*Nova Scotia Civil Procedure Rules **

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* an official consolidation of Rules made on June 6, 2008 and amended to December 12, 2025.

Part 1 - Applying these Rules

Rule 1 - Purpose

1.01 Object of these Rules

These Rules are for the just, speedy, and inexpensive determination of every proceeding.

Rule 2 - General

2.01 Court to which Rules apply

(1) These Rules apply to proceedings in the Supreme Court of Nova Scotia, including the Family Division of the Supreme Court.

(2) Rule 90 - Civil Appeal, and Rule 91 - Criminal Appeal, apply to proceedings in the Nova Scotia Court of Appeal.

2.02 Irregularity or mistake

(1) A failure to comply with these Rules is an irregularity and does not invalidate a proceeding or a step, document, or order in a proceeding.

(2) A judge may do any of the following in response to an irregularity:

(a) excuse compliance under Rule 2.03;

(b) permit an amendment or grant other relief to correct the irregularity;

(c) set aside all or part of a proceeding, step, document, or order, if it is necessary to do so in the interest of justice.

(3) It is not in the interest of justice to set aside a proceeding, step, document, or order on a motion made after an undue delay by the party who makes the motion or after that party takes a fresh step in the proceeding knowing about the irregularity.

2.03 General judicial discretions

(1) A judge has the discretions, which are limited by these Rules only as provided in Rules 2.03(2) and (3), to do any of the following:

(a) give directions for the conduct of a proceeding before the trial or hearing;

(b) when sitting as the presiding judge, direct the conduct of the trial or hearing;

(c) excuse compliance with a Rule, including to shorten or lengthen a period provided in a Rule and to dispense with notice to a party.

(2) A judge who exercises the general discretion to excuse compliance with a Rule must consider doing each of the following:

(a) order a new period in which a person must do something, if the person is excused from doing the thing within a period set by a Rule;

(b) require an excused person to do anything in substitution for compliance;

(c) order an excused person to indemnify another person for expenses that result from a failure to comply with a Rule.

(3) The general discretions do not override any of the following kinds of provisions in these Rules:

(a) a mandatory provision requiring a judge to do, or not do, something;

(b) a limitation in a permissive Rule that limits the circumstances in which a discretion may be exercised;

(c) a requirement in a Rule establishing a discretion that the judge exercising the discretion take into account stated considerations.

2.04 Dates set by the Court

Dates set by a judge cannot be altered without the approval of a judge.

Part 2 - Civil Proceedings

Rule 3 - Kinds of Proceedings

3.01 Actions, applications, and judicial or appellate review

A person may claim a civil remedy in the Supreme Court of Nova Scotia by starting any one of the following kinds of proceedings:

(a) an action, which leads to a trial or an earlier resolution under Part 4 - Alternative Resolution or Determination;

(b) an application, which leads to a hearing or an earlier resolution under Part 4 - Alternative Resolution or Determination;

(c) a proceeding for judicial review, or an appeal to the court under legislation.

Rule 4 - Action

4.01 Scope of Rule 4

(1) A person may do any of the following, in accordance with this Rule:

(a) start an action;

(b) defend an action;

(c) bring a counterclaim, crossclaim, or third party claim within an action;

(d) have an action set down for trial.

(2) The provisions for having an action set down for trial allow a party to request trial dates before the parties are ready for trial, and the following kinds of requirements are included as a consequence of providing for early assignment of trial dates:

(a) parties, counsel, and a judge assigning the trial date are required to make diligent efforts for forecasting when the action will be ready for trial and how many days will be needed;

(b) a party who becomes aware that the forecast may not be attained has a duty to request a conference with a judge;

(c) a party has a duty to get ready for trial in the forecasted time and participate in a trial readiness conference.

4.02 Notice of action

(1) A person may start an action by filing a notice of action, unless one of the following applies:

(a) legislation requires the action to be started by filing a different document, such as the petition required by the *Controverted Elections Act*;

(b) legislation, such as the *Builders' Lien Act*, permits the action to be started by filing a statement of claim without a notice;

(c) a creditor chooses to start the action by filing a notice of action for debt under Rule 4.03.

(2) The notice of action must include a statement of claim as part of the notice.

(3) The notice of action must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Action", be dated and signed, and include all of the following:

(a) notice that action has been started for relief described in the attached statement of claim;

(b) notice of the deadlines in Rule 31 - Notice for filing a defence;

(c) notice that the plaintiff may have default judgment against the defendant, unless the defendant files a notice of defence;

(d) a notice that the defendant may file a demand for notice, if the defendant does not defend the action but wishes to have further notice;

(e) a statement summarizing the effect of Rule 57 - Action for Damages Under $150,000, stating how it becomes applicable, and stating whether the action is within the Rule;

(f) a statement explaining how documents are filed and the requirement for immediate delivery to each party entitled to notice;

(g) if there is only one plaintiff, a designation of an address for delivery of documents to the plaintiff and, if there is more than one plaintiff, a designation of one address for delivery to all plaintiffs or a separate address for each plaintiff;

(h) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(i) the place of trial designated by the plaintiff in accordance with Rule 47 - Place of Trial or Hearing;

(j) the attached statement of claim.

(4) The statement of claim must notify the defendant of all the claims to be raised by the plaintiff at trial, conform with Rule 38 - Pleading, and include each of the following:

(a) a description of the parties;

(b) a concise statement of the material facts relied on by the plaintiff, but not argument or the evidence by which the material facts are to be proved;

(c) reference to legislation relied on by the plaintiff, if the material facts that make the legislation applicable have been stated;

(d) a concise statement of the remedies claimed, except costs.

(5) The notice of action may be in Form 4.02A, and the statement of claim may be in Form 4.02B.

4.03 Notice of action for debt

(1) A plaintiff who claims only on a debt, and who claims no interest, interest under an agreement that expressly provides for the payment of interest, or prejudgment interest under the *Judicature Act* may start an action by filing a notice of action for debt.

(2) A plaintiff who files a notice of action for debt, and who has not contracted a rate of interest, may claim prejudgment interest under the *Judicature Act* at five percent a year calculated simply from the day the debt came due.

(3) A prothonotary may dismiss an action brought by notice of action for debt, if the prothonotary is satisfied the plaintiff makes a claim that is not based only on a debt, such as a claim based on an unliquidated demand.

(4) The notice of action for debt must be entitled "Notice of Action for Debt", otherwise include everything that is required in a notice of action, and provide each of the following additional statements:

(a) a statement of the amount sought on default judgment expressed as the amount of the debt calculated to a recent day, a claim for interest after that day such that the defendant and the prothonotary can calculate the amount from information in the notice including the statement of claim, the amount of Tariff D costs, and a claim for disbursements to be taxed;

(b) a statement that the prothonotary will dismiss the action, except the claim for taxed disbursements, if the defendant pays the amount sought for default judgment and delivers a receipt to the prothonotary;

(c) a statement that the claim for disbursements may be settled or taxed.

