

Nova Scotia Civil Procedure Rules
Amendment Re: *Adult Capacity and Decision-making Act*
June 22, 2018

The *Civil Procedure Rules* are amended as follows:

1. Rule 31.03(1)(b) is replaced with the following:

adult who lacks capacity – upon an adult who has been found not to have capacity to understand the kind of document to be served, to act on their own, or to instruct counsel, by handing it to the statutory representative of the adult or the adult’s litigation guardian and upon a person who appears, but has not been found, to lack one of those capacities, to the person’s litigation guardian or, if there is no litigation guardian, to both the person and another designated by a judge;

2. The words “the *Incompetent Persons Act*” in Rule 36.01(1)(c) are replaced with “a statutory representative”.
3. The words “who is not capable of managing their affairs” in Rule 36.06(1) are replaced with “who has been found not to have capacity to act on their own or to instruct counsel”.
4. The words “the *Incompetent Persons Act*” in Rule 36.06(1) are replaced with “a statutory representative”.
5. The words “guardian under the *Incompetent Persons Act*” in Rule 36.06(2) are replaced with “statutory representative”.
6. The words “or representative” are added after “both the person and the guardian” in Rule 36.06(2).
7. The words “is not capable of managing their affairs” in Rules 36.06(3), 36.06(3)(a), and 36.06(3)(b) are replaced with “appears to lack the capacity to act on their own or to instruct counsel”.
8. Rule 36.07(2) is replaced with the following:

A statutory representative must start, defend, contest or respond to a proceeding involving the represented adult in the names of the adult and the representative, unless a judge orders that another person act as litigation guardian.

9. Rule 71.01(1) is replaced with the following:

A person may seek the appointment of a guardian for a child under the *Guardianship Act* or the approval of a contract by a child, in accordance with this Rule.

10. Rule 71.01 is amended by adding Rule 71.01(4) as follows:

This Rule also supplements procedures under the *Adult Capacity and Decision-making Act*.

11. The words “or the *Incompetent Persons Act*” are removed from Rule 71.02.
12. Rules 71.03(3), (4), and (5) are repealed.
13. Rule 71.04(2) is repealed and Rules 71.04(3), (4), and (5) are renumbered (2), (3), and (4) respectively.
14. The phrase “or the *Incompetent Persons Act*” is removed from Rule 71.06(b).
15. The phrase “of a child” is removed from Rule 71.06(g).
16. Rule 71.09 is repealed and Rules 71.10, 71.11, 71.12, and 71.13 are renumbered 71.09, 71.10, 71.11, and 71.12 respectively.
17. The phrase “or a person who is not capable of managing their affairs” is removed from Rule 71.11(1).
18. The phrase “or the person who is not capable of managing their affairs” is removed from Rule 71.11(1)(b).
19. The phrase “or person who is not capable of managing their affairs” is removed from Rule 71.11(2)(c).
20. The phrase “, or a person who becomes capable of managing their affairs and whose guardian is discharged” is removed from Rule 71.11(2)(f).
21. The attached Rule 71.13 is added at the end of Rule 71 – Guardianship.
22. The words “or the *Incompetent Persons Act*” in Rule 77.14(3) are replaced with “, a statutory representative”.

23. The following definition is added after “registry number” in 94.10 “ ‘statutory representative’ means a representative appointed under the *Adult Capacity and Decision-making Act* for a person found to not have the capacity to act on their own, or to instruct counsel, in a proceeding;”.

Certificate

I, Joseph P. Kennedy, Chief Justice of the Supreme Court of Nova Scotia, certify that on June 22, 2018, a majority of the judges of the court made the foregoing amendments to the *Nova Scotia Civil Procedure Rules*.

Signed June 22, 2018



Joseph P. Kennedy
Chief Justice of the Supreme Court
of Nova Scotia

Supplement to Adult Capacity and Decision-making Act Procedures

- 71.13 (1)** A document, other than a notice, pleading, or draft order, authorized by the *Adult Capacity and Decision-making Act* or the regulations made under that statute to be filed with the court must be proved by affidavit and filed as part of the affidavit.
- (2)** An application referred to in the statute or regulations, other than an application for a representation order under sections 5, 8, or 65 of the statute, must be made by motion in the proceeding started by the notice of application for a representation order.
- (3)** A right to apply provided by the statute or regulations, other than to apply for a representation order under sections 5, 8, or 65 of the statute, must be exercised by motion in the proceeding.