletries, Household Supplies		
12. Clothing		
13. Laundry and Dry-Cleaning		
14. Motor Vehicle:		
(a) Payment		
(b) Gas		
(c) Maintenance/Repair		
(d) Insurance, License, Registration & Inspection		
15. Taxis, Public Transportation		
16. Section 7 Child Related Expenses:		
(a) Child Care Expense (day-care or baby-sitting)		
(b) Children's Medical or Dental Insurance Premiums		
(c) Health Related Expenses		

- (d) Primary or Secondary School Expense
- (e) Post Secondary School Expense
- (f) Extracurricular Activities
- 17. School Supplies, Tuition, Books
- 18. Children's Allowances and Activities
- 19. Child Access Costs
- 20. Hair and Grooming
- 21. Life Insurance/Medical Insurance
- 22. Drugs
- 23. Dental
- 24. Glasses

EXPENSES	BUDGET	COMMENTS
25. Christmas, Birthdays, Events & Gifts		
26. Newspapers and Magazines		
27. Charitable Donations		
28. Holidays		
29. Entertainment		
30. Savings		
31. Child Support or Spousal Support		
32. Miscellaneous		
33. Other		
34. Other		
35. Other		
SUB-TOTAL		

Debt Payments:

- 36.
 - 37.
 - 38.
- SUB-TOTAL**

- 39. Income Source Deductions, Excluding Income Tax
 - (a) CPP
 - (b) EI
 - (c) Pension
 - (d) Union Dues
 - (e) Medical Plan
 - (f) Other

TOTAL EXPENSES

SUMMARY

Total Income Before Tax (from Part A)

Less: Total Expenses (from above)

Surplus (Deficit) Before tax

Less: Income Tax (Attach Calculations)

SURPLUS (DEFICIT)

PART D - To be completed if either party is making a claim for undue hardship pursuant to Section 10 of the Child Support Guidelines or spousal support.

8.The following are the names, occupations or sources of income of all persons with whom I currently reside or with whom I share living expenses or from whom I receive an economic benefit as a result of living with that person. *If you are making a claim for undue hardship, you must provide the following information. If you do not provide the following information your application for undue hardship may not be considered.*

NAME OCCUPATION OR SOURCE OF INCOME

- 1.
- 2.
- 3.

SWORN TO at [location], in the County of)

*[name of county], Province of Nova Scotia,)

this [date] day of [month], [year], before me)

)

)

)

_____)

A Barrister, Notary or Commissioner of)*[name]

Oaths for the Province of Nova Scotia)

[Amend. 29/01/99]

Form 57.13B

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT or

CO-PETITIONER

NOTICE TO FILE FINANCIAL INFORMATION

Pursuant to Civil Procedure Rule 57.13, the (_____) requires you to file with the court and serve on the (_____) a statement of financial information in Form 57.13A and a statement of property in Form 67.03, whether or not you intend to defend this proceeding.

You must file and serve your statements within:

- (a) twenty (20) days if this demand is served on you within Nova Scotia,
- (b) forty (40) days if it is served elsewhere in Canada or it is served in the United States, and
- (c) sixty (60) days if it is served in any other place.

If you do not file and serve your statements as required, the (_____) will apply to the court, without further notice to you, for an order requiring service of the financial statements within a specified time.

DATED this _____ day of _____, 19_____.

Solicitor for

TO:

[Amend. 31/1/98]

Form 57.13C

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT or

CO-PETITIONER

WAIVER OF FINANCIAL STATEMENTS

The petitioner and the (co-petitioner) respondent waive financial statements in respect of claims made in this action.

DATED AT _____, this ____ day of _____, 19_____.

Signature of petitioner's

lawyer or petitioner

Signature of respondent's

(co-petitioner's) lawyer or

respondent (co-petitioner)

Form 57.18

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

APPLICATION FOR JUDGMENT

To the Prothonotary:

1. The parties (petitioner/respondent) hereby request that this action be set down for determination as an uncontested proceeding to be heard under rule 57.18 on the basis of affidavit evidence.

2. The petitioner (respondent) claims the following relief:

_____ Divorce _____ early date of effect of judgment

_____ Custody _____ Access

_____ Support for _____ in the amount of \$ _____ per month

_____ Support for child(ren) in the amount of \$ _____ per month (per child)

_____ Relief under **The Matrimonial Property Act**

_____ Costs

_____ Other (**specify**)

3. The following pleadings, proceedings and documents are on file:

_____ Petition

_____ Notice of Application for Judgment

_____ Marriage registration **or**

_____ Order dispensing with production of marriage registration

_____ Financial Statements _____ petitioner _____ respondent **or**

_____ Waiver of Financial Statements if there are no children of the marriage

_____ Guideline income information if required under rule 57.13.1 _____ Petitioner _____ Respondent

_____ Other (**specify**) [Amend. 6/97]

4. Service of the petition upon the respondent was effected by

_____ personal service. See affidavit of personal service attached to petition.

_____ ordinary mail. See affidavit of service by ordinary mail attached to petition and confirmation of the petitioner's affidavit that the respondent actually received a copy of the petition.

_____ substitutional service. See copy of order and affidavit of compliance attached to petition.

5. The respondent was noted for default of answer on the _____ day of _____, 19 ____.

(Delete paragraphs 4 and 5 where it is a joint petition.)

6. The petitioner's affidavits required by rule 57.18 and rule 57.19 **(or as the case may be)** accompany this application.

Exhibited to the affidavit(s) are the following documents:

_____ separation or financial or custody agreement

_____ previous court order

_____ undertaking that no appeal from judgment will be taken

_____ other (specify)

7. The following documents also accompany this application:

_____ affidavit of respondent admitting adultery, **or**

_____ certified transcript of the examination for discovery of the respondent

_____ draft judgment

_____ addressed envelopes _____ to respondent _____ to petitioner

DATED at _____, this _____ day of _____, 19_____.

Signature of petitioner's

lawyer or petitioner

Signature of respondent's

(co-petitioner's) lawyer or

respondent (co-petitioner)

Form 57.22A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

DIVORCE JUDGMENT

BEFORE THE HONOURABLE _____ JUSTICE _____

UPON the petition for divorce coming on before the court this day;

IT IS HEREBY ORDERED:

1. That _____ and _____, who were married at the _____ of _____,

in the Province of _____, on the _____ day of _____,

19 ____ are hereby divorced.

2. That a copy of this judgment be forthwith mailed to the respondent, _____, at _____ .

(Optional - this paragraph for name change only)

3. That the Petitioner's/Respondent's name shall be changed from *** to *** effective on the issuance of the Certificate of Divorce. The Petitioner/Respondent was born at ***, in the Province of *** on the *** day of ***, 19***. The Petitioner's/Respondent's name prior to this marriage was ***. The Petitioner's/Respondent's maiden name was ***.

4. That nothing in this Divorce Judgment or any Order or Corollary Relief Judgment that may be issued shall disentitle, waive, encroach upon or affect in any way the statutory entitlement of the parties to seek a division of Canada Pension Plan credits and benefits of each other pursuant to the **Canada Pension Plan Act**, R.S.C., 1985, C. C-8 as amended.

5. That unless appealed, this judgment shall take effect on the thirty-first (31st) day after the date of pronouncement.

(OR)

That by reason of special circumstances and the spouses having agreed and undertaken that no appeal from this judgment will be taken, this judgment shall take effect forthwith (or on such other date the court directs).

6. That upon application by any person after this judgment takes effect, and upon proof of service, and upon proof that this judgment has not been appealed, the court will issue a Certificate of Divorce.

DATED at _____, this _____ day of _____, 19_____.

PROTHONOTARY

[Amend. 31/1/98]

FORM 57.22B

No. _____

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

A. B.

PETITIONER

-- and --

C. B.

RESPONDENT

COROLLARY RELIEF JUDGMENT

[TABLE AMOUNT ONLY]

BEFORE THE HONOURABLE JUSTICE

UPON the parties having been divorced by Divorce Judgment this _____ day of _____ 19_____;

AND UPON this proceeding coming on this day for hearing in the absence of the parties, upon proof of service of the petition being established, upon considering the pleadings and the evidence presented by affidavit;

AND UPON IT APPEARING that C. B. has an annual income of \$ _____ for the purpose of determining the table amount of child support; [Practice Memo No. 25, Note 1]

The following corollary relief under the **Divorce Act** is hereby ordered:

Custody and Access

1. A. B. [Practice Memo No. 25, Note 2] shall have custody of the following children of the marriage:

1. _____, born _____ [Note 3]

2. _____, born _____

2. C. B. shall have reasonable access to the children on reasonable notice to A. B. at times agreed upon by the parties.

[or]

2. C. B. shall have access as set out in the Minutes of Settlement [or separation agreement or Family Court order] dated _____ and detailed below: [set out specific terms of access] [Practice Memo No. 25, Note 4]

[OR, WHERE JOINT CUSTODY]

1. A. B. and C. B. shall have joint custody of the following children of the marriage:

1. _____, born _____

2. _____, born _____

2. (a) A. B. shall have primary care and control of the children and C. B. shall have care and control as agreed by the parties [or as set out below]: [Practice Memo No. 25, Note 5]

(b) All other matters affecting the custody, care and control of the children are set out in the Minutes of Settlement [or separation agreement or Family Court Order] dated _____, attached hereto and incorporated in this order. [Practice Memo No. 25, Note 5]

Child Support

3. C. B. shall pay child support to A. B. pursuant to the federal Child Support Guidelines and in accordance with the Nova Scotia table, the amount of \$ _____ per month, payable on the first day of each month, and commencing [insert date].

4. C. B. shall continue [or acquire and continue] medical, dental and drug plan coverage for the children available through his/her present or subsequent employer or otherwise [and shall reimburse A. B. for receipts provided by him/her for submission to the insurer without delay]. [Practice Memo No. 25, Note 6]

5. C. B. shall provide A. B. with a copy of his/her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from Revenue Canada, on an annual basis on or before June 1st. [Practice Memo No. 25, Note 7]

Spousal Support

6. Neither C. B. nor A. B. shall now, or in the future, pay any spousal support to the other.

[or]

6. C. B. shall pay spousal support to A. B. in the amount of \$ _____ per month, payable on the first day of each month, and commencing _____.

Payment of Support

7. All support payments shall be made payable to A. B. Payments shall be forwarded to the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia B3J 2V2, while the order is filed for enforcement with the Director. The current mailing address of A. B. is _____ and the current mailing address of C. B. is _____. [Practice Memo No. 25, Note 9]

Property Division

The following relief pursuant to the **Matrimonial Property Act** is ordered:

8. The division of property shall be in accordance with the Minutes of Settlement [or separation agreement] dated _____, attached hereto and incorporated insofar as the jurisdiction of the court allows.

[or]

8. All property and debts have been divided by the parties and each party shall retain the property now in his or her possession.

[or]

8. The division of property shall be as follows:

(a) _____

(b) _____

Enforcement

9. All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they, and each of them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

DEPUTY PROTHONOTARY

[Amend. 29/01/99]

FORM 57.22C

No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

A. B.

PETITIONER

- and -

C. B.

RESPONDENT

COROLLARY RELIEF JUDGMENT

[TABLE AMOUNT PLUS SPECIAL OR EXTRAORDINARY EXPENSES]

BEFORE THE HONOURABLE JUSTICE

UPON the parties having been divorced by Divorce Judgment this ___ day of _____ 19;

AND UPON this proceeding coming on this day for hearing in the absence of the parties, upon proof of service of the petition being established, upon considering the pleadings and the evidence presented by affidavit;

AND UPON IT APPEARING that C. B. has an annual income of \$_____ for the purpose of determining the table amount of child support and, for the purpose of making an order for payment of special or extraordinary expenses, the annual income of C. B. is \$_____ and the annual income of A. B. is \$_____; [Practice Memo No. 25, Note 1]

The following corollary relief under the **Divorce Act** is hereby ordered:

Custody and Access

1. A. B. [Note 2] shall have custody of the following children of the marriage:

1. _____, born _____ [Practice Memo No. 25, Note 3]

2. _____, born _____

2. C. B. shall have reasonable access to the children on reasonable notice to A. B. at times agreed upon by the parties.

[or]

2. C. B. shall have access as set out in the Minutes of Settlement [or separation agreement or Family Court Order] dated _____ and detailed below: [set out specific terms of access] [Practice Memo No. 25, Note 4]

[OR, WHERE JOINT CUSTODY]

1. A. B. and C. B. shall have joint custody of the following children of the marriage:

1. _____, born _____

2. _____, born _____

2. (a) A. B. shall have primary care and control of the children and C. B. shall have care and control as agreed by the parties [or as set out below]: [Practice Memo No. 25, Note 5]

(b) All other matters affecting the custody, care and control of the children are set out in the Minutes of Settlement [or separation agreement or Family Court Order] dated _____, attached hereto and incorporated in this order. [Practice Memo No. 25, Note 5]

Child Support

3. C. B. shall pay child support to A. B. pursuant to the federal Child Support Guidelines and in accordance with the Nova Scotia table, the amount of \$ _____ per month, payable on the first day of each month, and commencing [insert date].

4. In addition to the table amount set out above, on the first day of each month and commencing _____, C. B. shall pay to A. B. the amount of \$ _____ for his/her share of the following special or extraordinary expenses: [Practice Memo No. 25, Note 8]

Child's name Particulars Total Expense Amount Percentage

to be paid to be paid

5. In total, C. B. shall pay child support to A. B. pursuant to the federal Child Support Guidelines, the amount of \$ _____ per month, payable on the first day of each month, commencing _____, consisting of the table amount of \$ _____ per month plus special or extraordinary expenses of \$ _____ per month.

6. C. B. shall continue [or acquire and continue] the medical, dental and drug plan coverage for the children available through his/her present or subsequent employer or otherwise [and shall reimburse A. B. for receipts provided by him/her for submission to the insurer without delay]. [Practice Memo No. 25, Note 6]

7. C. B. and A. B. shall provide each other with a copy of his or her income tax return, completed and with all attachments, even if the return is not filed, along with all notices of assessment received from Revenue Canada, on an annual basis on or before June 1st. [Practice Memo No. 25, Note 7]

Spousal Support

8. Neither C. B. nor A. B. shall now, or in the future, pay any spousal support to the other.

[or]

8. C. B. shall pay spousal support to A. B. in the amount of \$ _____ per month, payable on the first day of each month, and commencing _____.

Payment of Support

9. All support payments shall be made payable to A. B. Payments shall be forwarded to the Office of the Director of Maintenance Enforcement, P.O. Box 803, Halifax, Nova Scotia B3J 2V2, while the order is filed for enforcement with the Director. The current mailing address of A. B. is _____ and the current mailing address of C. B. is _____. [Practice Memo No. 25, Note 9]

Property Division

The following relief pursuant to the **Matrimonial Property Act** is ordered:

10. The division of property shall be in accordance with the Minutes of Settlement [or separation agreement] dated _____, attached hereto and incorporated insofar as the jurisdiction of the court allows.

[or]

10. All property and debts have been divided by the parties and each party shall have retain the property now in his or her possession.

[or]

10. The division of property shall be as follows:

(a) _____

(b) _____

Enforcement

11. All sheriffs, deputy sheriffs, constables and peace officers shall do all such acts as may be necessary to enforce this order and for such purposes they, and each of them, are hereby given full power and authority to enter upon any lands and premises whatsoever to enforce the terms of this order.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

DEPUTY PROTHONOTARY

[Amend 29/01/99]

Form 57.24A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

APPLICATION FOR CERTIFICATE OF DIVORCE

I, _____, (solicitor for the Petitioner) or (Petitioner) or (Co-Petitioner) or (Respondent) request that a Certificate of Divorce be issued and I hereby certify to this Honourable Court that:

- 1. Thirty-one (31) days have elapsed since the judgment granting the divorce was rendered.
- 2. No appeal from the judgment of divorce has been served upon me (or my solicitor) (or the Petitioner/Respondent/Co-Petitioner).

DATED at _____, Nova Scotia, this _____ day of _____, 19_____.

Petitioner/Respondent/

Co-Petitioner or Solicitor

for

Form 57.24B

19No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

CERTIFICATE OF DIVORCE

This is to certify that the marriage of

_____ and

which was solemnized on the _____ day of _____, 19 _____,

was dissolved by a judgment which became effective

on the _____ day of _____, 19 _____,

Dated at _____ this _____ day of _____, 19_____.

PROTHONOTARY

(COURT SEAL)

FORM 57.25A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

ORDER SETTING DOWN

UPON IT APPEARING that the notice of petition and petition were served on the Respondent on the _____ day of _____, 19 ____; that twelve (12) months have elapsed since the service; and that (an answer has not been filed) (more than six (6) months have elapsed since the filing of answer):

IT IS ORDERED that this matrimonial cause be and it is hereby set down for hearing at a sitting of this court to be held at the _____, in _____, Nova Scotia, on _____, the _____ day of _____, 19 ____ at _____ o'clock in the _____ noon.

DATED at _____, Nova Scotia, this ____ day of _____, 19 ____.

PROTHONOTARY

Form 57.25B

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

NOTICE OF HEARING

TAKE NOTICE that this matrimonial cause has been set down for hearing at the _____, in _____, Nova Scotia, on _____, the _____ day of _____, 19 ____ at the hour of _____ o'clock in the _____ noon.

AND FURTHER TAKE NOTICE that this cause has been set down for hearing pursuant to an order issued under rule 57.25 of the Civil Procedure Rules of this Honourable Court, and a true copy of the rule is endorsed hereon.

DATED at _____, Nova Scotia, this _____ day of _____, 19_____.

PROTHONOTARY

Form 57.30A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

APPLICATION TO VARY, RESCIND OR SUSPEND ORDER

FOR COROLLARY RELIEF

Application is hereby made:

1. To vary, rescind or suspend the order for relief contained in the Corollary Relief Judgment herein. (as amended

by order dated _____)

2. For leave to issue an execution order to enforce the Corollary Relief Judgment herein. (as amended by order dated _____)

DATED at _____ this _____ day of _____, 19_____.

PETITIONER

Form 57.30B

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

NOTICE OF REPORT OF FAMILY COURT JUDGE

NOTICE is hereby given that an application in Form 57.30A attached has been made and filed herein and a report on the application in the form attached, made by a judge of the Family Court, has been filed in the office of the prothonotary of the Supreme Court of Nova Scotia at the Law Courts, Halifax, Nova Scotia, (and in the office of the prothonotary at _____

Nova Scotia) and that, after the expiration of the period of twenty (20) days from the date the prothonotary (at Halifax) receives the report, the Supreme Court of Nova Scotia, may deal with the report in the same manner as it may deal with the report of a referee made pursuant to Civil Procedure Rule 35.03.

If you wish to object to the recommendations in the report you should file, before the expiration of the twenty-day (20-day) period referred to above, a notice of objection with the prothonotary (at Halifax).

DATED at _____, Nova Scotia, the _____ day of _____, 19_____.

Clerk of the Family Court

TO

and to

and to the Prothonotary of the Supreme Court

P.O. Box 2238, Law Courts

Halifax, Nova Scotia, B3J 3C8.

and to the Prothonotary of the Supreme Court at _____, Nova Scotia.

Form 57.31

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

NOTICE OF TAKING OF FURTHER EVIDENCE FOR MAINTENANCE ORDER

To the Petitioner

The _____ day of _____, 19 ____ at _____ o'clock in the _____ noon at (**court house address**) is appointed as the time and place for the taking of further evidence on the following points

pursuant to the request of the court in which confirmation of the provisional order is being sought.

If you desire to proceed with your application you must

- (a) prepare an affidavit giving the evidence requested, and file it in the court before the date set for the hearing; or
- (b) appear at the time and place aforesaid either personally or by your solicitor and produce further evidence on the matter.

DATED at _____, the _____ day of _____, 19 _____.

PROTHONOTARY

Form 57.32A

19 No. 1201-

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

PETITIONER

-- and --

RESPONDENT

NOTICE OF CONFIRMATION HEARING

TO:

TAKE NOTICE that an application to confirm the provisional order of _____ of _____ pronounced the ____ day

(Judge) (court)

of _____, 19 ____ will be heard by the presiding judge at _____ in the _____ of _____

(address)

on the _____ day of _____, 19 _____, at _____ o'clock in the _____ noon, or so soon thereafter as the matter can be heard.

FURTHER TAKE NOTICE that in support of such application will be read all material forwarded by the court that granted the provisional order.

AND FURTHER TAKE NOTICE that if you do not file an affidavit in response at least five (5) days prior to the time set for hearing, an order confirming or varying the provisional order may be made in your absence and enforced against you.

DATED at _____, on the _____ day of _____, 19_____.

PROTHONOTARY

FORM 57.32B

19 No. 1201-

BETWEEN:

PETITIONER

-- and --

RESPONDENT

ORDER AFTER CONFIRMATION HEARING

Before The Honourable _____ Justice _____ .

WHEREAS a provisional order was made by (**name of court**) at (**address in full**) for the payment of support (or maintenance) by the respondent to the petitioner.

AND WHEREAS a notice was served on the respondent of a hearing to confirm the provisional order and the respondent has (**or** has not) appeared.

NOW THEREFORE IT IS HEREBY ORDERED that the provisional order be confirmed (**or** be confirmed with the following variation _____

for the following reasons **or** not be confirmed for the following reasons **or** not remitted to the said court for the purpose of taking further evidence on the following points

and it is hereby ordered that the respondent pay the sum of \$ _____ per month for the support of

commencing on the first day of _____, 19 _____, and payable on the first day of each and every month thereafter, pending the final disposition of this proceeding **or as the case may be**.

Payments under the said order are to commence _____ .

DATED at _____, the _____ day of _____, 19 ____ .

PROTHONOTARY

RULE 57-(57.01-57.36)

MATRIMONIAL CAUSES RULES

The judges of the Supreme Court of Nova Scotia, pursuant to the powers and authorities enabling them in that behalf, repealed Rule 57 of the Civil Procedure Rules and substituted therefore the foregoing Rule 57 of the Civil Procedure Rules with effect on and from the first day of June, 1986.

DATED this 26th day of May, 1986.

LORNE O. CLARKE C.J.N.S. CONSTANCE R. GLUBE

C.J.T.D.

GORDON L. S. HART J.A. A. M. MacINTOSH J.

MALACHI C. JONES J.A. DOANE HALLET J.

IAN M. MacKEIGAN J.A. WILLIAM GRANT J.

VINCENT A. MORRISON J.A. K. PETER RICHARD J.

ANGUS L. MacDONALD J.A. C. DENNE BURCHELL J.

LEONARD L. PACE J.A. R. MacLEOD ROGERS J.

KENNETH M. MATTHEWS J.A. D. MERLIN NUNN J.

H. S. NATHANSON J.

R. MacDONALD J.

F. B. WILLIAM KELLY J.

GORDON A. TIDMAN J.

RULE 58

RULES MADE PURSUANT TO SECTION 438 OF THE CRIMINAL CODE WITH RESPECT TO MANDAMUS, CERTIORARI, HABEAS CORPUS AND PROHIBITION

[Amend. 11/86]

Civil Procedure Rules to apply

58.01. The Civil Procedure Rules, with any necessary modification, including any rule relating to the abridgment or extension of time, apply in all matters not provided for in Rule 58.

Order not writ shall issue

58.02. (1) An application for an order in the nature of mandamus, prohibition or certiorari shall be made by originating notice (action) or originating notice (application inter partes) to a judge of the Supreme Court of Nova

Scotia as set out in rules 9.02 and 9.04. [Amend. 29/5/98]

(2) An application for an order in the nature of habeas corpus may be made ex parte to a judge of the Supreme Court of Nova Scotia as set out in rule 9.02. [Amend. 29/5/98]

Service

58.03.

(1) An originating notice shall be served upon every person who appears to be interested or likely to be affected by the proceeding pursuant to rule 58.02(1).

(2) Where it is sought to quash a conviction, order, warrant or inquiry, the originating notice shall also be served at least four (4) clear days before a hearing, upon:

(a) the Attorney General, and

(b) the person making the conviction or order, issuing the warrant, or holding the inquiry.

(3) A person who has not been served with an originating notice may show that he or she is affected by a proceeding and, with the leave of the court, may take part in the proceeding as though served. [Amend. 29/5/98]

Appeals

58.04. An appeal shall lie from an order of the court to the Nova Scotia Court of Appeal. [Amend. 20/6/94]

Power of a judge of the Nova Scotia Court of Appeal

58.05. Any direction required to give effect to an order of the Nova Scotia Court of Appeal may be made by a judge of the court. [Amend. 20/6/94]

I. Certiorari

Notice filed and served within six months

58.06. An originating notice for an order in the nature of certiorari shall be filed and served within six (6) months after the conviction, order, warrant or inquiry to which it relates, and rule 3.03 does not apply hereto.

Endorsement on originating notice

58.07. (1) There shall be endorsed upon an originating notice for an order in the nature of certiorari a notice to the following effect, adapted as may be necessary and addressed to the judge, magistrate, justice or justices, officer or clerk,

"You are hereby required forthwith after service of this originating notice on you to return to the prothonotary at _____, Nova Scotia, the conviction, order or decision and the reasons therefore, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all things touching the proceeding as fully and entirely as they remain in your custody, together with this notice.

DATED, etc., C.D., of _____ Street, _____, Nova Scotia,

_____ Solicitor for the Applicant."

(2) All things required by paragraph (1) to be returned to the prothonotary shall, for the purposes of an application for an order in the nature of certiorari, be deemed to be part of the record.

Return of lower court

58.08. (1) Upon receiving an originating notice so endorsed, the judge, magistrate, justice or justices, officer or clerk shall return forthwith to the prothonotary the conviction, order, warrant, decision or reasons for judgment, together with the process commencing the proceeding, the evidence and all exhibits filed, if any, and all other things in the proceeding, together with the originating notice served upon him, with a certificate endorsed thereon in the following form,

"Pursuant to the accompanying notice I herewith return to this Honourable Court the following papers and documents, that is to say,

- (1) the conviction, order or decision (or as the case may be) and the reasons therefor;
- (2) the process commencing the proceeding and the warrant issued thereon;
- (3) the evidence taken at the hearing and all exhibits filed; and
- (4) all other papers or documents touching the matter.

And I hereby certify to this Honourable Court that I have above truly set forth all the papers and documents in my custody and power in the proceeding set forth in the originating notice."

- (2) If the papers and documents, or any of them, are not in the possession of the person required to transmit them, he shall in lieu of or in addition to the certificate, so state and explain the circumstances.
- (3) When the papers and documents have not been received by the prothonotary as provided in paragraph (1), the prothonotary shall return a certificate of the fact to the court.
- (4) The return and certificate prescribed in paragraphs (1) or (2) shall have the same effect as a return to a writ of certiorari.
- (5) The court may dispense with the return of the evidence or exhibits or any part of them.
- (6) A copy of this rule shall appear upon or be annexed to the originating notice served upon the magistrate, justice or justices, clerk, or officer from whom the return is required.

Application by Crown to quash

58.09. Notwithstanding rules 58.02 to 58.08 inclusive, the court may on ex parte application by the Crown, quash a conviction, order, warrant or inquiry.

II. Mandamus

Affidavit of prosecutor

58.10. An order in the nature of mandamus shall not be made unless it is supported by an affidavit of a person who deposes that the application is made at his instance as prosecutor, and his name appears as the person at whose instance the application is made.

Mandamus issued by the court

58.11. A proceeding shall not be commenced or prosecuted against any person under this rule in respect of anything done in obedience to a mandamus issued by the court.

Effect of mandamus order

58.12. An order in the nature of mandamus may compel the performance of a duty forthwith, or upon the expiration of a fixed time, or subject to specific terms.

III. Habeas Corpus

58.13 An application for an order in the nature of habeas corpus may be made ex parte with an affidavit of or on behalf of the person restrained showing that it is made at that person's instance and setting out the nature of the restraint. [Amend. 29/5/98]

58.14

(1) The court to whom an application under rule 58.02 and rule 58.13 is made ex parte may

(a) make an order requiring that the person restrained be brought immediately before the court; or

(b) make an order directing the person against whom the order is issued to make a return to the court within two (2) clear days. [Amend. 29/5/98]

(2) There shall be served with the order a notice in Form 58.14A. [Amend. 29/5/98]

Return to the order in the nature of habeas corpus

58.15

(1) The return to the order shall be made to the prothonotary in Form 58.15A. [Amend. 29/5/98]

(2) The return may be amended, or another return substituted therefor, by leave of the court before whom the order is returnable. [Amend. 29/5/98]

Procedure at hearing of the return

58.16 When a return to an order is made, a motion may be made for discharging or remanding the person restrained or amending or quashing the return. [Amend. 29/5/98] **FORM 58.14A**

(Rule 58.14)

NOTICE

Canada

Province of Nova Scotia

To the keeper (administrator, warden) of the (prison, hospital or other place where the person is restrained):

TAKE NOTICE that you are ordered to bring (the person restrained) before (name of court) at (place) on (date) at (time).

