

*Nova Scotia Civil Procedure Rules*  
Amendment of Rule 56  
June 22, 2018

The following amendments are made to Rule 56 - Commission Evidence.

1. The name of the Rule is changed to Rule 56 - Commission Evidence and Testimony by Video Conference.
2. The words of Rule 56.01(2) are replaced with the following:
  - (2) The evidence is obtained by one of the following methods:
    - (a) a commission to take the evidence and deliver a transcript to the court;
    - (b) a commission to transmit the evidence to the court by video conference while the court is in session;
    - (c) a transmission under order without a commission.
3. The words of Rule 56.01(3) are replaced with the following:
  - (3) This Rule also provides for assistance to a court outside the province that takes evidence from a witness within Nova Scotia.
4. Rule 56.02 is renumbered 56.03 and the former Rule 56.03 is replaced with the attached Rule 56.02.
5. The words "by commission" in Rule 56.03(1), formerly 56.02(1), are removed and replaced with "under this Rule 56".
6. The words "by commission" in Rule 56.03(2), formerly 56.02(2), are replaced with "under this Rule".
7. The words of Rule 56.03(2)(d), formerly 56.02(2)(d) are replaced with the following:


The evidence is not being transmitted and the objecting party elects to reserve the question, line of questions, or subject for a ruling by a judge and undertaken to seek that ruling as soon as is practical;
8. Rule 56.03(2)(e) is added at the end of Rule 56.03 as follows:
  - (e) The evidence is not being transmitted and the objecting party elects to adjourn the commission evidence and undertakes to seek a ruling by a judge as soon as is practical.

9. Rules 56.08 and 56.09 are renumbered 56.09 and 56.10 respectively and the former Rule 56.08 is replaced with the attached Rule 56.08.
10. The word and numerals in Rule 56.09(4), formerly 56.08(4), are changed to 56.09.
11. The following Rule 56.09(5) is added to Rule 56.09:
  - (5) A judge may make an order compelling attendance of a witness at a video conference to be transmitted without a commissioner if the judge is satisfied that the order is necessary, and that either of the following applies:
    - (a) the video conference is to be held in Nova Scotia, and the order can be enforced;
    - (b) the witness agrees to the order.
12. Form 56.08 is amended to remove 56.08 and replace it with 56.09.

#### **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



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

## **Order for transcription or transmission**

**56.02 (1)** A judge may make an order that does one of the following:

- (a) appoints a commissioner and authorizes the commissioner to take and transcribe evidence;
- (b) appoints a commissioner and authorizes the commissioner to transmit evidence by video conference received in open court;
- (c) provides for transmission of evidence by video conference received in open court without a commissioner.

**(2)** A judge who decides whether to order transcribed or transmitted evidence must consider each of the following:

- (a) the circumstances of the person to be examined, including the potential for disruption to employment or personal life if the witness were to travel to the place of trial or hearing;
- (b) the chances that the person will not be available to testify in the courtroom;
- (c) the chances that the person will be beyond the ability of the court to compel attendance and will not attend voluntarily;
- (d) the expense of bringing the person to the trial or hearing, and, if the person is in Nova Scotia, the expense of bringing the trial or hearing to the person;
- (e) the apparent importance of having the person's testimony;
- (f) the possibility of convening court where the witness is located, if that place is in Nova Scotia;
- (g) the possibility of appointing the judge to take evidence under commission, if the witness is outside Nova Scotia and there is no jury.

**(3)** A judge who decides whether to order transcribed evidence must also consider the inadequacies of a transcript for assessing testimony and any alternatives that may be available.

**(4)** A judge who decides whether to order transmitted evidence must also consider each of the following:

- (a) the quality of the proposed transmission for the purposes of the trial or

hearing, especially for assessment of the evidence by a judge or members of a jury;

- (b) if there is a significant difference in time zones of the place of transmission and Nova Scotia, the impact on the trial or hearing of accommodating the need for alertness at both places;
  - (c) if the transmission cannot be readied whenever the witness may be called, the impact on the trial or hearing of having to fix a date and time for the transmission or having to adjourn the trial or hearing.
- (5) A judge who decides whether to order transmitted evidence without a commissioner must also consider how safeguards that are the subjects of instructions to a commissioner for taking and transmitting evidence can be ensured without a commissioner.
- (6) A party who makes a motion for transcription or transmission of evidence from a place outside Nova Scotia must include references to the applicable laws of that place in the brief filed in support of the motion.

#### **Order for transmission without commissioner**

- 56.08** (1) An order for transmission without a commissioner may be made in writing or orally, before or during the trial or hearing in which the evidence is to be received.
- (2) The order must include a requirement for the administration of an oath or affirmation that accords with the laws of the place from which the evidence is to be transmitted.
- (3) The judge who presides at the trial or hearing must be satisfied on each of the following:
- (a) the required oath or affirmation is administered;
  - (b) the witness is in a room with doors closed;
  - (c) no one other than the witness is in the room, except as permitted by the judge;
  - (d) the witness agrees to comply with all directions of the court, not to communicate with others during examination unless the judge permits, not to look at a note or other thing containing information unless the judge permits, and to report to the judge anything unusual that happens in the room.