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## Part 20 - Citation, Interpretation, and Documents

### Rule 93 - Citation

#### Educational Notes

The Rules may be cited as the *Nova Scotia Civil Procedure Rules* and the previous Rules may be cited as the *Nova Scotia Civil Procedure Rules (1972)*.

#### 93.01 - Citation and meaning of references

- (1) These Rules may be cited as the *Nova Scotia Civil Procedure Rules*.
- (2) The phrase “these Rules” refers to all Rules in the *Nova Scotia Civil Procedure Rules*, including Rules made under the *Judicature Act*, the *Divorce Act*, the *Controverted Elections Act*, and the *Criminal Code*.
- (3) These Rules refer to a Rule, or a subdivision of a Rule, as “Rule” followed by the number of the Rule or the subdivision of the Rule, such as Rule 4, Rule 4.04, Rule 4.04(4), Rule 4.04(4)(b), or Rule 4.04(4)(b)(i).
- (4) A reference to a provision in these Rules that has been subdivided includes the subdivided provisions, such as in the following examples:
  - (a) a reference to Rule 4 includes Rules 4.01 to 4.22;
  - (b) a reference to Rule 4.01(2) includes Rules 4.01(2)(a) to (c).
- (5) A Rule may be cited in the same way it is referenced in these Rules, or with the phrase “*Nova Scotia Civil Procedure Rule*” instead of “Rule”.
- (6) These Rules use the phrase “this Rule” without a numerical reference to mean the whole of the Rule in which the phrase is used including the subdivisions, such that “this Rule” means Rule 93 in this Rule.

#### 93.02 - Citation of former Rules

The Civil Procedure Rules made by the judges of the Supreme Court on December 2, 1971, as amended, may be cited as those Rules provide, except “Civil Procedure Rules” must be replaced with “*Nova Scotia Civil Procedure Rules (1972)*”.

## Rule 94 - Interpretation

### Educational Notes

The Rule specifies that the Rules are to be interpreted in accordance with the same principles that govern the interpretation of statutes, and that the relevant *Interpretation Act* (Federal or provincial, depending on the context) applies.

#### *Calculation of Time*

The most important change in R.94 is that the method for calculating days has changed. Under R.94.02, all days are clear business days.

Under the *Time Definition Act*, “month” means a calendar month.

Rule 94.02(5) defines a “year” as the 365 days from midnight on the first day to the instant before midnight marking the beginning of the same day the following year. One year from April 17, 2008 would be 11:59 p.m. on April 16, 2009. (Note that the deadline in the leap year example should be February 28 at 11:59 p.m. rather than March 1. This will be corrected in the first amendment to the Rules.)

The court’s formal period of vacation in July and August has been eliminated, and under R.94.04 the court is in session all year.

#### *Withholding Information Solely to Impeach*

Rule 94.09 permits a party to withhold information for the sole purpose of impeaching a witness, even if the Rules would otherwise require that it be disclosed. The Rule mandates a number of conditions to the exception - the party withholding the information may not call the witness to be impeached, and may only offer the withheld information to impeach credibility. If the party decides not to use the withheld information or witness, the party must immediately disclose the information.

It appears that this sub-Rule was drafted with surveillance video in mind, but is broad enough to include any impeaching information.

#### *Definitions*

The definitions section has moved from R.1 in the previous Rules, to R.94. A number of previously defined terms have been deleted and many new terms are defined.

### 94.01 - General

- (1) These Rules must be interpreted in accordance with the principles for interpretation of legislation.
- (2) The *Interpretation Act* (Nova Scotia) applies to these Rules, except where a contrary intention appears and except in a Rule that is within the definition of “regulation” in subsection 2(1) of the *Interpretation Act* (Canada).

### 94.02 - Time

- (1) The period of days in a Rule that permits or requires something to be done in a number of days does not include any of the following:
  - (a) the day the period begins;
  - (b) a Saturday and Sunday in the period;
  - (c) a weekday the office of the prothonotary is closed during the period;
  - (d) the day on which a thing is required, or first permitted, to be done.
- (2) A document delivered on a Saturday, a Sunday, or a weekday that the office of the prothonotary is closed is considered to be delivered on the next weekday when the office of the prothonotary is open.
- (3) A document delivered after four-thirty on an afternoon is considered to be delivered on the next weekday when the office of the prothonotary is open.
- (4) A day is the period between midnight and the instant before midnight marking the beginning of the next day.
- (5) For the purpose of Section 3 of the *Time Definition Act*, a year is the 365 days from midnight of a day on the Gregorian calendar to the instant before midnight marking the beginning of the same numbered day, in the same month, in the following year, except the period is 366 days for a year that includes the twenty-ninth day of February in the following calendar year.

