

Nova Scotia Civil Procedure Rules
Amendment (Applications)
December 11, 2020

The following Rules and Forms are amended as follows:

1. The words “longer hearings” in Rule 5.01(4) are replaced with “a dispute that can be ready for hearing within two years and will take no more than four days to be heard”.
2. The following Rule 5.06(3) is added to Rule 5.06:
 - (3) Two days before the hearing of an application in chambers in which a respondent has not filed a document in response, the applicant must either file an affidavit of service proving required notice or advise the prothonotary that notice has not been effected.
3. Rule 5.07(3) is amended by removing the word “twenty-five” and substituting “thirty-five”.
4. Rule 5.07(3) is further amended by adding, immediately before the period, the phrase “, and the date may not be adjourned unless a judge orders otherwise”.
5. Rule 5.07(4)(b) is amended by adding “and, if not, all details known to counsel about other witnesses” immediately before the semi-colon.
6. Rules 5.07(5)(b) to (d) are re-lettered (c) to (e) and the following Rule 5.07(5)(b) is added:
 - (b) if the applicant intends to provide evidence from a witness the applicant cannot name, the notice must provide information about the intended witness, an explanation for the inability to name the witness, and the justification for proceeding by application, rather than action, without naming the witness at the time of the motion for directions.
7. The following Rule 5.07(7) is added to Rule 5.07:
 - (7) Two days before the hearing of the motion for directions in an application in which a respondent has not filed a document in response, the applicant must either file an affidavit of service proving required notice or advise the prothonotary that notice has not been effected.

8. Rule 5.08(1) is amended by removing the word “fifteen” and substituting “twenty-five”.

9. Rule 5.10(1) is amended by removing the word “fifteen” and substituting “twenty-five”.

10. The following Rule 5.10(4) is added to Rule 5.10:

(4) Two days before the hearing of the motion for directions in an application in which a respondent has made a claim against another respondent, the claiming respondent must either file an affidavit of service proving required notice to the other respondent or advise the prothonotary that notice has not been effected.

11. Rules 5.13(2) and (3) are renumbered (7) and (8) and the following Rules (2) to (6) are added to Rule 5.13:

(2) A judge who hears a motion for directions must, after examining the information in the materials filed on the application and hearing the parties, determine each of the following:

(a) whether the information is sufficient to warrant giving directions and setting a date for the hearing of the application;

(b) whether the information is such as to warrant giving only some directions, and adjourning the motion for further information and further directions;

(c) whether the information shows that the application may need to be converted to an action under Rule 6 - Choosing Between Action and Application.

(3) A judge who adjourns the hearing of a motion for directions may also adjourn setting a time, date, and place for the hearing of the application.

(4) A judge hearing a motion for directions, or another motion concerning the course of an application, and who is satisfied on the materials filed in the application that it is obvious the application should be converted to an action may, on the judge’s own motion without a further hearing, make an order under Rule 6.03(1) of Rule 6 – Choosing Between Action and Application.

(5) A judge may adjourn a motion for directions and give directions for continuing the motion in combination with a hearing under Rule 6 – Choosing Between Action and Application.

- (6)** The judge adjourning a motion for directions must endeavour to preside at the adjourned hearing, if that is convenient for the judge and for the court.
12. Rule 5.13(1) is replaced with the following:
- (1)** The motion for directions must be heard in chambers, unless a judge directs otherwise, and the lawyer who expects to act as lead counsel for a party must be present, unless the chambers judge permits otherwise.
13. Rule 5.13(5)(d), formerly in Rule 5.13(2), is replaced with the following:
- (d)** order discovery of a witness only if the witness is expected to provide an affidavit or if the witness has relevant information but refuses to cooperate in the production of an affidavit;
14. Rules 5.13(7)(e) to (j), formerly in Rule 5.13(2), are renumbered (f) to (k) and Rule 5.13(7)(e) is added as follows:
- (e)** set a deadline for discovery of a witness who is to provide an affidavit that is after the deadline for providing the witnesses' affidavit, authorize a discovery subpoena for an uncooperative witness, and give directions for the conduct of the discovery such as directions limiting the time or scope of examination;
15. Rules 5.13(2)(k) to (n) of the former Rule 5.13(2), now duplicate Rule 5.13(7)(k) and the rest of the paragraphs in Rule 5.13(7), are replaced with the following:
- (k)** ascertain the volume of documents that are likely to be in evidence;
- (l)** set deadlines before the finish date for filing the applicant's affidavits, the respondent's affidavits, an applicant's rebuttal affidavit, and a notice of objection to admissibility;
- (m)** set deadlines for filing briefs;
- (n)** set the time, date, and place for the hearing of the application;
- (o)** set the time, date, and place for a settlement conference, if the parties want one;
- (p)** direct further appearances before that judge or another judge;