(5) The statement of claim in a notice of action for debt must notify the defendant of the basis for the claim in debt, conform with Rule 38 - Pleading, and include each of the following:

(a) a description of the parties;

(b) a concise statement of how the debt was incurred;

(c) a concise statement of how the debt came due;

(d) a statement of the rate and calculation of any interest claimed;

(e) a statement showing the calculation of the amount claimed, including principal, credits, interest, and the total;

(f) a statement showing how further interest is to be calculated to the date of judgment.

(6) The notice of action for debt may be in Form 4.03A, and the statement of claim may be in Form 4.03B.

4.04 Expiry and renewal of a notice of action

(1) A notice of action, including a notice of action for debt, expires one year after the day it is filed, unless a defendant is notified of the action in accordance with Rule 31 - Notice.

(2) A plaintiff may make a motion to renew a notice of action for a second year by filing a notice of motion no more than fourteen months after the day the notice of action is filed.

(3) The motion may be made *ex parte*, unless a judge orders otherwise.

(4) A notice of action that is renewed for a second year expires two years after the day it is filed.

(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.

(6) A judge may renew an expired notice of action more than fourteen months after the day the notice of action is filed only if the plaintiff satisfies the judge on either of the following:

(a) reasonable efforts were made to notify the defendant of the action by effecting personal service, service could not be effected personally, and the plaintiff will make a motion for a substituted method of giving notice as soon as possible;

(b) inadvertence led to the expiry, the plaintiff will suffer serious prejudice if the proceeding is terminated, and no defendant will suffer serious prejudice that cannot be compensated in costs as a result of the delay in notification.

4.05 Defending an action

(1) A defendant may defend an action by filing a notice of defence.

(2) The notice of defence must include a statement of defence as part of the notice.

(3) The notice of defence must contain the standard heading, be entitled "Notice of Defence", be dated and signed, and include all of the following:

(a) a statement identifying each defendant filing the defence;

(b) a notice that the action is defended on the grounds stated in the attached statement of defence;

(c) if the notice is for only one defendant, a designation of an address for delivery of documents to the defendant and, if it is for more than one defendant, a designation of one address for delivery to all defendants who file the notice or a separate address for each defendant;

(d) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(e) the attached statement of defence.

(4) The statement of defence must notify the plaintiff of all the defences to be raised at trial, conform with Rule 38 - Pleading, and include each of the following:

(a) a statement identifying the defending party;

(b) a statement of which of the facts pleaded in the statement of claim are admitted, which are not admitted only because the defendant has insufficient knowledge to admit or deny them, and which are denied;

(c) a concise statement of the defendant's version of the material facts, if the defendant will seek to prove a different version of the material facts from those in the statement of claim;

(d) a concise statement of the material facts relied on by the defendant for any further defence, but not argument or the evidence by which the material facts are to be proved;

(e) reference to legislation relied on by the defendant, if the material facts that make the legislation applicable have been stated.

(5) The notice of defence may be in Form 4.05A, unless the defendant also counterclaims or crossclaims, and the statement of defence may be in Form 4.05B.

(6) A notice of defence may be filed before the deadline in Rule 31 - Notice or the time permitted by a judge who sets aside a judgment under Rule 8 - Default Judgment.

4.06 Demand for notice

(1) A defendant who does not have a defence to an action, or does not choose to defend an action, may demand notice of all steps in the proceeding.

(2) The defendant may demand notice by filing a demand for notice.

(3) The demand for notice must contain the standard heading, be entitled "Demand for Notice", be dated and signed, and include all of the following:

(a) a statement identifying each defendant filing the demand;

(b) a notice the demand is made;

(c) if the demand is filed by one defendant, a designation of an address for delivery of documents to that defendant and, if the demand is filed by more than one defendant, a designation of one address for all defendants or a separate address for each defendant.

(d) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(4) The demand for notice may be in Form 4.06.

4.07 Lack of jurisdiction

(1) A defendant who maintains that the court does not have jurisdiction over the subject of an action, or over the defendant, may make a motion to dismiss the action for want of jurisdiction.

(2) A defendant does not submit to the jurisdiction of the court only by moving to dismiss the action for want of jurisdiction.

(3) A judge who dismisses a motion for an order dismissing an action for want of jurisdiction must set a deadline by which the defendant may file a notice of defence, and the court may only grant judgment against the defendant after that time.

4.08 Counterclaim

(1) A defendant may counterclaim against a plaintiff for any claim the defendant has against the plaintiff.

(2) The defendant may counterclaim by filing a notice of defence and counterclaim.

(3) A notice of defence and counterclaim must include a statement of defence and a statement of counterclaim as parts of the notice.

(4) The notice of defence and counterclaim must be entitled "Notice of Defence and Counterclaim", otherwise include everything that is required in a notice of defence under Rule 4.05(3), and provide all of the following:

(a) a notice that a claim is made by the defendant against the plaintiff;

(b) a notice that the defendant may have default judgment against the plaintiff on the counterclaim, unless the plaintiff files a statement of defence to counterclaim in the time required by Rule 31 - Notice;

(c) the attached statement of counterclaim.

(5) The statement of counterclaim must notify the plaintiff of all the claims to be raised at trial by the defendant against the plaintiff, conform with Rule 38 - Pleading, and contain everything that is required in a statement of claim under Rule 4.02(4) as if the defendant making the claim were a plaintiff.

(6) The notice of defence and counterclaim may be in Form 4.08, the statement of defence may be in Form 4.05B, and the statement of counterclaim may be in Form 4.02B.

(7) A notice of defence and counterclaim may be filed before the deadline in Rule 31 - Notice or before the time permitted by a judge who sets aside a judgment under Rule 8 - Default Judgment.

4.09 Crossclaim

(1) A defendant may crossclaim against another defendant for a claim of either of the following kinds:

(a) a claim that the other defendant is liable to the first defendant for all or part of the plaintiff's claim;

(b) a claim that would be consolidated with the plaintiff's action if the defendant commenced an independent action for the same claim.

(2) The defendant may crossclaim by filing a notice of defence with crossclaim.

(3) A notice of defence with crossclaim must include a statement of defence and a statement of crossclaim as parts of the notice.

(4) The notice of defence with crossclaim must be entitled "Notice of Defence with Crossclaim", otherwise include everything required in a notice of defence, and include each of the following:

(a) a notice that a claim is made by the defendant against the other defendant;

(b) a notice that the defendant may have default judgment against the other defendant on the crossclaim, unless that defendant files a statement of defence to crossclaim within the required time;

(c) the attached statement of crossclaim.