AND FURTHER TAKE NOTICE that if you do not obey this order, proceedings for contempt will be taken against you.

_____: Prothonotary

[Amend. 29/5/98]

FORM 58.15A

(Rule 58.15)

RETURN

Pursuant to the accompanying order, I hereby certify to this Honourable Court that the date of committal of (person restrained) is (date) and the cause for the taking or detention is (state case).

I herewith return to this Honourable Court a copy of the process (warrant or order) upon which (the person restrained) is held.

Keeper (administrator, warden)

[Amend. 29/5/98]

RULES 58-(58.01- 58.12)

CROWN RULES PURSUANT TO SECTION 438 OF THE CRIMINAL CODE WITH RESPECT TO MANDAMUS, CERTIORARI, HABEAS CORPUS AND PROHIBITION

These rules with respect to mandamus, certiorari, habeas corpus and prohibition, come into force on March 1, 1972, with respect to proceedings commenced on and after that date, and all rules with respect to mandamus, certiorari, habeas corpus and prohibition heretofore in force are repealed, without prejudice to any proceedings under the said rules which may have been taken prior to March 1, 1972.

These rules are made by the Nova Scotia Court of Appeal with the concurrence of a majority of judges thereof, present at a meeting held for the purpose at Halifax, Nova Scotia, on the 3rd day of February, 1986, pursuant to s. 438 of the Criminal Code.

LORNE O. CLARKE, C.J.N.S.

MALACHI C. JONES, J.A.

V. A. MORRISON, J.A.

LEONARD L. PACE, J.A.

GORDON L. S. HART, J.A.

IAN M. MacKEIGAN, J.A.

ANGUS L. MacDONALD, J.A.

KENNETH M. MATTHEWS, J.A.

These rules are made by the Supreme Court of Nova Scotia with the concurrence of a majority of judges thereof, present at a meeting held for the purpose at Halifax, Nova Scotia, on the 3rd day of February, 1986.

CONSTANCE R. GLUBE, C.J.T.D.

DOANE HALLETT, J.

K. PETER RICHARD, J.

R. MacLEOD ROGERS, J.

H. S. NATHANSON, J.

F. B. WILLIAM KELLY, J.

A. M. MacINTOSH, J.

WILLIAM J. GRANT, J.

C. DENNE BURCHELL, J.

D. MERLIN NUNN, J.

ROBERT MacDONALD, J.

G. A. TIDMAN, J.

RULE 59

RULES PROMULGATED UNDER THE WINDING-UP AND RESTRUCTURING ACT

[Amend.05/02/03]

I. Petition to Wind up Company

Title of petition

59.01. A petition for the winding up of a company by the court, and any notice, affidavit and other document in the proceeding, shall be entitled "In the matter of the *Winding-Up and Restructuring Act*" of the company, naming the company to which the petition relates. [Amend.05/02/03]

Service of petition, etc.

59.02. A copy of a petition endorsed with, or accompanied by, a notice of an application for a winding-up order and copies of any affidavit and other material upon which the petitioner proposes to rely in support of the application, shall, unless the petition is presented by the company, be served at the principal or last known principal office or place of business of the company, if it can be found, upon any member, officer or servant of the company there, or when a member, officer or servant cannot, after due diligence, be found there, then in the manner provided for service on a corporation of ordinary process, or in such other manner as the court may direct.

Contributories, etc. entitled to copies of papers, etc.

59.03. Any **contributory** or creditor of the company shall be entitled to be furnished by the solicitor for a petitioner, or by a petitioner if he presents a petition in person, with copies of the petition, affidavit and other material or of any portion thereof as is required, within twenty-four (24) hours after the same is demanded, on paying the sum of twenty cents (20¢) per page.

II. Winding-up Order

Order to be advertised and served

59.04. Every order for the winding up of a company by the court, or subject to its supervision, shall within fifteen (15) days after the date thereof, be advertised in a newspaper having a general circulation in the place where the head office or principal place of business of the company is situated, and in The Canada Gazette or The Royal Gazette as the court may direct, and shall be served upon any person and in such manner as the court may direct.

Entry of order, etc.

59.05. (1) A winding-up order shall be entered with the prothonotary within seven (7) days after it is made up, and in default thereof any other person interested in the winding up may draw the order and the court may give the carriage and prosecution of the order to such person.

(2) Upon a winding-up order being entered, the person having the carriage of the proceeding shall cause a notice of application to be issued forthwith and served upon all parties who have appeared on the hearing of the petition.

(3) On the application, the court may fix a time and place for the appointment of a liquidator, the proof of debts, and the list of contributories to be brought in, and give directions for any advertisement and notice, and generally as to the proceeding or parties to attend thereon.

Evidence, etc.

59.06. To enable the court to determine the most satisfactory method of giving notice of an application to appoint a liquidator and the parties to whom notice should be given, a petitioner or other person having the carriage of the proceeding shall furnish to the court the best evidence, obtainable by him on reasonable enquiry and to the satisfaction of the court, as to the names of the creditors, contributories and shareholders respectively and their places of residence, and the court may require any further evidence on these or other points to be furnished.

Provisional liquidator

59.07. Where it is desired to appoint a provisional liquidator, an application for that purpose may be made at any time after the presentation of a petition for winding up, without notice or advertisement unless the court otherwise directs, and the court may appoint the provisional director, if it thinks fit, without security.

Winding-up order

59.08. Notwithstanding the provisions of any other rule, if it appears to the court, upon the presentation of a petition that all proper parties had notice, the court may make an order for winding up the company and the appointment of a liquidator.

III. Liquidator

Advertising

59.09. When a time and place has been fixed for the appointment of a liquidator, notice of the time and place shall be given to creditors, contributories and shareholders or members, or advertised in such manner as the court may direct, but the first or only advertisement, if any, shall be published within fifteen (15) days and not less than seven (7) days before the day so fixed.

Contents of notice

59.10. Notice of the application for the appointment of a liquidator shall give the name, address and occupation of the person proposed to be appointed, and the court may appoint the person named in the notice or any other person, with or without further notice to any person.

Qualifications of liquidator

59.11. An application for the appointment of a liquidator shall be accompanied by satisfactory evidence of the qualifications and character of the party sought to be appointed as liquidator and of his fitness for the office.

Security

59.12. Unless otherwise ordered by the court, a liquidator shall give security in such manner and in such sum as the court may direct.

Order appointing liquidator

59.13. A liquidator shall be appointed by order, which shall

- (a) fix a time within which the liquidator shall give security, unless he has done so or it has been dispensed with;
- (b) fix the times or periods at which the liquidator is to leave his accounts of receipts and payments at the office of the prothonotary, and
- (c) direct all monies received by the liquidator to be paid into a chartered bank to the account of the liquidator immediately after their receipt in an account opened therefor, and an office copy of the order shall be lodged with the bank.

Sureties of liquidator

59.14. A liquidator, if required to furnish security, shall, on each passing of his account and whenever the court requires, satisfy the court that his security remains in full force and effect, and in default thereof he may be required to enter into fresh security as directed.

Death, etc. of liquidator

59.15. In case of the death, removal or resignation of a liquidator, another or others shall be appointed in his place as in the case of a first appointment, and the proceeding for the purpose may be taken by any interested party.

Duties of liquidator

59.16. A liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete and rectify the books of account of the company, and shall provide and keep such books of account as are necessary or as the court may direct, for the purpose aforesaid and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call made under the Act.

Accounts of liquidator

59.17. The accounts of a liquidator shall be filed in the office of the prothonotary at such time as may from time to time be required by the court, and the accounts shall, whenever required by the court and upon notice to any party as the court may direct, be passed and verified in the same manner as receivers' accounts.

IV. Proof of Debts

Advertisement for debts, etc.

59.18. (1) For the purpose of ascertaining the creditors and claimants of a company and requiring them to come in and prove their debts or claims, such advertisements shall be published as the court may direct.

(2) The advertisements shall fix a time for the creditors and claimants to send in to the liquidator, their names and addresses, the particulars of their debts or claims, the nature and amount of the security, if any, held by them respectively, with the valuation thereof on oath, and the names and addresses of their solicitors, if any, and the advertisements shall appoint a day for adjudicating thereon.

Proof of claims

59.19. The creditors and claimants need not attend the adjudication or prove their debts or claims, unless they are required to do so by notice from the liquidator, or any creditor, contributory, shareholder or member of the company, but upon the notice being given they shall come in and prove their debts or claims at the time therein specified or such other time as the court may allow.

Duties of liquidator as to debts and claims

59.20. A liquidator shall investigate the debts and claims sent in to him and ascertain, so far as he is able, which of them are justly due from the company, and he shall make out and leave with the prothonotary a list of all debts and claims sent to him, distinguishing the debts and claims or parts thereof so claimed that are in his opinion justly due and proper to be allowed without further evidence from those that in his opinion ought to be proved by the creditors, and he shall make and file with the prothonotary, prior to the time appointed for adjudication, an affidavit setting forth the debts and claims that in his opinion are justly due and proper to be allowed without further evidence.

Claims of which liquidator has not notice

59.21. If by examination of the books, accounts or papers of a company, or by any other means, a liquidator is led to believe that any person is a creditor of or has a claim against the company, for which the party is entitled to rank against the assets of the company, and the party has not sent in notice of his claim to the liquidator, the liquidator shall mention the claim and the probable amount thereof in the affidavit required by rule 59.20, with the address or supposed address of the person.

Judge may allow debts, etc.

59.22. At the time appointed for adjudicating upon the debts or claims, or at any adjournment thereof, the court may either allow the debts and claims upon the affidavit of the liquidator, or require the same, or any of them, to be proved by any claimant and adjourn the adjudication thereon to a time to be fixed, and the liquidator shall give notice to any creditor whose debts or claims have been allowed.

Service of notice of hearing

59.23. Notice of the time and place, fixed for hearing and determining debts and claims of which proof is required, shall be served upon the creditors or claimants asserting the debts or claims, and such other parties, including persons who may be mentioned by the liquidator as a probable creditor or claimant under rule 59.21, as the court shall direct at least four (4) days before the day so fixed.

Costs of proof of claims

59.24. Unless the court otherwise orders, any creditor who comes in and proves his debt or claim pursuant to notice may be allowed his costs of proving it, and a person unsuccessful in proving a claim may be ordered to pay costs.

V. List of Contributories**List of contributories**

59.25. (1) A liquidator shall, with all convenient speed after his appointment or at such time as the court shall direct, make out and file with the prothonotary a list of the contributories of the company.

(2) A list of contributories shall be verified by the affidavit of the liquidator, and shall, so far as is practicable, state the respective addresses of, the number of shares or extent of interest to be attributed to each contributory, and distinguish the several classes of contributories, and the list may, from time to time by leave of the court, be varied or added to by the liquidator.

Appointment to settle list, etc.

59.26. Upon the list of contributories being filed with the prothonotary, the liquidator shall obtain an appointment for the court to settle the same, and shall give at least four (4) days' notice in writing of the appointment to every person included in the list, stating in what character the person is included, and the extent of the liability of the person as a contributory; and in case any variation or addition to the list is at any time made by the liquidator, a similar notice in writing shall be given to every person to whom the variation or addition applies.

Prothonotary's certificate

59.27. The result of the settlement of the list of contributories shall be set out in a certificate made by the prothonotary, and certificates may be made from time to time for the purpose of stating the result of a settlement

down to any particular time, or as to any particular person, or stating any variation in the list.

VI. Calls

Application to make call, etc.

59.28. An application to the court, to make a call on any contributory, shall be made by notice stating the proposed amount of the call, which shall be served four (4) days at least before the day appointed for making the application on every contributory proposed to be included in the call, and upon the copy, so served on each contributory, shall be written or printed a memorandum specifying the amount that the contributory will be required to pay upon the basis of the proposed call.

Notice of intended call

59.29. (1) When the court directs, notice of an intended call may be given by advertisement, and no further notice of the application need be given to any contributory unless the court so orders.

(2) When notice of an intended call is given by advertisement, notice need not be given of the particular amount required of each contributory and the memorandum specified in rule 59.28 may be dispensed with.

Contents of order for call

59.30. An order for a call may direct payment, not merely of the amount of the call, but also of the amounts or balances payable by the respective contributories, or by such of them as may seem proper, and the time and place of payment, provided that a contributory shall not be ordered to pay a larger sum than specified in the memorandum filed on the application without notice to him or his solicitor that a larger sum is to be paid by him: but the court may, upon such notice as may seem just or, if the party appears, then without further notice, cause the memorandum to be amended by increasing the amount, or otherwise and may direct the liquidator, or other party having the conduct of the proceeding, to pay any additional costs to be thus incurred and make such other order as is just.

Order where memo not served

59.31. Unless it shall seem just and proper, where the memorandum specified in rule 59.28 is not served either by advertisement or otherwise, an order shall specify merely the amount of the call to be made and shall not direct payment of specific sums by the respective contributories.

Service of order, etc.

59.32. A copy of an order for a call shall be served forthwith upon each contributory included in the call; and upon each contributory so included, who is not directed by the order itself to pay a specific sum in respect of the call, there shall be served, with the order, a notice from the liquidator, or other party having the conduct of the proceedings for a call, specifying the amount of balance due from the contributory in respect of the call, but an order for a call need not be advertised unless the court directs.

Adjournment of call proceedings

59.33. (1) At the time of making an order for a call, if the order does not specify the particular sum payable by each contributory included in the call, or if the court otherwise deems it proper, any further proceeding shall be adjourned until after the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary.

(2) At the time appointed by an adjournment or upon an application to enforce payment of a call, and upon proof of

the service of an order and notice of the amount due as required by rule 59.32 and the non-payment thereof, an order may be made for any contributory who is in default, or against whom it is thought proper to make the order, to pay the sum that they were respectively required to pay by an earlier order and notice, or any lesser sum that appears to be due from them respectively, and any order may be made that is just and proper for the payment by any contributory of the costs of the adjournment, or further application and order, or of any portion thereof.

Receipt of bank for amount of call

59.34. A contributory may deposit with the prothonotary a receipt of the bank where a call is payable, or of the prothonotary where the call is payable into court, or of the party authorized by an order to receive such payment, and the receipt shall show the amount paid in respect of the call.

Issue of non-payment of call

59.35. Where a contributory is, by an order for a call or by a subsequent order, directed to pay a specific amount in respect of a call, then at the expiration of the time for payment, if a receipt for the payment has not been deposited with the prothonotary, or if the receipt deposited does not show that the proper amount has been paid, an execution order may, without further order, be issued by the prothonotary to realize the amount so ordered, or any deficiency appearing from the receipt, and with this may be included any sum for taxed costs where the same can be conveniently included according to the usual practice.

VII. Proceedings before the Court

Application to be made in chambers

59.36. Any application under a winding-up order shall be made in chambers, unless the court otherwise directs, and the application shall, unless it is a proper one for an ex parte order, be made upon notice.

Affidavit for sanction of compromise, etc.

59.37. (1) An application for the sanction of the court to a compromise or other arrangement with any contributory or other person indebted or liable to a company, or with creditors or persons claiming to be creditors of a company, shall be supported by an affidavit of the liquidator deposing that he believes the proposed compromise will be beneficial to the company, stating reasons for his belief and showing, where the state of affairs of such contributory or other person is one of such reasons that the liquidator has investigated the affairs of the contributory or other person and the result of his investigation.

(2) Any facts supporting the reasons for the liquidator's belief shall, as far as is practicable, be proved, and upon an application any further evidence may be required by the court.

Sanction to be testified by memo

59.38. The sanction of the court under rule 59.37 shall be testified by a memorandum signed by the prothonotary on the agreement of compromise or arrangement, unless a party desires to appeal from the decision of the court when an order shall be drawn up and issued for that purpose.

VIII. Advertisements

Advertisements

59.39. Where an advertisement is required for any purpose, it shall be published only in the newspaper or other

publication, and for such number of times, as is provided by this rule or by order of the court, provided that the court may in any case dispense with any advertisement required by this rule.

IX. Register and File of Proceedings

Register of proceedings

59.40. A prothonotary shall attend before the court upon a proceeding and shall keep a register of all proceedings in chambers or in court or on appeal in each matter under the Act.

Deposit and filing of documents

59.41. Any document or other record, required to be filed in court, shall be filed with the prothonotary in whose office the petition has been filed.

Custody of documents not filed

59.42. Any order, exhibit, admission, memorandum or other document relating to the winding-up of a company, not required by Rule 59 or the usual practice or the special direction of the court to be filed in court, shall be filed and kept by the liquidator in his own office and shall be produced in court and otherwise as may be required.

Inspection of documents

59.43. Every contributory, and every creditor whose debt or claim has been allowed, is entitled at all reasonable times to inspect any document filed with the liquidator or prothonotary in a proceeding under the Act free of charge, and to take copies thereof or extracts therefrom at his own expense, not removing the same from the office where the same is filed, or to be furnished with any copy or extracts on paying for them at a rate not exceeding twenty cents (20¢) per page.

X. Provisional Liquidator

Provisional liquidators

59.44. All rules relating to liquidators shall, with any necessary modification, and subject to the directions of the court, apply to any provisional liquidator.

XI. Attendance and Appearance of Parties

Attendance and appearance of parties

59.45. Any person, on a list of contributories filed with the prothonotary, or having a debt or claim against a company that is allowed by the court, shall be at liberty, at his own expense, to attend the proceedings on the winding-up of the company, and be entitled, upon payment of the costs occasioned thereby, to have notice of any proceeding that he requests in writing to have notice of; but if the court is of the opinion that the attendance of any such person at a proceeding has occasioned any additional costs which ought not to be borne by the company, the person may be directed to pay the costs, or a gross sum in lieu thereof, and such person shall not be entitled to attend any further proceeding until he pays the same, and the liquidator may take any measure to collect the same as he might take for the collection of any costs awarded by the court.

Appointment of representative of class

59.46. (1) The court may, from time to time, appoint any one or more of the contributories or creditors to represent, at the expense of the company or otherwise as shall seem proper, all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors, or in and about any proceeding before it relating to the winding-up of the company, and may remove any person so appointed.

(2) In case more than one person is appointed, they shall employ the same solicitor to represent them.

(3) Costs shall not be allowed against a company to any such person in respect of any proceeding unless he is specially requested by the court to attend on the proceeding.

Conditions of attendance in chambers

59.47. A contributory or creditor shall not be entitled to attend any proceeding before the court until he has entered his name and address, and the name and address of his solicitor, if any, in a book to be kept for that purpose by the prothonotary, and until, upon any change of his address or of his solicitor, he has entered in the book his new address, and the name and address of his new solicitor.

XII. Service of Summons, Notices, etc.

Service by post

59.48. Service upon any contributory or creditor shall be effected, except when personal or other service is specifically required, by sending any notice, order or other document through the mail, in a postage prepaid letter addressed to the solicitor of the party to be served, if any, or otherwise to the party himself, at the address entered or last entered pursuant to rule 59.47 or, if no address has been so entered, at the address of the party appearing on the records of the company, and the notice or order or other proceeding shall be considered as served at the time it ought to be delivered in the due course of delivery by the post office, and notwithstanding it may be returned by the post office, the court shall not be obliged to receive proof on oath of the time but may act on its own knowledge of the course of the mails, or on any information as it may think reliable.

XIII. Termination of Winding Up

Balance sheet of liquidator

59.49. Upon the termination of a proceeding in court for the winding up of a company, a balance sheet shall be brought in by the liquidator of his re-ceipts and payments, which shall be verified by his affidavit, and the liquidator shall pass his final account and any balance due thereon shall be certified, and upon payment of the balance in such manner as the court shall direct, any recognizance entered into by the liquidator and his sureties may be vacated.

Prothonotary's certificate of dissolution

59.50. When a liquidator has passed his final account and any balance certified to be due thereon has been disbursed as the court directs, a certificate shall be issued by the prothonotary that the affairs of the company have been completely wound up and, in case the company has not already been dissolved, the liquidator shall, immediately after the certificate has become binding, apply to the court for an order that the company be dissolved from the date of the order.

Deposit of file

59.51. When the proceedings for winding up any company have been completed, the file of the proceedings and the book containing the official liquidator's account shall be deposited with the prothonotary.

XIV. Solicitor of Liquidator

Solicitor to conduct proceedings, etc.

59.52. The solicitor of a liquidator shall conduct any proceeding as is ordinarily conducted by a solicitor; and where an attendance is required in court the liquidator need not attend in person, except where his presence is necessary in addition to that of his solicitor, or the court shall direct him to attend.

XV. Forms

Forms

59.53. Until other forms are directed, the forms in use in winding-up proceedings in England, with such variations as may be necessary to adapt them to the practice under these Rules and the *Winding-Up and Restructuring Act*, and as the circumstances of each case require, may be used. [Amend.05/02/03]

XVI. Delegation

Delegation of powers of court

59.54. When a winding-up order has been made, the court may, by the order or by any subsequent order, refer, and delegate to a referee any of the power conferred upon the court.

XVII. Costs

Fees

59.55. The fees allowed to solicitors, counsel, sheriffs and the prothonotary in a proceeding under the Act shall, so far as applicable and unless otherwise directed by the court, be those authorized under the **Costs and Fees Act**.

Taxation

59.56. Where an order is made by the court for the payment of any costs and unless otherwise directed, the same shall be taxed by the prothonotary, subject to appeal from the taxation as in an ordinary proceeding in the court.

XVIII. Power of Court

Power of court to enlarge or abridge time

59.57. The power of the court to enlarge or abridge the time to do any act, take any proceeding, adjourn or review any proceeding, or give any direction as to the conduct of the proceeding, is unaffected by these Rules.

XIX. General Directions

General practice to apply

59.58. The general practice and rules of the court shall, in cases not provided for by the Act or Rule 59, and so far as the same are applicable and not inconsistent with the Act or Rule 59, apply to any proceeding for winding up a company.

RULE 59-(59.01-59.58)

WINDING-UP ACT, CANADA

Made, framed and settled by the Judges of the Supreme Court of Nova Scotia this 2nd day of December, A.D. 1971, to come into force on March 1, 1972, with respect to proceedings commenced on or after that date, and all forms, rules and regulations heretofore made, framed and settled under the **Winding-Up Act**, shall cease to be in force except as to proceedings commenced before March 1, 1972.

A. H. MCKINNON C.J.N.S. GORDON S. COWAN C.J.T.D.

T. H. COFFIN J.A. F. W. BISSETT J.

A. GORDON COOPER J.A. J. L. DUBINSKY J. D. J. GILLIS J.

GORDON L. S. HART J.

M. C. JONES J.

RULE 60

RULES MADE UNDER THE CONTROVERTED ELECTIONS ACT (NOVA SCOTIA)

Interpretation

60.01.

(1) In Rule 60,

- (a) "Act" means the **Controverted Elections Act**;
- (b) "court" means the Supreme Court of Nova Scotia, or any judge thereof;
- (c) "petition" means an election petition;
- (d) "prothonotary" means the prothonotary of the county in which lies the electoral district to which the petition relates;
- (e) "sheriff" means the sheriff of the county in which lies the electoral district to which the petition relates;
- (f) "returning officer" means the returning officer of the electoral district to which the petition relates.

(2) A reference to a section in Rule 60 is to the applicable section of the **Controverted Elections Act**, or to the section as amended. [Amend. 20/6/94]

Petition

60.02.

(1) The petition may be in Form 60.02A and shall state,

(a) the right of the petitioner under section 5 to present a petition to the court;

[Amend.05/02/03]

(b) the holding and result of the election; and

(c) the complaint, and the facts and grounds relied upon in support of the complaint and prayer.

(2) A petition shall be divided into paragraphs with each being confined to a distinct subject and numbered consecutively.

(3) A petition shall conclude with a prayer, as for instance, that a specific person be declared duly returned or elected, or that the election be declared void, or that a return be enforced.

(4) A petition shall be signed by the petitioner, or by all the petitioners, if there are more than one.

(5) Evidence shall not be stated in the petition.

Endorsements on petition

60.03.

(1) There shall be endorsed upon a petition and any copy thereof the name of the petitioner's solicitor, or a statement that the petitioner acts for himself.

(2) The endorsement shall give an address within the jurisdiction to which a notice or document may be served upon the petitioner.

(3) In default of the endorsement, any notice or document may be served on the petitioner by posting it in the office of the prothonotary.

(4) There shall also be endorsed on the petition and all copies thereof a memorandum to the effect that in default of the respondent giving an address for service as provided in rule 60.07 within one (1) week after service of the petition, any notice or document may be served on him by posting it in the office of the prothonotary.

(5) The endorsements may be in Form 60.03A.

Presentation of petition and copy for returning officer

60.04.

A petition is presented by delivering it and a copy at the office of the prothonotary within the times prescribed by paragraphs 9(b) and 9(c), and the prothonotary shall send a copy to the returning officer as provided by paragraph 9(h). [Amend.05/02/03]

Security and cost of publication

60.05.

(1) The deposit of money as security for the payment of costs, charges and expenses that are payable by the

petitioner, shall be made with the prothonotary as provided by section 9. [Amend.05/02/03]

(2) The prothonotary shall, on receipt of the deposit on the filing of the petition, forthwith deposit the same to bear interest in a chartered bank having an office in the county where the office of the prothonotary is situate.

(3) The cost of publication of any matter required to be published by any officer shall be paid by the petitioner or person moving in the matter, and shall form part of the general costs of the petition.

Title of proceeding

60.06.

Any document in the proceeding may be entitled as in Form 60.06A.

Appointment of solicitor by respondent

60.07.

(1) A person returned as a member and any other person who may be a respondent under the Act may, at any time after the election, file with the prothonotary a memorandum signed by him or his agent appointing a solicitor to act for him in case a petition is presented against him, or stating that he intends to act for himself.

(2) The memorandum shall give an address within the jurisdiction where any notice or document requiring service may be served upon the respondent.

(3) When the memorandum is not received by the prothonotary within one (1) week after service of the petition on the respondent, any notice or document may be served on the respondent by posting in the office of the prothonotary.

Interlocutory proceedings

60.08.

Any interlocutory question or matter shall be heard and disposed of on application to a judge in chambers.

Petition when at issue

60.09.

Unless otherwise ordered by the court, after the expiration of ten (10) days after personal service of a petition on the respondent or respondents as provided by section 10, the petition shall be deemed to be at issue. [Amend.05/02/03]

Production and inspection of books, etc.

60.10.

(1) When a petition is at issue under rule 60.09, the court may order the production and inspection of all books, lists, commissions, ballots, certificates, statements, papers, documents and returns relating to the election, that are in the possession of the Provincial Secretary, returning officer, adverse party or any other person, at such place and in such manner, and upon such terms as the Court directs.

(2) The books, lists, commissions, ballots, certificates, statements, documents, papers and returns shall be returned to the custody of the Provincial Secretary, returning officer, adverse party or other person, after the trial of the petition, or when the purpose has been served for which their delivery or transmission was required.

Particulars to be delivered

60.11.

(1) Where a petitioner claims a seat for an unsuccessful candidate alleging that he had a majority of lawful votes, the party complaining of and the party defending the election or return shall each, six (6) days before the day appointed for trial, deliver to the prothonotary and also at the address, if any, given by the petitioner and respondent, a list of the votes intended to be objected to, and of the nature of the objection to each such vote.

(2) Where a petition alleges corrupt practices against a respondent or his agents, the petitioner shall, six (6) days before the day appointed for the trial, deliver to the prothonotary, and also at the address, if any, given by the petitioner, particulars in writing of the specific corrupt practices charged, which shall state,

(a) the name and address, as far as known, of any person alleged to have been guilty of each such act;

(b) the time and place where each such act was committed; and

(c) each illegal practice intended to be relied upon as affecting the result of the election.

(3) Where a respondent, who is complaining of an undue return and a seat from some person, intends to give evidence to prove the election of the person was undue under the Act, he shall, six (6) days before the day appointed for trial, deliver to the prothonotary, and also at the address, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely.

(4) The court may, at any time, order any further and other particulars by a party as may be necessary to prevent surprise or unnecessary expense and to ensure a fair and effectual trial, and upon such terms as to costs and otherwise as the court may order.

(5) The prothonotary shall, upon request, allow inspection by, and furnish copies of the particulars specified in the four (4) next preceding paragraphs to, all interested parties.

