

*Nova Scotia Civil Procedure Rules*  
Amendment (Miscellaneous)  
January 24, 2020

The following Rules and Forms are amended as follows:

1. The word “Alternate” in the title of Part 4, and in the references to Part 4 in the table of contents, Rules 3.01(a) and (b), and Rule 13.01(2)(c) is changed to “Alternative”.
2. The phrase “, and who has not contracted a rate of interest,” is added to Rule 4.03(2) after the phrase “files a notice of action for debt”.
3. Rule 4.04(5) is renumbered 4.04(6) and the following new Rule 4.04(5) is added to Rule 4.04:
  - (5) When a proceeding expires, the prothonotary must deliver a notice advising of the expiry to a party who designated an address for delivery by ordinary mail to that address.
4. Rule 4.22(1) is amended by removing the indefinite article “an” before “action” and replacing it with “a defended”.
5. The title “**Third party claims**” is added to Rule 5.12.
6. Rule 7.07 is renumbered 7.07(1) and the following Rule 7.07(2) is added:
  - (2) Two days before the hearing of the motion for directions in a judicial review in which a respondent has not filed a document in response, the applicant must either file an affidavit of service proving required notice, advise the prothonotary that the respondent has stated in writing their intention to appear at the hearing, or advise the prothonotary that notice has not been effected.
7. Rule 7.23 is renumbered 7.23(1) and the following Rule 7.23(2) is added:
  - (2) Two days before the hearing of the motion for directions in an appeal in which a respondent has not filed a document in response, the appellant must either file an affidavit of service proving required notice, advise the prothonotary that the respondent has stated in writing their intention to appear at the hearing, or advise the prothonotary that notice has not been effected.
8. Rule 8.03 is renumbered 8.03(1) and the following Rule 8.03(2) is added:

- (2) Two days before a party moves for the default judgment, the moving party must either file an affidavit proving required notice or advise the prothonotary that notice has not been effected.
9. The words “accountant, certified general accountant” in Rule 11.02(4)(a) are replaced with “professional accountant”.
10. The word “cost” in Rule 14.07(4) is corrected to read “costs”.
11. The following Rule 23.11(3) is added to Rule 23.11:
- (3) Two days before the hearing of a motion involving a person who is not a party and has not filed a document in response, or a party who is not disentitled to notice and does not have a designated address for delivery of documents, the party making the motion must either file an affidavit of service proving required notice or advise the prothonotary that notice has not been effected.
12. The title of **Rule 26 - Conference** is changed to **Rule 26A - Conference** and “A” is added to the number of each of the Rules under that title.
13. The numeral “26” is changed to 26A in the table of contents at Part 6, and in Rules 22.01(2)(d), 24.01(3), 59.38(1), (2), (4), (5), and (6), 60A.13(1), 62.05(2), 76A.02(2)(a), 78.04(3)(e), 86.02(2), 86.04(4), and 87.02(2).
14. Rule 26A.02 titled “**Case management**” is removed and Rules 26A.03 to 26A.05 are renumbered 26A.02 to 26A.04.
15. **Rule 26B - Case Management** attached as an appendix to this amendment is added after **Rule 26A - Conference**.
16. Rule 27.01(2) is renumbered (3) and the following Rule 27.01(2) is added to Rule 27.01:
- (2) Unless a judge permits otherwise, a motion by correspondence must include a notice of motion, a supporting affidavit, a draft order, and a brief.
17. The phrase “is not capable of managing their affairs” in the following Rules is changed to “has been found not to have capacity to act on their own or to instruct counsel”: Rules 36.01(1)(b), 36.06(5), and 36.09(6).
18. The phrase “is not capable of managing their affairs” in the following Rules is changed to “appears likely to be found not to have capacity to act on their own or to instruct counsel”: Rules 36.06(4) and 36.13(2)(a).

19. Rules 36.14(4) and (5) are replaced with the following Rule 36.14(4):
- (4) The terms of the trust must include a requirement for a bond in an amount one and one quarter times the amount of the trust fund, or the value of the trust property, provided by a recognized surety company, unless the judge is satisfied that one of the following adequately protects the represented party from a breach of the trust by the trustee:
- (a) a bond provided by a recognized surety company in a lesser amount;
  - (b) a bond provided by a person who justifies by affidavit, in the prescribed amount, or a lesser amount approved by the judge;
  - (c) a security granted or posted by the trustee, or another person, that has a value in the prescribed amount, or a lesser amount approved by the judge;
  - (d) the unsecured liability of the trustee for breach of trust.
20. The numerals “100,000” in the title to **Part 12 - Actions Under \$100,000, Rule 57 - Action for Damages Under \$100,000, and Rule 58 - Action for Claim Valued Under \$100,000**, and everywhere in the text of that Part and those Rules, is changed to 150,000.
21. The numeral 99,999.99 in Rule 57.04(3) is changed to 149,999.99.
22. The numeral 100,000 in Rule 52.02(2) is changed to 150,000.
23. The words “*Canada Pension Act*” in Rule 62.23(2)(e) are replaced with “Canada Pension Plan”.
24. The numeral “100,000” is changed to 150,000 in the table of contents at Part 12, in Rules 4.02(3)(e), 13.01(2)(d), 18.01(2), 52.02(2), and 67.03(2)(d), and in both the heading and text of Rule 92.06.
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25. The period at the end of Rule 84.02(4)(f) is changed to a semi-colon, and the following Rule 84.02(4)(g) is added to Rule 84.02(4):
- (g) the expiry of an action.
26. Rule 84.02(4) is amended by re-lettering (e) and (f) as (f) and (g) and adding the following as Rule 84.02(4)(e):
- (e) the expiry of an action as declared by the prothonotary;

27. The words “**and interim order**” are added to the title of Rule 85.04.
28. Rule 85.04 is amended by adding the following Rules 85.04(4), (5), and (6):
- (4) A party who moves for a confidentiality order may make a motion by correspondence to the prothonotary, or the chambers judge, for an interim order for confidentiality.
  - (5) A prothonotary, or chambers judge, to whom a motion for an interim order for confidentiality is made may restrict access to the record of the motion, and to any other record sought to be made the subject of the confidentiality order, for such time as is required to give notice of the motion and bring the motion to a hearing.
  - (6) A judge may extend the time provided by an interim order for confidentiality, and the judge who hears a motion for a confidentiality order, may give directions about access to the records in issue pending determination of the motion.
29. The title of Rule 85.05 is changed to “**Notice for confidentiality order and for interim order**”.
30. Rule 85.05(1) is amended by removing “A” at the beginning and substituting “In addition to giving notice to the other parties as required by these Rules, a”.
31. Rule 85.05 is amended by adding the following Rule 85.05(5):
- (5) A motion for an interim order for confidentiality may be made *ex parte*, unless a judge directs otherwise.
32. The numeral 100,000 in the title and text of the paragraph titled “**Rule 57 - Action for Damages Under \$100,000**” in Form 4.02A and Form 4.03A is changed to 150,000.

### Certificate

I, Deborah K. Smith, Chief Justice of the Supreme Court of Nova Scotia, certify that on January 24, 2020 a majority of the judges of the court made the foregoing amendments to the *Nova Scotia Civil Procedure Rules*.

Signed January 24, 2020

Original signed by  
Chief Justice Deborah K. Smith

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

## **Rule 26B - Case Management**

### **Scope of Rule 26B**

- 26B.01 (1)** This Rule 26B continues the practice of judicial management in selected actions.
- (2) This Rule departs from a general principle of procedure that an action is managed by the parties until trial dates are requested.

### **Appointment**

- 26B.02 (1)** A judge may order the prothonotary to appoint a case management judge to assist in managing an action.
- (2) The Chief Justice of the court may appoint a judge to act as case manager and as trial judge.
- (3) A case management judge, who has been appointed by the Chief Justice to also act as trial judge, must inquire, at the first conference, into whether a motion is foreseen the determination of which could preclude the case management judge from presiding at trial.

### **First conference**

- 26B.03 (1)** A judge who is appointed as case manager must convene a conference with all parties who are entitled to notice as soon as is convenient after the appointment to consider all subjects pertinent to management, including:
- (a) the state of pleadings, a deadline for close of pleadings, and amendments to pleadings;
- (b) the state of disclosure and a schedule for completion of disclosure;
- (c) whether parties know who they require for discovery;
- (d) a schedule for discoveries or a deadline for the parties to be in a position to suggest a schedule;
- (e) information about expert witnesses;
- (f) a schedule for expert witness reports or a deadline for the parties to be in a position to suggest a schedule;

- (g) anticipated motions and whether they should be dealt with in conference or in chambers;
- (h) whether the case manager is precluded from determining an anticipated motion;
- (i) whether trial readiness can be forecasted and, if so, the forecast;
- (j) whether length of trial can be forecasted and, if so, the forecast.

#### **Further case management**

- 26B.04 (1)** A case management judge must monitor the progress of the action under management by holding further conferences, by hearing motions, by exchanging correspondence, or by other means.
- (2) A case management judge must direct the action towards its conclusion at conferences, at hearings, by correspondence, or by other means.
  - (3) A judge who case manages an action, and who has the information a date assignment conference judge would have, may appoint trial dates.

#### **Motions in cases under management**

- 26B.05 (1)** A case management judge must hear motions made in the action under management, unless one of the following applies:
- (a) the judge is conflicted from hearing the motion;
  - (b) the motion responds to an emergency and the case management judge is not available when the emergency requires;
  - (c) the case management judge is also the trial judge and the case management judge determines that hearing the motion would create a substantial risk of recusal;
  - (d) the case management judge determines there is another substantive reason that precludes the judge from hearing the motion.
- (2) A case management judge who does not hear a motion in the proceeding under management may assist the parties to have the motion heard by another judge at a time, and in a place, suitable to the circumstances of the motion.