(5) The statement of crossclaim must notify the other defendant of all the claims against the other defendant, conform with Rule 38 - Pleading, and contain everything that is required in a statement of claim under Rule 4.02(4) as if the defendant making the crossclaim were the plaintiff.

(6) The notice of defence with crossclaim may be in Form 4.09, the statement of defence may be in Form 4.05B, and the statement of crossclaim may be in Form 4.02B.

(7) A notice of defence with crossclaim may be filed before the deadline in Rule 31 - Notice, or before the time permitted by a judge who sets aside a judgment under Rule 8 - Default Judgment.

4.10 Counterclaim involving third party

(1) A defendant who claims that a plaintiff and a person who is not a party are both liable to the defendant for the same claim may proceed jointly against them by counterclaiming against the plaintiff under Rule 4.08 and, at the same time, taking action against the third party under Rule 4.11.

(2) Despite the requirements for the heading of a notice of defence and counterclaim, a notice of defence and counterclaim filed jointly with a notice of claim against third party must contain the same heading as the notice of action with the addition of the name of each third party, described as "Third Party" or "Third Parties".

4.11 Third party claim

(1) A defendant may make a claim in an action against a person who is not a party, if the claim against the third party is of one of the following kinds:

(a) a claim alleging that the third party is liable to the defendant for all or part of the plaintiff's claim;

(b) a claim that would be consolidated with the plaintiff's action if the defendant started a new action against the third party for that claim;

(c) a claim jointly against the plaintiff and the third party to which Rule 4.10(1) applies.

(2) The defendant may start the third party action by filing a notice of claim against third party.

(3) The notice of claim against third party must include a statement of claim against third party as part of the notice.

(4) The notice of claim against third party must contain the standard heading varied as required by Rule 82.09(3)(b), of Rule 82 - Administration of Civil Proceedings, to give the name and title of each third party, be entitled "Notice of Claim against Third Party", be dated and signed, and include all of the following:

(a) notice that a third party action has been brought for an order described in the attached statement of claim against third party;

(b) a reference to each notice filed including the attached pleadings;

(c) notice that the defendant may have default judgment against the third party when the main action is determined or a judge allows, unless the third party files a statement of defence in the time required by Rule 31 - Notice;

(d) notice that the third party may file a demand for notice, if the third party does not defend the claim but wishes to receive further notice;

(e) a statement explaining how documents are filed and the requirement for immediate delivery to each party entitled to notice;

(f) the same address for delivery of documents to the defendant as in the defence;

(g) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(h) an attached copy of each notice, including pleadings that form part of the notice, and the attached statement of claim against third party.

(5) The statement of claim against third party must notify the third party of all the claims to be raised by the defendant against the third party, conform with Rule 38 - Pleading, and include everything required in a statement of claim under Rule 4.02(4) as if the defendant making the claim were a plaintiff.

(6) The notice of claim against third party may be in Form 4.11, and the statement of claim against third party may be in Form 4.02B.

(7) A notice of claim against third party may be filed before the deadline in Rule 31 - Notice for the defendant making the third party claim to file a defence, unless a judge orders otherwise.

4.12 Counterclaim, crossclaim, and third party claim

(1) All procedures for a plaintiff's claim and a defendant's defence apply to a counterclaim, crossclaim, and third party claim as if the party initiating the claim were a plaintiff and the party defending the claim were a defendant, with each of the following exceptions:

(a) a notice filed in response to a counterclaim, crossclaim, or third party claim may be entitled so it refers to the counterclaim, crossclaim, or third party claim, such as "Notice of Defence to Counterclaim";

(b) the attached pleading may refer to the counterclaim, crossclaim, or third party claim, such as "Statement of Defence to Third Party Claim";

(c) a Rule that refers specifically to counterclaim, crossclaim, or third party claim prevails over other Rules to the extent of any inconsistency;

(d) no order for judgment may be made against a third party under Rule 8 - Default Judgment, until the main action is determined, unless a judge permits otherwise.

(2) A third party may defend a claim in the main action.

(3) A third party who defends a claim in the main action must attach to the notice of defence both of the following statements of defence:

(a) one giving notice to the defendant of all defences to be raised at trial in answer to the third party claim;

(b) the other giving notice to the plaintiff of all defences to be raised at trial in answer to a claim in the main action.

(4) A third party who wishes to bring a proceeding against a further party must file a notice of claim that is the same as a notice of claim against third party except the notice must describe the new party as the fourth party, and a fourth party who wishes to bring a proceeding against a further party must file a notice of claim that describes the new party as the fifth party, and so on.

(5) A notice of claim against a fourth, fifth, or further party must contain the standard heading varied as required by Rule 82.09(3)(b), of Rule 82 - Administration of Civil Proceedings.

4.13 Request for date assignment conference

(1) A party may obtain a date assignment conference to appoint trial dates after pleadings close as provided in Rule 38 - Pleading, and after each party has done all of the following:

(a) disclosed documents and electronic information as required;

(b) discovered each individual party of whom discovery is required;

(c) discovered, from each corporate party of whom discovery is required, at least the designated manager or one other officer or employee;

(d) answered interrogatories required to be answered by or on behalf of the party.

(2) A party may make a motion for permission to request a date assignment conference before each party has done everything required in Rule 4.13(1), and the party must satisfy the judge on one of the following:

(a) a party is lagging in making disclosure or conducting discovery, and the party requesting the conference has made disclosure and conducted the discoveries that party requires;

(b) an emergency exists, it can only be resolved by a trial, and it is clear that the parties will be ready for trial when the trial readiness conference is conducted;

(c) the efficient administration of justice requires that the conference be held.

(3) The request for a date assignment conference must include all of the following:

(a) the request;

(b) the party's election as required by Rule 52 - Trial by Jury;

(c) a statement showing that the requirements to obtain a date assignment conference have been satisfied, or that an order for permission to request a date assignment conference has been issued;

(d) a chronological list of all pleadings;

(e) a chronological list of all orders affecting the future conduct of the action, or the conduct of the trial;

(f) a general description of the status of the action, including information about the status of discoveries, disclosure, and expert opinion;

(g) a statement of all steps in the proceeding the party making the request foresees being taken by any party before trial, including holding a discovery, delivery of an expert's report, and making a motion;

(h) a general description of the documents and electronic information the party foresees being introduced by all parties at trial;

(i) the number of witnesses the party expects to call and an estimate of the length of testimony by each;

(j) an estimate of the number of days required for the trial and a breakdown stating the number of days attributed to each party's case and any jury selection and deliberations;

(k) whether special requirements need to be accommodated;

(l) whether a settlement conference is requested;

(m) when the party anticipates all parties being ready for trial.

(4) A copy of each pleading and each order affecting the future conduct of the action, or the conduct of the trial, must be attached to the request for a date assignment conference.

(5) The request for a date assignment conference may be in Form 4.13.

