

Nova Scotia Civil Procedure Rules
Amendments to Rule 5 (Applications) and Rule 49
June 27, 2025

The following Rules are amended as follows:

1. In Rule 5.01(4), the word “four” is replaced by the word “two”.
2. The following subclauses are added under Rule 5.01(4):
 - (a) Applications in court concerning disputes under the *Quieting Titles Act*, R.S., c. 382, s.1; the *Partition Act*, R.S., c. 333, s.1; the *Companies Act*, R.S., c. 81, s.1 (Third Schedule) and contested estate matters may, at the discretion of the judge presiding at the further motion for directions, be scheduled for up to four hearing days.
 - (b) In rare and exceptional circumstances, a judge may order that a dispute, in addition to those set out above in (a), be scheduled for up to four days.
3. Rule 5.01(5) is renumbered 5.01(6) and a new Rule 5.01(5) is added:
 - (5) Except as set out in Rule 5.13 (4) (d), there is no discovery of witnesses in an application in court.
4. Rule 5.07(2) is deleted and replaced with:
 - (2) A person who files a notice of application in court must, in the notice, provide for the initial motion for directions before a judge.
5. In Rules 5.07(3) and 5.07(4), the word “initial” is added before the word “motion”.
6. Rule 5.07(4)(d) is deleted, and Rule 5.07(4)(e), (f), (g) and (h) are renumbered to Rule 5.07(4)(d), (e), (f) and (g), respectively.
7. Rule 5.07(5)(c) deleted in its entirety and replaced with:
 - (c) it must include a notice of the initial motion for directions and a reference to the affidavit filed in support of the motion.
8. In Rules 5.07(7), 5.10(2)(d), 15.10(4), and 5.11(1), the word “initial” is added before the word “motion”.
9. In Rule 5.12, the word “initial” is added before the words “motion for directions”.
10. Rule 5.13 is renamed “**Initial motion for directions**”.

11. In Rule 5.13(1), the word “initial” is added before the word “motion”.
12. In Rule 5.13(2), the word “a” before “motion” is deleted and replaced with the words “the initial”.
13. In Rule 5.13(2)(a), the words “and setting a date for the hearing of the application” are deleted.
14. Rule 5.13(3) is deleted in its entirety and replaced with:
 - (3) The judge adjourning the initial motion for directions must endeavour to preside at the adjourned hearing, if that is convenient for the judge and for the court.
15. Rules 5.13(4), 5.13(5), 5.13(6) and 5.13(7) are deleted in their entirety and replaced with the following:
 - (4) The judge who hears the initial motion for directions may do any of the following:
 - (a) permit an amendment to the notice of application or notice of contest;
 - (b) ascertain whether there are interested persons who are not parties and, if necessary, adjourn the motion until an interested person is made a party;
 - (c) ascertain the extent to which parties have searched for and made disclosure of documents, electronic information, or other evidence and, if necessary, order disclosure;
 - (d) order discovery of a witness only if the witness has relevant information but refuses to cooperate in the production of an affidavit;
 - (e) give directions for the conduct of a discovery under Rule 5.13 (4)(d), such as directions limiting the time or scope of examination;
 - (f) ascertain witnesses from whom each party is likely to produce an affidavit, inquire into any requirement for cross-examination of a likely witness;
 - (g) order a party to produce an intended affiant as a witness to be cross-examined at the hearing, or out of court with a transcript;
 - (h) limit the duration or subjects for cross-examination;
 - (i) determine whether an expert opinion may be admitted and order disclosure;
 - (j) permit a witness to testify instead of swearing or affirming an affidavit and order disclosure of the witness’ anticipated evidence, such as by ordering delivery of a will-say statement;
 - (k) ascertain the volume of documents that are likely to be in evidence;

- (l) set deadlines for filing the applicant's affidavits, the respondent's affidavits, an applicant's rebuttal affidavit, and a notice of objection to admissibility;
 - (m) set the finish date;
 - (n) set the time, date, and place for the further motion for directions which must occur after the affidavits, and notices of objection to admissibility have been filed and any ordered discovery pursuant to Rule 5.13(4)(d) has taken place;
 - (o) set the time, date, and place for a judicial settlement conference, if the parties request one;
 - (p) give any other directions, or make any other order, needed to organize the application.
- (5) A judge will not set the time, date and place for hearing of the application at the initial motion for directions unless the judge determines it is in the interest of justice to do so.
16. Rule 5.13(8) is renumbered 5.13(6).
17. A new Rule 5.14 is added as follows:

5.14 Further motion for directions to set the time, date and place for hearing of the application

- (1) The further 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 judge permits otherwise.
- (2) Ten days prior to the further motion for directions date, each party must confirm in writing that they have met all deadlines and that the matter is ready for setting the time, date and place of the hearing.
- (3) A judge who hears the further 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 to set the time, date and place for hearing;
 - (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.
- (4) The judge adjourning a further motion for directions must endeavour to preside at the adjourned hearing, if that is convenient for the judge and for the court.
- (5) The judge who hears the further motion for directions may do any of the following:
 - (a) set the time, date, and place for the hearing of the application;
 - (b) set deadlines for filing briefs;
 - (c) set the time, date, and place for a settlement conference, if the parties request one;
 - (d) direct further appearances before that judge or another judge;
 - (e) give any other directions, or make any other order, needed to organize the application.

18. A new Rule 5.15 is added as follows:

5.15 Conversion

- (1) A judge hearing the initial motion for directions, or the further motion for directions 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.
 - (2) A judge may adjourn the initial motion for directions or the further motion for directions and give directions for continuing the motion in combination with a hearing under Rule 6 - Choosing Between Action and Application.
 - (3) The judge adjourning the initial motion for directions or the further motion for directions must endeavour to preside at the adjourned motion, if that is convenient for the judge and for the court.
19. Rules 5.14, 5.15, 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26 and 5.27 are renumbered as 5.16, 5.17, 5.18, 5.19, 5.20, 5.21, 5.22, 5.23, 5.24, 5.25, 5.26, 5.27, 5.28 and 5.29, respectively. The following amendments apply to these renumbered Rules.
20. In Rule 5.17(1), the words "unless a judge hearing the application permits an affidavit to be filed later" are deleted and replaced with "unless the judge hearing the application determines that circumstances exist to justify an affidavit being filed later".
21. Rule 5.17(2) (a), (b), and (c) are renumbered as Rule 5.17(2) (d), (e) and (f), respectively, and the following new subclauses are added:

- (a) the reasons why the affidavit was not filed by the deadline;
 - (b) whether the evidence was known or, by due diligence, could have been known at the deadline;
 - (c) whether the evidence is relevant, in that it bears on a decisive or potentially decisive issue;
22. In Rule 5.18, the words “on a date set by a judge that must be” are added between “admissibility” and “before the finish date”.
23. Rule 5.19(1) is deleted and replaced with the following:
- (1) The finish date in an application in court will be 10 days before the date of the further motion for directions to set a time, date and place for the hearing, unless otherwise ordered by a judge.
24. In Rule 5.19(2), the words “including making required disclosure, completing permitted discovery, and filing all affidavits before the finish date” are deleted and replaced with “before the finish date, or before any earlier deadline set by a judge”.
25. Rule 5.20(1) is deleted and replaced with the following:
- On the further motion for direction or afterwards, the judge will set a date by which counsel must contact the court to schedule a prehearing conference with the judge who is expected to hear an application in court.
26. In Rule 5.20(4)(a), all words after “schedule” are deleted and replaced with “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”.
27. In Rule 5.20(4)(c), a comma is added after “finish date” and “or before any earlier deadline set by a judge” is added after the comma.
28. Rules 5.23(1), (2) and (3) are deleted and replaced with the following:
- (1) A scheduled hearing date of an application in court may only be adjourned by the Chief Justice, Associate Chief Justice, or their designate on the request of a party or the hearing judge or other judge.
 - (2) The Chief Justice, Associate Chief Justice, or their designate who determines a motion for an adjournment of the date for hearing of an application in court must consider each of the following:

- (a) the prejudice to the party seeking the adjournment, if the party is required to proceed to the hearing;
 - (b) the prejudice to other parties, if they lose the hearing dates;
 - (c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.
- 29. In Rule 5.24, the words “A judge” are deleted and replaced with “The Chief Justice, Associate Chief Justice, or their designate”.
- 30. A new Rule 5.25(3) is added as follows:
 - (3) A judge may set aside a summary dismissal of an application made by another judge if it is in the interest of justice to do so.
- 31. Rule 49.04 is deleted in its entirety and replaced with the following:
 - (1) The court may sit for jury trials on any day that the office of the Prothonotary is open excepting from the third Friday in December until the first day that the office of the Prothonotary is open in January.

Certificate

I, Deborah K. Smith, Chief Justice of the Supreme Court of Nova Scotia, certify that on June 27, 2025, a majority of the judges of the court made the foregoing amendments to the *Nova Scotia Civil Procedure Rules*.

**Original signed by
Chief Justice Deborah K. Smith**

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