- (q) give any other directions, or make any other order, needed to organize the application.
16. Rules 5.16 to 5.24 are re-numbered 5.19 to 5.27 and the following Rules 5.16 to 5.18 are added to Rule 5 - Application:

Notice of objection to admissibility

- 5.16(1)** A party who wishes to object to the admission of an averment, an exhibit, or a part of either in an affidavit must file a notice of objection to admissibility before the finish date.
- (2) The notice of objection to admissibility must contain the standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Objection to Admissibility (Application in Court)", be dated and signed, and include all of the following:
 - (a) a statement identifying the affidavit containing an averment, exhibit, or part said to be inadmissible under the rules of evidence;
 - (b) particulars of the averment or exhibit and a summary of the objected averment or exhibit;
 - (c) the ground of the objection including the rule of evidence relied upon.
 - (3) The notice of objection to admissibility may be in Form 5.16.
 - (4) A party who does not file a notice of objection may not rely on the rules of evidence to exclude an averment or an exhibit in an affidavit filed in an application in court.
 - (5) A judge may not exclude an averment, an exhibit, or a part of either that is not the subject of a notice of objection to admissibility, unless the judge is satisfied both that the averment, exhibit, or part is inadmissible and that its remaining part of the record compromises the integrity of the fact-finding process.

Finish date

- 5.17(1)** The finish date in an application in court is sixty days before the date set for the hearing of the application.

- (2) Each party must complete all prehearing procedures in an application in court, including making required disclosure, completing permitted discovery, and filing all affidavits before the finish date.
- (3) A failure to complete a prehearing procedure before the finish date, or before an earlier deadline set by a judge, that causes prejudice to another party may be dealt with under Rule 88 - Abuse of Process.

Prehearing conference

5.18(1) On the motion for direction or afterwards, the court must schedule a prehearing conference with the judge who is expected to hear an application in court.

- (2) The hearing judge may direct that the prehearing conference be held in a courtroom, chambers, or a conference room.
- (3) A lawyer who is to act as lead counsel for a party must participate in the conference, unless the hearing judge permits otherwise.
- (4) At the prehearing conference, the hearing judge must ascertain whether the parties are ready for the hearing of the application and, if so, organize the hearing, which tasks may include any of the following:
 - (a) assess whether the time scheduled for the hearing of the application is sufficient and, if not, schedule more time, adjourn the hearing to new dates, adjourn the hearing without new dates and schedule a hearing of a motion by a party, or the judge's own motion, under Rule 6 - Choosing Between Action and Application, or convert the application to an action on the judge's own motion during the hearing of the motion for directions;
 - (b) ascertain whether all necessary prehearing procedures are complete;
 - (c) ascertain objections to admissibility of an averment or exhibit that require judicial determination and, unless the judge determines that doing so would harm the integrity of the evidence upon which the application is to be determined, dismiss an objection not supported by a notice of objection filed before the finish date;
 - (d) if there is a procedural or an evidentiary dispute, determine the dispute, appoint a time before the hearing of the application for the hearing judge to determine the dispute, allow for time during the hearing for determination, adjourn the hearing of the application with or without

allowing for determination of the dispute during the time in which the hearing had been scheduled, or schedule a hearing under Rule 6 - Choosing Between Action and Application;

- (e) review the affidavits that have been filed and ascertain whether an anticipated affidavit has not been filed;
- (f) inquire into intended cross-examination and set limits on the subjects and duration of cross-examination and re-examination;
- (g) inquire into intended motions usually to be heard by the application judge, such as for an order excluding witnesses pending cross-examination and re-examination, and determine the motion or give directions for when it is to be heard;
- (h) inquire into needs of counsel, a party, or a witness and their accommodation, such as examination by video conference or assistance for those who do not hear well;
- (i) ascertain that briefs have been filed, or will be filed, by the applicable deadlines.

(5) The court may schedule the prehearing conference with a judge other than the hearing judge, if the hearing judge is not available.