4.14 Objecting to request for date assignment conference

(1) A party who objects to trial dates being set may make a motion for an order refusing the request for a date assignment conference, unless the request is permitted by a judge under Rule 4.13(2).

(2) The party who makes the motion must do one of the following no more than ten days after the day the request for a date assignment conference is delivered to the objecting party, and the hearing of the motion must be set no more than fifteen days after the day of delivery:

(a) file an appearance notice in accordance with Rule 24 - Appearance Motion, if the motion is to be heard at Halifax;

(b) request a judge to provide a time and date for the motion to be heard by teleconference in accordance with Rule 25 - Motion by Appointment, if the motion is not to be heard at Halifax;

(c) request a judge to permit the motion be brought by other means.

(3) On the hearing of the motion, a judge may do any of the following:

(a) refuse the request for trial dates;

(b) dismiss the motion;

(c) delay the holding of a date assignment conference, give directions on steps to be completed before the conference, set a deadline for filing a memorandum for the date assignment judge, and set a delayed date and time for the conference.

4.15 Memorandum for date assignment judge

(1) A party to whom a request for a date assignment conference is delivered, and who does not obtain an order refusing the request, must file a memorandum for the date assignment conference judge by the following deadlines:

(a) no more than ten days after the day the request is delivered, if the party does not make a motion in the required time for an order refusing the request or the request is permitted by a judge;

(b) no more than ten days after the day of the dismissal of a motion for an order refusing the request;

(c) as directed by a judge who delays the holding of a conference.

(2) A memorandum for the date assignment judge must contain all of the following information:

(a) any correction of, or addition to, the information or estimates in the request for trial dates;

(b) the number of witnesses the party expects to call and an estimate of the length of testimony by each;

(c) when the party anticipates being ready for trial;

(d) if applicable, the party's election of trial with or without a jury.

(3) A memorandum for the date assignment judge may be in Form 4.15.

4.16 Date assignment conference

(1) The prothonotary must notify the parties of the time and date of a date assignment conference by the following deadlines:

(a) no more than twenty-five days after the day the request is filed, if no party makes a motion in the required time for an order refusing the request or the request is permitted by a judge under Rule 4.13(2);

(b) no more than ten days after the day a motion for an order refusing the request is dismissed.

(2) The prothonotary must notify the parties of the location of the conference, or that it will be held by teleconference.

(3) Outside of Halifax, a judge may give the notice of the conference or direct that notice be given by a member of the judge's office instead of the prothonotary.

(4) A party who intends to make a pretrial motion that may materially affect a forecast of trial readiness must do both of the following:

(a) before the date assignment conference, fully inform themselves regarding how much time it will take for the motion to be presented;

(b) at the date assignment conference, advise the judge of the nature of the intended motion, the intended evidence in support of the motion, the plan for proceeding with the motion, and a proposed deadline by which all documents will be filed.

(5) The judge may refuse to set trial dates if the information provided by the parties before or during the conference is insufficient to forecast when the case will be ready for trial or to estimate the length of the trial.

(6) The judge who is able to forecast trial readiness and estimate the length of a trial may give directions about the course of the proceeding and the conduct of the trial, and must do each of the following:

(a) set the dates for trial;

(b) set a trial readiness conference date no less than forty days before the first day of trial;

(c) fix a finish date at no less than twenty days before the day set for the trial readiness conference, as the date when all pretrial procedures are to be finished;

(d) fix a completion date for any specific task, if the judge considers that a deadline is advisable to ensure readiness for trial;

(e) if a settlement conference is to be held, determine whether an ordinary or trial-like settlement conference should be conducted and set a date for a settlement conference no less than ten days before the day set for the trial readiness conference.

(7) A judge who is satisfied that monitoring trial preparation generally, or monitoring performance of a task specifically, is necessary to ensure trial readiness may set dates for additional conferences.

4.17 Reconsideration

A party who becomes aware, after the date assignment conference, of information that materially affects the forecast of trial readiness or the estimate of the length of trial, must immediately request a conference to reconsider the trial dates.

4.18 Witness list

(1) A party must, before the finish date, file a list of the witnesses, including the name of each witness, the party intends to call at trial, except a witness the party will call only to impeach the credibility of another expected witness.

(2) A party may only call at trial a witness named on the party's witness list, unless the witness is called only to impeach the credibility of another witness or the trial judge permits the party to call the witness in order to avoid an injustice.

(3) A party who determines to seek permission to call a witness not on the party's witness list must immediately notify all other parties and the trial judge of the determination and the grounds for asserting that the witness must be called in order to avoid an injustice.

(4) A judge who permits a party to call a witness not on the party's witness list may order the party to indemnify each other party for expenses resulting from the permission, including expenses resulting from an adjournment if that is a result.

(5) A party is not required to call each person on the party's witness list, but a party who decides not to call a person on the list must immediately notify all other parties and the trial judge.

4.19 Trial readiness conference

(1) At a trial readiness conference, a judge must ascertain whether all pretrial procedures were completed by the finish date and confirm that the parties are ready for trial.

(2) A trial readiness conference judge who finds the parties are not ready for trial must cancel the trial dates, unless justice requires otherwise.

(3) The trial readiness conference judge may give directions for the course of the proceeding to trial, order quick completion of a pretrial procedure the judge finds is not complete, and set a date for a settlement conference if a late settlement conference is warranted and the parties consent.

4.20 Adjournment of trial dates

(1) A judge may adjourn trial dates before the finish date, if all parties agree the party seeking the adjournment would suffer a greater prejudice in proceeding with the trial than other parties would suffer by losing the trial dates.

(2) A motion for an adjournment after the finish date must be made to the trial judge, unless a judge has not been assigned or the trial judge is not available.

(3) A judge hearing a motion for an adjournment after the finish date must consider each of the following:

(a) the prejudice to the party seeking the adjournment, if the party is required to proceed to trial;

(b) the prejudice to other parties, if they lose the trial dates;

(c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.

(4) The judge who hears a motion for an adjournment after the finish date must presume both of the following, unless the contrary is established:

(a) losing trial dates adversely affects a party's tangible and intangible interests;

(b) a late adjournment adversely affects the efficient scheduling of facilities and time.

4.21 Remedies for refusal, cancellation, or adjournment

A judge who refuses to appoint dates for trial, cancels trial dates, or adjourns a trial may do any of the following:

(a) order a party to do anything necessary so the court may appoint trial dates;

(b) set a date for a date assignment conference;

(c) give directions on what must be done before a party can make another request for trial dates;

(d) order a party who failed to file a memorandum for a date assignment judge to indemnify another party for expenses caused by the failure;

(e) order a party whose conduct caused the refusal, cancellation, or adjournment, to indemnify another party for the expense of preparing for and participating in the date assignment conference, trial readiness conference, or motion for an adjournment, and the expenses caused by the refusal, cancellation, or adjournment;

(f) order a party whose conduct contributed to the refusal, cancellation, or adjournment to indemnify another party in proportion to the contribution.

4.22 Dormant actions to be dismissed

(1) The prothonotary must make a motion to dismiss a defended unexpired action five years after the day the notice of action is filed, if no trial date is set and no request for date assignment conference is filed.

(2) The motion must include dismissal of any counterclaim, crossclaim, or third party claim in the action.

Rule 5 - Application

5.01 Scope of Rule 5

(1) As provided in these Rules, an application is an original proceeding and a motion is an interlocutory step in a proceeding.

(2) This Rule provides for an *ex parte* application, an application in chambers, and an application in court.

(3) The application in chambers is heard in a short time, and it is scheduled at a time when chambers is regularly held or at an appointed time.

(4) The application in court is for a dispute that can be ready for hearing within two years and will take no more than two days to be heard, and it is available, in appropriate circumstances, as a flexible and speedy alternative to an action.

(a) Applications in court concerning disputes under the *Quieting Titles Act,* R.S., c. 382, s.1; the *Partition Act,* R.S., c. 333, s.1; the *Companies Act*, R.S., c. 81, s.1 (Third Schedule) and contested estate matters may, at the discretion of the judge presiding at either the initial or the further motion for directions, be scheduled for up to four hearing days.

(b) In rare and exceptional circumstances, a judge may order that a dispute, in addition to those set out above in (a), be scheduled for up to four days.

(5) Except as set out in Rule 5.13 (4) (d), there is no discovery of witnesses in an application in court.

(6) A person may make an application or respond to an application, in accordance with this Rule, except an application in a family proceeding is made and responded to as provided in Part 13 - Family Proceedings.

5.02 *Ex parte* application in chambers

(1) A person may apply for an *ex parte* order, if it is appropriate to seek the order without notice to another person.

(2) The person may apply for an *ex parte* order in chambers by filing an *ex parte* application.

(3) The *ex parte* application must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "*Ex parte* Application", be dated and signed, and include all of the following:

(a) a description of the order applied for;

(b) a statement explaining why it would be appropriate for the judge to grant the order without notice to other persons;

(c) a concise statement of the grounds for the order, including the material facts the applicant seeks to establish and a reference to legislation relied on by the applicant;

(d) a reference to each affidavit relied on by the applicant, identified by the name of the witness and the date the affidavit is sworn or affirmed;

(e) the time, date, and the place for the application

(f) if there is only one applicant, a designation of an address for delivery of documents to the applicant, and if there is more than one applicant, a designation of one address for delivery to all applicants or a separate address for each applicant;

(g) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(4) The *ex parte* application may be in Form 5.02.

(5) The applicant must file the *ex parte* application, and the referenced affidavit, and deliver a brief for the judge hearing the application, at least two days before the day of the hearing of the application.

5.03 Application in chambers on notice

(1) A person may apply for an order on notice to another person by filing a notice of application in chambers.

(2) The notice of application in chambers must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Application in Chambers", be dated and signed, and include all of the following:

(a) notice that the applicant applies to a judge for an order and a description of the order applied for;

(b) a concise statement of the grounds for the order, including the material facts the applicant seeks to establish, and a reference to legislation or points of law relied on by the applicant;

(c) a reference to each affidavit relied on by the applicant and notice that further affidavits may be filed by the applicant before the deadline in this Rule;

(d) notice of the deadlines for the respondent to file a notice of contest and an affidavit, and a statement that filing the notice of contest entitles the respondent to notice of further steps in the application;

(e) notice of the time, date, and place of the hearing;

(f) notice that the judge may proceed in the absence of the respondent if the respondent or counsel does not attend the hearing;

(g) a statement explaining how documents are filed and the requirement for immediate delivery to a party entitled to notice;

(h) if there is only one applicant, a designation of an address for delivery of documents to the applicant and, if there is more than one applicant, a designation of one address for delivery to all applicants or a separate address for each applicant.

(3) The notice of application may be in Form 5.03.

5.04 Notice of contest of chambers application

(1) A respondent may contest an application in chambers by filing a notice of contest.

(2) The notice of contest must contain the standard heading, be entitled "Notice of Contest (Chambers Application)", be dated and signed, and include all of the following:

(a) a statement that the application is contested and indicating which of the material facts in the applicant's grounds are admitted, which are denied, and which are neither admitted nor denied only because the respondent does not have sufficient information to admit them;

(b) a concise statement of further grounds relied on by the respondent, including material facts the respondent seeks to establish, and a reference to legislation relied on by the respondent;

(c) a reference to each affidavit relied on by the respondent, identified by the name of the affiant and the date the affidavit is sworn;

(d) if the notice is for only one respondent, a designation of an address for delivery of documents to the respondent and, if it is for more than one respondent, a designation of one address for delivery to all respondents or a separate address for each respondent;

(e) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(3) The notice of contest may be in Form 5.04.

5.05 Chambers application

(1) A person may make an application in chambers at any time when chambers is regularly held, if the person is satisfied the hearing will take less than a half-hour and cross-examination will not be required.

(2) A person may make an application in chambers at a time appointed by a judge or the prothonotary, if the person is satisfied that the hearing will take less than a half-day.

(3) The applicant must take reasonable steps to select a time convenient for each respondent's counsel and each respondent who acts on their own.

(4) The applicant must limit a rebuttal affidavit to new points raised by the respondent's affidavit.

(5) A party who receives an affidavit and wishes to cross-examine the witness must file a notice to that effect.

(6) A judge may order that a witness be cross-examined outside the hearing and set deadlines for conducting the cross-examination and filing a transcript.

(7) A party must deliver a brief for the judge hearing the application, unless the judge permits otherwise.

5.06 Chambers application deadlines

(1) The applicant must notify each respondent of the application in chambers in accordance with Rule 31 - Notice, no less than ten days before the day of a hearing in chambers that is regularly held or twenty-five days before the day of a hearing at an appointed time and date.

(2) Documents must be filed by the deadlines in the following table:

Document	*Regular time*	*Appointed time*
notice of application	10 days before date of hearing	25 days before date of hearing
applicant's affidavit	10 days before date of hearing	25 days before date of hearing
notice of contest	5 days after date of notification	10 days after date of notification
respondent's affidavit	5 days after date of notification	10 days after date of notification
rebuttal affidavit	2 days after day affidavit is delivered	2 days after day affidavit is delivered
notice cross-examination is required	3 days before hearing, except 1 day for rebuttal affidavit	5 days before date of hearing
applicant's brief	3 days before date of hearing	5 days before date of hearing
respondent's brief	2 days before date of hearing	3 days before date of hearing
reply brief	1 day before date of hearing	1 day before date of hearing.

(3) Two days before the hearing of an application in chambers in which a respondent has not filed a document in response, the applicant must either file an affidavit of service proving required notice or advise the prothonotary that notice has not been effected.

5.07 Application in court

(1) A person may make an application in court by filing a notice of application in court.

(2) A person who files a notice of application in court must, in the notice, provide for the initial motion for directions before a judge.

(3) The date for hearing the initial motion for directions must be no more than thirty-five days after the day the notice of application is filed, and the date may not be adjourned unless a judge orders otherwise.

(4) The initial motion for directions must be supported by an affidavit, which may be an affidavit of counsel, addressing all of the following:

(a) whether there are any persons who are not parties but who may have an interest in the matters raised by the application;

(b) whether the list of possible witnesses in the notice of application is complete and, if not, all details known to counsel about other witnesses;

(c) the extent to which the applicant has disclosed documents and electronic information to the respondents and, if disclosure is not complete, the applicant's plan for completing disclosure;

(d) if the application will involve a series of hearings, an estimate of the number of hearings and when each could occur;

(e) if the application concerns events that are unfolding, a description of the events and the expected course of the events;

(f) if the application concerns alleged rights that could be eroded over time, an explanation of the rights, how they may be eroded, and the consequences for the applicant;

(g) all information known to the applicant that could significantly affect the estimate of time needed to prepare for the hearing and the length of the hearing itself.

(5) A notice of application in court must be entitled "Notice of Application in Court" and otherwise include everything required in a notice of application in chambers, with each of the following modifications:

(a) instead of a reference to each affidavit relied on, it must identify the witnesses whose affidavit the applicant intends to file and describe the subjects about which each witness could give evidence;

(b) if the applicant intends to provide evidence from a witness the applicant cannot name, the notice must provide information about the intended witness, an explanation for the inability to name the witness, and the justification for proceeding by application, rather than action, without naming the witness at the time of the motion for directions;

(c) it must include a notice of the initial motion for directions and a reference to the affidavit filed in support of the motion.

(d) it must notify the respondent of the deadline for the respondent to file a notice of contest and that the judge may proceed with the motion if the respondent, or counsel for the respondent, does not attend the hearing;

(e) the statement about proceeding in the absence of the respondent must refer to attendance at the hearing of the motion for directions.

(6) The notice of application in court may be in Form 5.07.

(7) Two days before the hearing of the initial motion for directions in an application in which a respondent has not filed a document in response, the applicant must either file an affidavit of service proving required notice or advise the prothonotary that notice has not been effected.

5.08 Notice of contest of application in court

(1) A respondent who wishes to contest an application in court must file a notice of contest no more than twenty-five days after the day the respondent is notified of the application in accordance with Rule 31 - Notice.

(2) A notice of contest for an application in court must be entitled “Notice of Contest (Application in Court)” and otherwise include everything required in a notice of contest (chambers application), except instead of a reference to an affidavit, it must identify the witnesses whose affidavit the respondent intends to file, identify all other possible witnesses known to the respondent not already identified by the applicant, and describe the subjects about which each identified witness could give evidence.

(3) The notice of contest of an application in court may be in Form 5.08.

5.09 Respondent's Claim in Chambers Application

A respondent to a chambers application who wishes to make a claim against the applicant, another respondent, or a third party may start an independent proceeding.

5.10 Respondent's Claim in Application in Court

(1) A respondent who wishes to make a claim against the applicant, or against another respondent, in an application in court must file a notice of the claim no more than twenty-five days after the day the respondent is notified of the application in accordance with Rule 31 - Notice.

(2) The notice of claim by a respondent must contain the standard heading, be entitled "Notice of Respondent's Claim", be dated and signed, and include all of the following:

(a) notice that the respondent applies to a judge for an order against a named party and a description of the order applied for;

(b) a concise statement of the grounds for the order, including the material facts the respondent seeks to establish, and a reference to legislation or points of law relied on by the respondent;

(c) a statement naming the witnesses whose affidavit the respondent intends to file in support of the respondent's claim and describing the subjects about which each witness could give evidence;

(d) a statement that the respondent will seek directions concerning the claim when the applicant's initial motion for directions is heard;

(e) a statement that the respondent is, or is not, also filing a notice of contest of the application;

(f) if the respondent is not filing a notice of contest, the designation of address and the acknowledgment of the effect of delivery required in a notice of contest.

(3) A notice of claim by a respondent may be in Form 5.10.

(4) Two days before the hearing of the initial motion for directions in an application in which a respondent has made a claim against another respondent, the claiming respondent must either file an affidavit of service proving required notice to the other respondent or advise the prothonotary that notice has not been effected.

5.11 Contesting Respondent's Claim

(1) A party against whom a respondent makes a claim, and who wishes to contest the claim, must file a notice of contest no less than two days before the day of the hearing of the initial motion for directions.

(2) The notice of contest must contain the standard heading, be entitled "Notice of Contest of Respondent's Claim", be dated and signed, and include all of the following:

(a) a statement that the respondent's claim is contested and indicating which of the material facts in the notice of respondent's claim are admitted, which are denied, and which are neither admitted or denied only because the respondent does not have sufficient information to admit them;

(b) a concise statement of any further grounds relied on in contest of the respondent's claim;

(c) a statement identifying any further witness from whom the contesting party expects to obtain affidavits;

(d) if the party is a respondent and if the party is not filing a notice of contest of the application, the designation of address and the acknowledgment of the effect of delivery required in a notice of contest of an application.

(3) A notice of contest of respondent's claim may be in Form 5.11.

5.12 Third party claims

A respondent in an application in court who wishes to make a claim against a person who is not a party may start an independent proceeding or make a motion at or before the hearing of the initial motion for directions to join the third party under Rule 35 - Parties.

5.13 Initial motion for directions

(1) The initial motion for directions must be heard in chambers, unless a judge directs otherwise, and the lawyer who expects to act as lead counsel for a party must be present, unless the chambers judge permits otherwise.

(2) A judge who hears the initial motion for directions must, after examining the information in the materials filed on the application and hearing the parties, determine each of the following:

(a) whether the information is sufficient to warrant giving directions;

(b) whether the information is such as to warrant giving only some directions, and adjourning the motion for further information and further directions;

(c) whether the information shows that the application may need to be converted to an action under Rule 6 - Choosing Between Action and Application.

(3) The judge adjourning the initial motion for directions must endeavour to preside at the adjourned hearing, if that is convenient for the judge and for the court.

