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Part 4 - Alternate Resolution or Determination

Rule 10 - Settlement

Educational Notes

How this Rule Works

This Rule consolidates and expands on the previous R.41A and Practice Memoranda 5 and 27. Rule 10 applies to any type of proceeding and addresses three aspects of settlement:

1. enforcement of settlement agreements;
2. formal settlement offers affecting costs; and
3. judge-assisted settlement conferences.

Judicial approval of settlements is dealt with in Rule 36 - Representative Party.

Highlights of Changes

Enforcement of Settlement Agreements

Enforcement of settlement agreements is dealt with in R.10.02 and 10.04.

Rule 10.02 provides that settlement with one party does not release any other party unless expressly agreed. It allows third parties to enforce settlement agreements affecting them, even where no privity exists.

Rule 10.04 creates a simple enforcement mechanism for settlements of pending litigation, whether the settlement was reached through negotiation, mediation, arbitration, or at a settlement conference. Rule 10.04 does not extend to enforcement of mediated settlements or arbitration awards except in the context of pending litigation.

By motion, a party can seek an order giving effect to a settlement agreement. A novel aspect of R.10.04 is that where the alleged settlement was reached at a settlement conference, the motion will generally be heard before the settlement conference judge, who is expressly permitted to consider his or her own knowledge of what took place.

Formal Offers to Settle Affecting Costs

Formal offers to settle are addressed in R.10.03 and R.10.05-10.10. Rule 10.05 creates four separate forms of offers to settle, depending on which party is making the offer, and whether the offer is entirely monetary or not.

While the previous R.41A.02 allowed for partial settlements of "any claim," to comply with R.10.05(4) a formal offer to settle must now include terms "that would settle all claims in the proceeding between the party making the offer and the party to whom it is made," including costs, though it is acceptable to simply include costs to be determined.

Rule 10.08 deals with determination of costs after acceptance of a formal offer to settle. Where the defendant's offer is accepted, the Rule builds in an incentive for early acceptance, as the defendant is entitled to disbursements and a contribution towards expenses while the offer is outstanding.

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Rule 10.03 gives the court broad discretion when determining costs to consider written offers made under R.10 or otherwise, but specifically excludes from consideration any offers made at settlement conferences or under agreement that they would not be admissible in relation to costs.

The previous R.41A.04 permitted time-limited offers. Rule 10.06 eliminates deemed revocation and requires that an offer be withdrawn in writing. Presumably, a party could still indicate in the offer an intention to withdraw it on a particular date, but the wording of R.10.06 suggests that a party must now take the step of actually withdrawing the offer in writing when that date arrives.

Breaches after acceptance of a formal offer are dealt with in R.10.07 and provide an aggrieved party with broad remedies in addition to enforcement of the settlement, including damages and expenses of attempting or seeking performance.

The formula for assessing costs has changed. Under the previous R.41A, the successful plaintiff was entitled to disbursements plus double party and party costs from the date of service of the offer to settle, while a successful defendant limited the plaintiff's costs to the date of service of their offer, and became entitled to their own party and party costs and disbursements thereafter.

Rule 10.09 continues different treatment for late settlement offers received less than seven days prior to trial and defines a "favourable judgment" for costs purposes. Rule 10.09 also rewards early settlement offers by increasing tariff costs by a percentage that decreases steadily as the litigation progresses:

Stage of Litigation	Party who starts or successfully defends a proceeding and obtains a favourable judgment	Party who defends but does not fully succeed, and obtains a favourable judgment
Less than 25 days after close of pleadings	Tariff + 100%	Tariff as if successful
More than 25 days after close of pleadings but before setting down	Tariff + 75%	75% of Tariff as if successful
After setting down but before the finish date	Tariff + 50%	60% of Tariff as if successful
After the finish date (which is at least 60 days before trial)	Tariff + 25%	Nothing

Some aspects of the previous R.41A are not dealt with in R.10. For example, R.41A.05 confirmed the usual without prejudice status of offers and limited a party from referring

to offers before the matter was decided, but there is no similar provision in R.10, nor does R.10 contain a provision similar to the previous R.41A.10 dealing with multiple defendants.

Judge-assisted Settlement Conferences

Settlement conferences remain voluntary and confidential under the new Rules, but R.10 shifts the judge's role in the conference away from mediation and towards expression of a candid opinion of the merits of the case.

Timing of Settlement Conferences

The Rules provide wide discretion to hold the conference "at any stage of a proceeding" (R.10.11(1)). Settlement conferences fixed through the Date Assignment process will generally be held no later than 10 days before the trial readiness conference (R.4.16(6)(e)), which in turn is held at least 40 days prior to trial. Rule 4.19(3) expressly provides for late settlement conferences after the trial readiness conference, if warranted.

Types of Settlement Conferences

Counsel may choose between two different types of settlement conference:

Ordinary – in which the parties request the judge to express opinions on the issues in dispute after preparing by reading excerpts from discoveries, other documentary evidence, briefs, and hearing submissions (R.10.13). As a general rule, ordinary settlement conferences will continue to be held in a conference room and will not be on the record or open to the public. The Rule allows for caucusing with the judge. A template agenda is contained in R.10.13(4).

Trial-like – like an ordinary settlement conference, with one added feature: counsel may question a witness or witnesses (R.10.14). Trial-like settlement conferences are not unlike the mini-trials referenced in Practice Memorandum 5, but there are significant differences. Rule 10 suggests that the court intends trial-like conferences to be more widely available than mini-trials. There is no need to prepare a statement of agreed facts, but a list of witnesses with will-says is required and the Rule contemplates that the judge will hear from one or more witnesses. The questioning can include direct examination (or will-say), and cross-examination, but is not done under oath, as its purpose is only to permit the judge to better assess whether the testimony is likely to be accepted. As a general rule, trial-like settlement conferences will be held in a courtroom, off the record, and closed to the public. A template agenda is contained in R.10.14(4).

Procedures Common to all Settlement Conferences

Default procedures for both types of settlement conference are set out in R.10.12, but the parties may agree, or the judge may adopt, other procedures. Rule 10.12 provides for an organizing conference to address procedure, if necessary.

Rule 10 settlement conferences demand a high level of preparation and participation from counsel, clients, and the court. Parties must prepare and submit a brief, book of authorities, and a book of evidence. The contents of each party's books of authorities and evidence must be carefully chosen and edited. They must disclose their case or defence in written submissions (including the party's position on all settlement proposals to date – R.10.13(2)). The filing deadline is 5 days before the conference for ordinary conferences, and 14 days for trial-like settlement conferences. The client or

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an agent with authority to bind the party must attend the conference, unless the judge grants permission to have that person available by phone instead (R.10.12).

If a settlement conference is cancelled due to a party's failure to comply with R.10.12, the judge may order the unprepared party to indemnify another party for their expenses. If a judge is unable to formulate an opinion after reviewing the parties' material and hearing from them, he or she will explain why he or she is unable to do so (R.10.13(4)(f)).

If a settlement is reached, the judge will ensure there is a written or electronic record of the settlement provisions, assign responsibility for preparation of an order, and advise the prothonotary regarding changed requirements for trial or hearing dates.

The confidentiality provisions of R.10.16 govern all settlement conferences and ensure that conference-related documents and correspondence are kept separately from the court file, and are returned to the parties, or destroyed when they are no longer required. Unlike Practice Memorandum 5, R.10 does not specify that the settlement-conference judge may not sit as the trial judge, though the confidentiality provisions of R.10.16 suggest that the practice of assigning a different judge to hear the trial will continue.

10.01 - Scope of Rule 10

- (1) This Rule applies to a settlement of a proceeding or of a claim in a proceeding, and includes both of the following:
 - (a) a formal way to make an offer that may affect how costs are awarded;
 - (b) judge-assisted alternative dispute resolution that is voluntary and flexible.
- (2) This Rule does not cover approval of a settlement by a judge, such as that provided for in Rule 36 - Representative Party.
- (3) Nothing in this Rule makes a judge a compellable witness, or diminishes judicial immunity from civil claims.

10.02 - Release-bar and third party beneficiary rules

- (1) A settlement with one party of a claim in a proceeding does not release any other party against whom the claim is made, unless the party making the claim expressly agrees to release the other party.
- (2) An express agreement to release another party may be enforced by that other party, although the other party is not a party to the agreement.

10.03 - Settlement offers and costs

A judge who determines costs may take into consideration a written offer of settlement made formally under this Rule or otherwise, unless the offer was made at a settlement conference or under an agreement that the offer would not be admissible in relation to costs.

10.04 - Enforcement of settlement agreement or arbitration award

- (1) A party who alleges that, after a proceeding was started, the parties reached agreement for settlement of the proceeding or of a claim in the proceeding may make a motion for an order giving effect to the agreement.
- (2) The judge who hears the motion may do any of the following:
 - (a) declare that an agreement was, or was not, made and is, or is not, enforceable;
 - (b) declare the terms of an agreement;
 - (c) grant an order enforcing an agreement according to its terms;
 - (d) order a trial under Rule 4 - Action or a hearing under Rule 5 - Application and give directions about the issues to be determined.
- (3) A motion under this Rule 10.04 in which it is alleged that an agreement was made in the presence of a settlement conference judge must be heard by the settlement conference judge, unless the judge directs otherwise.
- (4) The settlement conference judge may take into account the judge's own knowledge of what took place at the conference, as well as the evidence presented by the parties.
- (5) A judge may grant an order enforcing a mediated agreement or an arbitration award disposing of a claim in a proceeding, if both of the following apply:
 - (a) after the proceeding was started, the parties agreed to submit the claim to mediation or arbitration;
 - (b) either the mediated agreement or the award disposes of all claims in the proceeding or the claim is severed under Rule 37 - Consolidation and Separation and the award or mediated agreement disposes of the claim.

Annotations

The third party, Mundle, brought a motion under Rule 10.04(1) for an order enforcing the terms of an alleged settlement agreement reached at mediation. While the parties agreed on a resolution to the plaintiffs' claim, the third parties believed the defendants also agreed to sign a release in relation to their counterclaim(s). There was no minutes of settlement. *Held*, motion dismissed, without costs. Settlement agreements are ordinary contracts. There was no meeting of the minds in relation to the terms of the contract # only mistaken assumptions, in part, because: most of the negotiations took place separately; there was no written minutes of settlement; and the negotiations focused almost exclusively with the plaintiffs' claim. Both parties had reason to believe in their understanding of the terms of settlement, and their lack of mutual understanding means no contract arose re: the release.

Gunvaldsen-Klassen v. Bulpitt et al. , [2009 NSSC 66](#)

10.05 - Formal offer to settle an action

- (1) A party who makes a formal offer to settle under this Rule 10.05 may take advantage of the applicable provisions for costs in Rules 10.08 and 10.09.
- (2) A party may make a formal offer to settle an action, or a counterclaim, crossclaim or third party claim in an action, by delivering an offer to settle.
- (3) A formal offer to settle must contain the standard heading of the action, be entitled in one of the following ways, and be dated and signed:

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- (a) "Offer to Settle by Claimant (Monetary)", if it offers to settle entirely on the basis that money is paid to the party who makes the offer;
 - (b) "Offer to Settle by Claimant (Non-monetary)", if it offers to settle on terms that include a requirement the other party do, or refrain from doing, something in satisfaction of a non-monetary claim;
 - (c) "Offer to Settle by Person Claimed Against (Monetary)", if it offers to settle entirely on the basis that money is paid to the other party by the party who makes the offer;
 - (d) "Offer to Settle by Person Claimed Against (Non-monetary)", if it offers to settle on terms that require the party making the offer to do, or refrain from doing, something in satisfaction of a non-monetary claim made by the other party.
- (4) The offer must include terms that would settle all claims in the proceeding between the party making the offer and the party to whom it is made, and the term that would settle costs must provide for one of the following:
- (a) payment on acceptance of an amount stated in the offer;
 - (b) payment of an amount for costs to be determined by a judge;
 - (c) an option for the other party to choose between a stated amount for costs or determination by a judge.
- (5) The offer must also contain both of the following terms:
- (a) it is open for acceptance until it is withdrawn or the trial begins;
 - (b) it may be accepted only by delivery of a written acceptance to the party making the offer.

10.06 - Withdrawal or expiry of formal offer to settle

- (1) A party who makes a formal offer to settle may withdraw the offer at any time by delivering to the other party a written withdrawal.
- (2) A formal offer to settle remains open for acceptance although the other party makes an offer to settle on other terms.

Forms

Offer to Settle by Claimant (Non-Monetary)(10.06B), Offer to Settle by Party Claimed Against (Non-Monetary)(10.06D), Offer to Settle by Claimant (Monetary)(10.06A), Offer to Settle by Party Claimed Against (Monetary)(10.06C).