(6) Evidence shall not be given against the validity of any vote, or upon any objection to the election, or of any corrupt or illegal practice not specified in the particulars delivered, except by leave of the court granted upon such terms as to amendment of the particulars, postponement of the inquiry, payment of costs, or otherwise, as may be ordered.

Election list**60.12.**

A prothonotary shall make out the election list. In it he shall insert the names of the solicitor of any petitioner and respondent, and the addresses to which notices may be sent, if any. The list may be inspected at the office of the prothonotary at any time during office hours, and shall be put up for that purpose upon a notice board appropriated to proceedings under the Act, and headed the "**Controverted Elections Act.**"

Trial. Notices thereof. Postponement**60.13.**

(1) The time and place of trial of a petition shall be fixed by the court, and notice thereof shall be given in writing by the prothonotary,

(a) affixing the same in some conspicuous place in his office; and

(b) sending by registered mail a copy thereof to each of the following persons,

(i) the petitioner or his solicitor at the address stated in the indorsement,

(ii) the respondent or his solicitor at the address given under rule 60.07, if any,

(iii) the sheriff, and

(iv) the returning officer, not less than fourteen (14) days before the day appointed for the trial.

(2) The sheriff shall forthwith publish the notice in the county by causing copies thereof to be posted up in the most public places therein.

(3) The affixing of the notice of trial in the office of the prothonotary is deemed and taken to be notice in the prescribed manner within the meaning of the Act, and the notice is not vitiated by any miscarriage of or relating to the copy or copies thereof to be sent or posted as herein directed.

(4) A notice of trial may be in the Form 60.13A.

(5) The court may, from time to time, upon the application of a party to the petition, or by notice in such form as the court may direct to be sent to the sheriff, postpone the commencement of the trial to such day as he may name, and the notice when received shall be forthwith made public by the sheriff.

Adjournment of trial

60.14.

(1) In the event of the failure of a judge to arrive at the time appointed for the trial or to which it is postponed, the commencement thereof shall stand adjourned to the ensuing day, and so from day to day until the arrival of the judge.

(2) No formal adjournment of the trial shall be necessary, but unless otherwise ordered by the court it shall be continued from day to day until it is concluded.

(3) Should the judge, who begins the trial, be disabled by illness or otherwise, it may be recommenced and concluded by any other judge.

Returning officer to deliver poll books

60.15.

The returning officer shall, on or before the day fixed for the trial, deliver or cause to be delivered to the prothonotary, the poll books relating to the election, and the prothonotary shall, if required, give a receipt therefor, safely keep the books until the termination of the trial, and then return them to the returning officer.

Copies of proceedings for court

60.16.

(1) At the time appointed for the trial of an election petition, the petitioner shall leave with the prothonotary, for the use of the court at the trial, a copy of the petition and all proceedings thereon that show the several matters to be

tried, including all particulars delivered on either side, and the prothonotary shall forthwith transmit the same to the court.

(2) The court may allow an amendment of the copy or in default of the copy being delivered, the court may refuse to try the petition, or may allow a further time for delivery of the copy, or may adjourn the trial, in every case upon such terms as to costs or otherwise, as the court sees fit to impose.

Special case

60.17.

An application to state a special case may be made on notice to the opposite party.

Findings of court

60.18.

After the trial of an election petition, the court shall return to the prothonotary the evidence and proceedings before the court, and forthwith certify in writing its determination to the Provincial Secretary as provided by sections 40 to 42. [Amend.05/02/03]

Appointment of reporter

60.19.

The court may appoint a suitable person to take the evidence at the trial, who before entering upon his duties shall be sworn to the faithful performance of the same.

Withdrawal of petition; substituted petitioner

60.20. (1) Notice of an application for leave to withdraw a petition shall be in writing in Form 60.20A, signed by the petitioner or his solicitor, and state the grounds of the application.

(2) The petitioner shall file the notice with the prothonotary who shall forthwith cause a notice thereof in Form 60.20B to be published in at least one (1) newspaper, if any, published or circulating in the electoral district.

(3) Any person who might have been a petitioner in respect of the election to which the petition relates may, within five (5) days after the notice is published, give notice in writing signed by him or on his behalf, to the prothonotary, of his intention to apply at the hearing to be substituted for the petitioner, but the failure to give the notice shall not defeat the application.

(4) The court shall fix the time and place for hearing the application, but the time fixed shall be not less than a week after the notice of the application has been given to the prothonotary as hereinbefore provided, and notice of the time and place appointed for the hearing shall be given to the respondent and to every person who has given notice to the prothonotary of his intention to apply to be substituted as petitioner.

(5) The court may also direct such other notice to be given as it sees fit.

Abatement of petition; application to be substituted

60.21. Notice of the abatement of a petition by death of the sole petitioner or surviving petitioner shall be given by the respondent or any person who might have been a petitioner, in the same manner as notice of an application to withdraw a petition, and the time within which application may be made to the court to be substituted as a petitioner, shall be one (1) calendar month or such further time as the court may allow.

Respondent, death of, etc.

60.22.

(1) When a respondent dies, or the House of Assembly resolves that his seat is vacant, or the respondent gives the prescribed notice that he does not intend to oppose or further to oppose the petition, any person who might have been a petitioner may give notice of the fact in writing signed by him or his solicitor.

(2) The notice is given by filing it in the office of the prothonotary.

(3) Upon receipt of the notice, the prothonotary shall forthwith,

(a) affix it in a conspicuous place in his office,

(b) notify the judge assigned to try the petition that the notice has been received,

(c) send a copy thereof by registered post to the petitioner or his solicitor at the address stated in the indorsement, and

(d) send a copy thereof by registered post to the sheriff.

(4) The sheriff shall forthwith publish the notice in the county by causing copies thereof to be posted up in the most public places therein.

(5) A respondent, who does not intend to oppose or to further oppose the petition, may give notice of the fact in writing signed by him or on his behalf.

(6) The notice in paragraph (5) shall be given in the manner prescribed by paragraphs (1) and (2), and the prothonotary and sheriff shall deal with the same in the manner prescribed in paragraphs (3) and (4) with regard to the notice therein referred to.

Application to be admitted as respondent

60.23.

The time for applying to be admitted as a respondent in any of the events mentioned in section 63, shall be within ten (10) days after the notice is published as directed in rule 60.22, or such further time as the court may allow.

[Amend.05/02/03]

Non-compliance

60.24. (1) Non-compliance with any rule, shall not render any proceeding void, unless the court so directs, but the proceeding may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the court thinks just.

(2) An application to set aside a proceeding for irregularity shall not be allowed, unless made within a reasonable

time, or if the party applying has taken any fresh step after knowledge of the irregularity.

(3) Where an application is made to set aside a proceeding for irregularity, any objection intended to be relied upon shall be stated in the notice.

(4) Where an application is made to set aside any process or proceeding for irregularity, and the application is dismissed generally, without any special direction as to costs, it is to be understood as dismissed with costs.

(5) A proceeding under the Act shall not be defeated by any formal objection.

Money deposited: How dealt with

60.25. (1) Any claim to money deposited, or to be deposited, for payment of costs, charges and expenses, payable by a petitioner pursuant to the Act shall be disposed of as the court orders.

(2) Money so deposited shall, if and when it is no longer needed for securing payment of the costs, charges and expenses, be returned or otherwise disposed of, as the court orders.

(3) An order may be made after proof that all just claims have been satisfied, or otherwise sufficiently provided for, as the court may require.

(4) An order may direct payment, either to the party who deposited the same, or to any person entitled to receive it.

(5) Upon an order being made, the amount may be paid by the prothonotary.

(6) The prothonotary is, on the payment out of any money on deposit, entitled to deduct five per cent (5%) of the bank interest accrued thereon as compensation for investing and handling the money.

Rules of the Supreme Court to apply

60.26. In all cases not provided for by Rule 60, the Civil Procedure Rules and practice of the Supreme Court of Nova Scotia, apply with any necessary modification, to any proceeding under the Act.

FORM 60.02a

(Rule 60.02)

FORM OF PETITION

IN THE SUPREME COURT OF NOVA SCOTIA

The Controverted Elections Act

and

The election of a member for the House of Assembly for the Electoral District of , held on day of , 19 .

The petition of , of , in the County of

, Province of Nova Scotia, (state occupation), states,

(1) Your petitioner is a person who at the above election [had a right to vote] or [was a candidate at the election].

(2) The election was held on the day of , 19 , when _____, C.D., and E.F., were candidates, and M.N. of

Street, Nova Scotia, the returning officer of the Electoral District of , has returned _____, as being duly elected.

(3) Your petitioner complains (here set out the precise complaint).

(4) Your petitioner says that (here state the facts and grounds on which petitioner relies).

Wherefore your petitioner prays that it may be determined that [_____, was not duly elected or returned and that the election was void] [or as the case may be].

Petitioner

Note: Where there are more petitioners than one, the form shall be varied accordingly.

FORM 60.03a
(Rule 60.03)

ENDORSEMENTS TO BE MADE ON THE PETITION

AND ALL COPIES

1. Notice is hereby given that [the petitioner authorizes _____, of , to act as his solicitor] or [the petitioner will act for himself] in all matters connected with the foregoing petition.
2. The address to which any paper or document may be sent for service on the petitioner is Street, , Nova Scotia.
3. In default of the respondent giving an address for service as provided in rule 60.07 within one (1) week after service of the petition, any notice and document may be served on him by posting at the office of the prothonotary in the Court House, in , Nova Scotia.

FORM 60.06a
(Rule 60.06)

TITLE OF PROCEEDING

IN THE SUPREME COURT OF NOVA SCOTIA

The Controverted Elections Act

and

The election of a member for the House of Assembly for the Electoral District of ,

Between: _____ Petitioner,

and

C.D., Respondent.

FORM 60.13A
(Rule 60.13)

NOTICE OF TRIAL
IN THE SUPREME COURT
TRIAL DIVISION

(Title of proceeding as in Form 60.06A)

_____ Take notice that the petition herein will be tried in the Court House, at , Nova Scotia, on the day of
, 19 , and on any subsequent day as may be required.

Dated the day of , 19 .

Prothonotary

FORM 60.20a
(Rule 60.20)

NOTICE OF APPLICATION FOR LEAVE TO WITHDRAW PETITION

(Title of proceeding as in Form 60.06A)

The petitioner proposes to apply to withdraw his petition presented herein on the day of , 19 , upon the following grounds, that is to say (grounds) and requests that a day may be appointed for hearing his application.

Dated this day of , 19 .

Petitioner.

FORM 60.20b
(Rule 60.20)

NOTICE FOR PUBLICATION THAT NOTICE

OF WITHDRAWAL HAS BEEN GIVEN

(Title of proceeding as in Form 60.06A)

Notice is hereby given that the petitioner has, on the

day of , 19 , lodged at the office of the prothonotary the following notice of an application to withdraw his petition herein:-

(set out the notice);

Further take notice that any person who might have been a petitioner in respect of the election may, within five days after publication by the returning officer of this notice, give notice in writing of his intention, on the hearing, to apply for leave to be substituted as a petitioner.

Prothonotary.

RULE 60-(60.01-60.26)

CONTROVERTED ELECTIONS ACT

(NOVA SCOTIA)

Made by the Judges of the Supreme Court of Nova Scotia this 2nd day of December, A.D. 1971, to come into force March 1, 1972, with respect to proceedings commenced on and after that date, and all rules heretofore made under the **Controverted Elections Act (Nova Scotia)** shall cease to be in force, except as to proceedings commenced before March 1, 1972.

A. H. McKINNON C.J.N.S. GORDON S. COWAN C.J.T.D.T.

T. H. COFFIN J.A. F. W. BISSETT J.

A. GORDON COOPER J.A. J. L. DUBINSKY J.

D. J. GILLIS J.

GORDON L. S. HART J.

M. C. JONES J.

RULE 61 Repealed [05/02/03]



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 62

CIVIL APPEALS

NOTE: AS OF JUNE 16, 2006 RULE 62.05(3) HAS BEEN AMENDED (SEE BELOW):

Definitions

62.01.

In this Rule unless the context otherwise requires:

- (a) "appeal" means an appeal to the Court and includes a cross-appeal, an application for leave to appeal (where the application is not required by enactment to be made to a Judge), an application for a new trial or to amend, quash or set aside a judgment appealed from, and any matter reserved, case stated or reference presented to the Court under any enactment or rule;
- (b) "appellant" means any person who files a notice of appeal and includes a tribunal that reserves a matter, states a case, or presents a reference to the Court;
- (c) "Chief Justice" means the Chief Justice of Nova Scotia;
- (d) "Court" means the Nova Scotia Court of Appeal;
- (e) "court appealed from" means any court, judge, magistrate or tribunal from which an appeal lies to the Court and "judgment appealed from" means the judgment of such a court;
- (f) "judgment" means the formal disposition of an appeal by the Court and includes an order for judgment, and, when referring to a judgment appealed from, means the judgment, decision, verdict, order, finding, direction, determination or award of the court appealed from;
- (g) "Judge" means a judge of the Nova Scotia Court of Appeal;

(h) "notice of appeal" includes an order, stated case, or reference of a tribunal originating an appeal by it;

(i) "Registrar" means the Prothonotary of the Supreme Court at Halifax, or such other person as may from time to time be appointed Registrar of the Court and includes a deputy, assistant or associate prothonotary or assistant or associate registrar;

(j) "respondent" means any person properly served with a notice of appeal and any other person, who, whether served with a notice of appeal or not, is authorized by the Court or a Judge to be a party to the appeal, and in an appeal under Rule 56 or 58 includes any court, judge, magistrate, or tribunal to which the proceedings appealed from were directed;

(k) "tribunal" means any person or body, from whom an appeal lies to the Court, including any board, commission, committee, municipal authority, Minister, public official, or other public or governmental agency or authority, including the Governor in Council, but not including a court, judge or magistrate except a court or judge reserving, referring or stating a matter to the Court under subsection 33 (3) of the **Judicature Act** or any other enactment or under rule 27.06;
[Amend. 28/07/95; 04/02]

(l) "tribunal appeal" means any appeal authorized by enactment to be taken from a tribunal, including any matter reserved, case stated or reference referred by a tribunal to the Court. [Amend. 20/6/94]

Commencement of appeals

NOTE: AS OF NOVEMBER 8, 2005 RULE 62.02(4) HAS BEEN AMENDED (SEE BELOW):

62.02.

(1) An appeal, other than a tribunal appeal, shall be brought by filing a notice of appeal with the Registrar

(a) in the case of an appeal from an interlocutory order, an interim order or an order as to costs only, within ten (10) days, and
[Amend. 8/11/79; 04/02]

(b) in the case of an appeal from a judgment under the **Divorce Act**, within thirty

(30) days, and

(c) in the case of an appeal from any other judgment, within thirty (30) days, from the date of the order for judgment appealed from or, if no order has been made from the date of the decision.

(2) A notice of appeal, other than in a tribunal appeal, shall be served within the time prescribed by rule 62.02(1) and as prescribed by rule 10.12 on any party in the proceedings in the court appealed from who may be directly affected by the appeal.

(3) A notice of appeal in an appeal (other than from an interlocutory judgment) under Rules 56 or 58 or in an appeal in a declaratory action relating to or affecting a provincial statute or a tribunal shall also be served as prescribed by rule 10.12 on the magistrate or tribunal involved, if not a party in the court appealed from, and on the Attorney General of Nova Scotia, who shall thereupon be respondents entitled to participate in the appeal. Service on a tribunal may be effected by service on its secretary or chief executive officer.

(4) The appellant shall order a copy of the audio recording of the proceeding from the prothonotary or clerk of the court appealed from. Upon receipt of the prescribed fee the prothonotary or clerk shall provide the appellant with tapes or a digital recording of the entire record of the proceedings including the evidence, the oral submissions and all oral rulings and decisions. [Amend. 3/87; 1/00; 11/05]

(5) The appellant shall file with the Registrar a certificate in Form 62.02(5), relating to the preparation of the appeal book, before applying for a date for the hearing of the appeal. [Amend. 1/00]

Commencement of tribunal appeals

62.03.

(1) If an enactment authorizing a tribunal appeal prescribes how the appeal shall be brought or when, how and to whom any notice of appeal may be delivered, the prescriptions shall be observed.

(2) Subject to rule 62.03(1) a tribunal appeal shall be brought by filing a notice of appeal with the Registrar within thirty (30) days from the date of the order for judgment appealed from or, if no order has been made from the date of the decision.

(3) Unless otherwise ordered by a Judge, a notice of appeal in a tribunal appeal shall be served, within the time prescribed by rule 62.03(2) and as prescribed by rule 10.12, on the Attorney General of Nova Scotia and on the tribunal or its chief executive officer and on any other party in the proceedings before the tribunal. If there is doubt or difficulty as to who may be a party or should be served or as to the form of notice, the appellant may apply to a Judge for directions.

Commencement of *Children and Family Services Act* Appeals

62.03A.

(1) An appeal pursuant to section 49 of the **Children and Family Services Act**, shall be brought by filing a notice of appeal in Form 62.03A with the Registrar within thirty (30) days of the date of the order appealed from. [Amend. 1/00; 04/02]

(2) A notice of an appeal pursuant to section 49 of the **Children and Family Services Act** shall be served within the time prescribed by rule 62.03A (1) and as prescribed by rule 10.12, on the Minister of Community Services, the court officer of the court appealed from, and on all other parties in the proceeding in the court appealed from. [Amend. 1/00; 04/02]

(3) The notice of appeal in an appeal pursuant to section 49 of the **Children and Family Services Act**, shall include a notice of intention to apply to a Judge to set down the appeal for hearing by the Court and to give directions as to the appeal book and factums to be filed by the parties with the Court for the appeal. [Amend. 1/00; 04/02]

(4) The application shall be made to a Judge in Chambers no later than ten days following the filing of the notice of appeal, failing which the appeal shall be deemed dismissed unless a Judge otherwise orders. [Amend. 1/00]

Form of notice of appeal

62.04.

(1) A notice of appeal unless otherwise ordered by a Judge shall specify the judgment and court appealed from, the grounds of appeal and the relief or disposition sought and whether the whole or only part, and if so which part, of the judgment is being appealed from. An appellant may not without leave of the Court or a Judge rely on any ground not specified in the notice.

(2) A notice of appeal in a tribunal appeal shall also specify the errors of law or jurisdiction that the tribunal allegedly committed, or in an appeal by a tribunal shall specify the matters being reserved, stated or referred to the Court.

(3) A notice of appeal shall give the names and addresses of the appellant or his solicitor, if any, and of the persons being served with the notice.

(4) The notice may be amended within twenty (20) days of filing and thereafter only with leave of a Judge, and as amended shall be forthwith filed and served.

(5) A notice of appeal, other than from an interlocutory judgment or as to costs only, may be in Form 62.04A.

Appeal from interlocutory judgments or as to costs only

62.05.

(1) A notice of appeal from an interlocutory judgment or as to costs only may be in Form 62.05A and shall include a notice of intention to apply to a Judge to set down the appeal for hearing by the Court and to give directions as to the appeal book and factums, if any, to be filed by the parties with the Court for the appeal.

(2) On the application to the Judge the appellant shall present the judgment appealed from, and the pleadings and evidence material to the appeal, or a summary thereof.

(3) The application shall be made to a Judge in chambers on the next Thursday following the filing of the notice of appeal which permits at least three (3) clear days between the filing of the notice of appeal and the Thursday, failing which the appeal shall be deemed dismissed unless a Judge otherwise orders. [Amend. 04/02; 06/02; 06/06]

Constitutional questions, etc.

62.06. Where any constitutional question or question of public importance is raised by an appeal,

(a) any party may serve a notice on the Attorney General of Canada or the Attorney General of Nova Scotia, or

(b) the Court or a Judge may direct the Registrar to notify the Attorney General of Canada or the Attorney General of Nova Scotia, and

(c) the Attorney General of Canada or the Attorney General of Nova Scotia or the Attorney General of any other Province of Canada with or without such notice may intervene as a respondent in the appeal and may file with the Registrar a notice of intention and serve it as prescribed by rule 10.12 on the parties to the appeal.

Notice of intention to participate

62.07. (1) Any person served with a notice of appeal in a tribunal appeal may participate in the appeal as a respondent, if he files with the Registrar and delivers to the appellant a notice of intention so to participate, containing the name and address of his solicitor, if any.

(2) A person who might have filed a notice of intention to participate shall not be considered a respondent and no notice or other paper need be served on him if he has not filed and delivered a notice of intention within seven (7) days after he was served with the notice of appeal. [Amend. 17/1/77]

Notice of cross-appeal

62.08. (1) A respondent who wishes to cross-appeal, shall, within fifteen (15) days after he or his solicitor is served with notice of appeal, file a notice of cross-appeal with the Registrar and serve it as prescribed by rule 10.12 on the appellant and any other party affected by the cross-appeal.

(2) Rule 62.04 shall apply mutatis mutandis to a notice of cross-appeal.

Respondent's notice of contention

62.09.

(1) A respondent who has not cross-appealed and who intends to contend on the appeal that

(a) the judgment appealed from should be varied in any event, or

(b) the judgment appealed from should be affirmed on grounds other than those given by the court appealed from, or

(c) he is entitled to other or different relief or disposition than that given by the judgment appealed from, shall, within fifteen (15) days from service of the notice of appeal on him, file with the Registrar and serve on the appellant and any other party affected by the contention, a notice of contention specifying the grounds thereof. [Amend. 28/07/95]

(2) Failure of a respondent to file and serve a notice of contention shall not diminish the power of the Court, but it may be grounds for an adjournment of the appeal or a special order as to costs.

Stay of execution

62.10. (1) The filing of a notice of appeal shall not operate as a stay of execution of the judgment appealed from.

(2) A Judge on application of a party to an appeal may, pending disposition of the appeal, order stayed the execution of any judgment appealed from or of any judgment or proceedings of or before a magistrate or tribunal which is being reviewed on an appeal under Rules 56 or 58 or otherwise.

(3) An order under rule 62.10(2) may be granted on such terms as the Judge deems just.

(4) Interest for such time as execution may be delayed by an appeal shall be allowed on the

judgment at the rate of six per cent (6%) per annum from the filing of the notice of appeal, unless otherwise ordered by the Court or a Judge, and the interest shall be added to the judgment on execution without an order for that purpose.

(5) Nothing herein prevents the staying of execution or proceedings by the court appealed from, as authorized by rule of court or by an enactment.

(6) Where an execution has been issued and is thereafter stayed as provided in this rule 62.10 the appellant is entitled to obtain a certificate from the Registrar that the execution has been stayed pending the appeal, and, upon the certificate being lodged with the sheriff, the execution shall be superseded, but the execution debtor shall pay the sheriff's fees and the sum so paid shall be allowed to him as part of the costs of the appeal.

[Amend. 28/07/95]

(7) Where the execution of a judgment is stayed pending an appeal, all further proceedings in the action other than the issue and recording of the judgment in the office of the Registrar of Deeds and the taxation of costs thereunder, shall be stayed unless otherwise ordered by the Court or a Judge. [Amend. 17/1/77]

Applications respecting initiation of appeal

62.11.

In addition to any other powers conferred by Rule 62 or otherwise, a Judge may at any time and on such terms as he deems just, on the application of the Registrar or of any party to an appeal, order that

(a) a notice of appeal or respondent's notice be served on a person not a party to the appeal, and make any further order as might have been made if the person had originally been a party;

(b) service of a notice of appeal or respondent's notice be effected by substituted service or that service be waived;

(c) leave or permission to appeal be granted or refused where by an enactment application for leave or permission to appeal must be made to a Judge before notice of appeal can be given; [Amend. 28/07/95]

(d) a notice of appeal be quashed because of failure by the appellant to comply with Rule 62 in respect thereof, provided that seven (7) days' notice has been given to the appellant. [Amend. 8/11/79]

(e) a notice of appeal be quashed on the ground that no appeal lies to the Court, provided that seven (7) days' notice has been given to the appellant. [Amend. 06/01]

Directions to prothonotary or clerk of trial court

62.12.

Except in an interlocutory appeal or an appeal as to costs only or a tribunal appeal or where otherwise ordered by a Judge, the Registrar, on receiving a notice of appeal, shall forthwith request the prothonotary or clerk of the court appealed from to transmit to him the pleadings, documentary exhibits and other papers in the proceeding being appealed and a list of any exhibits that are not documents.

Security for costs

62.13.

(1) A Judge on application of a party to an appeal may at any time order security for the costs of appeal to be given as he deems just.

(2) If a party fails to give security for costs when ordered, a Judge on application may dismiss or allow the appeal, as the case may require.

Appeal books

62.14.

(1) Except in an interlocutory appeal or an appeal as to costs only or where otherwise ordered by a Judge, the appellant shall, within sixty (60) days from the filing of the notice of appeal,

(a) file with the Registrar five (5) copies of the appeal book for the use of the Court; and

(b) deliver to each respondent or his solicitor a copy of the appeal book.

(2) When an appellant files a notice of appeal he may give notice in writing to the Registrar and serve such notice on the other parties to the appeal, that, instead of an appeal book as prescribed by this rule 62.14, he will file and deliver a printed case in the form required by the Supreme Court of Canada Rules.

(3) Except in an interlocutory appeal, an appeal as to costs only or a tribunal appeal, or except where otherwise ordered by a Judge or agreed to by the parties, an appeal book shall consist of the following:

(a) Part I - Pleadings and Related Documents:

- (i) index of the documents therein;
- (ii) the notice of appeal, any notice of cross-appeal or respondent's notice of contention;
- (iii) the pleadings, including any particulars;
- (iv) the decision and order appealed from;
- (v) a reference sheet containing the heading and file number of the matter appealed, the name of the judge, the dates of the hearing and the date of the decision in the court below. [Amend. 28/07/95]

(b) Part II - Evidence:

- (i) index of witnesses; the index of witnesses shall state the name of the witness, the party who called the witness and shall indicate the pages in the appeal book at which examination in chief, cross examination, or re-examination begin;

[Amend. 28/07/95]

- (ii) list of all exhibits;
- (iii) transcript of the evidence at the trial; every page of the transcript of evidence shall have a headline which shall state the name of the witness and whether the page contains the transcript of examination in chief, cross-examination or re-examination. The questions shall be numbered consecutively for each witness. Questions shall be preceded by the letter "Q" and the answers by the letter "A"; [Amend. 28/07/95]

- (iv) copies of affidavits, written admissions and discovery evidence if, and to the degree, that they have been admitted in evidence at the trial and are not reproduced in the transcript of evidence;

- (v) photocopies of documentary exhibits, if not reproduced in the transcript, but not exhibits or parts of exhibits not germane to the issues on appeal or which may more conveniently be summarized or described;

- (vi) a statement of facts agreed to by the parties in lieu of any or all of (iii), (iv) and (v). [Amend. 8/11/79]

(c) An appeal book shall be printed double-spaced on letter size paper with printing on both sides of the paper and with page numbering in the upper right corner of odd numbered pages and the upper left corner of even numbered pages. An appeal book shall be bound with a plastic coil binding. Each page of transcript shall have a two inch (2") margin on the bottom of the page and a one inch (1") margin on the top and sides of the page. The size of type shall not be smaller than twelve point (12 pt). If Part II is not lengthy it may be bound in the same volume with Part I. [Amend. 28/07/95]

(d) the cover of the appeal book shall be grey and have marked thereon the number and short title of the appeal and each volume shall have marked thereon its number and the number of each Part therein, and where any Part contains more than one volume, each volume shall repeat the index and show on its cover the page numbers contained in it.

(4) In a tribunal appeal, an appeal book shall be prepared so far as possible as prescribed by rule 62.14(3), but if any question arises, or if, except where the appellant is the tribunal itself, any transcript, exhibit or other document is in the control of the tribunal, the appellant may apply for directions and assistance to a Judge, who may give directions as to the form and contents of the appeal book and may direct the tribunal to send to the Registrar any transcript, exhibit or other document for use on the appeal.

(5) The parties to an appeal or their solicitors may by agreement (which should not be part of the appeal book) agree to omit part or all of the transcript of evidence or of any other material which would normally be included in an appeal book, or agree to the inclusion of an agreed statement of facts in lieu of transcript or exhibits, with the object of avoiding undue expense or delay by reproduction of material not necessary for the appeal.

(6) If either party wishes to abridge the appeal book as provided for in rule 62.14(5), but without agreement of the opposite party having been secured, he may apply to a Judge who may give directions as to the form and contents of the appeal book.

Factums

62.15.

(1) The appellant shall within fourteen (14) days after the delivery of the appeal book, or within such time as a Judge orders, file with the Registrar five (5) copies of a factum as prescribed by rule 62.15(3) and deliver a copy to each respondent.

(2) Each respondent shall within fourteen (14) days after being served with the appellant's factum, or within such time as a Judge orders, file with the Registrar five (5) copies of a factum as prescribed by rule 62.15(3) and deliver a copy to each other party to the appeal.

(3) A factum shall consist of:

- (a) Part I - Concise Statement of Facts;
- (b) Part II - List of the Issues;
- (c) Part III - Argument (summary of the submissions on each issue);
- (d) Part IV - Order or relief sought, including any order as to costs;
- (e) Appendix A - List of citations referred to in Part III;
- (f) Appendix B - Statutes and Regulations (all relevant provisions shall be set forth in this appendix or in the appellant's factum; or offprints may be filed and served with the factum).

(4) If a cross-appeal involves matters not conveniently covered by a section of the respondent's factum, the respondent shall file and serve with his factum a second factum as a cross-appellant and the appellant (respondent on the cross-appeal) shall have seven (7) days after receiving the respondent's factum to file and serve, if he wishes so to do, a separate factum as cross-respondent.

(5) Counsel shall provide photocopies of authorities to be relied upon in argument but shall photocopy only those authorities which are reasonably necessary in the presentation of the appeal and reproduce only those parts of a case or other authority which are relevant. The authority shall be in a binder entitled "Book of Authorities". [Amend. 10/92]

(6) Each Book of Authorities must include an index of the materials reproduced therein and each case or article should be marked with a tab (either numbered or lettered). Pages of the Book of Authorities do not have to be numbered if the page numbers of each authority are clearly shown. [Amend. 10/92]

(7) The passages to be relied upon in each of the authorities should be indicated by page references and highlighted by underlining the relevant passage or by marking the passage along the margin of the text. [Amend. 10/92]

(8) The appellant(s) and the respondent(s) may file their Books of Authorities at the time of filing their factums but shall file their Books of Authorities no later than two (2) weeks and the interveners no later than one (1) week, before the hearing of the appeal. [Amend. 10/92]

(9) The appellant(s) and the respondent(s), where feasible, shall file a joint Book of Authorities. In addition, the interveners shall file a joint Book of Authorities which shall not duplicate anything included in the joint Book of Authorities filed by the appellant and the respondent. [Amend. 10/92]

(10) This rule 62.15 applies to all appeals, unless a Judge otherwise orders. [Amend. 10/92]
[Amend. 02/01]

Form of factum

62.16.

A factum shall be double spaced, on one side of the paper only with the typed pages to the left. It shall include an index after which all pages shall be numbered consecutively. All paragraphs in a factum shall be numbered consecutively throughout the factum. The covers of appellants' factums shall be coloured buff or yellow and the covers of respondents' factums (including factums as cross-appellants) shall be coloured green or blue.

Failure to prosecute appeal

62.17. (1) If an appellant fails to observe Rule 62 in preparation or prosecution of the appeal, the respondent may apply to a Judge to set down the appeal for hearing or, if seven (7) days' notice has been given, to dismiss the appeal. [Amend. 8/11/79]

(2) If an appeal is not perfected for hearing within four (4) months of the judgment appealed from, or within such lesser time as a Judge may direct, the Registrar shall give seven (7) days' notice to the parties that he will apply to a Judge for an order dismissing the appeal for non-compliance with the rules. [Amend. 8/11/79]

(3) If Rule 62 has not been complied with in the preparation or the prosecution of an appeal, a Judge on the application of a party or of the Registrar may direct perfection of the appeal, or may set the appeal down for hearing or, on seven (7) days' notice to the parties, may dismiss the appeal. [Amend. 8/11/79]

(4) In this rule 62.17 a "perfected appeal" means one wherein the appellant has complied with the rules as to

(a) the form and service of the notice of appeal,

(b) the ordering of copies of the transcript of evidence, in compliance with rule 62.02(4), [Amend. 01/87]

(c) filing and delivery of the appeal book (or printed case in the Supreme Court of Canada form) and of the appellant's factum. [Amend. 17/1/77]

Application to quash or dismiss appeal

62.18. (1) Any party to an appeal may apply in accordance with rule 62.30 to the Court at any

time before or at the hearing of the appeal for an order quashing the notice of appeal or dismissing the appeal on the ground that the appeal is frivolous, vexatious or without merit or that the appellant has unduly delayed preparation and perfection of the appeal. [Amend. 06/01]

(2) The applicant in his notice shall state the reasons supporting the application supported by an affidavit setting forth any relevant facts not set forth in the judgment appealed from.

(3) On the application, the Court may deprive an applicant of costs or impose costs on him, if he had unduly delayed an application which should have been made soon after the notice of appeal was filed.

Arrangements for hearing

62.19.

(1) A Judge may on application or on his own motion set a time for the hearing of any appeal, whether perfected or not, and if the appeal has not been perfected, may direct what appeal book or factums or other material shall be filed. [Amend. 8/11/79]

(2) The Registrar shall give each party notice of the time set for the hearing of an appeal under this or any other rule.

Review of docket

62.20.

A Judge in chambers on the Thursday preceding the opening of a term shall review the list of appeals theretofore set down for hearing and may make changes therein, and may set times for the hearing of appeals not on the list, whether perfected or not, and may issue any direction or order as to the preparation or hearing of any appeal.

Discontinuance

62.21.

An appellant may discontinue an appeal by filing with the Registrar and serving upon the respondent a notice stating that he has so discontinued it, whereupon the appeal shall be at an end and the respondent shall be entitled to costs.

Evidence

62.22.

(1) The Court on application of a party may on special grounds authorize evidence to be given to

the Court on the hearing of an appeal on any question of fact as it directs. [Amend. 10/92]

(2) The evidence shall be taken by oral examination before the Court or by affidavit or deposition, as the Court directs. [Amend. 10/92]

(3) The Court on an appeal may on special grounds inspect or view any place, property or thing.

Powers of the Court

62.23.

(1) Without restricting the generality of the jurisdiction, powers and authority conferred on the Court by the **Judicature Act** or any other enactment the Court may:

(a) amend, set aside or discharge any judgment appealed from except one made in the exercise of such discretion as belongs to a judge;

(b) draw inferences of fact and give any judgment, allow any amendment, or make any order which might have been made by the court appealed from or which the appeal may require;

(c) make such order as to the costs of the trial or appeal as it deems fit;

(d) direct a new trial by jury or otherwise, and for that purpose order that the judgment appealed from be set aside;

(e) make any order or give any judgment which the appeal may require.

(2) The powers of the Court may be exercised in respect of all or any part of the judgment or proceedings appealed from, notwithstanding that the notice of appeal states that part only of the judgment is complained of, and may be exercised in favour of all or any of the parties or other persons interested in the appeal, although they have not complained of the judgment appealed from.

(3) On or after hearing an application for leave to appeal the Court, if it decides to grant leave to appeal and if the merits of the appeal have been fully argued, may decide the appeal without further argument.

Terms and sessions of the Court

62.24.

(1) The Court shall sit at Halifax or elsewhere as business requires and the Chief Justice directs.

(2) The terms of the Court consist of the following, except as varied from time to time by the Chief Justice:

(a) from the second Tuesday of January to the third Friday of February, both days inclusive;

(b) from the second Tuesday of March to the third Friday of April, both days inclusive;

(c) from the second Tuesday of May to the third Friday of June, both days inclusive;

(d) from the second Tuesday of September to the third Friday of October, both days inclusive;

(e) from the second Tuesday of November until the second Friday of December, both days inclusive.

(3) Three (3) or more Judges, designated from time to time by the Chief Justice, shall sit on each appeal or other matter heard by the Court.

(4) The Chief Justice shall preside at a sitting of the Court and if he is absent the next senior Judge in attendance other than a supernumerary Judge shall preside. [Amend. 09/91]

Delivery of judgment

62.25.

(1) The Court may, on the conclusion of a hearing, with or without then or later giving reasons for judgment, deliver judgment disposing of an appeal in open court and the judgment of the Court shall be pronounced by the Chief Justice or other Judge presiding at the hearing.

(2) Where the Court reserves judgment on an appeal, written reasons for judgment shall later be filed with the Registrar after all the Judges sitting on the appeal have, subject to section 36 of the **Judicature Act**, written or concurred in reasons for judgment. Judgment of the Court shall be deemed to have been delivered on the date the last reasons have been so filed and in accordance with the disposition proposed by the majority reasons. When the Court is equally divided, the appeal shall be dismissed. [Amend. 28/07/95; 04/02]

(3) Where reasons for judgment are given in writing or given orally and later reduced to writing, the Registrar shall send a copy of the reasons, without charge, to the parties or their solicitors, to the court appealed from, and to such libraries and other persons as the Chief Justice authorizes in the particular case or generally. Copies may be supplied to other persons on payment of the charge therefor from time to time fixed by law.

Formal order

62.26.

(1) Upon judgment having been delivered or deemed delivered under rule 62.25, the Registrar shall forthwith, with the approval of the Judge presiding on the appeal, settle, sign and enter a formal order of judgment bearing the date on which judgment was delivered and providing for the disposition of the appeal as directed by the Court and shall send a copy of the order to each party and the court appealed from. [Amend. 8/11/79]

(2) The Judge who approved the order under subrule 62.26(1), or any other Judge on application of a party, may amend the formal order of judgment to correct any errors or omissions or otherwise to better express its intent, or may refer the order to the Court for such amendment as it deems fit. An amended order shall show the date of amendment but shall be effective from its original date unless otherwise ordered. The Registrar shall sign and enter the amended order and send a copy to each party and to the court appealed from. [Amend. 28/07/95]

(3) Where the judgment appealed from has been reversed, and the judgment ordered on appeal provided for payment of money, it shall bear interest from the date of the judgment reversed.

Costs

62.27.

Unless otherwise ordered by the Court in its discretion, no costs shall be ordered paid by or to any party to a tribunal appeal. [Amend. 17/1/77]

Disposition of files

62.28.

The Registrar shall preserve the appeal book, factums, other appeal documents and orders, and, unless the Court or a Judge otherwise orders, return to the court appealed from all files and exhibits received from it,

unless the matter is appealed to the Supreme Court of Canada, in which event the Registrar shall comply with the Rules of that Court. The Registrar shall not return the files and exhibits to the court appealed from until the time has expired for appeal or application for leave to appeal to the Supreme Court of Canada.

Entry by prothonotaries of orders

62.29.

(1) Where an order of the Court has been certified by the Registrar to the prothonotary or clerk with whom the order appealed from was entered, the latter shall thereupon cause it to be entered in the proper book and all subsequent proceedings may be taken thereon as if the order had been granted by the court appealed from.

(2) When an order of the Supreme Court of Canada has been certified by the registrar of that Court to the prothonotary or clerk with whom the order initially appealed from was entered, the prothonotary or clerk shall thereupon cause it to be entered in the proper book and all subsequent proceedings may be taken thereon as if the order had been granted by the court initially appealed from.

Applications to the Court

62.30.

(1) An application may be made to the Court under this rule 62.30 in any appeal or other matter where by this or any other rule or by the

Supreme Court of Canada Act or any other enactment application may be made by notice, motion, petition or otherwise to the Court.

(2) An intended applicant may apply ex parte to a Judge to set a time for the hearing of an application by the Court and to specify the form of notice and who should be served with it.

(3) The applicant shall give seven (7) days' notice (or such other notice as may be prescribed by the rule or enactment authorizing the application) in the form and on the persons specified by the Judge or the rule or enactment together with any supporting material and shall at the same time file with the Registrar five (5) copies of the notice and all material so served. [Amend. 28/07/95]

Application to a Judge

NOTE: AS OF NOVEMBER 8, 2005 RULE 62.31 HAS BEN AMENDED BY (g) TO PARAGRAPH 7 AND ADDING PARAGRAPHS 9 & 10 (SEE BELOW):

62.31.

(1) A Judge shall have and may exercise any and all power and authority necessary to deal with any application authorized to be made to him by this or any other rule or any enactment.

(2) An application to a Judge, whether authorized by law to be made by notice, motion, petition or otherwise, shall be made by notice, which shall concisely set out the grounds of the application and the relief sought, and be supported by affidavit if necessary, and accompanied by a memorandum of the points of argument, including a list of authorities relied upon.

(3) The applicant shall file with the Registrar and serve on any other party, at least **three (3) clear days** before the time of the hearing, unless by any rule or enactment any other length of notice is required or permitted, the notice, affidavit, memorandum and copy of any proposed order . Any party opposing the application shall file with the Registrar and serve on the applicant, at least **two (2) clear days** before the time of the hearing any affidavit or memorandum on which he will rely. [Amend. 04/02; 06/02; 07/05]

(4) Applications shall be heard by the Judge from time to time designated as chambers judge by the Chief Justice and, unless otherwise ordered by the Chief Justice either generally or for a particular application, the applications shall be heard in chambers at the Law Courts at Halifax every Thursday at ten o'clock in the forenoon. [Amend. 01/88; 04/02]

(5) An application may be made ex parte where

(a) under an enactment or rule notice is specifically not required;

(b) the opposing party has in writing waived notice or consented to the order proposed by the applicant;

(c) a Judge authorizes the application to be made ex parte;

(d) a party applies to fix a special time for the hearing of an application. [Amend. 11/79; 04/02]

(6) If an applicant believes that the application should be heard before the next chambers day or that the hearing may be lengthy, he may apply ex parte to a Judge to fix a special time for the hearing. [Amend. 04/02]

(7) A Judge may order that

(a) a notice of application be served on any person as he directs and he may adjourn a hearing to permit the service;

(b) service of notice on a person be dispensed with;

(c) an application be adjourned, continued, or dismissed if a person, who ought to have been served, has not been served;

(d) the application be referred to the Court for hearing and disposition;

(e) any time prescribed by this rule be extended or abridged before or after the expiration thereof; [Amend. 11/79]

(f) legal counsel be appointed to represent a party to an appeal pursuant to the **Children and Family Services Act**, where the Court is authorized to do so.

[Amend. 04/02]

(g) the attendance of any person being held in custody whose presence is required for the hearing of any matter before the Court or in Chambers.[Amend. 11/05]

(8) Costs of any application shall be in the Judge's discretion. [Amend. 07/02]

(9) A Judge may exercise any jurisdiction or authority of the Court to:

(a) allow the use of pseudonyms

(b) issue a publication ban

(c) issue a sealing order, or

(d) order an in camera hearing

in any proceeding until such other order of the Court.

(10) Any order made by a Judge pursuant to Rule 62.31(9) is subject to review in accordance with the provisions of Rule 62.36 (2) to (8).

Evidence on applications

62.32.

Rule 37.09 shall apply to the hearing of an application under rule 62.30 or rule 62.31.

Supplementary powers as to applications

62.33.

Rules 37.11 and 37.12 shall apply mutatis mutandis, to an application under rule 62.30 or rule 62.31.

62.34.

(1) For the purposes of section 50 of the **Judicature Act** a Judge of the court having power to hear an appeal may extend or abridge the time periods pursuant to that section either before or after the expiration of the period. [Amend. 28/07/95; 04/02]

(2) The application shall be made upon two (2) clear days notice to the parties to the proceedings and be supported by an affidavit.

(3) The judge may extend or abridge the time on such terms as he thinks just. [Amend. 01/88]

Intervention on appeal

62.35.

- (1) Any person, including any person who intervened in a proceeding pursuant to Rule 8, interested in an appeal, may, by application in accordance with Rule 62.31 apply to a Judge in Chambers for leave to intervene upon such terms and conditions as the Judge may determine.
- (2) An application for intervention shall be filed and served within 20 days after the filing of the notice of appeal.
- (3) An application for intervention shall briefly
- (a) describe the intervener and the intervener's interest in the appeal;
 - (b) identify the position to be taken by the intervener on the appeal; and
 - (c) set out the submissions to be advanced by the intervener, their relevancy to the appeal and the reasons for believing that the submissions will be useful to the Court and different from those of other parties.
- (4) An intervener has the right to file a factum.
- (5) Unless otherwise ordered by a Judge or the Court, an intervener
- (a) shall not file a factum that exceeds 25 pages;
 - (b) shall be bound by the appeal books and may not add to them; and
 - (c) shall not present oral argument. [Amend. 6/16/97]

62.36

- (1) The order of a Chambers judge is a final order of the Court.
- (2) Any order of a Chambers judge that disposes of an appeal is subject to review by a panel of the Court, upon leave being granted by the Chief Justice, or his or her designate.
- (3) The application for leave to review any such order shall be made in writing to the Chief Justice, and served on the other parties to the appeal, within 10 days after the date of the order sought to be reviewed. An affidavit of proof of service on all opposing parties shall be filed with the application.

- (4) Any party opposing the application for leave shall file with the Chief Justice, and serve on the applicant, a reply to the application within 10 days of the date of service of the application.
- (5) The Chief Justice, or his or her designate may, without conducting an oral hearing:
- (a) dismiss the application,
 - (b) set the application down for hearing, or,
 - (c) grant leave to review the order of the Chambers judge if satisfied that the Chambers judge, acted without authority under the Rules, or the order creates a patent injustice or an inconsistency with an earlier decision of a Chambers judge or the Court.
- (6) It shall not be necessary for the Chief Justice, or his or her designate, to give reasons for dismissing the application or granting leave to review pursuant to this Rule.
- (7) If leave is granted, the Chief Justice, or his or her designate, shall set a time for the hearing of the review before a panel of the Court and give directions for the filing of factums and other material.
- (8) An order granting or denying leave pursuant to this Rule is a final order of the Court and not subject to further review.

Form 62.02(5)
RULE 62.02(5)

CA/CAC No.

IN THE NOVA SCOTIA COURT OF APPEAL

BETWEEN:

Appellant

and

Respondent

CERTIFICATE RESPECTING PREPARATION OF APPEAL BOOK

(to be faxed or sent to the Registrar of the Court prior to Chambers appearance,
upon application for setting dates for the hearing of an appeal)

I, _____(counsel for the appellant or appellant in person) certify to the Court :

(i) that the court appealed from has issued a formal order (if applicable);

(ii) I have a paper copy of the written decision under appeal;

OR

(ii) should there have been no written decision filed, I undertake to send a copy of the transcribed oral decision to the judge appealed from as soon as I receive it from the court reporter;

(delete inapplicable clause (ii))

(iii) that I have ordered copies of the tapes from the appropriate court;

(iv) that I have ordered the transcription of these tapes (the evidence);

(v) that I am informed by _____(name of court reporter or transcription service) and believe that the transcription will be completed no later than _____(date); and

(vi) that I anticipate being able to file the Appeal Book in this matter no later than _____(date).

Dated at _____, Nova Scotia this _____ day of _____, 20 ____.

_____(Counsel for Appellant/Appellant in Person)

Address: _____

Phone No. _____

Fax No. _____

TO: The Registrar of the Court of Appeal
The Law Courts
1815 Upper Water St.
Halifax, Nova Scotia, B3J 1S7
FAX: (902) 424-0646

(amended February 1, 2006)



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 63

COSTS

[Amend. 12/88]

Part I. Party and Party Costs: General

Definition

63.01. In Rule 63,

(a) "solicitor" means a barrister and solicitor;

(b) "Tariffs" means the Tariffs of Costs and Fees determined pursuant to subsection 2(3) of the *Costs and Fees Act*. [Amend.05/02/03]

Costs in discretion of court

63.02.

(1) Notwithstanding the provisions of rules 63.03 to 63.15, the costs of any party, the amount thereof, the party by whom, or the fund or estate or portion of an estate out of which they are to be paid, are in the discretion of the court, and the court may,

(a) award a gross sum in lieu of, or in addition to any taxed costs;

(b) allow a percentage of the taxed costs, or allow taxed costs from or up to a specific stage of a proceeding; [E. 62/9(4)]

(c) direct whether or not any costs are to be set off.

(2) The court in exercising its discretion as to costs may take into account,

(a) any payment into court and the amount of the payment;

(b) any offer of contribution.

(3) The court may deal with costs at any stage of a proceeding. [E. 62/4(1)]

When costs follow the event or are determined by the Rules

63.03.

(1) Unless the court otherwise orders, the costs of a proceeding, or of any issue of fact or law therein, shall follow the event.

(2) Unless the court otherwise orders, the costs of and occasioned by,

(a) an amendment made under Rule 15 shall be borne, as provided in rule 15.10, by the party making the amendment;

(b) an application to extend the time fixed by any rule for serving or filing any document, or doing any other act, including the costs of any order made on the application, shall be borne by the party making the application;

(c) proving the truth of any fact or the authenticity of any document, that a party unreasonably denies or refuses to admit, shall be borne as provided in rule 21.04 by that party;

(d) a proceeding tried with a jury shall follow the event as provided in rule 34.16.

(3) Where a party discontinues a proceeding, withdraws any cause of action therein, or withdraws his defence or any part thereof, liability for the costs are determined as provided in rule 40.03.

(4) Where money is paid out of court, the costs are determined as provided in rule 41.04.

Party and party costs fixed by court

63.04.

(1) Subject to rules 63.06 and 63.10, unless the court otherwise orders, the costs between parties shall be fixed by the court in accordance with the Tariffs and, in such cases, the "amount involved" shall be determined, for the purpose of the Tariffs, by the court.

(2) In fixing costs, the court may also consider

(a) the amount claimed;

(b) the apportionment of liability;

(c) the conduct of any party which tended to shorten or unnecessarily lengthen the duration of the proceeding;

(d) the manner in which the proceeding was conducted;

(e) any step in the proceeding which was improper, vexatious, prolix or unnecessary;

(f) any step in the proceeding which was taken through over-caution, negligence or mistake;

(g) the neglect or refusal of any party to make an admission which should have been made;

(h) whether or not two or more defendants or respondents should be allowed more than one set of

costs, where they have defended the proceeding by different solicitors, or where, although they defended by the same solicitor, they separated unnecessarily in their defence;

(i) whether two or more plaintiffs, represented by the same solicitor, initiated separate actions unnecessarily; and

(j) any other matter relevant to the question of costs.

Costs on interlocutory applications

63.05.

(1) Unless the court otherwise orders, the costs of any interlocutory application, whether ex parte or otherwise, are costs in the cause and shall be included in the general costs of the proceeding.

(2) Where an ex parte order does not contain any direction as to costs, the costs of the application and order shall be dealt with as provided in paragraph (1). [Amend. 1/91]

Costs on a default judgment and in uncontested foreclosure proceedings

63.06. The prothonotary entering a default judgment shall determine for the purpose of the Tariffs, the "amount involved" and shall tax the costs in accordance with the applicable provisions of the Tariffs except that in a proceeding for foreclosure, or foreclosure and sale that is uncontested the costs shall be fixed by a taxing officer in accordance with the applicable provisions of the Tariffs. [Amend. 1/91]

Costs of a proceeding removed to the Supreme Court

63.07.

The court may deal with the costs of a proceeding transferred or removed to the court from any other court or tribunal, including the costs arising both before and after the transfer or removal, as it deems just.

Costs on appeal

63.08.

The costs of an appeal and of the proceeding in the court below shall be as directed by the judgment of the Nova Scotia Court of Appeal, or in default of direction shall be in accordance with the applicable provisions of Tariffs. [Amend. 20/6/94]

Costs when application abandoned

63.09.

(1) Unless the court otherwise orders, when a party who serves a notice of application does not set the application down for hearing he shall be deemed to have abandoned it, and the opposite party is thereupon entitled without an order to the costs of application.

(2) A party, who serves a notice of application, may countermand it by notice served on the opposite party who is thereupon entitled to the costs of application.

(3) In either of the cases referred to in paragraphs (1) or (2), the costs may be determined without an order upon the production of the notice of application served, with an affidavit that the application was not set down or the notice of countermand was served, and, if the costs are not paid within four (4) days from the date on which the costs were determined, the party entitled thereto may issue an execution therefor.

Costs on settlement or in a proceeding ending before judgment

63.10.

(1) Where a proceeding is settled on the basis that any party is to pay or recover costs and the amount of costs is not determined by the settlement, then upon the filing of a memorandum of the settlement or a consent signed by the party agreeing to pay the costs, the taxing officer shall determine the "amount involved" for the purpose of the Tariffs and the costs shall be determined by the taxing officer in accordance with the applicable provisions of the Tariffs.

(2) Where a proceeding is discontinued or disposed of before judgment other than as a result of a settlement, the "amount involved" shall be determined by a taxing officer for the purpose of the Tariffs and the costs shall be determined by the taxing officer in accordance with the applicable provisions of the Tariffs, upon the application of any party in the same manner as if an order had been made for taxation.

Disbursements

63.10A Unless the court otherwise orders, a party entitled to costs or a proportion of that party's costs is entitled on the same basis to that party's disbursements determined by a taxing officer in accordance with the applicable provisions of the Tariffs.

Costs of a person under disability

63.11. Where the court appoints a solicitor to be guardian ad litem of a person under disability, the court may direct that the costs incurred in the performance of the duties of the guardian are to be borne and paid by the parties or some one or more of the parties, or out of any fund in court in which the person under disability has an interest, and may give directions for the payment or allowance of costs as are just.

Costs of trustee, personal representative, or mortgagee

63.12.

(1) Where a person is a party in the capacity of trustee, personal representative or mortgagee, he shall, unless the court otherwise orders, be entitled to costs, insofar as they are not recovered from or paid by any other person, out of the fund held by the trustee or personal representative, or out of the mortgaged property. [E. 62/6(2)]

(2) Where a trustee, executor, administrator or mortgagee,

(a) has acted unreasonably;

(b) has acted for his own benefit rather than in his representative capacity;

(c) has participated in a proceeding unnecessarily because his interest is small, remote or sufficiently protected by any other interested party;

the court may order the costs under paragraph (1) not to be paid out of the fund or mortgaged property.

Costs of member of class represented by own solicitor

63.13.

Where any person in a class that is represented by one solicitor, insists on being represented by a different solicitor, he shall pay the costs of his own solicitor and any costs occasioned to any party by his being represented by his own solicitor.

Costs of several proceedings on one bond, etc.

63.14. (1) Unless the court otherwise orders, where several proceedings are brought on the one bond, recognizance, promissory note, bill of exchange or other instrument, against the maker and endorser of a note, or against the drawer, acceptor or endorser of a bill of exchange, there shall be collected or recovered the costs taxed in one proceeding only, and the actual disbursements only in the other proceedings, but this provision shall not extend to any interlocutory costs.

(2) Where the parties entitled to costs under paragraph (1) cannot agree on the division of the taxed costs, they shall be divided as the court may order.

Costs arising from misconduct or neglect

63.15.

(1) Where any thing is done or an omission is made, improperly or unnecessarily, by or on behalf of a party, the court may order,

- (a) any costs arising from the act or omission not be allowed to the party;
- (b) the party to pay the costs of any other party occasioned by the act or omission;
- (c) a taxing officer to inquire into the act or omission, with power to order or disallow any costs as provided in clauses (a) and (b).

(2) Where in a proceeding, costs are incurred improperly, or without reasonable cause, or arise because of undue delay, neglect or other default, the court may, when the solicitor whom it considers to be responsible, whether personally or through a servant or agent, is before the court or has notice, make an order,

- (a) disallowing the costs as between the solicitor and his client;
- (b) directing the solicitor to repay to his client costs which the client has been ordered to pay to any other party;
- (c) directing the solicitor personally to indemnify any other party against costs payable by the party; [E. 62/29]

(d) directing a taxing officer to inquire into the act or omission, with power to order or disallow any costs as provided in clauses (a) to (c).

Part II. Solicitor and Client Costs: General

Costs to be reasonable

63.16.

(1) A solicitor is entitled to such compensation from a client, who is a party, as is reasonable for the services performed, having regard to

- (a) the nature, importance and urgency of the matters involved,
- (b) the circumstances and interest of the person by whom the costs are payable,
- (c) the fund out of which they are payable,
- (d) the general conduct and costs of the proceeding,
- (e) the skill, labour and responsibility involved, and
- (f) all other circumstances, including, to the extent hereinafter authorized, the contingencies involved.

(2) The charges of a solicitor for services performed by him under paragraph (1) are, notwithstanding any agreement to the contrary, subject to taxation as provided by Rule 63.

Contingent fee agreement

63.17.

A solicitor may, with respect to an intended or existing proceeding, make an agreement with a client for the amount and manner of payment of the whole or any part of past or future services, fees, charges or disbursements rendered and incurred, or to be rendered and incurred, by him with respect to the proceeding, and the form of payment may consist of a gross sum, commission, percentage or otherwise in an amount which may be the same, greater or less than that which the solicitor normally receives as remuneration, subject however to taxation under Rule 63.

Agreement must be in writing

63.18. (1) Where under an agreement referred to in rule 63.17, a solicitor's compensation is dependent or contingent, in whole or in part, upon the successful disposition of the subject matter, then the agreement shall be in writing and signed by the client or his authorized agent.

(2) The agreement shall contain,

- (a) the name and address of each client,
- (b) the name and address of the solicitor,
- (c) a statement of the nature of the claim,
- (d) a statement of the contingency upon which the compensation is to be paid, and whether and to what extent the client is to be liable to pay compensation otherwise than from amounts collected by the solicitor,
- (e) a statement that reasonable contingent compensation is to be paid for the services, and the maximum amount or rate which the compensation is not to exceed, after deduction of all reasonable and proper disbursements, and a statement to the following effect: *"This agreement may be reviewed by a taxing officer at the client's request, and may either at the instance of the taxing officer or the client be further reviewed by the court, and either the taxing officer or the court may vary, modify or disallow the agreement."*

Agreement must be filed

63.19.

(1) Within ten (10) days after it is signed, a copy of an agreement referred to in rule 63.17 shall be filed with the prothonotary of the county where the solicitor practices, and the prothonotary shall file the agreement separately from any proceeding and, unless the court otherwise orders, the agreement is not available for inspection by, or its contents shall not be communicated to any person, other than the client, solicitor, or taxing officer engaged in the taxation.

(2) Where an agreement as mentioned in rule 63.17 does not comply with rule 63.18, or is not properly filed as provided in paragraph (1), the solicitor is, upon the successful disposition of the subject matter, entitled only to the compensation as would have been payable in the absence of any contingency arrangement and without regard to the contingency.

Review of agreement by taxing officer or court

63.20.

(1) Any agreement as mentioned in rule 63.17 may, at any time after its making until the expiry of six (6) months from the last date on which a solicitor has received, on his own account, the fee or any part of it, be reviewed by the taxing officer at the instance of the client.

(2) At any time while the agreement is before the taxing master or within ten (10) days after he has given his decision on review, the taxing master may, and on the request of the client shall, refer the agreement to the court by transmitting all the material before him to the prothonotary, who shall obtain an appointment for the review and notify the solicitor and the client of the appointed time.

(3) The court and taxing master has power on review to,

- (a) approve the agreement;
- (b) vary, modify or disallow all or any of the provisions of the agreement, and if the agreement is

so disallowed, any amount payable to the solicitor shall be determined in accordance with rule 63.19(2);

(c) exercise the powers which a taxing master has on the taxation of a solicitor and client bill of costs in a proceeding.

Void provisions in agreement

63.21.

(1) A provision in an agreement respecting solicitor and client fees which purports to

(a) relieve a solicitor from liability for negligence or other liability to which he might be subject as a solicitor; or

(b) provide that a proceeding cannot be abandoned, discontinued or settled without the consent of the solicitor, is void.

(2) Notwithstanding anything in an agreement to the contrary, a client may change his solicitor before the conclusion of the retainer.

Death of a solicitor

63.22.

(1) Where a solicitor dies or becomes incapable of acting before his retainer has been completely performed by him, an application may be made by or on behalf of either party to the taxing officer to determine the amount, if any, due in respect of the services rendered under the retainer and, subject to paragraph (2), the taxing officer in determining the amount shall have regard to the terms of any agreement between the parties.

(2) Where an agreement provides that payment is to be contingent, in whole or in part, upon the successful disposition of the subject matter, the taxing officer has the powers provided by rule 63.20 or may refuse any compensation, and no monies in respect of the agreement are payable until the disposition has been made.

(3) Where a client changes or discharges his solicitor before the conclusion of the retainer, the solicitor shall be deemed to have become incapable of acting within the meaning of paragraph (1).

(4) Where a client personally settles any matter which is the subject of an agreement as described in paragraph (2), without changing or discharging his solicitor, he shall be deemed to have discharged him within the meaning of paragraph (3).

(5) Where a client discontinues or abandons any matter which is the subject of an agreement as described in paragraph (2) without changing or discharging his solicitor, then the solicitor may apply to tax his costs against his client, and the taxing officer may, if he finds the discontinuance or abandonment to be wholly unreasonable, allow to the solicitor reasonable compensation therefor, and has the powers provided by rule 63.20.

(6) Payment of any amount found to be due under rule 63.22 may be enforced in the same manner as if the solicitor had completely performed his retainer, except that in any case falling within paragraph (2), payment may not be enforced prior to the successful disposition, and then only with the leave of the court.

Costs of a solicitor acting as a trustee, etc.**63.23.**

Unless an enactment otherwise provides, a solicitor who is a guardian, committee, mortgagee, trustee or personal representative is entitled as against the estate, fund, or mortgaged property, to make the same charges for services performed by him as a solicitor for or in connection with the estate, fund or mortgaged property as might have been payable out of the estate or fund, or be chargeable against the mortgaged property, as if the solicitor had been employed by some other person acting in that capacity.

Costs payable out of trust funds**63.24.**

Costs payable out of or chargeable against any trust estate, trust fund or mortgaged property, shall not be so paid as against any person interested therein, unless

- (a) the costs have been taxed;
- (b) any interested person is sui juris and has consented to the payment; or
- (c) the court has fixed the amount of, and directed the payment or charge.

Payment in advance or security taken**63.25.**

A solicitor may obtain payment in advance or take security for his future fees, charges or disbursements, subject to the right of taxation.

Charging property for fees**63.26.**

(1) The court may, on the application of a solicitor, declare that the solicitor is entitled to a charge for his proper fees and disbursements in a proceeding upon the property recovered or preserved through his instrumentality in the proceeding, and may make such order as is just for the payment of the fees and disbursements out of the property.

(2) Nothing shall defeat any such charge referred to in paragraph (1) unless the property has been disposed of to a bona fide purchaser for value without notice.

(3) An order shall not be made under paragraph (1) where the right of a solicitor to recover payment of his fees and disbursements is barred by any statute of limitations.

Proceeding for costs**63.27.**

(1) In any proceeding by a barrister and solicitor for fees, costs, charges or disbursements, a copy of the bill shall

be filed with the originating notice.

(2) If the matter is contested, the court in which the matter is heard shall, on application,

(a) tax the bill, and

(b) if the bill is contested as to amount only, grant summary judgment for the amount approved on taxation.

(3) If the bill is for services arising out of an action or proceeding, the barrister and solicitor shall proceed by interlocutory notice (application inter partes) in the proceeding to which the services relate, and the provisions of this Rule shall apply, mutatis mutandis. [Amend. 29/03/96]

Part III. Taxation of Costs

Application of Part III

63.27A

Unless the court otherwise orders, this Part does not apply with respect to a determination of costs pursuant to rule 63.04 or 63.06.

Appointment for taxation

63.28.

(1) A party entitled to tax any costs or to require any costs to be taxed shall secure an appointment therefor from the taxing officer and when the taxing officer requests it, he shall deposit with the taxing officer a copy of the proposed bill of costs.

(2) A notice of taxation, together with a copy of the bill to be taxed, shall be served upon every party interested in the taxation at least five (5) clear days before the time fixed for the taxation, unless the party is absconding or absent out of the jurisdiction when notice need not be given.

(3) A notice of taxation, together with a copy of the bill to be taxed, may be served personally, or by being posted by ordinary mail addressed to the opposite party at his usual address and mailed in sufficient time so that it may reach him five (5) clear days before the date of taxation by the usual course of post, and the service may be proved by affidavit.

Production of bill of costs by other parties

63.29.

(1) Where a notice of taxation and a copy of a bill of costs is served upon a party,

(a) entitled to costs;

(b) entitled to set off any other costs against the amount of the bill to be taxed;

(c) required to bring in a bill of any other costs for the purpose of ascertaining the amount of the bill to be taxed;

the party so served shall bring with him a bill for the taxation of his costs at the appointed time.

(2) Where a party required to bring in a bill of costs under paragraph (1) fails to do so, the taxing officer may tax the costs of any other party, and

(a) allow the defaulting party a nominal or other sum for costs;

(b) direct that the defaulting party forfeits his right to any costs;

(c) defer the taxation of the defaulting party's costs.

(3) Proceedings under paragraph (1) may be instituted by any party liable to pay costs or whose costs depend upon the determination of any other party's costs.

Proof of disbursements

63.30.

Disbursements, other than fees paid to officers of the court, shall not be allowed unless the liability therefor is established either by the solicitor conducting the matter, or by affidavit.

Failure to attend on taxation, etc.

63.31.

(1) Where a party

(a) has been served with a notice of taxation and a copy of the bill of costs;

(b) is absconding or absent out of the jurisdiction;

the taxing officer may proceed with the taxation in his absence, upon proof of service of the documents or of the absconding or absence.

(2) Where a party entitled to costs refuses or neglects to bring in his bill of costs for taxation or to procure the bill to be taxed and thereby prejudices any other party, the taxing officer shall certify the costs of the other parties and certify such refusal or neglect, or may allow the party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by the refusal or neglect.

Powers of taxing officer

63.32.

On a taxation of costs relating to a proceeding, a taxing officer may,

- (a) take evidence either by affidavit or viva voce upon oath;
- (b) direct the production of books, papers and documents;
- (c) require notice of the taxation to be given to any person who may be interested in the taxation or in the fund or estate out of which the costs are payable;
- (d) give directions as to the manner of service of any notice of taxation and the bill of costs;
- (e) require any party or person to be represented by a separate solicitor;
- (f) unless the court otherwise orders, enlarge or abridge, from time to time, the time appointed under any rule or order for any proceeding before him, whether the application therefor is made before or after the expiration of the appointed time;
- (g) where a party entitled to receive costs is liable to pay costs to any other party, adjust the costs by way of deduction or set-off.

Disallowance of costs by taxing officer

63.33.

(1) Upon a taxation between a solicitor and his client in a proceeding the taxing officer shall not allow the costs of any proceedings,

- (a) unnecessarily taken;
- (b) not calculated to advance the interests of the party on whose behalf the proceedings were taken;
- (c) incurred through overcaution, negligence or mistake;
- (d) that do not appear to have been necessary or proper for the attainment of justice or defending the rights of the party.

(2) Upon a taxation between a solicitor and his client in a proceeding the taxing officer may allow the costs of any unnecessary proceedings, where he is of the opinion that,

- (a) the solicitor could consider they were conducive to the interests of his client;
- (b) the proceedings were taken on the instructions of the client after being informed by his solicitor that they were unnecessary and not calculated to advance his interests.

Costs against fund or estate

63.34. The taxing officer may

(a) direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate;

(b) disallow the costs of any party whose attendance he considers unnecessary in consequence of the interest of the party in the fund or estate being small, or remote, or sufficiently protected by any other interested party.

Certificate of taxing officer

63.35.

(1) On a taxation, the taxing officer shall certify the amount of the costs taxed by him for and against each party or person.

(2) Subject to appeal and the terms contained in the certificate or in the order under which the taxation has been made, any certificate given upon any taxation is final and conclusive as to the amounts therein mentioned against any person who received notice of the taxation.

Special allowances

63.36. The following special allowances and general regulations shall apply to all taxations in a proceeding:

(1) the fees allowed for drawing any pleading or other document shall include any copy made for the use of the solicitor, agent or client, or for counsel;

(2) when there are several deponents of an affidavit to be sworn, or it is necessary for the purpose of the affidavit being sworn to go a distance, or to employ an agent, such reasonable allowance may be made therefor as the taxing officer thinks fit;

(3) the allowances for instructions and drawing an affidavit in answer to interrogatories include all attendances on the deponent to settle and read over;

(4) where the same solicitor or firm of solicitors is employed by two or more plaintiffs or defendants and separate pleadings are delivered or other proceedings had by or for any of the parties separately, the taxing officer, on the taxation of the bill of costs of the solicitor or solicitors involved, may disallow any costs occasioned by separate pleadings or other proceedings that he considers to have been unnecessarily or improperly incurred;

(5) any just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed;

(6) where, by reason of the non-attendance of any party or the neglect of any party in not being prepared with any proper evidence, account or other proceeding, a proceeding is adjourned without any useful progress being made, the court may order such an amount of costs, if any, as it thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally, and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested;

(7) in a folio every figure comprised in a column, or authorized to be used, shall be counted as one (1) word;

(8) no allowance is to be made for any notice to inspect documents, or the inspection thereof, unless the taxing officer is satisfied that there were good and sufficient reasons for giving the notice and making the inspection.

Part IV. Payment of Costs

Enforcement

63.37.

(1) An execution order may be issued for the recovery of costs.

(2) Costs awarded against a person who is not a party, may be sued for and recovered as any other debt and, subject to appeal, any bill duly taxed shall be conclusive evidence against any person who received notice of the taxation that the amount allowed on taxation is the correct amount.

Part V. Appeals from Taxation

Application of Part V

63.37A

(1) No appeal lies pursuant to this Part from a determination of costs by the court pursuant to rule 63.04.

(2) For greater certainty, nothing in paragraph (1) precludes an

appeal to the Nova Scotia Court of Appeal from a determination of costs by the court, including a determination pursuant to this Part of costs by a judge in chambers. [Amend. 20/6/94]

Time and contents of appeal

63.38.

(1) A person pecuniarily interested in the result of a taxation may, not later than ten (10) days after he has received notice of a certification on taxation, appeal the taxation as herein provided.

(2) The appellant shall commence the appeal by filing with the prothonotary a notice of appeal as prescribed by the Small Claims Court Taxation of Costs Regulations and immediately serving a copy of the notice upon all other parties to the taxation and upon the taxing officer. [Amend. 05/02/03]

(3) A notice of appeal shall specify any item objected to, the grounds of the objection, and the date of the hearing of the appeal.

(4) A notice of appeal shall be,

(a) returnable within fifteen (15) days from filing it with the prothonotary; and

(b) served on all parties directly affected by the appeal not less than three (3) days before the date set for the hearing of the appeal. [E. 62/33/35]

(5) Notwithstanding anything contained in this Part, an appeal from a taxing officer's determination of a party's entitlement to disbursements in a proceeding in which the costs between the parties were determined by a court shall be to the same judge who determined the costs between the parties, unless the court otherwise orders.

Appeal confined to items specified

63.39.

(1) Unless the court otherwise orders, an appeal from a taxation shall be confined to the items and grounds specified and shall be heard on the evidence before the taxing officer.

(2) The decision of the taxing officer shall be final and conclusive on all matters which have not been appealed from.

Powers of judge on appeal

63.40.

On an appeal from a taxation, the court may

(a) exercise all the powers of a taxing officer;

(b) review any discretion exercised by the taxing officer as fully as if the taxation were made by the court in the first instance; and

(c) grant such order on the application, including the costs of appeal and taxation, as is just.

Amendment of execution order

63.41.

(1) If an execution order has been issued for costs which are reduced or increased on appeal, the execution order shall be returned to the prothonotary for amendment in accordance with the order made upon the appeal.

(2) Where the amount as originally taxed by the taxing officer has been paid and after payment is reduced on appeal, the court hearing the appeal may order the return of the excess by the party or solicitor who has received it, and the order may be enforced as an order of the court.

TARIFFS OF COSTS AND FEES DETERMINED BY THE COSTS AND FEES COMMITTEE TO BE USED IN DETERMINING PARTY AND PARTY COSTS

In these Tariffs, the "amount involved shall be

(a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to

- (i) the amount allowed,
- (ii) the complexity of the proceeding, and
- (iii) the importance of the issues;

(b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to

- (i) the amount of damages provisionally assessed by the court, if any,
- (ii) the amount claimed, if any,
- (iii) the complexity of the proceeding, and
- (iv) the importance of the issues;

(c) where there is a substantial non-monetary issue involved and whether or not the proceeding is contested, an amount determined having regard to

- (i) the complexity of the proceeding, and
- (ii) the importance of the issues;
- (d) an amount agreed upon by the parties.

TARIFF A

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on a Decision or Order in a Proceeding

In applying this Schedule the "length of trial" is to be fixed by a Trial Judge.

The length of trial is an additional factor to be included in calculating costs under this Tariff and therefore two thousand dollars (\$2000) shall be added to the amount calculated under this tariff for each day of trial as determined by the judge.

Amount Involved	Scale 1 (-25%)	Scale 2 (Basic)	Scale 3 (+25%)
Less than \$25,000	\$3,000	\$4,000	\$5,000
\$25,000 - \$40,000	\$4,688	\$6,250	\$7,813
\$40001 - \$65000	\$5,138	\$7,250	\$9,063
\$65,001 - \$90000	\$7,313	\$9,750	\$12,188
\$90,001 - \$125,000	\$9,188	\$12,250	\$15,313
\$125,001 - \$200,000	\$12,563	\$16,750	\$20,938
\$200,001 - \$300000	\$17,063	\$22,750	\$28,438
\$300,001 - \$500,000	\$26,063	\$34,750	\$43,438

\$500,001 - \$750,000	\$37,313	\$49,750	\$63,188
\$750 001 - \$1,000,000	\$48,563	\$64,750	\$80,938
more than \$1 000,000	The Basic Scale is derived by multiplying the amount involved by 6.5%		

TARIFF B

Tariff of Party and Party costs allowed on an Appeal to the Nova Scotia Court of Appeal

On an appeal, the costs allowed shall be 40% of the costs awarded at trial excluding the “length of trial” component unless a different amount is set by the Nova Scotia Court of Appeal.

TARIFF C

Tariff of Costs payable following an Application heard in Chambers by the Superior Court of Nova Scotia

For applications heard in Chambers the following guidelines shall apply:

- (1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following an application heard in Chambers.
- (2) Unless otherwise ordered, the costs assessed following an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.
- (3) In the exercise of discretion to award costs following an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.
- (4) When an order following an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:
 - (a) the complexity of the matter,
 - (b) the importance of the matter to the parties,
 - (c) the amount of effort involved in preparing for and conducting the application.

(Such applications might include, but are not limited to, successful applications for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as

certiorari or a permanent injunction.)

Length of Hearing of Application

Less than 1 hour
 More than 1 hour but less than 1/2 day
 More than 1/2 day but less than 1 day
 1 day or more

Range of Costs

\$250 - \$500
 \$750 - \$1000
 \$1000-\$2000
 \$2000 per full day

TARIFF D

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on the Signing of Default Judgment

Amount Involved

Is less than \$15,000
 exceeds \$15,000 but not \$25,000
 exceeds \$25,000 but not \$50,000
 exceeds \$50,000 but not \$75,000
 exceeds \$75,000 but not \$100,000
 exceeds \$100,000

Costs

\$200.00
 \$300.00
 \$375.00
 \$450.00
 \$600.00
 \$600.00 plus \$1.00 for each increase of \$1,000 in amount involved

When an execution order is issued, an additional \$25.00 may be allowed for the order.

TARIFF E

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs in an Uncontested Proceeding for Foreclosure, or Foreclosure and Sale

1. For all steps in the proceeding up to and including the application for an order for foreclosure or foreclosure and sale the allowable fees shall be determined in accordance with one of the following scales:

Scale 1
 \$300

Scale 2 (Basic)
 \$900

Scale 3
 \$1500

2. For all steps in the proceeding subsequent to the application for an order for foreclosure or foreclosure and sale, the allowable fees shall be determined in accordance with one of the following scales:

Scale 1
\$650

Scale 2 (Basic)
\$850

Scale 3
\$1500

3. Notwithstanding anything contained in this Tariff E there shall be, in addition to the allowable fees otherwise provided by this Tariff E, an allowable fee for all steps taken in obtaining a deficiency judgment in a proceeding for foreclosure or foreclosure and sale and that allowable fee shall be determined in accordance with one of the following scales:

Scale 1
\$300

Scale 2 (Basic)
\$500

Scale 3
\$700

TARIFF F

Tariff of fees allowed for Solicitor's Services Allowable to a Party Entitled to Costs in a Proceeding which is Discontinued or Settled

Costs on settlement are always a matter of negotiation between the parties.

This Tariff F is to be applied if the costs cannot be settled and must be assessed by a taxing officer.

The "amount involved" for purposes of this Tariff F is the amount of a settlement without including disbursements.

When determining costs in a proceeding, which is sealed or discontinued, a taxing officer may assess the amount involved and the costs based on the following

Amount Involved

Up to \$25,000
\$25,001 - \$50,000
\$50,001 - \$100,000

Amount of Costs

Not more than \$3,000
Not more than \$4,000
Not more than \$5,000

Where the proceeding is discontinued or settled and the amount involved exceeds \$100,000, costs shall not be more than the total of \$5,000 plus 2% of the amount in excess of \$100,000.

DATED this 1st day of September, 2004.

Justice John D. Murphy
Nova Scotia Supreme Court, Chair

W. Augustus (Gus) Richardson

Justice Jamie W.S. Saunders
Nova Scotia Court of Appeal

Raymond F. Wagner

Carman G. McCormick, Q.C.

Darrel I. Pink



CIVIL PROCEDURE RULES - NOVA SCOTIA

[Court of Appeal](#) and [Supreme Court](#)

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RULE 64

MADE UNDER THE RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

Application under Act

64.01.

(1) In this Rule 64 "Act" means the *Reciprocal Enforcement of Judgments Act*.
[Amend.05/02/03]

(2) An application under the Act for an order to register a judgment may be commenced,

(a) where subsection 3(2) of the Act applies, by filing an originating notice (ex parte application); [Amend.05/02/03]

(b) where subsection 3(2) of the Act does not apply, by filing an originating notice (application inter partes); [Amend.05/02/03]

[Amend. 01/01]

(3) The title of an application under Rule 64 shall be in the following form:

"In The Matter of the **Reciprocal Enforcement of Judgments Act**, and In The Matter of a judgment of (describe court) obtained in (describe the proceedings), and dated the ____ day of _____, 19__."

(4) The affidavit in support of an application under this Rule 64 shall exhibit an exemplification or certified copy of the judgment to be registered.

Service of notice of registration

64.02. A notice of registration to be served on a judgment debtor pursuant to subsection 7(1) of the Act shall, [Amend.05/02/03]

- (a) contain full particulars of the judgment registered and of the order for registration;
- (b) state the name and address of the judgment creditor, or his solicitor or agent, upon whom and where service of any document may be effected, and
- (c) state that the judgment debtor, within one (1) month after he has had notice of the registration, may apply to the registering court to have the registration set aside upon any of the grounds mentioned in subsection 3(5) of the Act. [Amend.05/02/03]

Setting aside registration of judgment

64.03.

- (1) An application to have the registration of a judgment set aside shall be made by an interlocutory notice (application inter partes).
- (2) The Court may, whenever it deems it just, order the judgment creditor to give security for the costs of any proceedings which may be brought to set aside the registration.

Form of execution order

64.4.

Where an execution order is issued on a judgment registered under the Act, the execution order shall be varied by striking out the first paragraph of Form 53.02A, and by substituting therefor the following

"Upon being satisfied that the judgment creditor has registered a judgment in this court against the judgment debtor pursuant to the **Reciprocal Enforcement of Judgments Act**, which judgment of (describe the court in which judgment was obtained) is dated the ____ day of _____, 19__, and was so registered on the ____ day of _____, 19__."

RULE 64-(64.01-64.04)

RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT

MADE BY THE JUDGES OF THE SUPREME COURT OF NOVA SCOTIA this 31st day of December, 1973.

Ian M. MacKeigan C.J.N.S.
Gordon S. Cowan C.J.T.D.
T. H. Coffin J.A.

F. W. Bissett J.
A. Gordon Cooper J.A.
J. L. Dubinsky J.
Gordon L. S. Hart J.
M. C. Jones J.
A. M. MacIntosh J.
Vincent A. Morrison J.

RULE 65

CRIMINAL APPEALS

Definitions

65.01.

(1) In this Rule unless the context otherwise requires,

- (a) "appeal" includes an application for leave to appeal and a cross-appeal;
- (b) "appellant" means the person who is appealing from conviction or sentence, or both, an informant, and in an appeal by the Crown means Her Majesty The Queen represented by the Attorney General and includes an appellant by cross-appeal;
- (c) "Attorney General" means the Attorney General as defined in Section 2 of the Code and includes counsel instructed by him for the purpose of appeal, and Her Majesty The Queen represented in an appeal by the Attorney General;
- (d) "Chief Justice" means the Chief Justice of Nova Scotia;
- (e) "Code" means the *Criminal Code*; [Amend. 04/02]
- (f) "Court" means the Court of Appeal; [Amend. 11/12/95]
- (g) "Judge" means a Judge of the Court of Appeal; [Amend. 11/12/95]
- (h) "judge" includes a judge of the Supreme Court of Nova Scotia, a judge of the Provincial Court and a judge of the Youth Court; [Amend. 11/12/95]
- (i) "judgment" means the formal disposition of an appeal by the Court and includes an order for judgment;
- (j) repealed [Amend. 11/12/95]

(k) "notice of appeal" includes notice of application for leave to appeal and notice of cross-appeal;

(l) "prisoner appeal" means an appeal by a person who at the time the notice of appeal is given is in custody and not represented by counsel;

(m) "prothonotary" means a prothonotary of the Supreme Court and includes, in the case of the Prothonotary at Halifax, the Registrar;

(n) "Registrar" means the Prothonotary of the Supreme Court at Halifax, or such other person as may from time to time be appointed Registrar of the Court of Appeal, and includes a deputy, assistant or associate prothonotary or assistant or associate registrar; [Amend. 11/12/95]

(o) "respondent" means Her Majesty The Queen represented by the Attorney General in the case of a person who appeals against his conviction or sentence and where an appeal is by Her Majesty The Queen represented by the Attorney General, means the person whose acquittal or sentence is appealed;

(p) "time prescribed" means time limited or appointed by this Rule or by a judgment or order;

(q) "trial judge" means the judge who presided at the trial; [Amend. 11/12/95]

Code definitions to apply

65.02. The interpretation and definition sections of the Code shall apply to this Rule.

Civil Procedure Rules to apply

65.03.

(1) The Civil Procedure Rules and Related Rules and practice of the Supreme Court shall apply with any necessary modifications to this Rule in all matters not herein provided for and when not inconsistent with this Rule;

(2) Without restricting the generality of rule 65.03, Rule 62 when not inconsistent with this Rule shall apply to this Rule and all appeals and applications thereunder.

Application of Rule 65

65.04. This Rule shall apply to appeals under Part XXI and section 839 of the Code. [Amend. 11/12/95; 04/02]

Extension or abridgement of time

65.05.

(1) Any time prescribed by this Rule may be extended or abridged by a Judge before or after the expiration thereof.

(2) Two (2) clear days' notice of an application to extend or abridge time shall be given to the opposite party, unless such application is made on consent or unless otherwise directed by a Judge.

(3) A Judge on an application to extend or abridge time, shall examine the court file, including the explanation for the delay or the reasons in support of abridgement and the apparent merits of the proposed appeal as indicated by the grounds of appeal set forth in the notice of appeal and the report of the trial judge upon the matter and shall determine whether an extension or abridgement of time should be granted. [Amend. 11/12/95]

(4) An appellant not represented by solicitor may apply for extension of time by including with the notice of appeal in Form 65.07B an application for such extension, whereupon a Judge may, on notice to the Attorney General, determine the application and either grant extension of time or quash the notice of appeal. The Registrar shall notify each party of the Judge's order. [Amend. 11/12/95]

Effect of non-compliance with rules

65.06.

Non-compliance with this Rule 65 shall not render any proceeding void, but the same may be amended or may be set aside as irregular or otherwise dealt with as may be just.

Notice of appeal

65.07.

(1) The notice of appeal shall set out the grounds of appeal, and in appeals by a convicted person not represented by a solicitor shall be in Form 65.07B and in all other appeals by a convicted person or by the Attorney General or an informant shall be in Form 65.07A or to like effect. [Amend. 8/11/79]

(2) The senior official of every penal institution shall supply to any prisoner in his custody, upon request, forms of notice of appeal for the latter's use.

(3) Where the appeal is from conviction or acquittal, the notice of appeal shall be served within

thirty (30) days from the day of the conviction or acquittal.

(4) Where the appeal is from sentence, or from conviction and sentence, the notice of appeal shall be served within thirty (30) days from the day of sentence.

(5) Where the appeal is from the decision of a Summary Conviction Appeal Court, the notice of appeal shall be filed and served within thirty (30) days from the date the Summary Conviction Appeal Court pronounces the decision, with or without reasons. [Amend. 04/02]

Method of service of the notice of appeal

65.08.

(1) Service of the notice of appeal shall be effected:

(a) in a prisoner appeal, by serving three (3) copies of the notice of appeal on the senior official of the institution in which the appellant is imprisoned, and the senior official shall endorse on all copies of the notice of appeal the date on which that official received them and shall then forthwith return one (1) copy so endorsed to the appellant, forward one (1) copy to the Registrar who shall file it, and forward the remaining copy to the Attorney General of Canada or the Attorney General of Nova Scotia, as the case may be;

(b) in an appeal by Her Majesty The Queen represented by the Attorney General, by personal service of the notice of appeal on the person in respect of whose acquittal or sentence the appeal is brought, unless otherwise ordered by a Judge; and three (3) copies of the notice of appeal, together with proof of service thereof, shall be filed in the office of the Registrar not later than seven (7) days after the last day for service of the notice of appeal; and

(c) in all other cases, by filing three (3) copies of the notice of appeal with the Registrar and at the same time serving one (1) copy of the notice of appeal on the respondent.

(2) In the case of a prisoner appeal, the Registrar shall, upon receipt of a notice of appeal, forthwith forward a copy thereof to the trial judge and to the prothonotary or the chief clerk of the court appealed from.

(3) In all cases other than the case referred to in rule 65.08(2), the appellant shall, at the time the notice of appeal or proof of service is filed with the Registrar, forward a copy of the notice of appeal to the trial judge and to the prothonotary or the chief clerk of the court appealed from.

(4) A notice of cross-appeal shall be served and filed in accordance with the method of service prescribed by rule 65.08(1) within thirty (30) days after service of the notice of appeal. [Amend.

11/12/95]

Report of a trial judge**65.09.**

(1) In all sentence appeals and in any other appeal when so directed by the Court or a Judge thereof the Registrar shall, on behalf of the Court and pursuant to subsection 682(1) of the Code, request the trial judge to furnish to the Court, in care of the Registrar, a report on the case in general and in particular, on those matters which are raised by the notice of appeal. [Amend. 11/12/95; 04/02]

(2) The Registrar shall forthwith, after its receipt by him, mail copies of the report of the trial judge to the appellant and respondent, or their solicitors.

Appeals in writing**65.10.**

(1) Where an appellant desires to present his argument on appeal in writing instead of appearing in person, or by counsel, he shall state his intention to do so in the notice of appeal and may include therein his points of argument, or alternatively, file and serve in the manner and within the time prescribed by rule 65.15 a memorandum containing his points of argument.

(2) Where a respondent desires to present his argument on appeal in writing instead of appearing in person, or by counsel, he shall advise the Registrar and the appellant of his intention to do so at the time he files and serves a memorandum containing his points of argument. Such memorandum shall be filed and served in the manner and within the times prescribed by rule 65.15.

(3) At the time of filing a memorandum of argument counsel, or the parties, shall comply with rule 65.15(2).

Transcripts**65.11.**

(1) The charge for every copy of material and of a transcript furnished to a party shall, pursuant to subsection 682(4) of the Code, be as from time to time fixed by law [Amend. 11/12/95; 04/02]

(2) Except in the case of a prisoner appeal the appellant shall when he files the notice of appeal with the Registrar also file a copy of a letter by him to the reporter ordering copies of the transcript referred to in s. 682(2) of the Code. In prisoner appeals the Attorney General shall send the letter to the reporter and, upon receipt by him of the notice of appeal, file a copy of it with the Registrar. [Amend. 11/12/95]

Appeal book (appeals other than prisoner and sentence appeals)**65.12.**

(1) Except in a prisoner or sentence appeal or where otherwise ordered by a Judge the appellant shall, within sixty (60) days of service of the notice of appeal:

(a) file with the Registrar five (5) copies of the transcript of the evidence given at the trial and of an appeal book for the use of the Court. The appeal book shall be printed double-spaced on letter size paper with printing on both sides of the paper and with page numbering in the upper right corner of odd numbered pages and the upper left corner of even numbered pages. The appeal book shall be bound with a plastic coil binding. Each page of the transcript shall have a two inch (2") margin on the bottom of the page and a one inch (1") margin on the top and sides of the page. The size of type shall not be smaller than twelve point (12 pt). The appeal book shall contain, in the following order: [Amend. 11/12/95]

(i) an index,

(ii) the notice of appeal,

(iii) the information or indictment,

(iv) the reasons for judgment, if not included in the transcript of the proceedings,

(v) list of all exhibits,

(vi) photocopies of all documentary exhibits if not reproduced in the transcript; [Amend. 8/11/79]

(b) serve on the respondent or his solicitor a copy of the appeal book and of the transcript of the proceedings. [Amend. 8/11/79]

(1.1) The transcript of evidence given at the trial shall include an index of witnesses stating the name of the witness, the party who called the witness and the pages in the transcript at which examination in chief, cross-examination, or re-examination begin; [Amend. 11/12/95]

(1.2) Every page of the transcript of evidence shall have a headline stating the name of the witness and whether the page contains the transcript of examination in chief, cross-examination or re-examination. For each witness, the questions shall be numbered consecutively and questions shall be preceded by the letter "Q" and answers by the letter "A"; [Amend. 11/12/95]

(2) The parties to an appeal, or their solicitors, may, by written agreement filed with the Registrar, omit part of the transcript of the evidence or material that would otherwise be included in the appeal book or agree to the inclusion in the appeal book of an agreed statement of facts in lieu of a transcript.

(3) If either party wishes to abridge either the transcript or appeal book, or both, as provided for in rule 65.12(2) and has not obtained the agreement of the opposite party or parties, he may apply to a Judge who may give directions as to the form and contents of the transcript or appeal book, or both.

Appeal book (sentence appeals)

65.13.

(1) In sentence appeals the appellant shall, within thirty (30) days from the service of the notice of appeal:

(a) file with the Registrar five (5) copies of an appeal book for the use of the Court. The appeal book shall contain, in the following order:

(i) an index,

(ii) the notice of appeal,

(iii) the information or indictment,

(iv) an agreed statement of facts in lieu of a transcript of the trial evidence,

(v) a transcript of the evidence (if any) given on the issue of sentence,

(vi) the reasons (if any) for the sentence given by the trial judge,

(vii) any presentence reports,

(viii) the criminal record, if any, of the accused;

(ix) a reference sheet containing the heading and file number of the matter appealed, the name of the judge, the dates of the hearing and the date of the decision in the court below,

(x) the probation order (if any),

(xi) any warrant of committal; and [Amend. 11/12/95]

(b) serve on the respondent or his solicitor a copy of the appeal book.

(1.1) Any transcript of evidence given on the issue of sentence shall be prepared in accordance with rule 65.12(1.1) and (1.2). [Amend. 11/12/95]

(2) If counsel cannot agree on a statement of facts, application may be made, on two (2) clear days' notice to the opposite party, to a Judge for assistance and directions.

Appeal book (prisoner appeals)

65.14.

(1) In prisoner appeals, the Attorney General shall, where the appeal is from conviction, obtain the transcript referred to in subsection 682(2) of the Code unless a Judge otherwise orders and shall prepare the appeal book which, in the case of an appeal from conviction, shall be in the form prescribed in rule 65.12 and, in the case of a sentence appeal, in the form prescribed in rule 65.13 and shall deliver the same to the persons and within the times prescribed by such rules, save that in sentence appeals it shall not be necessary to obtain agreement from the appellant as to the statement of facts. [Amend. 11/12/95; 04/02]

(2) The senior official of every penal institution shall forthwith cause to be delivered to a prisoner any documents that may be addressed to such prisoner by the Registrar or the Attorney General.

(3) Where a prisoner appeal is commenced and the appellant subsequently retains a solicitor, the latter shall immediately notify the Registrar and the respondent of his retention; thereafter all relevant rules relating to appeals through solicitors shall apply. [Amend. 11/12/95]

Factums

65.15. (1) Subject to rule 65.10 and except where otherwise ordered by a Judge, the appellant and the respondent shall each, within the times prescribed by rules 65.15(3) and 65.15(4) serve and file with the Registrar five (5) copies of their respective factums which shall include with respect to each point reference to the transcript (if any) and the authorities relied on.

(2) An appellant's factum shall be filed and a copy thereof served upon the respondent not later than fourteen (14) days after the delivery of the transcript and appeal book pursuant to rules 65.12 and 65.13. [Amend. 8/11/79]

(3) A respondent's factum shall be filed and a copy thereof served upon the appellant not later than fourteen (14) days after service of the appellant's factum. [Amend. 8/11/79]

(4) The form of factums shall be as prescribed by rule 62.16. [Amend. 8/11/79]

(5) A person not represented by solicitor is not required to comply with this rule 65.15. [Amend. 8/11/79]

Hearing of appeals

65.16.

(1) A Judge may on application or on his own motion set a time for the hearing of any appeal, whether perfected or not, and if the appeal has not been perfected, may direct what appeal book or factums or other materials shall be filed. [Amend. 11/12/95]

(2) In this rule 65.16 a "perfected appeal" means one wherein the appellant has complied with the rules as to,

(a) the form and service of the notice of appeal;

(b) obtaining and delivery of the transcripts of the proceedings (if relevant); and

(c) delivery of the appeal book and the appellant's factum;

(d) filing a copy of the letter to the reporter ordering copies of the transcript.
[Amend. 8/12/76]

(3) A prisoner appeal shall, for the purposes of this rule 65.16 be deemed to be perfected upon compliance by the appellant with the rules as to the form and service of the notice of appeal and by the Attorney General with rules 65.14 and 65.15.

(4) Without derogation from the power of a Judge under Rule 62 or Rule 65, where an appeal has not been perfected within the times prescribed by this Rule, a Judge, on application of the respondent or of the Registrar and on seven (7) days' notice to the appellant, may quash the notice of appeal or cross-appeal, dismiss the appeal, set a time for the hearing of the appeal, or issue such other order as he sees fit respecting the appeal. [Amend. 8/11/79]

(5) A perfected cross-appeal may, with leave of a Judge, be set down for hearing even though the main appeal has not been perfected.

(6) On or after hearing an application for leave to appeal the Court, if it decides to grant leave to appeal, and if the merits of the appeal have been fully argued, may decide the appeal without further argument.

(7) The Registrar shall give each party notice of the time set for the hearing of an appeal under

this or any other rule. [Amend. 8/11/79]

Abandonment of appeals

65.17.

(1) An appellant who desires to abandon his appeal shall complete a notice of abandonment which shall be in Form 65.17A or to like effect, signed by his solicitor of record on the appeal, or by the appellant (in which case the signature shall be verified by affidavit or witnessed by a solicitor or an officer of the institution in which he is confined).

(2) A notice of abandonment shall be served in the same manner as provided for a notice of appeal under rule 65.08.

(3) An abandoned appeal shall be deemed to be dismissed and no formal order shall be required; provided however that the respondent may apply for a formal order dismissing the appeal.

(4) Notwithstanding rules 65.17(1), 65.17(2) and 65.17(3) a Judge may, at any time on application made on two (2) clear days' notice to the opposite party, grant an order permitting withdrawal of the notice of abandonment if, in his opinion, it is in the interest of the proper administration of justice to do so.

Release from custody pending appeal against sentence

65.18.

(1) Where an appellant seeks to appeal against sentence only and also seeks his release from custody pending the hearing of the appeal, a Judge shall first hear and determine the application for leave to appeal the sentence.

(2) Upon an application to a Judge for release from custody pending appeal pursuant to section 679 of the Code the applicant shall file an affidavit or affidavits, including where practicable his own affidavit, setting forth: [Amend. 11/12/95; 04/02]

(a) the particulars respecting the convictions;

(b) any grounds of appeal not specified in his notice of appeal;

(c) his age and marital status;

(d) his places of abode in the three (3) years preceding his conviction, and where he proposes to reside if released;

(e) his employment prior to conviction, and whether he expects to be employed if released, and where;

(f) his criminal record, if any;

(g) where the appeal is as to sentence only, what unnecessary hardship would be caused if he were detained in custody;

(h) where he proposes entering into a recognizance with sureties, the amount of money or value of other valuable security he proposes should be deposited, and where practicable, the names of the sureties and the amount for which each is to be liable.

(3) Where the Attorney General desires to assert that the detention of the applicant is necessary in the public interest and to rely on material other than that contained in the material filed by the applicant, the Attorney General shall file an affidavit setting out the facts upon which he relies.

(4) The appellant and the Attorney General may cross-examine upon affidavits filed by the opposite party.

(5) A Judge may dispense with the filing of the affidavits referred to in rules 65.18(2) and 65.18(3) and act upon a statement of facts agreed upon by counsel for the applicant and the Attorney General.

Exhibits

65.19.

(1) Except where otherwise provided by the Code, all documents, exhibits and other things received in connection with a trial or proceeding that is appealable under this Rule 65 shall be retained by the trial judge, the clerk of the court or of the Crown, or the prothonotary as the case may be, for a period of ten (10) days after the expiration of the time limited for giving notice of appeal and of any extension thereof. If an appeal is not sooner commenced and unless a Judge or the trial judge otherwise orders, all such documents, exhibits or other things shall be returned to and received by the party who produced them at the trial or proceeding or who had custody and control of them at the trial or proceeding or to his counsel.

(2) Where a party refuses to take delivery of any documents, exhibits or other things as herein provided, the custodian thereof may, on ten (10) days' notice to such party, apply to a Judge for an order for disposal of such exhibits, documents or other things by destruction thereof or otherwise.

(3) Upon receipt or filing of a notice of appeal the Attorney General shall forthwith,

(a) cause to be sent to the Registrar a list of all exhibits that were before the trial

court;

(b) advise the person who has custody of such exhibits of the appeal. Thereafter the exhibits shall be retained in the custody of such person until the appeal is finally disposed of. Upon such final disposition of the appeal and subject to any order that may be made by a Judge the custodian of such exhibits shall dispose of them in the manner provided in rule 65.19(1).

(4) Notwithstanding the provisions of rule 65.19 a Judge, or the Registrar, may at any time prior to the final disposition of the appeal request the custodian of the exhibits to forward all or any of them to the Court and the custodian shall immediately comply with such request.

(5) Nothing in rule 65.19 shall affect the provisions of the *Controlled Drugs and Substances Act*, and *Food and Drugs Act* or of any other federal or provincial enactment insofar as they relate to exhibits or things seized and to forfeiture thereof. [Amend. 04/02]

[This Form 65.07A may be varied to meet the case where the Attorney General is the appellant, or where circumstances require changes in it.]

FORM 65.07a
(Rule 65.07)

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL

(Where Notice is Filed by a Solicitor on Behalf of the Accused)

IN THE Nova Scotia Court of Appeal

(Name of Appellant)

Appellant

-versus-

HER MAJESTY THE QUEEN

Respondent

PARTICULARS OF CONVICTION

1. Place of conviction

2. Name of Judge
3. Name of Court
4. Name of Crown Prosecutor at trial
5. Name of Defence Counsel at trial
6. Offence of which appellant convicted
7. Sections of the Criminal Code or other statutes under which appellant convicted
8. Plea at trial
9. Sentence imposed
10. Date of conviction
11. Date of sentence
12. If appellant in custody, place of incarceration

Take notice that the appellant: (insert whichever of the following is applicable)

(1) appeals against his conviction upon grounds involving a question of law alone;

(2) applies for leave to appeal his conviction upon grounds involving a question of fact alone or a question of mixed law and fact, and if leave be granted hereby appeals against the said conviction;

(3) applies for leave to appeal against sentence, and if leave be granted hereby appeals against the sentence.

The grounds of appeal are annexed hereto as Appendix "A".

The relief sought is

The appellant's address for service is

Dated at, Nova Scotia, this day of,
19 .

Solicitor on behalf of appellant

TO: The Registrar

And to the Respondent

And to the Trial Judge

And to the Prothonotary or Chief Clerk of the Court appealed from
[Amend. 11/12/95]

FORM 65.07b
(Rule 65.07)

NOTICE OF APPEAL OR APPLICATION FOR LEAVE TO APPEAL

(Where Accused not Represented by a Solicitor)

IN THE NOVA SCOTIA COURT OF APPEAL

(Name of Appellant)

Appellant

-versus-

HER MAJESTY THE QUEEN

as represented by the Attorney General

Respondent

Name of appellant _____

Place of trial _____

Name of Court (1) _____

Name of judge _____

Offence(s) of which convicted (2) _____

Plea at trial _____

Sentence imposed _____

Date of conviction _____

Date of imposition of sentence _____

Name and address of place where appellant is in custody, or if not in custody, the appellant's address: _____

Name of your Defence Counsel (if any) at the trial _____
[Amend. 8/11/79]

I, the above named appellant, hereby give you notice that I desire to appeal and if it is necessary for me to do so, apply for leave to appeal against my (3) on the grounds hereinafter set forth.

I desire to present my case and argument (strike out (a) or (b),

(a) in writing (4)

(b) in person

If a new trial is ordered and you have a right to trial by judge and jury do you wish trial by judge and jury?

GROUND OF APPEAL

These must be filled in before the notice is sent to the Registrar. The appellant must here set out the grounds or reasons he alleges why his conviction should be quashed or his sentence reduced.

Dated this day of, 19 .

(Signed) (5)

(Appellant)

**To the Registrar
And to the Respondent**

(1) Supreme Court of Nova Scotia, Provincial Court, or the Youth Court [Amend. 11/12/95]

(2) e.g., Theft, forgery, sexual assault. [Amend. 11/12/95]

(3) If the appellant wishes to appeal against conviction, he must write the word "conviction". If he wishes to appeal against sentence, he must write the word "sentence". If he wishes to appeal against both conviction and sentence he must write the words "conviction and sentence". If an appellant convicted of more than one offence wishes to appeal against some only of his convictions and sentences, he must state clearly the convictions or sentences against which he wishes to appeal.

(4) If the appellant desires to submit his case and argument in writing he may serve his written argument with this notice of appeal, or within fourteen (14) days of receiving the transcript and the appeal book from the Attorney General, or within such time as ordered by a Judge. [Amend. 11/12/95]

(5) This notice must be signed by the appellant. If he cannot write he must affix his mark in the presence of a witness. The name and address of such attesting witness must be given.

NOTES

I.

(a) If your appeal is against conviction alone this notice must be served within thirty (30) days of the date of the conviction.

(b) If your appeal is against sentence alone or conviction and sentence this notice must be served within thirty (30) days of the date of imposition of the sentence.

(c) If this notice is served beyond thirty (30) days then you must apply for an extension of time by completing the application below. If you do not apply to the Court for such extension of time or if your application for extension is refused, your appeal will be dismissed without further hearing. [Amend. 8/11/79]

II. If you are in custody two (2) signed copies of this notice of appeal must be delivered to the senior official of the institution in which you are confined. If you are not in custody three (3) copies of the notice of appeal must be delivered to the Registrar.

I hereby apply for an extension of the time within which I may launch the within appeal upon the following grounds. (here state reasons for delay)

.....
Signed Date

FORM 65.17a
(Rule 65.17)

NOTICE OF ABANDONMENT OF APPEAL

[Court and Style of Cause as in Form 65.07A or 65.07B]

I hereby give notice that I abandon the appeal herein.

Dated at, Nova Scotia, this day of,
19 .

This notice was signed in the presence of:

.....

Appellant (or his solicitor as the case may be)

.....

Witness

To the respondent

To the Registrar

NOTE: If the notice of abandonment of appeal is signed by the appellant personally rule 65.17(1) required that his signature **must** be verified by affidavit or witnessed by a solicitor or an officer of the institution in which he may be confined.

Rule 65 (65.01-65.20)

The Judges of the Appeal Division of the Supreme Court of Nova Scotia pursuant to Section 438 of the Criminal Code at a meeting held for that purpose at Halifax, Nova Scotia, on April 17, 1975, made the foregoing Rules of Court as Rule 65 entitled "Criminal Appeals".

Rule 65 comes into force on June 30, 1975, on which date the Nova Scotia Criminal Appeal

Rules, 1966, shall cease to be in force and shall be deemed to be repealed without prejudice to any proceeding under such rules which may have been taken prior to June 30, 1975.

Ian M. MacKeigan, C.J.N.S.

T.H. Coffin, J.A.

A. Gordon Cooper, J.A.

Angus L. Macdonald, J.A.

RULE 66

SUMMARY APPEALS ON TRANSCRIPT OR AGREED STATEMENT OF FACTS

Definitions

66.01. The definition sections of Rule 65 and of the *Criminal Code* shall apply to this Rule. [Amend. 04/02]

Application of Rule 66

66.02. This Rule shall apply to all summary appeals on transcript or agreed statement of facts under section 830 of the *Criminal Code*. [Amend. 04/02]

66.03. All such appeals shall be to the Court.

Notice of appeal

66.04. An appeal under section 830 of the *Criminal Code* shall be commenced by a notice of appeal in writing served on the respondent within thirty (30) days after the date of the final order or determination that is the subject of the appeal. The notice of appeal shall set out the grounds, referred to in subsection 762(1) of the Code, on which the appeal is based and shall be in the form set out in Form 66.04A. [Amend. 04/02]

Method of service of the notice

66.05.

(1) Subject to rule 66.05(2), service of the notice of appeal shall be effected by filing two (2) copies of the notice with the Registrar. The Registrar shall, on receipt of the notice of appeal, forward a copy to the Attorney General.

(2) Where the appellant is the Attorney General or the informant, the notice of appeal shall be served personally on the respondent unless otherwise ordered by a Judge and a copy of the notice of appeal, together with proof of service of the notice, shall be filed with the Registrar not later than seven (7) days after the last day for service of the notice of appeal.

Request for transcript

66.06. Where an appeal is based on a transcript of the proceedings appealed from, the appellant shall request, in writing from the reporter, a copy of the transcript and forthwith file a copy of the request with the Registrar.

Agreed statement of facts

66.07. An agreed statement of facts shall be in the form set out in Form 66.07A.

Appeal book

66.08.

(1) Within ten (10) days after an appellant files an agreed statement of facts or receives a transcript of the proceedings appealed from, the appellant shall

(a) file with the Registrar five (5) copies of an appeal book for the use of the Court containing the following items, in the order in which the items are listed,

(i) an index,

(ii) the information,

(iii) the notice of appeal,

(iv) the agreed statement of facts or the transcript of the proceedings appealed from, and

(v) the decision of the trial judge; and

(b) serve a copy of the appeal book on the respondent.

(2) Factums shall be

(a) in the form set out in rule 62.16; and

(b) served and filed by the appellant and respondent as set out in rule 65.15 or as directed by a Judge under rule 65.16(1).

(3) On the filing of the appeal book and appellant's factum pursuant to this Rule, the appeal shall be considered perfected for purposes of rule 65.16 and a time may be set for the hearing in

accordance with that Rule.

Application of Rules 62 and 65

66.09. Rules 62 and 65 shall apply in respect of all matters not provided for in this Rule. [Amend. 06/87]

FORM 66.04a
(Rule 66.04)

NOTICE OF APPEAL

IN THE NOVA SCOTIA COURT OF APPEAL

(Name of Appellant)

Appellant

versus

(Name of Respondent)

Respondent

TO: [Name and address of respondent]

I, the undersigned, being the appellant referred to herein, hereby appeal against the (specify the final order or determination that is the subject of the appeal) dated the day of, 19, in the Provincial Court at, in the County of, on the ground(s) that (specify applicable grounds of appeal).

And further take notice that the appeal will be based on a transcript of the proceedings appealed against unless you sign and return the agreed statement of facts attached hereto within fifteen (15) days of the filing of this notice of appeal.

Dated at this day of, 19

[Name of appellant]

by his solicitor

[Name and address]

FORM 66.07a
(Rule 66.07)

AGREED STATEMENT OF FACTS
IN THE NOVA SCOTIA COURT OF APPEAL

(Name of Appellant)

Appellant

(versus (

(Name of Respondent)

Respondent

The appellant and the respondent hereby agree that the facts relating to this appeal are as follows:

Dated at this day of, 19

[Solicitor for] Appellant

[Solicitor for] Respondent

The Judges of the Supreme Court of Nova Scotia pursuant to Section 438 of the Criminal Code at a meeting held for the purpose at Halifax, Nova Scotia, on January 26, 1987, made the foregoing Rules of Court as Rule 66 entitled "Summary Appeals on Transcript or Agreed Statement of Facts".

Lorne O. Clarke, C.J.N.S.
Gordon L. S. Hart, J.A.
Malachi C. Jones, J.A.
Ian M. MacKeigan, J.A.
Vincent A. Morrison, J.A.
Angus L. Macdonald, J.A.
Leonard L. Pace, J.A.
Kenneth M. Matthews, J.A.
Constance R. Glube, C.J.T.D.
A. M. MacIntosh, J.
Doane Hallett, J.

William Grant, J.
K. Peter Richard, J.
C. Denne Burchell, J.
R. MacLeod Rogers, J.
D. Merlin Nunn, J.
H. S. Nathanson, J.
R. MacDonald, J.
F. B. William Kelly, J.
Gordon A. Tidman, J.



CIVIL PROCEDURE RULES - NOVA SCOTIA

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RULE 67

MATRIMONIAL PROPERTY ACT PROCEEDINGS

67.01.

(1) In this rule, unless the context otherwise requires,

(a) "Act" means the **Matrimonial Property Act**;

(b) "applicant" means a person making an application under the Act and includes a plaintiff, a plaintiff by counterclaim, a petitioner and a counter-petitioner for divorce;

(c) "originating document" means an originating notice (action), counterclaim, petition for divorce, counter-petition for divorce or originating notice that initiates an application under the Act;

(d) "respondent" includes a defendant; and

(e) "responding document" means a defence, defence to counterclaim, answer to a petition for divorce, answer to a counter-petition for divorce or appearance to an originating notice.

(2) An application under the Act may be made by,

(a) originating notice (action);

(b) counterclaim;

(c) petition for divorce;

(d) counter-petition for divorce, or

(e) originating notice, application inter partes.

67.02. An applicant under section 12 of the Act may include in his originating document a notice in Form 67.02 or may serve a notice in that form on the respondent at any time thereafter.

67.03.

(1) Every applicant under section 12 of the Act shall deliver a statement of property in Form 67.03 with his originating document.

(2) A party served with a statement of property shall deliver his statement of property with his responding document or, if he does not intend to defend the application.

(a) where the application is made by originating notice (application inter partes) on or before the return date of the application or within twenty (20) days after the date of service, whichever is the shorter period; or

(b) in any other case within the time limited for the delivery of his responding document.

(3) Where a respondent has been served with a notice under rule 67.02 and does not comply with this rule, the court, on the ex parte application of the applicant, may order the respondent to show cause why he should not be held in contempt.

67.04. A party may be cross-examined upon his statement of property and the cross-examination may be used in evidence.

(a) on any application for interim relief; and

(b) at trial, in the same manner as an examination for discovery.

67.05.

Unless the court otherwise orders, an application under the Act shall be commenced, dealt with and heard in the judicial district in which the applicant resides or, where the applicant resides outside the province, in the judicial district in which the respondent resides. [Amend. 29/01/99]

67.06.

(1) A party may serve on another party an offer to settle any claim made in an application under the Act or joined with a claim for divorce in a petition.

(2) An offer may be accepted at any time before the court makes an order disposing of an issue in respect of which the offer is made by serving notice of acceptance on the party who made the

offer.

(3) An offer may be withdrawn at any time before the offer is accepted by serving a notice of withdrawal on the party to whom the offer was made.

(4) Where an offer is accepted, the court may incorporate any of its terms into an order and, in exercising its discretion as to costs, may take into account the terms of the offer and the date on which the offer was served.

(5) Where an offer is not accepted, no communication respecting the offer shall be made to the court until the question of costs comes to be decided, and the court, in exercising its discretion as to costs, may take into account the terms of the offer and the date on which the offer was served.

(6) Where an offer is withdrawn no communication respecting the offer shall be made to the court at any time.

FORM 67.02(Rule 67.02)

(Heading, if delivered separately)

NOTICE TO FILE STATEMENT OF PROPERTY

You are required, under Section 14 of the **Matrimonial Property Act** and Civil Procedure r. 67.03, to file with the court and serve on the appellant (*or as the case may be*) a statement of property in Form 67.03, whether or not you intend to defend this proceeding.

You must file and serve your statement of property within (*set out relevant time period*).

If you do not file and serve your statement of property as required, the applicant (*or as the case may be*) will apply to the court, without further notice to you, to deal with your failure as a contempt of court.

DATED this ____ day of _____, 20__.

Solicitor for the

TO: _____

FORM 67.03

(Rule 67.03)

(Heading)

STATEMENT OF PROPERTY

I, _____, of *(place of residence and description)*, make oath and say that particulars of all my property are accurately set out below, to the best of my knowledge, information and belief.