N.S. Gaz. Pt. 1, [12/10/2008](#); [12/16/2009](#)

### 94.03 - Extension of time in appeal

- (1) A person who wishes to obtain an extension of a period referred to in Section 50 of the *Judicature Act* may make a motion in an appeal or in reference to an intended appeal.
- (2) A judge may determine the motion by exercising a discretion similar to that recognized by Rule 2.03, of Rule 2 - General.

### 94.04 - Sessions and sittings referred to in legislation

- (1) The court is in session each year and all year long.
- (2) A person who is permitted or required by legislation to do something at a future session or sitting of the court, such as the next sitting of the court at a specified place, may make a motion to a judge for directions and to appoint a time, date, and place for a hearing.

### 94.05 - Application referred to in legislation

A person who is permitted or required by legislation to apply to the court or a judge may start the application by filing one of the following notices:

- (a) an *ex parte* application, notice of application in chambers, notice of application in court, or notice for judicial review, if the permission or requirement is for an application that is not connected to an existing proceeding;

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- (b) a notice of motion, if the permission or requirement is for an interlocutory step in a proceeding.

### **94.06 - Judicial discretion when party permitted to make a motion**

A Rule that permits a party to make a motion for an order gives a judge a discretion to grant the order or provide other relief that is in the judge's discretion.

### **94.07 - Interlocutory notice and party disentitled to notice**

A Rule that provides for notice to another party or delivery of a document to another party does not require notice or delivery to a party who has become disentitled to notice, unless the Rule expressly provides otherwise.

### **94.08 - Rules applicable to non-party**

A reference in these Rules to a person includes a party and a non-party.

### **94.09 - Withholding information solely to impeach**

- (1) Despite a Rule that requires a party to disclose a document, to answer a question on discovery or by interrogatory, or to otherwise provide information to another party or the court, the party may, for the sole purpose of impeaching a witness, opt to withhold making the disclosure, answering the question, or otherwise providing the information.
- (2) All of the following apply to a party who chooses to withhold a document, not answer a question, or withhold other information for the sole purpose of impeaching a witness:
  - (a) the party cannot use the witness who is subject to impeachment as an affiant on a motion, or seek to call the witness to give direct evidence on a motion;
  - (b) the party cannot call the witness who is subject to impeachment as a witness for the party at a trial or hearing, unless the presiding judge permits otherwise;
  - (c) the party may only offer the withheld document or make use of the withheld information to impeach credibility, and it cannot be used by the withholding party to prove any fact in issue other than credibility;
  - (d) the party must immediately disclose the document or immediately provide the answer or the information, when the party decides not to use it or becomes aware the witness is not to be called.

### **94.10 - Definitions**

In these Rules, unless the context requires a different meaning:

“Chief Justice” means the Chief Justice of the Supreme Court of Nova Scotia in a Rule that applies to the court and the Chief Justice of Nova Scotia in a Rule that applies to the Court of Appeal;

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“child” where it is used in a family context, refers to a person in relation to parents and, where it is used in any other context, means a person who is under the age of majority;

“claim” includes a cause of action and the remedy sought;

“close of pleadings” means the time provided in Rule 38.11, of Rule 38 - Pleading;

“control” includes possession and custody;

“corporation” and “corporate party” mean an entity recognized by law to be a person other than an individual and includes a partnership, a government, and a representative party who represents a government or other public body;

“counsel” means counsel of record or a lawyer who substitutes for counsel of record;

“court” means the Supreme Court of Nova Scotia and includes all of the following:

- i) a judge of the Supreme Court of Nova Scotia, whether the judge is in court or chambers, and whether the judge is appointed generally or to the Family Division,
- ii) a prothonotary, and a court officer in the Family Division, who exercises a judicial power under legislation or these Rules,
- iii) a court officer to whom the prothonotary delegates a judicial power;

“Court of Appeal” means the Nova Scotia Court of Appeal;

“court transcriber” has the same meaning as in the Certification of Transcripts Regulations;

“deposit-taking corporation” means a bank, credit union, or another corporation that is, or is eligible to become, a member institution under the Canada Deposit Insurance Corporation Act;

“document” in a Rule outside Part 5 - Discovery and Disclosure, has the same meaning as in Part 5, except it includes electronic information;

“electronic information” in a Rule outside Part 5 - Discovery and Disclosure, has the same meaning as in Part 5;

“Family Division” means the Supreme Court of Nova Scotia (Family Division);

“family maintenance or support” means a payment required to be made for the maintenance or support of a child, spouse, former spouse, or parent by an order under the *Divorce Act*, the Maintenance and Custody Act, or similar legislation;