10.07 - Remedy for breach

- (1) A party to a settlement agreement that results from a formal offer to settle may do either of the following in response to a breach by the other party:
 - (a) move for judgment for damages, or any other remedy arising from the breach of the settlement agreement;
 - (b) require that the action continue as if there had been no settlement agreement.
- (2) The party not in breach of the agreement may also recover judgment against the party in breach for the expenses of attempting to perform the agreement and seeking performance.

10.08 - Determining costs if formal offer accepted

- (1) A judge who determines costs under an accepted formal offer to settle that was delivered by a party who started a proceeding must award costs to that party, unless an injustice would result.
- (2) A judge who determines costs under an accepted formal offer to settle that was delivered by a party against whom the proceeding was started must award to the following party the following costs, unless an injustice would result:
 - (a) to the party who started the proceeding, recoverable disbursements incurred and a contribution towards the expense of the proceeding until the offer was delivered;
 - (b) to the party who made the offer, recoverable disbursements incurred and a contribution towards the expense of the proceeding between the delivery of the offer and the delivery of the acceptance.

10.09 - Costs if formal offer not accepted

- (1) A party obtains a “favourable judgment” when each of the following have occurred:
 - (a) the party delivers a formal offer to settle an action, or a counterclaim, crossclaim, or third party claim, at least one week before a trial;
 - (b) the offer is not withdrawn or accepted;
 - (c) a judgment is given providing the other party with a result no better than that party would have received by accepting the offer.
- (2) A judge may award costs to a party who starts or who successfully defends a proceeding and obtains a favourable judgment, in an amount based on the tariffs increased by one of the following percentages:
 - (a) one hundred percent, if the offer is made less than twenty-five days after pleadings close;
 - (b) seventy-five percent, if the offer is made more than twenty-five days after pleadings close and before setting down;
 - (c) fifty percent, if the offer is made after setting down and before the finish date;
 - (d) twenty-five percent, if the offer is made after the finish date.
- (3) A judge may award costs in one of the following amounts to a party who defends a proceeding, does not fully succeed, and obtains a favourable judgment:
 - (a) the amount that the tariffs would provide had the party been successful, if the offer is made less than twenty-five days after pleadings close;
 - (b) seventy-five percent of that amount, if the offer is made more than twenty-five days after pleadings close and before setting down;
 - (c) sixty percent of that amount, if the offer is made after setting down and before the finish date;
 - (d) nothing, if the offer is made after the finish date.

Annotations

The plaintiff failed to prove liability. Costs were in issue. An offer to settle for \$250,000 was made almost two months before trial. The defendant wanted costs based on the total amount claimed, the Tariffs and a 25 percent increase for the rejected settlement offer under Rule 10.09(2)(d). The plaintiff argued costs calculated in this manner

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would be too high and suggested a lump sum of \$60,000. *Held*, lump sum of \$300,000 awarded; a substantial contribution to the actual costs (\$700,000). A strict calculation based on the Tariffs, and a 25 percent increase would result in an award that either significantly exceeds or almost equals the actual costs, which is inappropriate in the circumstances.

MacIntyre v. Cape Breton District Health Authority, [2010 NSSC 170](#)

10.10 - Formal offer of contribution

- (1) A party may deliver a formal offer of contribution in an action, or on a counterclaim, cross-claim, or third party claim in an action.
- (2) A formal offer of contribution must refer to this Rule 10.10.
- (3) A judge may take a formal offer of contribution into account when determining costs.

10.11 - Settlement Conference

- (1) A settlement conference may be organized at any stage of a proceeding, if the party making a claim and the party against whom the claim is made agree to participate.
- (2) The court may provide either of the following kinds of settlement conference:
 - (a) an ordinary settlement conference, at which the parties may request a judge to express opinions on the issues in dispute after reading excerpts from discoveries, other documentary evidence, and briefs and hearing submissions;
 - (b) a trial-like settlement conference, at which the parties request a judge to express opinions after hearing some witnesses being questioned in addition to reading materials and hearing submissions.

10.12 - Procedures for settlement conference generally

- (1) A judge may adopt any procedure for a settlement conference, and the adopted procedure prevails over procedures provided by this Rule 10.
- (2) A party may propose a procedure for a settlement conference in any of the following ways:
 - (a) at the conference for scheduling the settlement conference;
 - (b) at an organizing conference requested by a party or required by the settlement conference judge;
 - (c) by correspondence with the settlement conference judge, if all parties agree to the proposed procedure;
 - (d) at a conference called to organize a trial-like settlement conference;
 - (e) at the settlement conference.
- (3) A party who participates in a settlement conference must do each of the following:
 - (a) submit a brief, book of authorities, and book of evidence on time;
 - (b) prepare adequately for the conference;
 - (c) disclose the party's case or defence in written submissions and discussions;

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- (d) attend the conference personally if the party is an individual or, if the party is an individual who cannot attend or a corporation, authorize an agent to bind the party to terms of settlement;
 - (e) if the party authorizes an agent, arrange for the agent to attend the conference or, if the settlement conference judge permits, to be in communication with counsel and able to authorize counsel to bind the party to terms of settlement.
- (4) A judge may order a party who participates in a settlement conference and does not comply with Rule 10.12(3) and, as a result, causes the settlement conference to be cancelled, to indemnify another party for the expenses of the conference.
- (5) A judge may order a party who cancels a settlement conference after another party incurs expenses for the conference to indemnify the party for the expenses.

Annotations

The plaintiff filed a notice of application requesting an order for specific performance in relation to a purchase and sale agreement. At a Directions Hearing, filing deadlines were imposed. The parties later agreed to participate in a settlement conference, the date for which fell before the respondent's filing deadline. It was cancelled at the last minute because the respondent failed to file anything, and there was insufficient information to proceed. The plaintiffs sought costs. *Held*, costs of \$700.00 awarded (under Rule 77). The new rules were enacted to encourage parties to prepare and file documents on time so the integrity of the settlement conference process is maintained. The use of these conferences plays an integral role in the trial process by allowing easier and more economical access to justice. Rule 10.12 (3) requires parties to submit materials in advance of a settlement conference, and Rule 10.12 (4) allows for costs when it is not complied with, or a party otherwise causes a settlement conference to be cancelled. Here, the plaintiff incurred costs, and the defendants failed to file appropriate materials in time. Since their position would not be before the court, it would be unfair to proceed.

Parkwoodland Management Ltd. v. MacDonald et al., [2009 NSSC 168](#)

10.13 - Ordinary settlement conference

- (1) Each party who participates in an ordinary settlement conference must submit all of the following to the settlement conference judge at least five days before the conference, unless the judge directs otherwise:
- (a) a brief that complies with Rule 40 - Brief, and this Rule 10.13;
 - (b) a book of authorities that complies with Rule 40 - Brief;
 - (c) a book of evidence containing excerpts from discovery examinations, documentary productions, plans and expert's reports only to the extent necessary for the party to make whatever points the party wishes to make at the settlement conference.
- (2) A brief must include the party's position on the issues to be decided and on any proposals for settlement that have been made.
- (3) The book of evidence must conform with all of the following standards:
- (a) reproduction must be as legible as possible;
 - (b) the book must contain an index that describes each document and refers to its tab or page number;
 - (c) the material must be edited to ensure the judge reads evidence essential to the points being made, and no more.

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- (4) The following agenda applies at an ordinary settlement conference, unless the parties agree or the settlement conference judge directs otherwise:
 - (a) meet in a conference room or courtroom, not on record and not open to the public;
 - (b) each party refers to any further evidence in response to the other party's book of evidence;
 - (c) each party gives concise submissions on the issues in dispute and the party's position on settlement;
 - (d) the judge has the opportunity to ask questions and may require an adjournment to reflect on the submissions;
 - (e) the judge meets with the parties or counsel, together or in caucus;
 - (f) at an appropriate time, the judge expresses opinions on the issues in dispute or explains why the judge is unable to formulate an opinion.

10.14 - Trial-like settlement conference

- (1) Unless the judge directs otherwise, each party who participates in a trial-like settlement conference must, at least fourteen days before the conference, submit to the settlement conference judge the same materials required for an ordinary settlement conference and the brief must include all of the following additional information:
 - (a) a list of witnesses the party would call at trial;
 - (b) a concise summary of the testimony each is expected to give at trial;
 - (c) the name of any person the party intends to produce for questioning at the conference;
 - (d) a proposal for limits on the time to be allotted for questioning.
- (2) The settlement conference judge may convene a conference to organize a trial-like settlement conference.
- (3) The parties may agree on, or the judge at an organizing conference may direct, any procedure for a trial-like settlement conference, including any of the following:
 - (a) the time allotted for questioning;
 - (b) a will-say statement, instead of direct questioning;
 - (c) limits on subjects for questioning.
- (4) The following agenda applies at a trial-like settlement conference, unless the parties agree, or the judge directs, otherwise:
 - (a) meet in a courtroom, not on record and not open to the public;
 - (b) the judge deals with any preliminary issues;
 - (c) the parties briefly describe the evidence each would present at trial;
 - (d) persons are questioned, without oath or affirmation, by the party presenting them, then the other party;
 - (e) each party gives concise submissions;
 - (f) the judge has the opportunity to ask questions and may require an adjournment to reflect on the submissions;
 - (g) the judge meets with the parties or counsel, together or in caucus;

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- (h) at an appropriate time, the judge expresses opinions on the issues in dispute, or explains why the judge is unable to formulate an opinion.
- (5) The questioning of a person at a trial-like settlement conference is only for the settlement conference judge to better assess the chances a party's position will be accepted.

10.15 - Record of settlement

A judge who conducts a settlement conference at which the parties reach agreement must do all of the following, as soon as possible:

- (a) cause the provisions of the agreement to be recorded in writing or electronically;
- (b) assign responsibility to prepare an order that gives effect to the agreement;
- (c) advise the prothonotary of the affect the agreement may have on requirements for trial or hearing dates.

10.16 - Confidentiality

- (1) The privilege attached to settlement discussions applies to all communications for or at a settlement conference.
- (2) A judge who conducts a settlement conference may cause all or part of the conference to be recorded.
- (3) A recording of a settlement conference is not part of the public court record and it must be kept confidential by the prothonotary on behalf of the settlement conference judge.
- (4) Documents or correspondence for a settlement conference must not be filed with the records of the proceeding, or shown to anyone not involved in the conference.
- (5) The settlement conference judge must keep custody of the documents and correspondence and destroy them, or return them to the parties, when the judge no longer requires them.

Rule 11 - Reference

Educational Notes

This Rule allows for certain types of questions in a proceeding to be referred to a referee for inquiry and report. It replaces the previous R.35 on Referees or Local Judges. The primary use of the previous R.35 was references to Family Court judges.

Rule 11 will typically be used to deal with the passing of accounts, an accounting, assessments of damages, questions of land title or boundaries under the *Land Registration Act*, or any other question within the expertise of a referee. Referees can include chartered accountants, chartered business valuers, Nova Scotia Land Surveyors, health professionals, engineers, architects, lawyers, or others. Family Court judges are not specifically mentioned, but are not excluded.

Rule 11.07 gives the judge broad discretion in dealing with the referee's report similar to the powers under the previous R.35, with the exception that evidence contradicting the referee's finding of fact or conclusions must now meet the threshold for admission of fresh evidence under Rule 90 - Civil Appeal.

One of the major changes to R.11 is the inclusion of R.11.03 allowing reference of a question to the Registrar General under the *Land Registration Act*, or generally to a referee.

Rule 11 envisions creative uses by counsel to resolve questions involving technical financial, medical or scientific evidence in an expedited way, without departing from the Supreme Court entirely, as with a private arbitration, which may restrict the parties' rights of appeal. As such, counsel may find R.11 more useful than the previous Rule.

However, R.11 also raises a number of issues for counsel to consider before utilizing a reference. Rule 11.05(2) requires a referee to conduct the proceeding with the same impartiality and independence as a judge, but a referee does not have the security of tenure available to judges, and may not have the same appreciation for the rules of natural justice. Rule 11.05(2)(a) gives the referee conduct of the inquiry, but R.11.08(1) allows a judge to give directions controlling the conduct of the reference. The wording of 11.02(1) suggests that a judge may refer a matter to a referee on his or her own motion, but it seems unlikely that this would occur if all counsel involved object to the reference.

11.01 - Scope of Rule 11

- (1) This Rule provides for inquiry into a question in a proceeding by a person who is not a judge of the Supreme Court of Nova Scotia but who reports findings to the court.
- (2) A question may be referred and the reference may be conducted, in accordance with this Rule.