Land

(Include any interest in land, including leasehold interests and mortgages. Show current market value free of encumbrances, and show encumbrances under Debts below).

Nature of Interest _____	Nature and address of Property _____	Current Market value _____
--------------------------	--------------------------------------	----------------------------

Household items and vehicles

(Show items by category. Include furniture and household effects, clothing, jewellery, appliances, automobiles, boats and any other vehicles and any other household items. Give make, model and licence number for automobiles, boats and other vehicles. List major items in each category. Show current market value free of encumbrances, and show encumbrances under Debts below).

Category	Major items	Current market value

Savings and pensions

(Show items by category. Include cash, accounts in financial institutions, registered retirement or home ownership savings plans, deposit receipts, pensions and any other savings).

Category	Institution	Account Number	Present amount
_____	_____	_____	\$ _____

Securities

(Show items by category. Include shares, bonds, warrants, options, debentures, notes and any other securities).

Category	Number	Description	Estimated value \$_____
_____	_____	_____	_____

Life and disability insurance

Company	Policy Number	Owner	Beneficiary	Face Amount	Cash surrender value
_____	_____	_____	_____	_____	\$_____

Accounts receivable

(Give particulars of all debts owing to you, whether arising from business or from personal dealings).

Particulars: _____

Amount: \$_____

Business interests

(Show any interest in an unincorporated business. A controlling interest in an incorporated business may be shown here or under securities above).

Name of firm or company	Interest	Estimated value \$_____
_____	_____	_____

Other

(Show other property by categories. Include property of any kind not shown above).

Category _____ Estimated Value \$_____

Debts

(Show debts by category such as mortgages, charges, liens, notes and credit cards. Include contingent liabilities such as guarantees. Show the identity of property affected by any charges).

Category	Particulars	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

Income tax consequences

(Where applicable, attach a statement as to the income tax consequences of an ordered disposition or realization of particular assets).

Sworn before me at the ____ of _____ in the _____
of this ____ day of _____, 20__.

A Commissioner, etc.

RULE 68

HALIFAX CASE MANAGEMENT

[see [Practice Memorandum No. 27](#)]

Application of this Rule

68.01 (1) This rule applies to proceedings commenced by originating notice (action) filed in the office of the prothonotary at Halifax on or after the first day of April, 2000 and to proceedings permanently transferred there under rule 39.01 if the proceeding was commenced on or after the first day of April, 2000 by originating notice (action).

(2) Where the court makes an order under rule 37.10 (e) continuing an application as if it had been commenced by originating notice (action), the court may order that this rule applies to the proceeding.

(3) This rule does not apply to proceedings commenced in the Family Division or to proceedings under a statute where the statute prescribes the procedures to be followed.

Ordinary Process

68.02 Subject to rule 68.03 and to any order the court may make, parties shall file and serve lists of documents in the time provided by rule 20.01 (1), complete discovery of witnesses, other than experts, within six months after the close of pleadings, and complete discovery of any expert witnesses within fourteen months after the close of pleadings.

Fast Process

68.03 (1) If a plaintiff is satisfied that a notice of trial can be filed within eight months, the plaintiff may file and serve an originating notice (action) with the words "FAST PROCESS" in the upper right corner, and, in that event, the parties shall, notwithstanding rule 20.01 (1), file and serve lists of documents within twenty days after the close of pleadings, and they shall complete discovery of witnesses within four months after the close of pleadings.

(2) Upon being satisfied that a notice of trial can be filed within eight months, the court may order the parties, or any of them, to file and serve lists of documents and to complete discovery of witnesses within the times referred to in rule 68.03(1) or such other times as may be appropriate.

Appearance Days

68.04 (1) A party may make a motion to a judge under this rule at times designated by the court to be appearance days, and the court may, on its own motion, direct the parties to appear on such a day and respond to such matters as the court may, by notice, advise.

(2) A party may bring a motion under this rule by filing at the office of the prothonotary and serving upon the other parties a notice in Form 68.04A at least ten days before the motion is to be heard.

(3) Unless the court otherwise orders, a motion under this rule may be decided upon representations made by the parties without sworn evidence by way of affidavit or other means.

(4) On an appearance day the court may,

(a) vary any time limit referred to in this rule;

(b) order payment of costs, set a proceeding down for trial or grant such other remedy as may be just where a party has failed to comply with time limits established by this rule or an order;

(c) set aside a selection of the fast process made by a plaintiff under rule 68.03(1);

- (d) make an order under rule 68.03(2) bringing a proceeding within the fast process or setting any other time limits for production of documents, discovery of witnesses, or filing of a notice of trial;
- (e) order that the proceeding be subject to management by a judge where the proceeding is sufficiently complex to warrant such management;
- (f) hear and determine any objection made under rule 28.05(4) respecting a notice of trial;
- (g) strike a notice of trial; or
- (h) give any direction the court sees fit.

[see [Practice Memorandum No. 27](#)]

FORM 68.04A

20__

S.H. No.

IN THE SUPREME COURT OF NOVA SCOTIA

BETWEEN:

AB

PLAINTIFF

-and-

CD

DEFENDANT

APPEARANCE NOTICE

WHEREAS (brief description of the problem to be brought before the

judge)

TAKE NOTICE that an appearance is to be made before the judge presiding at appearance day on Friday, the day of , 20__ at the hour of 12:00 o'clock in the afternoon for such determination of this matter as the Court may direct and that all counsel are required to appear;

PROVIDED THAT where counsel for a party resides outside the metropolitan area of Halifax Regional Municipality, such counsel may instead appear on this matter by teleconference on the date aforesaid, which teleconference shall be scheduled and initiated by the Court upon request of counsel;

AND TAKE NOTICE that the following relief will be sought from the judge presiding at the Appearance Day, (describe relief requested)

DATED at Halifax, Nova Scotia, this day of , 20__.

(Plaintiff) (Defendant)
& Fax number)

Solicitor for the
(Address, Telephone

TO: Opposing counsel
Prothonotary

[Amend. 03/01]



CIVIL PROCEDURE RULES - NOVA SCOTIA

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RULE 69

PROCEEDINGS UNDER THE CHILDREN AND FAMILY SERVICES ACT

Interpretation

69.01. In this Rule,

- (a) "Act" means the *Children and Family Services Act*; [Amend.05/02/03]
- (b) "court" means a judge of the Supreme Court (Family Division), whether sitting in court or chambers, and, where a court officer has power to act, the court officer;
- (c) "protection application" means an application to determine whether a child is a child in need of protective services pursuant to section 32 of the Act;
- (d) "section" means the applicable section of the Act;
- (e) "working day" means a weekday from Monday to Friday, but does not include a holiday or any other day when the applicable justice centre is closed for business and, in computing "within five working days", the time does not include the day when the child is taken into care or the day when the protection application is filed.

Forms and applications

69.02.

- (1) Where no form is otherwise prescribed by this Rule for an application or an order, an application may be in Form 69.02A and an order may be in Form 69.02B.
- (2) An application for an order without notice under sections 26, 29 or 34 shall be in Form 69.02C, 69.02D, 69.02E or 69.02F as is applicable, specifying the order sought.
- (3) Where a child is taken into care, an agent shall forthwith serve a notice of taking into care in Form 69.02G personally upon the parent or guardian, if known and available to be served.

Commencement of proceedings

69.03.

- (1) For the purposes of subsection 39(1), a protection application is made or commenced when the protection application is filed with the court, which may be before or after the protection application is served. [Amend.05/02/03]
- (2) A protection proceeding shall be commenced by the agency filing a protection application in Form 69.03A, supported by an affidavit setting out in the body of the affidavit
 - (a) the reasonable and probable grounds relied upon by the agency for the specific allegations that the child is in need of protective services, and
 - (b) the contents of the interim order requested.
- (3) Where a child has been taken into care prior to a protection application being filed, the agency shall thereafter, as soon as practicable, file a protection application as required by sub-rule (2).

(4) As soon as practicable after the filing of the protection application, the agency shall file with the court a certified extract from the Registration of Birth for each child who is the subject of the protection application.

(5) The court may appoint a person to act as litigation guardian for a person under disability if the person proposed as litigation guardian has filed a consent to act in that capacity and a certificate that he or she has no interest in the proceeding adverse to any interests of the person under disability.

[Amend. 07/03]

Place of hearing

69.04.

(1) A protection application shall be filed in the judicial district most convenient to the child's place of ordinary residence or, if the child has no ordinary residence in the province, in the judicial district where the application is filed by the agency.

(2) A protection application shall be heard at the location of the court in the judicial district most convenient to the child's place of ordinary residence.

(3) Upon application by a party or upon the court's own motion, a proceeding under this rule may be transferred to another judicial district or to another location where the court or the Family Court for the Province of Nova Scotia sits.

Consolidation of proceedings

69.05.

Any proceeding in the court involving the custody of or access to a child, including another proceeding under the Act, may be consolidated with a protection proceeding, in accordance with Rule 39.02.

Protective intervention orders

69.06. (1) An application for a protective intervention order pursuant to section 30 shall be commenced by filing an originating notice (application inter partes).

(2) The originating notice and supporting affidavit shall be served upon the respondent two clear days before the hearing, unless waived by the party or shortened or dispensed with by the court, before or at the hearing of the application.

(3) Any application to vary, terminate, extend or set aside a protective intervention order shall be served upon the other parties two clear days before the hearing, or such shorter period as the court directs.

Interim hearings

69.07.

(1) Service of the protection application and supporting affidavit shall be effected by personal service, not less than two days prior to the interim hearing, unless waived by the party or shortened or dispensed with by the court, before or at the interim hearing.

(2) Where the agency is unable to serve a party in accordance with sub-rule (1), despite reasonable efforts to do so within the time available, the court shall proceed with the hearing required by subsections 39(1) and 39(2) and may make such further directions respecting service, including substituted service in accordance with Rule 10, as are just and necessary in the circumstances. [Amend.05/02/03]

(3) For the purposes of the hearing required by subsections 39(1) and 39(2), a letter or report of an expert may be admitted without compliance with the provisions of rule 69.08(4). [Amend.05/02/03]

(4) At the commencement of an interim hearing, the court shall first satisfy itself that the agency has met its obligations of disclosure pursuant to subsection 38(1) and, where that obligation has not been so satisfied, the court shall make such orders as are necessary to effect such disclosure in accordance with rule 69.08 during any period of adjournment of the interim hearing. [Amend.05/02/03]

(5) In determining whether there are reasonable and probable grounds to believe that a child is in need of protective services pursuant to subsections 39(2) and 39(3), the court shall decide the question solely upon any affidavits filed by any party, unless leave of the court is granted to hear oral evidence. [Amend.05/02/03]

(6) Where an interim hearing is adjourned pursuant to subsection 39(3), the court shall make an interim order pursuant to subsection 39(4) for no longer than is reasonably necessary to complete the interim hearing, subject to the time limits set out in subsection 39(4). [Amend.05/02/03]

(7) At the interim hearing, as soon as is practicable in the circumstances, the court shall determine whether the child is a party and entitled to representation in accordance with section 37 and shall make such directions respecting the child's party status, representation, presence at hearings, participation, disclosure to the child, and service of documents upon the child as are just and necessary in the circumstances, having regard to the child's best interests.

(8) Upon the application of any other person, pursuant to section 36(1)(f), the court may add that person as a party at the interim hearing, only where that person's presence as a party is necessary to determine the matters in issue, and otherwise the application shall be adjourned to the pre-hearing conference before the disposition hearing.

(9) Upon the application of a party, an interim order may be varied or terminated and, where a child has been taken into care by an agency after the commencement of the proceeding, the agency shall file the application to vary as soon as practicable, and serve the application upon the other parties not less than two days prior to the hearing, unless service is waived by the party or shortened or dispensed with by the court, before or at the hearing.

(10) A judge of the court who makes any interim order pursuant to subsection 39(3) or 39(4) is not seized of the proceeding, but is not disqualified from conducting any other hearing pursuant to sections 32 and 48. [Amend.05/02/03]

Disclosure and discovery

69.08.

(1) No oral examination for discovery pursuant to Rule 18 shall take place prior to the completion of the interim hearing, except with leave of the court.

(2) A child shall not be examined for discovery pursuant to Rule 18, except with leave of the court and upon such terms as the court may direct.

(3) Where a child is granted party status and representation pursuant to section 37, but no guardian ad litem is appointed, upon the application of counsel for the child or of any party or upon the court's own motion, where disclosure of all or any part of a report or assessment, or document, intended exhibit or evidence, would cause emotional harm to the child, the court may direct the information so identified not be disclosed to the child.

(4) Unless a copy of a report containing the full opinion of an expert, including the essential facts upon which the opinion is based and a summary of the grounds for each opinion expressed, has been served on each other party and filed with the court at least five days before the commencement of the hearing, the evidence of the expert shall not be admissible at the hearing without leave of the court.

(5) Where a document is in the possession, custody or control of a person who is not a party, and the production of the document might be compelled at a hearing, the court may, on notice to the parties, make an order in Form 69.08A or 69.08B for the production and inspection of the document or the preparation of a true copy that may be used in lieu of the original.

(6) An order for the production of any document for inspection by a party or the court shall not be made unless the court is of the opinion that the order is necessary for the disposing fairly of the proceeding or for saving costs and is not injurious to the public interest.

Mediation, pre-hearing conferences

69.09.

(1) Where the parties have agreed to the appointment of a mediator pursuant to subsection 21(1), the parties may apply for a stay of proceedings in accordance with subsection 21(2) and the court may grant a stay in Form 69.09A, in the interests of the child and the consensual resolution of the matters in issue. [Amend.05/02/03]

(2) Where an order is granted pursuant to sub-rule (1) and mediation has been completed, the mediator shall prepare a written report for the court as directed in the order and, after delivery of the report to counsel for the parties or to the parties themselves if unrepresented, the report shall be filed with the court.

(3) A pre-hearing conference shall be held prior to each of a protection hearing and a disposition hearing.

(4) The court may consolidate the applicable pre-hearing conference in sub-rule (3) with the protection hearing or with the disposition hearing.

(5) A pre-hearing conference may be held before a court officer, as directed by a judge of the court.

Protection hearing

69.10.

(1) No party shall adduce evidence at the protection hearing in accordance with subsections 96(1) or 96(3), unless that party has given notice of the intention to do so, no later than the pre-hearing conference held pursuant to rule 69.09(3), or unless leave of the court has otherwise been granted to do so. [Amend.05/02/03]

(2) Subject to Rule 39.03, a judge of the court who conducts the protection hearing and determines that a child is in need of protective services shall conduct the disposition hearing and any subsequent reviews respecting that child.

Disposition hearing

69.11.

(1) Where a finding has been made that a child is a child in need of protective services, the agency shall file and serve an application for a disposition order in Form 69.11A, along with any supporting affidavit and the agency plan for the child's care in Form 69.11B, not later than the pre-hearing conference held pursuant to rule 69.09(4).

(2) Where the court makes a disposition order pursuant to section 42(1), the disposition order shall be in Form 69.11C, 69.11D, 69.11E or 69.11F, as may be applicable in the circumstances.

(3) Where the court makes an order of dismissal pursuant to paragraph 42(1)(a) or an order of permanent care and custody pursuant to paragraph 42(1)(f), the court shall issue a separate order respecting each child who is the subject of the proceeding. [Amend.05/02/03]

(4) Before the court issues an order of permanent care and custody respecting a child, the agency shall file the certified extract from the Registration of Birth as required by rule 69.03(4), or satisfy the court that it is impracticable to do so.

Reviews

69.12.

(1) A party applying for a review of a disposition order pursuant to section 46 shall file and serve, not later than five days before the commencement of the review hearing a review application in Form 69.12A, along with any supporting affidavit.

(2) Where the agency is seeking a change in placement, access or services, or in any other case where the court orders, the agency shall file and serve a revised agency plan for the child's care not later than five days before the commencement of the review hearing.

(3) Where a child has been taken into care by an agency after the making of a supervision order, the agency shall as soon as practicable file and serve the review application upon the other parties, not less than two days prior to the review hearing, unless waived by the party or shortened or dispensed with by the court, before or at the review hearing.

(4) Where a review application has been filed and the court has commenced a review hearing prior to the expiry of the order in question, with the consent of all parties or upon the order of the court in the child's best interests, the review hearing may be adjourned and a further disposition order, other than an order for permanent care and custody, may be made until the review hearing can be justly and expeditiously completed, subject to the time limits set out in subsections 43(4) and 45(1). [Amend.05/02/03]

Termination of permanent care and custody orders and variation of access

69.13.

(1) An application to permit, vary or terminate access under an order for permanent care and custody shall be filed in Form 69.13A, supported by affidavit, and served upon the other parties not later than ten days before the commencement of the hearing.

(2) An application to terminate an order for permanent care and custody shall be filed in Form 69.13B, supported by affidavit, and served upon the other parties not later than ten days before the hearing of the application.

- (3) Where a party is required to obtain leave of the court under subsection 48(6), prior to making an application to terminate an order for permanent care and custody, the party shall first file an application for leave, supported by affidavit, and served upon the other parties not later than ten days before the hearing of the leave application and, if leave is granted, an application in Form 69.13B shall be filed and served as directed by the court. [Amend.05/02/03]
- (4) Where the court makes an order pursuant to subsection 48(8), other than paragraph 48(8)(a), the order shall be in Form 69.13C or Form 69.13D. [Amend.05/02/03]
- (5) An application to extend permanent care and custody pursuant to paragraph 48(1)(a) shall be filed by the agency or the child and served upon the child or the agency not later than ten days before the commencement of the hearing. [Amend.05/02/03]

Consent to treatment

69.14.

- (1) An application by the Minister pursuant to section 61 shall be in Form 69.14A, supported by affidavit and the two medical opinions required together with the form of order requested.
- (2) The hearing of the application shall take place at such time and location and on such terms respecting parties and notice as the court may direct.

Child Abuse Register

69.15.

- (1) An application by the Minister or an agency pursuant to subsection 63(3) for a finding of abuse for purposes of entry in the Child Abuse Register shall be filed in Form 69.15A, supported by affidavit. [Amend.05/02/03]
- (2) The application and affidavit, together with a copy of the notice of objection in Form 69.15B, shall be personally served upon the person whose name is intended to be entered in the Child Abuse Register.
- (3) For the purposes of this rule, the person served with an application pursuant to sub-rule (2) shall be named as the respondent.
- (4) Where the respondent has been served and no notice of objection has been filed with the court within thirty days of the date of service, the Minister or agency may file a notice of default in Form 69.15C and the court may make a finding of abuse without a hearing and without further notice to the respondent.
- (5) Upon the receipt of a notice of objection, the court shall forward a copy of the notice of objection to the applicant Minister or agency.
- (6) Where a notice of objection has been filed with the court, rules 69.07 and 69.09(1), with necessary modification, shall apply to a proceeding under this rule.
- (7) Where the respondent has filed a notice of objection with the court, the Minister or agency shall file and serve a notice of hearing in Form 69.15D, to be served upon the respondent's counsel or, where the respondent is not represented by counsel, by registered mail to the address provided on the notice of objection, not later than ten clear days prior to the date of the hearing.
- (8) Where the respondent has been served in accordance with sub-rule (7) and fails to appear at the hearing, the respondent shall be deemed to have admitted to a finding of abuse as alleged in the application.
- (9) Where the court makes a finding of abuse, the order shall be in Form 69.15E.
- (10) A person whose name is entered on the Child Abuse Register may file an application for removal in Form 69.15F and the court shall forward a copy of the application to the Minister, not less than thirty days prior to the date of the hearing of the application.
- (11) Where the court hears an application for removal and orders that the person's name be removed from the Child Abuse Register, the order shall be in Form 69.15G.

Access to files and records

69.16.

- (1) The files and records of the court respecting any proceeding under the Act shall only be available to the parties, subject to rules 69.07(7) and 69.08(3) respecting a child who is a party, counsel for the parties, and such other classes of persons as the court directs by practice memorandum or otherwise.
- (2) Any other person seeking access to such court files and records shall make application to the court and the court may grant access to the court files and records, subject to the provisions of section 94 and any order that may be made pursuant to section 94.
- (3) Prior to granting a person access, the court may require that the parties in the relevant proceeding be given notice of the application, by the applicant or otherwise, and that a hearing be held.

LIST OF FORMS

1. Application [69.02A](#)
2. Order [69.02B](#)
3. Application and Affidavit for Production and Inspection of Records [69.02C](#)
4. Application and Affidavit for Investigative Order(s) [69.02D](#)
5. Application and Affidavit for Order to Locate and Detain Runaway Child [69.02E](#)
6. Application and Affidavit for Order to Enter and Search for Child [69.02F](#)
7. Notice of Taking Into Care [69.02G](#)
8. Protection Application and Notice of Hearing [69.03A](#)
9. Order for Production [69.08A](#)
10. Order for Production (Police) [69.08B](#)
11. Order for Stay and Mediation [69.09A](#)
12. Application for Disposition Order and Notice of Hearing [69.11A](#)
13. Agency Plan for the Child's Care [69.11B](#)
14. Order of Dismissal [69.11C](#)
15. Supervision Order [69.11D](#)
16. Order for Temporary Care and Custody [69.11E](#)
17. Order for Permanent Care and Custody [69.11F](#)
18. Review Application and Notice of Hearing [69.12A](#)
19. Application Respecting Access Under an Order for Permanent Care and Custody Notice of Hearing [69.13A](#)
20. Application to Terminate Order for Permanent Care and Custody and Notice of Hearing [69.13B](#)
21. Supervision Order (on Application to Terminate) [69.13C](#)
22. Order Terminating an Order for Permanent Care and Custody [69.13D](#)
23. Application for Consent to Treatment and Notice of Hearing [69.14A](#)
24. Application for a Finding for Purposes of Entry in the Child Abuse Register [69.15A](#)
25. Notice of Objection [69.15B](#)
26. Notice of Default [69.15C](#)
27. Notice of Hearing (Child Abuse Register) [69.15D](#)
28. Order of Finding of Abuse [69.15E](#)
29. Application and Affidavit for Removal from Register [69.15F](#)
30. Order of Removal from Register [69.15G](#)

FORM 69.02A

No.

BETWEEN:

_____ APPLICANT

- and -

_____ RESPONDENT(S)

APPLICATION

TAKE NOTICE that an application will be made on behalf of the (applicant) (respondent) to the Supreme Court (Family Division), located at _____, Nova Scotia, on _____, the _____ day of _____, _____ at the hour of _____ o'clock in the _____ noon, or so soon thereafter as the application can be heard for an order _____.

AND TAKE NOTICE that in support of the application will be read and attached affidavit(s) and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than one clear day before the hearing of the application.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Counsel for the

TO: _____

[Form 69.02B]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

_____ APPLICANT

- and -

_____ RESPONDENT(S)

ORDER

BEFORE THE HONOURABLE JUSTICE _____

UPON READING the Application and all other documents on file herein (and having heard evidence on _____);

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:
IT IS ORDERED THAT:

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Court Officer

CONSENTING AS TO FORM:

Counsel for the _____

[Form 69.02C]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

IN THE MATTER OF: The Children and Family Services Act, Section 26(1)

- and -

IN THE MATTER OF: The Application of

**APPLICATION AND AFFIDAVIT FOR
PRODUCTION AND INSPECTION OF RECORDS**

I, _____ (full name), of _____ (City, Town or Municipality), in the County of _____ and Province of Nova Scotia, make application pursuant to Section 26(1) of the Children and Family Services Act on behalf of the (Children's Aid Society/Family and Children's Services of/Minister of Community Services) for an order for production and inspection of records or documents in the possession, custody or control of _____ (person or organization) located at _____ (address) respecting the child (ren) _____ or the parent or guardian _____;

AND in support of this application, I make oath and say that:

1. I am an agent of _____, an agency within the meaning of the Children and Family Services Act.
2. I have reasonable and probable grounds to believe that the person or organization named above has possession, custody or control of records or documents containing information necessary for the agency to determine whether the child(ren) named above is (are) in need of protective services, pursuant to the following clause(s) of Section 22(2) of the Act:

3. The records or documents which are necessary can be described as follows:

4. The person or organization named above has refused or is unwilling to permit the production and inspection of those records or documents, more particularly

(name, title, date of person contacted)

SWORN TO before me at _____)

in the County of _____)

and Province of Nova Scotia this ____)

day of _____, _____)

)

_____) _____

A Commissioner, etc.) ----- -Name of Agent
Province of Nova Scotia)

[Form 69.02D]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

IN THE MATTER OF: The Children and Family Services Act, Section 26(2)

- and -

IN THE MATTER OF: The Application of

APPLICATION AND AFFIDAVIT FOR INVESTIGATIVE ORDER(S)

I, _____ (full name), of _____ (City, Town or Municipality), in the County of _____ and Province of Nova Scotia, make application pursuant to Section 26(2) of the Children and Family Services Act on behalf of the (Children's Aid Society/Family and Children's Services of/Minister of Community Services) for investigative order(s) described below respecting the child(ren) _____ or the parent or guardian

(specify order sought, citing paragraph of Section 26(2))

AND in support of this application, I make oath and say that:

1. I am an agent of _____, an agency within the meaning of the Children and Family Services Act.

2. I have been refused access to the child, _____ (or entry to the premises located at _____ (street address), Nova Scotia,) by _____ (parent, guardian or other person) on _____ (date) at the hour of _____ o'clock in the _____ noon.

3. I have reasonable and probable grounds to believe that the child(ren), _____ may be in need of protective services as described in Section 22(2) of the Act, paragraphs _____.

4. It is necessary to make the order sought to determine whether the child is in need of protective services, for the following reasons:

SWORN TO before me at _____)

in the County of _____)

and Province of Nova Scotia this _____)

day of _____, _____)

_____)

_____) _____

A Commissioner, etc.) Name of Agent
Province of Nova Scotia)

[Form 69.02E]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

IN THE MATTER OF: The Children and Family Services Act, Section 29(1)

- and -

IN THE MATTER OF: The Application of

**APPLICATION AND AFFIDAVIT FOR ORDER
TO LOCATE AND DETAIN RUNAWAY CHILD**

I, _____ (full name), of _____ (City, Town or Municipality), in the County of _____ and Province of Nova Scotia, make application pursuant to Section 29(1) of the Children and Family Services Act for an order authorizing a peace officer to locate and detail the child _____, born _____.

AND in support of this application, I make oath and say that:

1. I am the _____ (parent, guardian or representative of an agency), entitled to lawful care and custody of the child _____ (if applicable) pursuant to a written agreement or court order attached hereto and marked Exhibit "A".

2. The child _____, withdrew from my care and control without my consent on _____ (date), in the following circumstances (provide factual particulars):
_____.

3. To the best of my knowledge and information, I believe the child _____ is located or was last seen at _____ (provide as much detail as possible as to whereabouts, when last seen, etc.)

4. I have reasonable and probable grounds to believe that the child's health or safety may be at risk, more particularly (provide particulars)

5. In the event that the child is located and detained by a peace officer, I may be contacted at _____ (telephone number) and, if I cannot be contacted, the peace officer may contact _____ (name, address and telephone number of alternative person, and state relationship).

SWORN TO before me at _____)

in the County of _____)

and Province of Nova Scotia this)

day of _____, _____)

_____)

_____) _____

A Commissioner, etc.)..... Name of Agent
Province of Nova Scotia)

[Form 69.02F]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

IN THE MATTER OF: The Children and Family Services Act, Section 34(1)

- and -

IN THE MATTER OF: The Application of

**APPLICATION AND AFFIDAVIT FOR ORDER
TO ENTER AND SEARCH FOR CHILD**

I, _____ (full name), of _____ (City, Town or Municipality), in the County of _____ and Province of Nova Scotia, make application pursuant to Section 34(1) of the Children and Family Services Act on behalf of (Children's Aid Society/Family and Children's Services of/Minister of Community Services) for an order authorizing the agent named therein to enter the premises specified and to search for the child(ren) for the purpose of taking the child(ren) into care as permitted by and in accordance with Section 33 of the Act;

AND in support of this application, I make oath and say that:

1. I am an agent of _____, an agency within the meaning of the Children and Family Services Act.

2. I have reasonable and probable grounds to believe that the child(ren) _____ (name(s), if practicable) is (are) in need of protective services pursuant to Section 22(2), clause(s) _____ on the following basis (provide brief particulars) _____

3. I have reasonable and probable grounds to believe that the child(ren)'s health or safety cannot be protected otherwise than by taking the child(ren) into care, for the following reasons:

4. I (or another agent, as applicable) was refused entry to the premises located at _____ (street address), Nova Scotia, where the child may be located, on _____ (date and time).