“file”, where it is used as a verb, means to deliver a document for filing to the prothonotary or to a person designated to accept documents for filing at an office of the Family Division;

“finish date” means the date fixed under Rule 4.16(6)(c), of Rule 4 - Action;

“individual” means a natural person;

“judge”, where the word is used in connection with the Court of Appeal, means a judge of the Court of Appeal and, where it is used otherwise, means a judge of the court including a judge appointed to the Family Division;

“judgment creditor” means a party in whose favour an order for payment of money is made, a person to whom the party assigns rights under the order, and a person appointed to administer or manage the estate or affairs of the party;

“judgment debtor” means a party against whom an order for payment of money is made;

“legislation” has the same meaning as “enactment” in the *Interpretation Act*;

“medical practitioner” has the same meaning as in the Medical Act as regards a person registered under that legislation and includes a person registered under similar legislation in another jurisdiction;

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“moveable” means property that is neither real nor chose in action;

“officer” includes a manager of a corporation, a manager of a business, a director, and a person who holds a public office;

“order for payment of money” includes an order for the payment of costs;

“proceeding” means the entire process by which a claim is started in, and determined by, the court, such as an action, application, judicial review, or appeal;

“prothonotary” means a person appointed by the Minister of Justice for the Province of Nova Scotia as a prothonotary of the court;

“receiver” includes a receiver and manager;

“registrar” means a person appointed by the Minister of Justice for the Province of Nova Scotia as registrar of the Court of Appeal;

“registry number” means the registry code inserted under Rule 32.02, of Rule 32 - Place of Proceeding, followed by the number assigned for registration of divorces if a divorce judgment is claimed, followed by the proceeding number assigned under Rule 82.14, of Rule 82 - Administration of Civil Proceedings;

“step in a proceeding” means an act in a proceeding required or authorized by a Rule or order, such as filing a document, conducting a discovery, or obtaining execution;

“subsequent encumbrancer” means a person who has an interest sought to be foreclosed in a proceeding but who is not the owner of the equity of redemption or part of it, such as a subsequent mortgagee, judgment holder, tenant, or grantee of a right-of-way;

“teleconference” means an audio or an audio-visual conference held by telephone, over the internet, or by other means of telecommunication;

“wages” includes salaries, commissions, gratuities, and other compensation for labour or services.

N.S. Gaz. Pt. 1, [12/10/08](#)

## **Rule 95 - Preparation of Documents**

### **Educational Notes**

This Rule requires that all documents filed or delivered under the Rules must be signed by or on behalf of the party. Most will be signed by counsel but the Rule lists a few types of documents that must be signed by the party personally (e.g. affidavits, litigation guardian's statement, bonds.) Forms are discretionary and may be varied (R.95.03) provided the Rules are complied with. Prescribed headings are mandatory.

### **95.01 - Scope of Rule 95**

This Rule provides for signature of documents by a party, and it provides for completion of the Forms referred to in these Rules.

### **95.02 - Signing documents**

- (1) A document to be filed by a party, and a document to be delivered under a Rule by a party without filing it, must be dated and signed by or on behalf of the party, except an affidavit of a party, including a response to interrogatories, must be signed by the witness, and dated and signed by the person administering the oath or affirmation.
- (2) Counsel must date and sign a document on behalf of the party counsel represents, unless legislation, a Rule, or an order requires that a party sign personally, as in the following examples:
  - (a) a document that is sworn or affirmed by an individual party, or an officer, employee, or designated manager of a corporate party;
  - (b) a litigation guardian's statement;
  - (c) an undertaking required for a temporary remedy;
  - (d) a bond;
  - (e) an application for reduction of parole ineligibility;
  - (f) an election petition.
- (3) An individual party who acts on their own and the appointed agent of a corporate party who acts on its own must, unless a judge permits otherwise, sign a document personally, except an agent may sign a notice for *habeas corpus* .
- (4) A person who is not a party and who executes a bond or signs a report must sign personally, unless a judge permits otherwise.
- (5) A person who is not a party but wishes to make a motion in a proceeding may sign by counsel or personally.

*N.S. Gaz. Pt. 1, [03/04/2009](#); [12/16/2009](#)*

### **95.03 - Forms, except Forms of headings, may be varied**

As provided in each Rule that prescribes a Form of a document, the document must conform with the requirements of the Rule but may otherwise vary from the Forms, except that a Form prescribing a heading is mandatory.

**95.04 - Forms**

- (1) The Forms referred to in these Rules are provided in Part 22 - Forms.
- (2) Brackets are used in Part 22 to indicate that guidance is being provided on how to complete a blank part of the Form.
- (3) Italicized words in brackets are used to indicate suggested wording.