11.02 - Trial or hearing before a referee

- (1) A judge may refer a question in a proceeding to any person for inquiry and report, unless the question is for a jury in an action in which a party has elected trial by jury.
- (2) A judge who refers a question must give directions for the payment of the referee.

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- (3) The judge may refer questions in the following kinds of proceedings:
 - (a) a motion to pass accounts by anyone obligated to submit accounts for approval by the court, such as a trustee, executor, administrator, receiver, liquidator, or guardian;
 - (b) an accounting under Rule 66 - Account;
 - (c) an assessment under Rule 70 - Assessment of Damages;
 - (d) an action, application, or motion that raises a question within the expertise of a referee.
- (4) The judge may refer a question to any one of the following referees:
 - (a) a member of one of the financial professions, such as a chartered accountant, certified general accountant, certified management consultant, licensed trustee in bankruptcy, chartered business valuer, or chartered insolvency and restructuring practitioner;
 - (b) a Nova Scotia Land Surveyor, a land surveyor qualified elsewhere, or a forester;
 - (c) a member of one of the health professions such as a medical practitioner, registered nurse, or occupational therapist;
 - (d) a member of the engineering profession, in any of its disciplines;
 - (e) a person who is knowledgeable of machines, ships, buildings, plants and their design, such as a mechanical engineer, architect, builder, electrician, plumber, carpenter, or ship surveyor;
 - (f) a psychologist;
 - (g) a social worker;
 - (h) a lawyer;
 - (i) anyone with skills or knowledge to determine the question.

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11.03 - Land Registration Act

- (1) A party may move for the reference of a question to the Registrar General under the *Land Registration Act*, or a person recommended by the Registrar General, if all of the following apply:
 - (a) the question arises in an application for a declaratory judgment to determine land title or boundaries;
 - (b) the application is brought by notice of application in court;
 - (c) the declaratory judgment and claim for costs are the only remedies sought in the application;
 - (d) the Registrar General does not have to answer the same question in making any decision, or taking any action, within the supervisory or appellate jurisdiction of the court;
 - (e) the Registrar General is not a party to a proceeding in which the same question must be decided by the court, or considered by the court on judicial or appellate review.
- (2) The notice of application in court must, in addition to all that is required by Rule 5.07(5) of Rule 5 - Application, provide notice that, on the motion for directions and setting a

Rule 11 - Reference

date, the applicant will move for a reference to the Registrar General or the Registrar General's nominee.

- (3) The affidavit in support of the motion for directions must include evidence for the reference.
- (4) This Rule 11.03 does not restrict the discretion of a judge to refer a question about land arising under the *Land Registration Act* or otherwise to a referee.

11.04 - Nomination, terms for payment, and consent

- (1) A party seeking the appointment of a referee must propose terms for the selection and payment of the referee.
- (2) An order appointing a referee takes effect when the referee files a consent.

11.05 - Terms of reference

- (1) A judge may give directions for the conduct of the inquiry before the referee.
- (2) Each of the following apply, unless a judge gives directions otherwise:
 - (a) a referee conducting an inquiry has the same powers as a judge conducting a hearing, except to grant a contempt order;
 - (b) the referee must conduct the inquiry with the same impartiality and independence required of a judge;
 - (c) the inquiry must be recorded and the exhibits must be kept by the referee until they are turned over to the court;
 - (d) the referee may direct the place and time of the inquiry, including adjournments.
- (3) These Rules apply on an inquiry, as if the referee were a judge.
- (4) The referee must report within six months of the conclusion of the inquiry, unless a judge directs otherwise.

11.06 - Report

- (1) The referee must prepare, file, and deliver to all parties a report stating the referee's findings.
- (2) The referee must state the reasons for the findings, and may make the statement in one of the following ways:
 - (a) giving an opinion orally when the inquiry is finished;
 - (b) giving opinions through the course of the inquiry, if a series of opinions is called for;
 - (c) reserving a question and delivering the opinion in writing before or with the report.
- (3) The referee must cause all exhibits introduced at the inquiry, a list of the exhibits, and a complete recording of the inquiry to be transmitted to the prothonotary.
- (4) Delivery of the report discharges the referee, unless a judge orders otherwise.

11.07 - Response to report

- (1) A judge may do any of the following, after the referee files a report:
 - (a) adopt the report, in whole or in part;
 - (b) vary or reverse any finding stated in the report;
 - (c) reinstate the reference, and direct the referee to provide a supplementary report;
 - (d) reinstate the reference, and remit it to the referee, or a new referee, to take further evidence and provide a supplementary report;
 - (e) give directions for the conduct of a reinstated reference;
 - (f) give judgment.
- (2) A judge may receive evidence in contradiction of the referee's findings of fact or the referee's conclusions, if the reception of the evidence would meet the requirements for admission of fresh evidence before the Court of Appeal under Rule 90 - Civil Appeal.

11.08 - Various powers of a judge

- (1) A judge may give directions controlling the conduct of a reference at anytime before the referee reports.
- (2) On motion of the referee, a judge may give an opinion on any question of law, or provide guidance to the referee.
- (3) A judge may replace a referee.

Rule 12 - Questions of Law

Educational Notes

How this Rule Works

This Rule is an updated version of the previous R.25 and R.27. Rule 12 allows for separating a question of law from the rest of the proceeding and determining the question prior to trial or hearing, if the necessary facts are available, the determination would reduce the length or expense of the proceeding, or the duration of the trial or hearing, and none of the disputed facts will remain in issue after the determination.

The judge who considers the motion to separate the question can either determine the question of law, or fix a hearing to determine the question and give directions, if necessary (R.12.03). The previous R.25 permitted a judge to invoke the Rule on his or her own motion. The general power of a judge to act on his or her own motion is preserved in R.22.10.

Highlights of Changes

Rule 12 now concerns itself only with questions of law. The previous R.25 also dealt with preliminary questions of fact or admissibility of evidence. (Advance rulings on sufficiency of a treating physician's narrative are available under R.55.15).

The biggest change to R.12 is the elimination of the need for an agreed statement of facts, or no material facts in dispute. As long as the facts can be found in a summary way (e.g. by cross-examination on affidavits), and will not remain in issue thereafter, a factual dispute no longer prevents questions of law from being determined prior to trial or hearing. This will prevent a party from resisting measures to shorten the proceeding by unreasonably or arbitrarily refusing agreement on the facts, but it has broader applications even where the parties reasonably disagree on the facts in a discrete area.