5. The parent, guardian or other person, _____ (name) refused to give up the child to me (or another agent, as applicable) on _____ (date and time).

6. I believe the child(ren) is (are) (or will be located) at _____ (provide street address or premises, if practicable) and I request that the agent named in the Order be _____.

SWORN TO before me at _____)

in the County of _____)

and Province of Nova Scotia this)

day of _____, _____)

_____)

_____) _____

A Commissioner, etc.)..... Name of Agent
Province of Nova Scotia)

[Form 69.02G]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

NOTICE OF TAKING INTO CARE

TAKE NOTICE that the undersigned Agent has on this day taken into care the child(ren) _____, born _____ who I have reasonable and probable grounds to believe is (are) in need of protective services and whose health or safety cannot be protected adequately otherwise than by being taken into care.

AND FURTHER TAKE NOTICE that a hearing must take place at the Supreme Court (Family Division), located at _____, Nova Scotia, not later than five working days from today's date and, at that hearing or any adjournment of the hearing, the Court may make an Order affecting the custody of the child(ren).

AND FURTHER TAKE NOTICE that the agency named above will make application to the Supreme Court (Family Division) for the Province of Nova Scotia for a finding that the child(ren) is (are) in need of protective services under the Children and Family Services Act, Section 22(2), paragraphs(s) _____ or such other grounds as may be included in the Protection Application.

AND IF YOU ARE A PARENT OR GUARDIAN, YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ENGAGED BY YOU and, should you be unable to afford a lawyer, a lawyer is available through the local legal aid office. If you wish to be represented by a lawyer, you should contact a lawyer AS SOON AS POSSIBLE.

DATED at _____, Nova Scotia, this _____ day of _____, ____.

Agent on behalf of the Applicant

[Form 69.03A]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

PROTECTION APPLICATION AND NOTICE OF HEARING

TAKE NOTICE that the Applicant makes application to the Supreme Court (Family Division) for the Province of Nova Scotia for a finding that the child(ren):

Full Name --- Birth Date -- Sex

is (are) in need of protective services under the Children and Family Services Act, Section 22(2), paragraph (s) _____, which state(s):

AND TAKE NOTICE that an interim hearing will take place at the Supreme Court (Family Division), located at _____, Nova Scotia, on the _____ day of _____, ____ at the hour of _____ o'clock in the _____ noon or so soon thereafter as the application can be heard for an order _____

(general nature of interim order requested)

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s) and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel before the interim hearing.

AT THIS INTERIM HEARING, the Court may make an order affecting the custody of the child(ren) noted above and, should you fail to appear, an order may be made in your absence without further notice to you. YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ENGAGED BY YOU and, should you be unable to afford a lawyer, a lawyer is available through the local legal aid office.

AT THE HEARING at the time and place set out above, the Court is required to decide whether there are reasonable and probable grounds to believe that the child(ren) is (are) in need of protective services upon the basis of affidavits filed by any party, including you, but witnesses will not be heard by the Court unless leave of the Court is granted.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Counsel for the

TO: _____

[Form 69.08A]

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

ORDER FOR PRODUCTION

BEFORE THE HONOURABLE JUSTICE

UPON READING the Application and all other documents on file;

AND UPON IT APPEARING that the proper persons have received notice of the hearing in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND UPON HEARING _____, counsel for the Applicant, and _____, counsel for the Respondent, _____;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. The complete files and records of _____, with respect to the Respondent, _____, and the child, _____, born _____, except for any information or documents in the files and records with respect to third persons who are not parties to this proceeding, foster placements, or information for which privilege is claimed, shall forthwith

be reproduced and a true copy shall be provided to the solicitor for the Applicant, [Children's Aid Society of/Family and Children's Services of/Minister of Community Services], [name of solicitor], at [firm address], telephone [_____]. **The reproduction of the files and records shall be made within ten days from the receipt of a certified copy of this Order**, or within such time as agreed upon by counsel.

2. Counsel for the Applicant, [_____], shall make copies of the files and records produced pursuant to this Order and subject to the terms of this Order, and a copy of the files and records shall be provided to counsel for the Respondent[s].

3. The production of the files and records shall be subject to the following conditions:

(a) the files and records, or any part of them or the information contained in them, shall only be used for the purposes of this proceeding;

(b) the files and records, or any part of them or the information contained in them, shall not be reproduced, disseminated, published or made public in any manner whatsoever, except as required by the Civil Procedure Rules, or for any use authorized by the court, or by professionals engaged in therapy, counselling, treatment or assessment of the parties or the child[ren] subject to this proceeding;

(c) the files and records, or any part of them or the information contained in them, shall be treated as confidential by the parties, their counsel, by professionals engaged in therapy, counselling, treatment or assessment of the parties or the child[ren] subject to this proceeding, and any and all employees, associates, servants or agents of those persons.

4. Any disclosure, reproduction, dissemination or publishing of the files and records, or any part of them or the information contained in them, contrary to any term of this order may be treated as contempt and subject to sanctions provided by the Civil Procedure Rules and the Children and Family Services Act.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

COURT OFFICER

CONSENTING [AS TO FORM]:

[Form 69.08B]

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

ORDER FOR PRODUCTION (POLICE)

BEFORE THE HONOURABLE JUSTICE

UPON READING the Application and all other documents on file;

AND UPON IT APPEARING that the proper persons have received notice of the hearing in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND UPON HEARING _____, counsel for the Applicant, and _____, _____ counsel for the Respondent, _____;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. The complete files and records of [the Regional Municipality of Halifax Police Service, including Canadian Police Information Centre (CPIC) information], with respect to [the Respondent], born _____, shall forthwith be reproduced insofar as the files and records pertain to: (a) any and all charges against the named individual; (b) any and all complaints made against the named individual; (c) any and all incident reports in which the named individual is a principal participant; and (d) any and all convictions of the named individual inclusive of any and all information held in relation to those convictions excepting and deleting information for which confidentiality or Crown privilege is claimed; and a true copy shall be provided to the solicitor for the Applicant, [Children's Aid Society of/ Family and Children's Services of/Minister of Community Services], [name of solicitor], at [firm address], telephone [_____]. **The reproduction of the files and records shall be made within ten days from the receipt of a certified copy of this Order**, or within such time as agreed upon by counsel.

2. Counsel for the Applicant, [_____], shall make copies of the files and records produced pursuant to this Order and subject to the terms of this Order, and a copy of the files and records shall be provided to counsel for the Respondent[s].

3. The production of the files and records shall be subject to the following conditions:

(a) the files and records, or any part of them or the information contained in them, shall only be used for the purposes of this proceeding;

(b) the files and records, or any part of them or the information contained in them, shall not be reproduced, disseminated, published or made public in any manner whatsoever, except as required by the Civil Procedure Rules, or for any use authorized by the court, or by professionals engaged in therapy, counselling, treatment or assessment of the parties or the child[ren] subject to this proceeding;

(c) the files and records, or any part of them or the information contained in them, shall be treated as confidential by the parties, their counsel, by professionals engaged in therapy, counselling, treatment or assessment of the parties or the child[ren] subject to this proceeding, and any and all employees, associates, servants or agents of those persons.

4. Any disclosure, reproduction, dissemination or publishing of the files and records, or any part of them or the information contained in them, contrary to any term of this order may be treated as contempt and subject to sanctions provided by the Civil Procedure Rules and the Children and Family Services Act.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

COURT OFFICER

CONSENTING [AS TO FORM]:

[Form 69.09A]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

ORDER FOR STAY AND MEDIATION

BEFORE THE HONOURABLE JUSTICE _____

UPON READING the Application and all other documents on file herein;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act.

AND UPON IT APPEARING that the parties hereto have consented to the appointment of a mediator and a stay of the proceedings have been applied for;

AND UPON IT APPEARING that the parties have agreed to mediate the following issues _____, _____ and _____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. The within proceedings shall be stayed until the _____ day of _____, _____, subject to any further review and order of this Court.
2. Upon completion of the mediation, the mediator shall prepare a written report for the Court and, after delivery of the report to counsel for the parties or to the parties themselves if unrepresented, the report shall be filed with the Court.
3. The report shall be closed or limited, stating only the number of interviews conducted, the persons who attended the interviews and the terms of any agreement reached or that an agreement was not reached. All other communications during mediation shall be confidential and privileged, not subject to disclosure during this proceeding, except as otherwise agreed by the parties.)

or

3. The report shall be open or full, not making recommendations but including any information which the mediator considers relevant to the issues.

ISSUED at _____, Nova Scotia, this _____ day of _____, _____.

Court Officer

CONSENTED TO:

Counsel for the

[Form 69.11A]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

**APPLICATION FOR DISPOSITION ORDER
AND NOTICE OF HEARING**

TAKE NOTICE that the Applicant makes application for a disposition order in this proceeding, namely an order for _____ under the Children and Family Services Act, Section 42 (1) _____;

AND TAKE NOTICE that a pre-hearing conference will be held at the Supreme court (Family Division) located at _____, Nova Scotia, on the ____ day of _____, _____ at the hour of _____ o'clock in the _____ noon and a disposition hearing will be held at that time or on a date to be fixed by the court;

AT THAT TIME, the court may make an order affecting the custody of the child(ren) involved and, should you fail to appear at the pre-hearing conference or at the disposition hearing, an order may be made in your absence without further notice to you. YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ENGAGED BY YOU and, should you be unable to afford a lawyer, a lawyer is available to you through the local legal aid offices;

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s), the agency plan for the child's care and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than two clear days before the commencement of the disposition hearing.

DATED at _____, Nova Scotia, this _____ day of _____, ____.

Counsel for the

TO: _____

[Form 69.11B]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

AGENCY PLAN FOR THE CHILD'S CARE

1. Disposition order sought:

2. Description of services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services

(a)agency services;

(b)other community resources:

3. Criteria by which the agency will determine when its care and custody or supervision is no longer required (specify the objectives of the agency's intervention and how attainment of those objectives will be determined)

4. Estimate of the time required to achieve the purpose of the agency's intervention (including the appropriate date for review, specific time lines with respect to service plans and prognosis)

5. Where the agency proposes to remove the child from the care of a parent or guardian:

(a)Explanation of why the child cannot be adequately protected while in the care of the parent or guardian (refer to the condition or situation on the basis of which the child was found to be in need of protective services)

(b) Description of past and present services:

Services that have been attempted and their current status (include any reasons why the services have failed, if applicable)

Services that have been refused by the parent or guardian (specify the reasons for the refusal and any renewed offer of services made subsequent to that refusal)

Services that have been considered, but would be inadequate to protect the child (specify why the services would be inadequate to protect the child)

(c)Possible placements with a relative, neighbour or other member of the child's community or extended family that have been considered and rejected and reasons therefor

(d)What efforts, if any, are planned to maintain the child's contact with the parent or guardian (specify the proposed frequency and terms of any such contact)

6. Where the agency proposed that the child be placed in temporary care and custody of the agency:

(a)A description of the child's needs with reference to the findings of current or previous assessments

(b)A statement of the goals to be achieved for the child while in temporary care and custody

(c)A statement of the objectives to be used to achieve the specified goals for the child

(d)A statement of the educational program for the child

(e)A statement of the ways in which the child's parents will be involved in the plan of care, including arrangements for contact between the child and the child's family

(f)Particulars of any specialized service to be provided

(g)Particulars of the dates for review of the plan of care and revisions to the plan of care as necessary

(h)A statement of the anticipated plan at final disposition, where applicable

7. Where the agency proposes that the child be placed in the permanent care and custody of the agency:

(a)Why the circumstances justifying the proposal are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits (specify the barriers to change, agency efforts to remedy or alleviate those barriers and why those efforts would be unsuccessful within the maximum time limits provided in the Act)

(b)Description of the arrangements made or being made for the child's long-term stable placement (refer to the child's present placement, any intended changes to that placement, any special needs of the child, availability of long-term placements, agency plans to identify a permanent placement for the child, adoption prospects, etc.)

(c)Access, if any, proposed for the child and any terms and conditions to be included in such access arrangements

DATED at _____, Nova Scotia, this ____ day of _____, _____.

of the Children's Aid Society /
Family and Children's Services/
Department of Community Services

[Form 69.11C]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

ORDER OF DISMISSAL

BEFORE THE HONOURABLE JUSTICE _____

UPON THE COURT HAVING DETERMINED that the child, _____, born _____ was in need of protective services pursuant to the Children and Family Services Act, Section 22(2), paragraph(s) _____ on the ____ day of _____, ____;

AND UPON reading the application for disposition order and all other documents on file, including the agency's plan of care for the child, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the hearing in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision dismissing the proceeding on the ____ day of _____, ____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:
IT IS ORDERED THAT:

1. The proceeding respecting the child, _____, born _____ is hereby dismissed.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Court Officer

CONSENTING AS TO FORM:

_____ Counsel for the

[Form 69.11D]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

SUPERVISION ORDER

BEFORE THE HONOURABLE JUSTICE _____

UPON THE COURT HAVING DETERMINED that the child(ren), _____, born _____ was/were in need of protective services pursuant to the Children and Family Services Act, Section 22(2), paragraph(s) _____ on the ____ day of _____, ____;

AND UPON reading the application for disposition order and all other documents on file, including the agency plan for the child's care, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision respecting disposition, including a statement of the plan for the child(ren)'s care and the reasons for the decision on the ____ day of _____, ____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:
IT IS ORDERED THAT:

1. The child(ren) _____, born _____

_____, born _____

_____, born _____

shall remain in [or be returned to] the care and custody of _____ subject to the supervision of the Applicant Agency.

2. The terms and conditions of the child's care and supervision shall be the following:

3. Any representative of the supervising agency has the right to enter the resident of the child to provide guidance and assistance and to ascertain that the child is being properly cared for.

4. This supervision order shall be reviewed by the court at a hearing to be held on the ____ day of _____, ____ at the hour of _____ o'clock in the ____ noon or sooner upon the application of any party to this proceeding upon notice to the other parties.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Court Officer

CONSENTING AS TO FORM:

Counsel for

[Form 69.11E]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

ORDER FOR TEMPORARY CARE AND CUSTODY

BEFORE THE HONOURABLE JUSTICE _____

UPON THE COURT HAVING DETERMINED that the child(ren), _____, born _____ was/were in need of protective services pursuant to the Children and Family Services Act, Section 22(2), paragraph(s) _____ on the _____ day of _____, _____;

AND UPON reading the application for disposition order and all other documents on file, including the agency plan for the child's care, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision respecting disposition, including a statement of the plan for the child(ren)'s care and the reasons for the decision on the _____ day of _____, _____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:
IT IS ORDERED THAT:

- 1. The child(ren) _____ born _____
- _____ born _____
- _____ born _____

shall be placed in the temporary care and custody of the Applicant Agency.

- 2. The terms and conditions of the order shall be the following: _____
- _____

[3. The child(ren) _____, shall be returned to the care and custody of _____, on the _____ day of _____, _____ (or upon _____) (if applicable).]

3. This order for temporary care and custody shall be reviewed by the court at a hearing to be held on the _____ day of _____, _____ at the hour of _____ o'clock in the _____ noon or sooner upon the application of any party to this proceeding upon notice to the other parties.

DATED AT _____, Nova Scotia, this _____ day of _____, _____.

Court Officer

CONSENTING AS TO FORM:

Counsel for the

[Form 69.11F]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

RESPONDENT(S)

ORDER FOR PERMANENT CARE AND CUSTODY

BEFORE THE HONOURABLE JUSTICE _____

UPON THE COURT HAVING DETERMINED that the child _____, born _____ was in need of protective services pursuant to the Children and Family Services Act, Section 22(2), paragraph(s) _____ on the _____ day of _____, ____;

AND UPON reading the application for disposition order and all other documents on file, including the agency plan for the child's care, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision respecting disposition, including a statement of the plan for the child's care and the reasons for the decision on the _____ day of _____, ____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

AND UPON NO FINDING BEING MADE with respect to the religious denomination of the child;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. The child, _____, born _____ shall be placed in the permanent care and custody of the Applicant Agency.

[2. Access to the child shall be exercised by _____ on the following terms and conditions: _____ (if applicable).]

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Court Officer

CONSENTING AS TO FORM:

Counsel for the

[Form 69.12A]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

REVIEW APPLICATION AND NOTICE OF HEARING

TAKE NOTICE that _____ makes application for a review of the supervision or temporary care and custody order made by the court on the ____ day of _____, ____ and for the following order: _____.

AND TAKE NOTICE that the application will be heard at the Supreme Court (Family Division), located at _____, Nova Scotia on the ____ day of _____, ____ at the hour of ____ o'clock in the ____ noon.

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s) and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than two clear days before the commencement of the review hearing.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Court Officer

TO: _____

[Form 69.13A]

No.

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

APPLICATION RESPECTING ACCESS UNDER AN ORDER FOR PERMANENT CARE AND CUSTODY AND NOTICE OF HEARING

TAKE NOTICE that _____ makes application for an order respecting access to the child(ren) _____, born _____, under an order for permanent care and custody, made on the _____ day of _____, _____.

AND TAKE NOTICE that the Applicant herein requests:

- (1) that an order for access be granted, based upon paragraph(s) _____ of section 47(2) of the Children and Family Services Act; or
- (2) that the order for access made the _____ day of _____, ____ be varied in accordance with Section 47(3) of the Children and Family Services Act; or
- (3) that the order for access made the _____ day of _____, ____ be terminated.

AND TAKE NOTICE that the application will be heard at the Supreme Court (Family Division), located at _____, Nova Scotia on the _____ day of _____, ____ at the hour of ____ o'clock in the _____ noon.

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s) and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than two clear days before the commencement of the review hearing.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Counsel for the

TO: _____

[Form 69.13B]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

APPLICATION TO TERMINATE AN ORDER FOR PERMANENT CARE AND CUSTODY AND NOTICE OF HEARING

TAKE NOTICE that _____ makes application to terminate the order for permanent care and custody, made on the ____ day of _____, ____.

AND TAKE NOTICE that no leave to make the within application is required as the Applicant herein complies in all respects with the provisions of Section 48 of the Children and Family Services Act.

or

[AND TAKE NOTICE the leave has been obtained by order made the ____ day of _____, ____ as required by Section 49(6)(____) of the Children and Family Services Act (if applicable).]

AND TAKE NOTICE that the application will be heard at the Supreme Court (Family Division), located at _____, Nova Scotia, on the ____ day of _____, ____ at the hour of ____ o'clock in the ____ noon.

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s) and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than two clear days before the commencement of the review hearing.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Counsel for the

TO: _____

[Form 69.13C]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

SUPERVISION ORDER ON APPLICATION TO TERMINATE

BEFORE THE HONOURABLE JUSTICE _____

UPON reading the application to terminate the order for permanent care and custody respecting the child(ren) _____, born _____, and all other documents on file, including the agency plan for the child's care, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision respecting disposition, including a statement of the plan for the child(ren)'s care and the reasons for the decision on the _____ day of _____, _____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:
IT IS ORDERED THAT:

1. The child(ren), _____ born _____

_____ born _____

_____ born _____

shall remain in or be returned to the care and custody of _____, subject to the supervision of the Application Agency.

2. The terms and conditions of the child's care and supervision shall be the following:

3. Any representative of the supervising agency has the right to enter the residence of the child to provide guidance and assistance and to ascertain that the child is being properly cared for.

4. This supervision order shall be reviewed by the court at a hearing to be held on the _____ day of _____, _____ at the hour of _____ o'clock in the _____ noon or sooner upon the application of any party to this proceeding upon notice to the other parties.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Court Officer

CONSENTING AS TO FORM:

Counsel for the

[Form 69.13D]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

ORDER TERMINATING AN ORDER FOR PERMANENT CARE AND CUSTODY

BEFORE THE HONOURABLE JUSTICE _____

UPON reading the application to terminate the order for permanent care and custody respecting the child _____, and all other documents on file, including the agency plan for the child's care, and having heard evidence on _____;

AND UPON IT APPEARING that the proper persons have received notice of the application in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND THE COURT having rendered its decision respecting disposition, including a statement of the plan for the child's care and the reasons for the decision on the _____ day of _____, _____;

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:

IT IS ORDERED THAT:

1. The order of permanent care and custody respecting the child _____ born _____, issued the _____ day of _____, _____, is terminated.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Court Officer

CONSENTING AS TO FORM:

Counsel for the

[Form 69.14A]

No.

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

BETWEEN:

Minister of Community Services

- APPLICANT

- and -

- RESPONDENT(S)

APPLICATION FOR CONSENT TO TREATMENT AND NOTICE OF HEARING

TAKE NOTICE that the Minister of Community Services makes application for certain orders respecting consent to treatment respecting the child _____, born _____, pursuant to Section 61 of the Children and Family Services Act;

AND TAKE NOTICE that the application will be heard at the Supreme Court (Family Division), located at _____, Nova Scotia on the ____ day of _____, ____ at the hour of _____ o'clock in the ____ noon, or so soon thereafter as the application can be heard for an order authorizing the provision of proper medical or other recognized remedial care or treatment that is considered essential for the preservation of life, limb or vital organs of the child and such ancillary orders as may be necessary, upon such terms that the court considers necessary;

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s), the attached medical reports of two duly qualified medical practitioners and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel before the hearing;

AT THIS HEARING, the court may make an order authorizing the provision of proper medical or other recognized remedial care or treatment for the child and, should you fail to appear, an order may be made in your absence without further notice to you.

YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ENGAGED BY YOU and, should you be unable to afford a lawyer, a lawyer is available through the local legal aid office. If you wish to be represented by a lawyer, you should contact a lawyer AS SOON AS POSSIBLE.

DATED at _____, Nova Scotia, this _____ day of _____, ____.

Counsel for the Minister of Community Services

TO: _____

[Form 69.15A]

No.

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

APPLICATION FOR A FINDING FOR PURPOSES OF ENTRY IN THE CHILD ABUSE REGISTER

TAKE NOTICE that the (Children's Aid Society/Family and Children's Services of/Minister of Community Services) makes application for a finding that the Respondent has abused the child, _____, as described in the Children and Family Services Act, Section 62, paragraph (a) or (b) or (c);

AND TAKE NOTICE that in support of the application will be read the attached affidavit(s), providing further factual particulars of the alleged abuse;

AND TAKE NOTICE that, if you object, you must complete and file the attached Notice of Objection within thirty days of the date of service of this application with the Supreme Court (Family Division) at _____, Nova Scotia. IF YOU DO NOT FILE THE NOTICE OF OBJECTION WITHIN THIRTY DAYS, THE COURT MAY MAKE A FINDING OF ABUSE FOR PURPOSES OF ENTRY IN THE CHILD ABUSE REGISTER WITHOUT FURTHER NOTICE TO YOU. ONCE YOUR NAME IS ENTERED IN THE CHILD ABUSE REGISTER, THE ENTRY WILL AFFECT YOUR ABILITY TO BECOME A FOSTER OR ADOPTIVE PARENT OR TO OBTAIN EMPLOYMENT OR WORK AS A VOLUNTEER CARING FOR OR WORKING WITH CHILDREN.

If you complete and file the attached Notice of Objection and mail it to the Supreme Court (Family Division) in the enclosed envelope, you will receive a Notice of Hearing, not later than ten days prior to the date of hearing of the application;

YOU HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL ENGAGED BY YOU and, should you be unable to afford a lawyer, a lawyer is available to you through the local legal aid office.

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Counsel for the

TO: _____

[Form 69.15B]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

NOTICE OF OBJECTION

TAKE NOTICE that the Respondent objects to the application for a finding of abuse for purposes of entry in the Child Abuse Register, dated the _____ day of _____, _____;

AND TAKE NOTICE that my reasons for objecting are: _____

AND TAKE NOTICE that my address for further service of a Notice of Hearing in this proceeding is: _____

(Street) (Apt. No.)

(City, Town or Municipality) (Postal Code)

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Respondent

TO:
The Supreme Court (Family Division)
The Applicant

[Form 69.15C]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

NOTICE OF DEFAULT

TAKE NOTICE that an application for a finding of abuse for purposes of entry in the Child Abuse Register was served upon the Respondent on the _____ day of _____, _____ as

appears from the Affidavit of Service on file;

AND TAKE NOTICE that more than thirty days has elapsed since the service of the application upon the Respondent and no Notice of Objection has been returned to the Supreme Court (Family Division);

AND THEREFORE TAKE NOTICE that the Applicant now requests that the Court make a finding of abuse without a hearing and without further notice to the Respondent as specified in the form of order on file.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Counsel for the

[Form 69.15D]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

NOTICE OF HEARING

TAKE NOTICE that the hearing for the application for a finding that the Respondent has abused the child _____, will take place at the Supreme Court (Family Division), located at _____, Nova Scotia on _____, the _____ day of _____, _____ at the hour of _____ o'clock in the _____ noon, or so soon thereafter as the application can be heard.

AND TAKE NOTICE that in support of the application will be read the affidavit previously served upon you and such other material as counsel may advise, a true copy of which will be delivered to you or your counsel not later than one clear day before the hearing of the application.

IF YOU FAIL TO APPEAR AT THE ABOVE HEARING, YOU WILL BE CONSIDERED TO HAVE ADMITTED TO A FINDING OF ABUSE AS ALLEGED IN THE APPLICATION PREVIOUSLY SERVED UPON YOU. THAT FINDING WILL RESULT IN YOUR NAME BEING ENTERED IN THE CHILD ABUSE REGISTER, WHICH WILL AFFECT YOUR ABILITY TO BECOME A FOSTER OR ADOPTIVE PARENT OR TO OBTAIN EMPLOYMENT OR WORK AS A VOLUNTEER CARING FOR OR WORKING WITH CHILDREN.

DATED at _____, Nova Scotia, this _____ day of _____, _____.

Counsel for the

TO: _____

[Form 69.15E]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

(Children's Aid Society/Family and Children's Services of)

(Minister of Community Services)

- APPLICANT

- and -

- RESPONDENT(S)

ORDER OF FINDING OF ABUSE

BEFORE THE HONOURABLE JUSTICE _____

UPON READING THE APPLICATION for a finding of abuse for purposes of entry in the Child Abuse Register, dated the ____ day of _____, ____;

AND UPON IT APPEARING that the Respondent has been served in accordance with the Civil Procedure Rules and the Children and Family Services Act;

(AND UPON NO NOTICE OF OBJECTION having been filed by the Respondent;

OR

AND UPON A NOTICE OF OBJECTION having been filed and a Notice of Hearing having been served upon the Respondent and the Respondent having failed to appear at the hearing on the _____ day of _____, ____;

OR

AND UPON A NOTICE OF OBJECTION having been filed and the Respondent having appeared and evidence having been heard on the ____ day of _____, ____;)

AND UPON HEARING _____ for the Applicant and _____ for the Respondent;

NOW UPON MOTION:

IT IS ORDERED THAT the Respondent is found to have abused the child _____, as described in the Children and Family Services Act, Section 62, paragraph (a) or (b) or (c).

DATED at _____, Nova Scotia, this ____ day of _____, ____.

Court Officer

[Form 69.15F]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

APPLICATION AND AFFIDAVIT FOR REMOVAL

I, _____ (full name), of _____

(City, Town or Municipality) in the County of _____ and Province of Nova Scotia, make application for removal of my name from the Child Abuse Register pursuant to Section 64(2) of the Children and Family Services Act;

AND I make oath and say that:

1. Attached hereto and marked Exhibit "A" to this my Affidavit is a true copy of the written notice of registration received by me from the Child Abuse Register.

2. I do not now pose a risk to children, for the following reasons: _____

3. I therefore request an order that my name be removed from the Child Abuse Register.

4. My address for further service is: _____

(Street) (Apt. No.)

(City, Town or Municipality) (Postal Code)

DATED at _____, Nova Scotia, this _____ day of _____, ____.

Respondent

TO: The Minister of Community Services

[Form 69.15G]

No.

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

- APPLICANT

- and -

- RESPONDENT(S)

ORDER OF REMOVAL

BEFORE THE HONOURABLE JUSTICE _____

UPON READING THE APPLICATION for removal of the Respondent's name from the Child Abuse Register, dated the _____ day of _____, _____;

AND UPON IT APPEARING that the Minister of Community Services has been served in accordance with the Civil Procedure Rules and the Children and Family Services Act;

AND UPON evidence having been heard and a decision having been rendered on the _____ day of _____, _____;

AND UPON HEARING _____ for the Respondent and _____ for the Minister of Community Services;

NOW UPON MOTION:

IT IS ORDERED THAT the name of the Respondent be removed from the Child Abuse Register.

DATED at _____, Nova Scotia, this _____ day of _____, ____.

Court Officer

DATED at Halifax, this _____ day of _____, 1999.

