

Nova Scotia Civil Procedure Rules
Amendment (Expert Opinion)
June 24, 2022

The following Rules are amended as follows:

1. Rule 51.15 is renumbered 51.16 and the following Rule 51.15 is added to **Rule 51 - Conduct of Trial**:

51.15 Judge limiting number of witnesses

- (1) A judge who is satisfied that calling a witness would lead to unnecessary repetition of testimony of previous witnesses may direct that the witness not be called.
- (2) A judge may limit the number of experts a party may call on the same subject.

2. Rule 55.01(3) is replaced with the following:

- (3) This Rule provides an exception for opinions expressed by a treating physician in the course of treatment, where such opinions were expressed for the predominant purpose of treating the patient. This exception is designed to balance the need for disclosure of information about the treating physician's opinions and the need for obtaining opinions from physicians who are unable or unwilling to prepare an expert's report.

3. Rule 55.09 is amended by removing the comma after the phrase "files an expert's report" and adding the phrase "and a party who wishes to prove an opinion formed by a treating physician in the course of treatment without filing an expert report," after the phrase "rebuttal expert's report,".

4. Rule 55.14 is replaced with the following:

55.14 Treating physician's report

- (1) A party who wishes to prove an opinion formed by a physician for the predominant purpose of treating the patient, such as a diagnosis or a prognosis determined in the course of treatment, may, instead of filing an expert's report by that physician, deliver to each other party notes relating to the opinion and made by the physician during treatment, including:
 - (a) notes of the opinion formed by the physician in the course of treatment;
 - (b) notes of information relied on in forming the opinion, such as notes of a history taken by the physician, an observation the physician made during examination, a relevant statement of fact made by the

party in the course of treatment, or test results obtained by the physician.

- (2) A treating physician report shall also include:
 - (a) a representation signed by the treating physician confirming the opinion was formulated in the course of treatment and identifying the notes representing the opinion and notes supporting the opinion;
 - (b) a transcript approved by the physician of notes that are difficult to read;
 - (c) the treating physician's relevant qualifications, which may be provided in an attached resumé.
- (3) A party who wishes to rely on a treating physician's opinion without filing an expert's report must deliver the treating physician's report within the following times:
 - (a) by no later than six months before the finish date, or a deadline set by a judge;
 - (b) as directed by a judge in an application.
- (4) A party who receives a treating physician's report may file a rebuttal expert's report on the subject of the opinion no more than three months before the finish date in an action, or as directed by a judge in an action or an application in court.
- (5) A party may not obtain a discovery subpoena for, deliver interrogatories to, or obtain an order for discovery of a treating physician who provides a treating physician's report rather than an expert's report.
- (6) A party who calls a treating physician at a trial, or presents the affidavit of a treating physician on an application in court, may not prove an opinion of the physician that is not covered in an expert's report by the physician, or in a treating physician's report with the required representation identifying the opinion.

5. Rule 55.15 is replaced with the following:

55.15 Excluding opinion based on treating physician's report

- (1) A judge who presides at the trial of an action or the hearing of an application must determine the admissibility of a treating physician's report, including any opinion expressed in it, except that an advance ruling under Rule 55.16 on the sufficiency of information to adequately deal with

a physician's report at the trial or hearing, and an order setting conditions or requiring redactions following a motion about sufficiency of information, are binding at the trial or hearing.

- (2) Although testimony by a treating physician providing expert opinion might otherwise be admissible, the judge who presides at the trial of an action or the hearing of an application must exclude expert opinion evidence that is disclosed only by a treating physician's report, unless the party seeking to prove the opinion satisfies the judge on one of the following:
 - (a) the other party had sufficient information to determine whether to retain an expert to assess the opinion, determine whether to seek or deliver a rebuttal expert's report, and prepare for cross-examination of the physician;
 - (b) a judge gave an advance ruling that determined that the treating physician's report is sufficient to adequately deal with the physician's opinion at trial or hearing;
 - (c) a judge gave an advance ruling on sufficiency that set conditions for, or required redactions to, the treating physician's report and the conditions have been fulfilled, or the redactions have been made;
 - (d) the physician supplied an expert's report, or a rebuttal expert's report, that expresses the same opinion.

6. The following Rule 55.16 is added to **Rule 55 - Expert Opinion**:

55.16 Advance ruling on sufficiency of treating physician's report

- (1) A party who delivers, or a party who receives, a treating physician's report may make a motion for a determination of whether the party receiving the report has sufficient information to adequately deal with the physician's opinion at the trial of an action or the hearing of an application.
- (2) A judge who makes an advance ruling on a treating physician's report, and who is satisfied that the party receiving the report does not have enough information to adequately deal with the opinion at the trial of an action or hearing of an application, may preclude the opinion from being proved at the trial or the hearing.
- (3) A judge who makes an advance ruling on a treating physician's report may set conditions that must be fulfilled before the opinion in question is to be proved at the trial of an action or hearing of an application, or require redactions to the report.

- (4) A judge who makes an advance ruling on a treating physician's report must confine the ruling to the sufficiency of information to adequately deal with the physician's opinion at trial or hearing and, otherwise, leave the issues of qualification and admissibility to the trial or hearing judge.

7. The following Rule 55.17 is added to **Rule 55 - Expert Opinion**:

55.17 Treating licensed nurse practitioner

The above Rules relating to opinions expressed by a treating physician, formed by the physician in the course of treatment for the predominant purpose of treating the patient, apply equally to a treating licensed nurse practitioner opinion.

Certificate

I, Deborah K. Smith, Chief Justice of the Supreme Court of Nova Scotia, certify that on June 24, 2022 a majority of the judges of the court made the foregoing amendments to the *Nova Scotia Civil Procedure Rules*.

Signed: June 25, 2022

**Original Signed by
Deborah K. Smith, C.J.**

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