

Order Rule 78.05 and Documents filed to correct errors and omissions in Court Orders

Errors and extensions of time

78.08 A judge may do any of the following, although a final order has been issued:

- (a) correct a clerical mistake, or an error resulting from an accidental mistake or omission, in an order;
- (b) amend an order to provide for something that should have been, but was not, adjudicated on;
- (c) extend the time for doing something required to be done by an order that provides a deadline;
- (d) set a deadline for complying with an order that does not set a deadline.

How to request a correction be made to an order:

Request is made by Motion by Correspondence [*Rule 27*]

Letter that includes the following required elements:

- Addressed and sent to Court Administration - **not** to a Judge directly [*Rule 59.59(1)*]
- ‘RE:’ Line contains:
 - Court File number(s)
 - Names of all parties in proceeding
 - Date of Issued Order
- Relief Sought:
 - Referral of motion to the judge who granted the order
 - Judge’s permission to proceed by motion by correspondence
 - Request to amend Order including:
 - Identification of error(s) or omission(s) in Order
 - Explanation for error(s) or omission(s)
- Cc’d (copied) to all other parties, or their counsel when represented, in the proceeding

Copy of the **original order**

Copy of the **correction order**. This is a stand-alone order separate from the original order. The correction order should be drafted as follows:

- the heading should be the same as the original order
- the title of the order should read: “Order Under Nova Scotia Civil Procedure Rule 78.08”

- the order should be addressed: “Before the Honourable Justice _____ in chambers”
- the operative clause of the order should refer to the original order that is being corrected by its title and issuance date, and confirm what part(s) of that order are being corrected and how.

For example:

[Heading]

ORDER UNDER NOVA SCOTIA CIVIL PROCEDURE RULE 78.08

BEFORE THE HONOURABLE JUSTICE

IN CHAMBERS:

1. “The Parenting & Support Order, issued on January 31, 2019, is corrected by replacing each occurrence of the word ‘Andrea’ with the word ‘Angela’.”

OR

1. “The order for foreclosure, sale and possession, issued on _____, 20__, is corrected by inserting the date “April 29, 2016” in paragraph 1 of the order.”

OR

1. “It is ordered that the words ‘in support of its motion for assessment of deficiency’ in subparagraphs a) and c) of the order, issued on _____, 20__, are replaced with ‘in support of its notice of action and statement of claim’.”

Why use Correction Orders instead of Amended Orders?

The reasons the drafting practice above does not use amended orders and instead uses stand alone, correction orders to correct a clerical or accidental mistake are the following:

- a) To conform with the principle of finality, by which an appeal court is usually the only court with power to vary a trial court order; and
- b) To avoid confusion around times for filing an appeal