(4) The judge who hears the initial motion for directions may do any of the following:

(a) permit an amendment to the notice of application or notice of contest;

(b) ascertain whether there are interested persons who are not parties and, if necessary, adjourn the motion until an interested person is made a party;

(c) ascertain the extent to which parties have searched for and made disclosure of documents, electronic information, or other evidence and, if necessary, order disclosure;

(d) order discovery of a witness only if the witness has relevant information but refuses to cooperate in the production of an affidavit;

(e) give directions for the conduct of a discovery under Rule 5.13 (4)(d), such as directions limiting the time or scope of examination;

(f) ascertain witnesses from whom each party is likely to produce an affidavit, inquire into any requirement for cross-examination of a likely witness;

(g) order a party to produce an intended affiant as a witness to be cross-examined at the hearing, or out of court with a transcript;

(h) limit the duration or subjects for cross-examination;

(i) determine whether an expert opinion may be admitted and order disclosure;

(j) permit a witness to testify instead of swearing or affirming an affidavit and order disclosure of the witness' anticipated evidence, such as by ordering delivery of a will-say statement;

(k) ascertain the volume of documents that are likely to be in evidence;

(l) set deadlines for filing the applicant's affidavits, the respondent's affidavits, an applicant's rebuttal affidavit, and a notice of objection to admissibility;

(m) set the finish date;

(n) set the time, date, and place for the further motion for directions which must occur after the affidavits, and notices of objection to admissibility have been filed and any ordered discovery pursuant to Rule 5.13(4)(d) has taken place;

(o) set the time, date, and place for a judicial settlement conference, if the parties request one;

(p) give any other directions, or make any other order, needed to organize the application.

(5) A judge will not set the time, date and place for hearing of the application at the initial motion for directions unless the judge determines it is in the interest of justice to do so.

(6) A judge may amend or supplement directions.

5.14 Further motion for directions to set the time, date and place for hearing of the application

(1) The further motion for directions must be heard in chambers, unless a judge directs otherwise, and the lawyer who expects to act as lead counsel for a party must be present, unless the judge permits otherwise.

(2) Ten days prior to the further motion for directions date, each party must confirm in writing that they have met all deadlines and that the matter is ready for setting the time, date and place of the hearing.

(3) A judge who hears the further motion for directions must, after examining the information in the materials filed on the application and hearing the parties, determine each of the following:

(a) whether the information is sufficient to warrant giving directions to set the time, date and place for hearing;

(b) whether the information is such as to warrant giving only some directions, and adjourning the motion for further information and further directions;

(c) whether the information shows that the application may need to be converted to an action under Rule 6 - Choosing Between Action and Application.

(4) The judge adjourning a further motion for directions must endeavour to preside at the adjourned hearing, if that is convenient for the judge and for the court.

(5) The judge who hears the further motion for directions may do any of the following:

(a) set the time, date, and place for the hearing of the application;

(b) set deadlines for filing briefs;

(c) set the time, date, and place for a settlement conference, if the parties request one;

(d) direct further appearances before that judge or another judge;

(e) give any other directions, or make any other order, needed to organize the application.

5.15 Conversion

(1) A judge hearing the initial motion for directions, or the further motion for directions or any motion concerning the course of an application, and who is satisfied on the materials filed in the application that it is obvious the application should be converted to an action may, on the judge's own motion without a further hearing, make an order under Rule 6.03(1) of Rule 6 - Choosing Between Action and Application.

(2) A judge may adjourn the initial motion for directions or the further motion for directions and give directions for continuing the motion in combination with a hearing under Rule 6 - Choosing Between Action and Application.

(3) The judge adjourning the initial motion for directions or the further motion for directions must endeavour to preside at the adjourned motion, if that is convenient for the judge and for the court.

5.16 Lack of jurisdiction

(1) A respondent who maintains that the court does not have jurisdiction over the subject of an application, or over the respondent, may make a motion to dismiss the application for want of jurisdiction.

(2) A respondent does not submit to the jurisdiction of the court only by moving to dismiss the application for want of jurisdiction.

(3) A judge who dismisses a motion for an order dismissing an application for want of jurisdiction must set a deadline by which the respondent may file a notice of contest.

5.17 No supplementary affidavits

(1) A party to an application may only file an affidavit within the deadlines under this Rule or set by a judge giving directions, unless the judge hearing the application determines that circumstances exist to justify an affidavit being filed later.

(2) On a motion to allow a later affidavit, the judge must consider all of the following:

(a) the reasons why the affidavit was not filed by the deadline;

(b) whether the evidence was known or, by due diligence, could have been known at the deadline;

(c) whether the evidence is relevant, in that it bears on a decisive or potentially decisive issue;

(d) the prejudice that would be caused to the party who offers the affidavit, if the application proceeds without that affidavit;

(e) the prejudice that would be caused to other parties by allowing the affidavit to be filed, including the prejudice of an adjournment if that would be a result;

(f) if an adjournment would result, the public interest in making the best use of court facilities, judges' time, and the time of court staff.

(3) A judge who allows a late affidavit may order the party filing the affidavit to indemnify each other party for expenses resulting from the filing, including expenses resulting from any adjournment.

5.18 Notice of objection to admissibility

(1) A party who wishes to object to the admission of an averment, an exhibit, or a part of either in an affidavit must file a notice of objection to admissibility on a date set by a judge that must be before the finish date.

(2) The notice of objection to admissibility must contain the standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Objection to Admissibility (Application in Court)", be dated and signed, and include all of the following:

(a) a statement identifying the affidavit containing an averment, exhibit, or part said to be inadmissible under the rules of evidence;

(b) particulars of the averment or exhibit and a summary of the objected averment or exhibit;

(c) the ground of the objection including the rule of evidence relied upon.

(3) The notice of objection to admissibility may be in Form 5.16.

(4) A party who does not file a notice of objection may not rely on the rules of evidence to exclude an averment or an exhibit in an affidavit filed in an application in court.

(5) A judge may not exclude an averment, an exhibit, or a part of either that is not the subject of a notice of objection to admissibility, unless the judge is satisfied both that the averment, exhibit, or part is inadmissible and that its remaining part of the record compromises the integrity of the fact-finding process.

5.19 Finish date

(1) The finish date in an application in court will be 10 days before the date of the further motion for directions to set a time, date and place for the hearing, unless otherwise ordered by a judge.

(2) Each party must complete all prehearing procedures in an application in court before the finish date, or before any earlier deadline set by a judge.

(3) A failure to complete a prehearing procedure before the finish date, or before an earlier deadline set by a judge, that causes prejudice to another party may be dealt with under Rule 88 - Abuse of Process.

5.20 Prehearing conference

(1) On the further motion for direction or afterwards, the judge will set a date by which counsel must contact the court to schedule a prehearing conference with the judge who is expected to hear an application in court.

(2) The hearing judge may direct that the prehearing conference be held in a courtroom, chambers, or a conference room.

(3) A lawyer who is to act as lead counsel for a party must participate in the conference, unless the hearing judge permits otherwise.