The Rules recognize that even with this expansion, R.12 is meant for those "limited circumstances" where preliminary determination of a question of law would increase efficiency and early determination of disputed facts would not impinge on the remaining issues for trial (R.12.01 and R.12.02).

Practice Tip

Counsel should be on the lookout for questions amenable to resolution under the expanded powers in R.12, as strategic use of the Rule could result in significant cost savings to clients.

12.01 - Scope of Rule 12

- (1) A party may, in limited circumstances, seek the determination of a question of law before the rest of the issues in a proceeding are determined, even though the parties disagree about facts relevant to the question.
- (2) A party may seek to have a question of law determined before the trial of an action or the hearing of an application, in accordance with this Rule.

12.02 - Separation

A judge may separate a question of law from other issues in a proceeding and provide for its determination before the trial or hearing of the proceeding, if all of the following apply:

- (a) the facts necessary to determine the question can be found without the trial or hearing;
- (b) the determination will reduce the length of the proceeding, duration of the trial or hearing, or expense of the proceeding;
- (c) no facts to be found in order to answer the question will remain in issue after the determination.

Annotations

The parties brought a chambers motion under Rule 12.02 to have a question of law determined prior to trial on the basis of an agreed statement of facts. The question before the court related to liability: was the damage sustained by the applicant's wharf excluded under the portion of the policy relating to exclusions for damage sustained in windstorms from "waterborne objects"? The wharf was damaged while a boat was being moved after sinking in a windstorm. *Held*, applying the principle of interpretation to the language used in the policy, the policy excludes the damage claimed. While "waterborne object" is a broad term, that doesn't mean it's ambiguous. Looking at the reasonable expectations of the parties in this commercial context, there is no ambiguity here to justify the application of *contra preferendum*. The court's reasons were brief but referentially incorporate the arguments/reasons outlined in the defendant's brief (attached to the original decision).

Thorburn Wharf Fisheries Ltd. v. ING Insurance Co., [2010 NSSC 181](#)

The parties entered into an agreement that the plaintiff could move into the defendant's property in advance of a formal sale for a monthly payment. The defendant evicted the plaintiff when subsequent negotiations failed to result in an agreement for the purchase of the property and the plaintiff was inconsistent in making the monthly payments. The plaintiff commenced an action claiming that the defendant had unlawfully distrained substantial equipment and materials that were owned by another company (even though the invoices for the distrained goods were made out to the plaintiff) and were subject to a purchase money security interest in favour of a financial institution. The plaintiff's application to have the distraint declared illegal and for the release of the distrained property on the basis of a summary judgment or a summary resolution of a question of law was dismissed. The court found, *inter alia*, that none of the criteria set out in Rule 12.02 as to when a question of law can be separated from other trial issues was met.

Cangra Natural Stones Inc. v. Snair's White Eagle Bakery Ltd., [2009 NSSC 252](#)

12.03 - Determination

- (1) A judge who orders separation must do either of the following:
 - (a) proceed to determine the question of law;
 - (b) appoint a time, date, and place for another hearing at which the question is to be determined.
- (2) A judge who appoints a time, date, and place for a separated question to be determined may give directions on any of the following:
 - (a) whether the hearing will be held in chambers or court;

Rule 12 - Questions of Law

- (b) the wording of the question to be determined;
- (c) dates for filing a further affidavit, statement of agreed facts, or brief;
- (d) cross-examination on an affidavit;
- (e) any other direction to organize the hearing.

Rule 13 - Summary Judgment

Educational Notes

This Rule is one of the few Rules to retain the same Rule number, but has expanded to include determination of questions of law.

What we currently think of as summary judgment has become “summary judgment on evidence,” dealt with in R.13.04. The “no arguable issue” test is now articulated as the “no genuine issue for trial” test, but the standard is the same.

Rule 13 also creates a new type of summary judgment called “summary judgment on pleadings” in R.13.03, for cases where the pleading discloses no cause of action or defence, or is otherwise “clearly unsustainable.” This is analogous to the previous R.14.25 which dealt with striking pleadings.

Rule 13.01(2) specifies that pleadings which are frivolous or vexatious should be dealt with under Rule 88 – Abuse of Process. Rule 88.02(1)(e) permits the court to strike a pleading amounting to an abuse of process, along with a number of other possible remedies.

From time to time after dismissing an application for summary judgment under the previous R.13.02, the court would give directions to counsel for the conduct of the proceeding. Rule 13.07 now requires the court to do so, unless all parties waive the requirement. This change offers counsel a window of opportunity to streamline the case with the assistance of a judge who is already familiar with the key facts and issues. Rule 13.07 gives the court broad discretion to restrict discovery in view of disclosure already provided by affidavit or cross-examination, narrow the issues, deal with outstanding disclosure issues, permit the evidence called on the motion to stand at trial, or otherwise provide for a speedy trial.

Rule 13 is one of only a few new Rules intentionally drafted to incorporate jurisprudence from another jurisdiction. Counsel will find many parallels with Ontario’s R.20 and much of the Ontario jurisprudence on summary judgment will be applicable to motions under R.13. Two key differences in the Ontario Rules that have not been incorporated in Nova Scotia are: (a) Ontario R.20.06, which provides for significant costs sanctions after a failed motion for summary judgment; and (b) Ontario R.76, which adopts a less onerous test for summary judgment in cases proceeding under simplified procedures.

13.01 - Scope of Rule 13

- (1) This Rule allows a party to move for summary judgment on the pleadings that are clearly unsustainable and to move for summary judgment on evidence establishing that there is no genuine issue for trial.
- (2) A frivolous, vexatious, scandalous, or otherwise abusive pleading may be dealt with under Rule 88 - Abuse of Process.

Annotations

The defendant municipality reclaimed a property from the school board and later sold it to the plaintiff developer who discovered contamination. They sued the municipality and school board for negligence/breach of contract; in part, claiming the defendants breached their duties under the *Education Act* and *Petroleum Management*

Regulations. The defendants moved for summary judgment, asking the claims be struck/dismissed for: disclosing no cause of action, lacking material facts and being clearly unsustainable. They argued there is no strict liability for breaching statutory duties. *Held*, motion dismissed. The claim will require amendments to show that statutory breach is being advanced as evidence of negligence and not as a cause of action. The existence of a good defence in relation to a particular pleading does not mean it should be struck as clearly unsustainable. If more information is needed to know the case to meet, that does not mean there is no cause of action; it can be addressed by a demand for particulars. Difficult/complex questions like proximity/duty of care are best left for trial unless the claim is clearly unsustainable.