17. The word “five” in the heading and again in the body of Rule 5.24 is replaced with “two”.
18. The phrase “, that can be tried or heard in four days or less and within two years after the day it was started,” is added after the word “claim” in Rule 6.02(2).
19. The word “either” in Rule 6.02(4) is changed to “any”, the period at the end of Rule 6.02(4)(b) is changed to a semi-colon, and the following Rule 6.02(4)(c) is added to Rule 6.02(4):
 - (c) the proceeding cannot be tried or heard less than two years from the day it was started.
20. Rule 6.02(5)(d) is re-lettered (e) and the following Rule 6.02(5)(d) is added to Rule 6.02(5):

(d) it can be heard in four days or less;

21. Rule 6.03 is renumbered 6.04 and the following new Rule 6.03 is added to Rule 6 - Choosing Between Action and Application:

Judge's own motion

6.03(1) A judge who hears a motion in a proceeding, including a motion for directions in an application in court, and who becomes satisfied that it is obvious the proceeding should be converted may convert the proceeding on the judge's own motion.

- (2) A judge who presides at a motion for directions in an application in court, and who is satisfied on the information provided for the motion that the application will not be heard within two years after it was started or that the hearing will require more than four days, may convert the application to an action on the judge's own motion.

22. Rules 14.14(2) to (5) are replaced with the following:

- (2) A judge may designate a manager for a corporate party who fails to do so in an action.
- (3) A judge may substitute a manager for a corporate party in an action who makes an unreasonable designation, such as designating a person who has no real connection with the party's claim or defence even though such a person is available and able to act as manager.
- (4) A designated manager in an action must, before being discovered, become informed about relevant information available to the party.
- (5) A corporate party to an application need not designate a manager unless a judge directs otherwise, and the judge may set the terms that apply to the manager.

23. The phrase "to an action" is added after the word "party" in Rule 19.01(1).

24. Rules 19.02 to 19.10 are renumbered 19.03 to 19.11 and the following Rule 19.02 is added:

Interpretation of Rule 19

19.02 In this Rule, "party" means a party to an action unless the word is followed by the phrase "to an application".

25. Rules 19.10 and 19.11, formerly 19.09 and 19.10, are renumbered 19.11 and 19.12 and the following Rule 19.10 is added:

Interrogatories in an application

19.10 A judge may permit interrogatories in an application and set the terms under which the interrogatories are asked and answered.

26. The phrase “, to an action and a party to an application,” is added immediately after the first use of the word “party” in Rule 19.11.
27. The title “**Witnesses for applicant**” in Form 5.07 is changed to “**Named witnesses for applicant**” and the following paragraph is added immediately after that paragraph:

Unnamed witness for applicant

[The applicant intends only to produce evidence from the witnesses named above.]

Provide information about an unnamed witness, an explanation for the applicant’s inability to name the witness, and a justification for proceeding by application, rather than action, without naming the witness at this time.]

28. The attached Form 5.16 - **Notice of Objection to Admissibility (Application in Court)** is added to **Part 22 - Forms**.
29. The word “action” in the first averment in Form 15.03A, Form 15.03B, Form 16.09A, and Form 16.09B is changed to [*action/application in court*].

Certificate

I, Deborah K. Smith, Chief Justice of the Supreme Court of Nova Scotia, certify that on December 11, 2020 a majority of the judges of the court made the foregoing amendments to the *Nova Scotia Civil Procedure Rules*.

Signed December 16th, 2020

**Original Signed by
Deborah K. Smith, C.J.**

Deborah K. Smith
Chief Justice of the Supreme Court
of Nova Scotia

Form 5.16

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No.

Supreme Court of Nova Scotia

Between: [copy standard heading]

[name]

Applicant

and

[name]

Respondent

**Notice of Objection to Admissibility
(Application in Court)**

To: [name of other party]

Objection

The [applicant/respondent] , [name] , objects to [an averment/averments/an exhibit/exhibits/a part of an averment/a part of an exhibit/parts of...] in the affidavit of [name] [sworn/affirmed] on the day of , 20 . The [applicant/respondent] requests that the [subject/subjects] of the objection be expunged.

Particulars of averment

The [subject/subjects] objected to [is/are] in the following [part/parts] of the affidavit and [is/are] to the following effects:

<i>Paragraph and Exhibit</i>	<i>Containing Words to this Effect</i>

Grounds of objection

The averment [at para. /and purporting to prove exhibit] is inadmissible under the rules of evidence because

[Further objected averments, exhibits, or parts.]

Signature
Signed

, 20

Signature
Print Name: