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## **Part 1 - Applying these Rules**

### **Rule 1 - Purpose**

#### **Educational Notes**

The object of the Rules remains unchanged under R.1.01 - it is the “just, speedy, and inexpensive determination of every proceeding.”

The provisions regarding citation of the Rules have moved to Rule 93 and the definitions section to Rule 94.

#### **1.01 - Object of these Rules**

These Rules are for the just, speedy, and inexpensive determination of every proceeding.

## **Rule 2 - General**

### **Educational Notes**

This Rule deals with application of the Rules, irregularities, mistakes, and general judicial discretion.

The Rules apply to proceedings in the Supreme Court of Nova Scotia, including the Family Division (R.2.01).

Non-compliance with the Rules is treated as an irregularity under R.2.02. As with the previous R.2.01, non-compliance does not invalidate a proceeding or step. The forms of relief are similar to those in the current Rules.

Rule 2.03 sets out that judges have the general discretion to give directions for the conduct of the proceeding before trial or hearing, and direct the conduct of the matter if presiding. The Rule also gives authority to excuse compliance, including the discretion to shorten or lengthen a period, or dispense with notice.

Before excusing compliance, a judge must consider ordering a new deadline, a substitute for compliance, and indemnification of expenses resulting from the failure to comply.

Rule 2.03(3) limits the exercise of a judge's discretion in three circumstances - where the Rules contain a mandatory provision, a limit on discretion, or a requirement to consider particular factors.

### **2.01 - Courts to which Rules apply**

- (1) These Rules apply to proceedings in the Supreme Court of Nova Scotia, including the Family Division of the Supreme Court.
- (2) Rule 90 - Civil Appeal, and Rule 91 - Criminal Appeal, apply to proceedings in the Nova Scotia Court of Appeal.

### **2.02 - Irregularity or mistake**

- (1) A failure to comply with these Rules is an irregularity and does not invalidate a proceeding or a step, document, or order in a proceeding.
- (2) A judge may do any of the following in response to an irregularity:
  - (a) excuse compliance under Rule 2.03;
  - (b) permit an amendment or grant other relief to correct the irregularity;
  - (c) set aside all or part of a proceeding, step, document, or order, if it is necessary to do so in the interest of justice.
- (3) It is not in the interest of justice to set aside a proceeding, step, document, or order on a motion made after an undue delay by the party who makes the motion or after that party takes a fresh step in the proceeding knowing about the irregularity.

### 2.03 - General judicial discretions

- (1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:
  - (a) give directions for the conduct of a proceeding before the trial or hearing;
  - (b) when sitting as the presiding judge, direct the conduct of the trial or hearing;
  - (c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.
- (2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:
  - (a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;
  - (b) require an excused person to do anything in substitution for compliance;
  - (c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.
- (3) The general discretions do not override any of the following kinds of provisions in these Rules:
  - (a) a mandatory provision requiring a judge to do, or not do, something;
  - (b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;
  - (c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations.

### Annotations

The plaintiffs sought to have their application for the appointment of an interim receiver treated as an emergency under Rule 28. They provided no explanation as to why they had waited 2 months to file the application, but insisted the motion be heard as an emergency because there was a chance the defendants would be filing for bankruptcy (in the US) at the end of the month. *Held*, while it would be advantageous for shareholders to know the application's outcome before the bankruptcy filing deadline, motion dismissed. The plaintiffs did not satisfy the court there was a legitimate reason for the delay, and failed to meet the requirements under 28.02 (1). There was no emergency of sufficient gravity to require a speedy hearing. Even if the emergency was of sufficient gravity, it did not outweigh the inconvenience to the defendants (as required by 28.02(1)(c)). Beveridge, J., held that "inconvenience" in the context of Rule 28 requires some unfairness/prejudice to a parties' ability to deal with the merits of the motion. He noted a court should not deny a request for an abridgement of time- lines simply because the responding parties are busy. In this case, the motions were not frivolous, and were complex. To hear them on an emergency basis *would* cause an inconvenience to the defendants. In *obiter*, Beveridge, J., indicated that he accepted the argument that when a court is being asked to abridge time, it should be reluctant to do so - especially if the motion to be heard is patently without merit. This approach should be taken only in the clearest of cases, since a court is generally not supposed to make preliminary assessments of the merits of the motion to be heard. In his reasons, Beveridge, J., pointed to the court's general discretion to abridge time requirements under Rule 2.03 (1). He found discretionary decisions must be guided by principle in order to avoid the appearance of arbitrariness; further, the burden should be on the moving party to satisfy the court that, without the abridgment: (1) the remedy they seek

## Rule 2 - General

would become moot by the mere passage of time and (2) the responding party will not be unfairly prejudiced.

*Aurelius Capital Partners et al. v. General Motors Corp. et al.* , [2009 NSSC 100](#)

The respondent, Carvery, retained the appellant lawyer to bring a personal injury action against the other two respondents. She moved. The appellant was unable to contact her for several years. When his application to be removed as solicitor of record was dismissed, he filed for leave to appeal the dismissal. Being unable to locate and serve any of the respondents, he asked to have notice of the leave application and appeal dispensed with. At issue was whether a chambers judge of the appeal court has jurisdiction to dispense with notice of a leave application/appeal. *Held*, notice dispensed with. Further efforts at service would be highly artificial and without any real purpose. The broad discretion conferred by Rule 2.03 can be used to authorize a judge to dispense with notice. Rule 90.37(12)(b) provides similar authority.

*Wagner v. Carvery et al.* , [2009 NSCA 102](#)