3021386 Nova Scotia Ltd. v. Barrington (District) , [2010 NSSC 173](#)

The parties entered into an agreement that the plaintiff could move into the defendant's property in advance of a formal sale for a monthly payment. The defendant evicted the plaintiff when subsequent negotiations failed to result in an agreement for the purchase of the property and the plaintiff was inconsistent in making the monthly payments. The plaintiff commenced an action claiming that the defendant had unlawfully distrained substantial equipment and materials that were owned by another company (even though the invoices for the distrained goods were made out to the plaintiff) and were subject to a purchase money security interest (PMSI) in favour of a financial institution. The plaintiff's application to have the distraint declared illegal and for the release of the distrained property on the basis of a summary judgment or a summary resolution of a question of law was dismissed. The court found, *inter alia*, that the ownership of the distrained equipment was an arguable issue that was critical to the outcome of the action and credibility would play a major role in resolving this issue and the issue of the PMSI, which required input from several third parties who were not involved in this application.

Cangra Natural Stones Inc. v. Snair's White Eagle Bakery Ltd. , [2009 NSSC 252](#)

13.02 - Interpretation

In this Rule 13,

"action" includes application, except the phrase "cause of action" has its ordinary meaning as a basis for an action or application;

"defendant" means a party against whom a claim is made and who defends the claim by defence, defence to counterclaim, defence to crossclaim, defence to third party statement of claim, or notice of contest;

"plaintiff" means a party who makes a claim by a statement of claim, counterclaim, crossclaim, third party statement of claim, or notice of application;

"statement of claim" means all or part of a statement of claim and includes all or part of a third party statement of claim, counterclaim, crossclaim, and the grounds in a notice of application;

"statement of defence" means all or part of a statement of defence and includes all or part of a statement of defence in answer to a statement of claim, counterclaim, crossclaim, or third party statement of claim, and the grounds in a notice of contest;

"trial" includes hearing of an application.

13.03 - Summary judgment on pleadings

- (1) A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:
 - (a) it discloses no cause of action or basis for a defence or contest;
 - (b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court;
 - (c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.
- (2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:
 - (a) judgment for the plaintiff, when the statement of defence is set aside wholly;
 - (b) dismissal of the proceeding, when the statement of claim is set aside wholly;
 - (c) allowance of a claim, when all parts of the statement of defence pertaining to the claim are set aside;
 - (d) dismissal of a claim, when all parts of the statement of claim that pertain to the claim are set aside.
- (3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.
- (4) A judge who hears a motion for summary judgment on pleadings may adjourn the motion until after the judge hears a motion for an amendment to the pleadings.
- (5) A judge who hears a motion for summary judgment on pleadings, and who is satisfied on both of the following, may determine a question of law:
 - (a) the allegations of material fact in the pleadings sought to be set aside provide, if assumed to be true, the entire facts necessary for the determination;
 - (b) the outcome of the motion depends entirely on the answer to the question.

Annotations

The *Civil Procedure Rules (1972)*, Rule 13 applied. The parties entered into a coal supply contract; a dispute arose when the appellants failed to deliver coal. They claimed (in part) their failure was irrelevant because the respondents had no vessel ready to accept delivery. The chambers judge concluded the parties' obligations (coal delivery/vessel supply) were sequential not concurrent, but his reasons did not outline how/why he made this finding. He granted summary judgment to the respondents and struck this portion of the appellants' defence. The appellants appealed, arguing the relevant clause raises an arguable issue requiring trial. *Held*, appeal allowed; previous cost order quashed and costs of \$3,000 awarded to the appellants. The appeal court found an error in law resulting in an injustice: it would be unfair to deprive the appellants of a potentially viable defence. The chambers judge articulated the correct test, but did not explain why/how he found an implied obligation. The contract, its extent/terms and effect, is in dispute. Whether the parties' obligations were sequential or concurrent, and how this affects damages, can only be determined after the evidence as a whole is fully analyzed. The contract wording is potentially ambiguous, and the evidence shows the parties' relationship was comprised from several sources (letters, emails, industry practice, etc.). There are also serious issues of credibility, facts, proof, contractual interpretation, law, and mixed law/fact.

AMCI Export Corp. v. Nova Scotia Power Inc., [2010 NSCA 41](#)

13.04 - Summary judgment on evidence

- (1) A judge who is satisfied that evidence, or the lack of evidence, shows that a statement of claim or defence fails to raise a genuine issue for trial must grant summary judgment.
- (2) The judge may grant judgment for the plaintiff, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.
- (3) On a motion for summary judgment on evidence, the pleadings serve only to indicate the laws and facts in issue, and the question of a genuine issue for trial depends on the evidence presented.
- (4) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by affidavit filed by the contesting party, affidavit filed by another party, cross-examination, or other means permitted by a judge.
- (5) A judge hearing a motion for summary judgment on evidence may determine a question of law, if the only genuine issue for trial is a question of law.
- (6) The motion may be made after pleadings close.

Annotations

The parties failed to close two property transactions, although the plaintiff paid most of the money due under the agreements. He brought this action after the defendant failed to convey the properties or return the money. The defendant argued the plaintiff had acquiesced to the money being used to help the defendant secure the approvals needed to close the transactions and that oral agreements had been made. The plaintiff moved for summary judgment under Rule 13.04. *Held*, summary judgment granted; the defendant must return the money plus prejudgment interest at five per cent from the date of payment to the date of order; costs to the plaintiff. The defendant was not a credible witness, and provided insufficient evidence to allow the court to conclude there was an oral agreement, or a genuine issue for trial.

Bell v. Atlantic East Properties Ltd., [2010 NSSC 209](#)

The defendant university accused the plaintiff professor of breaching the confidentiality clause in a settlement agreement made in respect of a human right's complaint made by her. Contrary to the confidentiality clause, the terms of settlement were published in the plaintiff's rebuttals filed in respect of a second human right's complaint. They were also published on her website. The defendant brought an action alleging breach of contract, seeking \$1.00 in damages and a permanent injunction requiring the plaintiff to remove all references to the settlement from her website. The plaintiff's defence and counterclaim claimed: the defendant breached the confidentiality clause first by misrepresenting the terms of settlement in a response to the second complaint, which – based on the language used by the university - justified her disclosure; the rebuttals were public documents and she was thus entitled to publish the info contained therein; privilege/absolute privilege; and abuse of process. The defendant moved for summary judgment under Rule 13.04. *Held*, application granted; counterclaim dismissed. By referencing the terms of settlement, the plaintiff breached the contract. The court found no genuine issue of fact to be determined at trial, and that her defences/arguments have no real chance of success: the defence of justification is based on a misunderstanding of the language used by the university in their response; the defence of "public document" has no validity and ignores the need for a successful freedom of information application before the materials could be made public; the defence of privilege appears to be a reference to witness immunity - any privilege that may have attached to the rebuttals were forfeited when the plaintiff published the materials on her website. As for the counterclaim, there are no facts to show this action was an abuse

of process. It was brought to address a specific concern, and justified by the plaintiff's flagrant disregard of the confidentiality clause.

Dalhousie University v. Aylward , [2010 NSSC 65](#)

The applicant sublet space to the respondent, at a loss. The respondent vacated early and got the head landlord to agree to allow an early termination of the head lease. The applicant thought an early termination not in their interest and kept paying rent. They brought an action to recover under the sub-lease, and brought a motion for summary judgment under Rule 13.04. The respondents argued: there were material facts in dispute, issues of conduct/credibility, and mitigation. *Held*, summary judgment granted. There were no material facts in dispute. Since the respondent repudiated the sub-lease, mitigation was irrelevant. Even if the mitigation argument were sustainable, it does not avoid summary judgment on liability.

AFG Glass Centre v. Roofing Connection , [2010 NSSC 108](#)

The plaintiff, a passive investor, owned half the company's common shares. Over four years, the defendants (15 percent shareholders and employees) received dividends of \$300,000. The plaintiff got nothing. She sued for half the dividends and moved for summary judgment under Rule 13.04. The defendants resisted, arguing material facts in dispute, including several purported oral agreements between them and the plaintiff's husband (the third party). They claimed the dividends were payment for their work as employees; that the plaintiff's husband agreed to the arrangement and bound her to it. They also argued the claim should have been made against the company, not them. *Held*, motion for summary judgment dismissed. The new *Civil Procedure Rules (2008)* don't change the law in relation to summary judgment, just codify it. The requirement, in Rule 13.04(4), that a responding party put their best evidentiary foot forward doesn't change the fact that a plaintiff bringing a summary judgment motion must prove their claim. Here, the plaintiff has failed to do so and there is an arguable defence. It's unclear whether she should have brought the claim against the company; even if it were a derivative action, issues would remain.

Heydari v. Ingram et al. , [2010 NSSC 110](#)

The plaintiff died before his civil action (alleging he was sexually assaulted at work) proceeded to trial. Two years passed without anyone moving to appoint a representative for the plaintiff. The defendant brought a motion for summary judgment under Rule 13.04(1). The plaintiff's lawyer, who had represented him throughout, felt the *Rules* required a stay and did not file any evidence in support of the claim. Despite Rule 35.11(1), which requires a stay of proceedings until a representative has been appointed, the court found it reasonable to proceed. *Held*, motion for summary judgment granted. The test for summary judgment remains the same as that under the old *Rules*, and jurisprudence from Ontario is also relevant. Here, there was no genuine issue for trial, and was no evidence from the plaintiff to show the claim had a real chance of success. Rule 13.04(4) requires a party to file some evidence in response to a motion for summary judgment. While the plaintiff was dead, and he had no representative to instruct counsel, his lawyer had represented him throughout and should have been familiar with the evidence available to refute the motion. Evidence could/should have been elicited from other sources.

Leeman v. Baine et al. , [2009 NSSC 311](#)

The defendant doctor, who was being sued for medical malpractice, applied for summary judgment under Rule 13.04. He filed two expert reports that concluded the plaintiff's condition was not connected to his surgery or any negligence on the defendants' part. The plaintiff filed no medical evidence. *Held*, summary judgment granted. The *Rules (2009)* do not alter the existing two part test ((1) there no genuine

issue for trial, and (2) no real chance for success at trial) and case-law. The defendant showed there was no genuine issue requiring trial. The plaintiff could not satisfy his burden by showing his claim had a real chance of success. Merely disagreeing (in his pleadings) with the expert reports was insufficient. His failure to provide evidence to support his position, and/or refute the defendant's, was fatal. The court noted it would be rare for a medical malpractice case to have a real chance of success absent some supporting evidence establishing a causal connection between the alleged negligence and harm suffered, and a breach of the standard of care.

Vaughn v. Hayden , [2009 NSSC 235](#)

13.05 - Damages may be determined

- (1) A judge hearing a motion for summary judgment on evidence must grant judgment for an amount to be determined, if the only genuine issue for trial is the amount to be paid on the claim.
- (2) The judge may determine the amount, or order an assessment, accounting or reference.

Annotations

The applicant sublet space to the respondent, at a loss. The respondent vacated early and got the head landlord to agree to allow an early termination of the head lease. The applicant thought an early termination not in their interest and kept paying rent. They brought an action to recover under the sub-lease, and brought a motion for summary judgment under Rule 13.04. The respondents argued: there were material facts in dispute, issues of conduct/credibility, and mitigation. *Held*, summary judgment granted. There were no material facts in dispute. Since the respondent repudiated the sub-lease, mitigation was irrelevant. Even if the mitigation argument were sustainable, it does not avoid summary judgment on liability.

AFG Glass Centre v. Roofing Connection , [2010 NSSC 108](#)

13.06 - Order for summary judgment

- (1) An order for summary judgment may provide any remedy the court provides on the trial or hearing of a proceeding.
- (2) The judge may stay an order for summary judgment until a related proceeding is determined.

13.07 - Conference or hearing after dismissal

- (1) A judge who dismisses a motion for summary judgment on evidence brought in an action must, as soon as is practical after the dismissal, arrange to give directions, unless all parties waive this requirement.
- (2) The judge may provide directions for the conduct of the proceeding, including directions that do any of the following:
 - (a) restrict discovery in view of disclosure made through an affidavit or cross-examination on an affidavit;
 - (b) narrow the issues to be tried by identifying facts not in dispute;

Rule 13 - Summary Judgment

- (c) regulate disclosure or production of documents, electronic information, or other evidence;
- (d) permit evidence on the motion for summary judgment to stand as evidence at trial;
- (e) provide for a speedy trial;
- (f) provide for a hearing, rather than a trial, under Rule 6 - Choosing Between Action and Application.