(4) At the prehearing conference, the hearing judge must ascertain whether the parties are ready for the hearing of the application and, if so, organize the hearing, which tasks may include any of the following:

(a) assess whether the time scheduled for the hearing of the application is sufficient and, if not, schedule a hearing of a motion by a party, or the judge's own motion, under Rule 6 – Choosing Between Action and Application, or convert the application to an action on the judge's own motion;

(b) ascertain whether all necessary prehearing procedures are complete;

(c) ascertain objections to admissibility of an averment or exhibit that require judicial determination and, unless the judge determines that doing so would harm the integrity of the evidence upon which the application is to be determined, dismiss an objection not supported by a notice of objection filed before the finish date, or before any earlier deadline set by a judge.

(d) if there is a procedural or an evidentiary dispute, determine the dispute, appoint a time before the hearing of the application for the hearing judge to determine the dispute, allow for time during the hearing for determination, adjourn the hearing of the application with or without allowing for determination of the dispute during the time in which the hearing had been scheduled, or schedule a hearing under Rule 6 - Choosing Between Action and Application;

(e) review the affidavits that have been filed and ascertain whether an anticipated affidavit has not been filed;

(f) inquire into intended cross-examination and set limits on the subjects and duration of cross-examination and re-examination;

(g) inquire into intended motions usually to be heard by the application judge, such as for an order excluding witnesses pending cross-examination and re-examination, and determine the motion or give directions for when it is to be heard;

(h) inquire into needs of counsel, a party, or a witness and their accommodation, such as examination by video conference or assistance for those who do not hear well;

(i) ascertain that briefs have been filed, or will be filed, by the applicable deadlines.

(5) The court may schedule the prehearing conference with a judge other than the hearing judge, if the hearing judge is not available.

5.21 Expense of cross-examination

The party who files an affidavit must pay the expense of presenting the witness for cross-examination, unless the parties agree, or a judge orders, otherwise.

5.22 Rules of evidence on an application

The rules of evidence, including the rules about hearsay, apply on the hearing of an application and to affidavits filed for the hearing except a judge may, in an *ex*

parte application, accept hearsay presented by affidavit prepared in accordance with Rule 39 - Affidavit.

5.23 Adjournment of application in court

(1) A scheduled hearing date of an application in court may only be adjourned by the Chief Justice, Associate Chief Justice, or their designate on the request of a party or the hearing judge or other judge.

(2) The Chief Justice, Associate Chief Justice, or their designate who determines a motion for an adjournment of the date for hearing of an application in court must consider each of the following:

(a) the prejudice to the party seeking the adjournment, if the party is required to proceed to the hearing;

(b) the prejudice to other parties, if they lose the hearing dates;

(c) the public interest in making the best use of court facilities, judges' time, and the time of court staff.

5.24 Directions and indemnity

The Chief Justice, Associate Chief Justice, or their designate who adjourns the hearing of an application in court may give directions for the further conduct of the proceedings and order a party whose conduct, in whole or in part, caused the adjournment to indemnify, in whole or in part, another party for expenses caused by the adjournment.

5.25 Failure to appear

(1) If no parties appear at the hearing of an application, or on a motion for directions, the judge may dismiss the application without costs unless the parties provide a joint submission for another disposition and the judge accepts the submission.

(2) A judge who is satisfied on all of the following may grant an order summarily disposing of an application against a respondent:

(a) the respondent is notified of the application under Rule 31 - Notice;

(b) the respondent either files no notice of contest or fails to appear at the hearing of the application or on the motion for directions;

(c) the applicant discloses to the judge all communications between the applicant and the respondent about the application;

(d) the evidence supports the granting of the order.

(3) A judge may set aside a summary dismissal of an application made by another judge if it is in the interest of justice to do so.

5.26 Failure to comply

A judge may provide each of the following remedies, if a party causes prejudice to another party by failing to do anything required by a judge or this Rule:

(a) dismiss the application, if the applicant causes the prejudice;

(b) grant the application, if the respondent causes the prejudice;

(c) order the party who causes the prejudice to indemnify another party for expenses caused by the failure;

(d) make any other order to restore the other party to the position the party would have been in had the failure not occurred.

5.27 Consolidation and severance

A judge may order two or more applications be heard together, a claim in an application be heard separately from another, or the claim against one respondent be heard separately from another respondent.

5.28 Disagreements about time and place

(1) A respondent who disagrees with the estimate of time required for an application in chambers or the time, date, or place selected for an application in chambers, or a motion for directions on an application in court, may make a motion for a new time, date, or place.

(2) A party to an application in chambers may move to continue the application as an application in court.

5.29 Dormant applications dismissed after two years

The prothonotary must make a motion to dismiss an application for which no hearing date is set two years after the day the notice of application is filed.

Rule 6 - Choosing Between Action and Application

6.01 Choice of proceeding

A person may choose to start an action or an application as the person is satisfied would be appropriate, unless legislation under which the proceeding is started requires only one kind of proceeding.

6.02 Converting action or application

(1) A judge may order that a proceeding started as an action be converted to an application or that a proceeding started as an application be converted to an action.

(2) A party who proposes that a claim, that can be tried or heard in two days or less and within two years after the day it was started, be determined by an action, rather than an application, has the burden of satisfying the judge that an application should be converted to an action, or an action should not be converted to an application

(3) An application is presumed to be preferable to an action if either of the following is established:

(a) substantive rights asserted by a party will be eroded in the time it will take to bring an action to trial, the party expeditiously brought a proceeding asserting these rights, and the erosion will be significantly lessened if the dispute is resolved by application;

(b) the court is requested to hold several hearings in one proceeding, such as with some proceedings for corporate reorganization.

(4) An action is presumed to be preferable to an application, if the presumption in favour of an application does not apply and any of the following is established:

(a) a party has, and wishes to exercise, a right to trial by jury and it is unreasonable to deprive the party of that right;

(b) it is unreasonable to require a party to disclose information about witnesses early in the proceeding, such as information about a witness that may be withheld if the witness is to be called only to impeach credibility;

(c) the proceeding cannot be tried or heard less than two years from the day it was started.

(5) On a motion to convert a proceeding, factors in favour of an application include each of the following:

(a) the parties can quickly ascertain who their important witnesses will be;

(b) the parties can be ready to be heard in months, rather than years;

(c) the hearing is of predictable length and content;

(d) it can be heard in two days or less;

(e) the evidence is such that credibility can satisfactorily be assessed by considering the whole of the evidence to be presented at the hearing, including affidavit evidence, permitted direct testimony, and cross-examination.

(6) The relative cost and delay of an action or an application are circumstances to be considered by a judge who determines a motion to convert a proceeding.

6.03 Judge's own motion

(1) A judge who hears a motion in a proceeding, including a motion for directions in an application in court, and who becomes satisfied that it is obvious the proceeding should be converted may convert the proceeding on the judge's own motion.

(2) A judge who presides at a motion for directions in an application in court, and who is satisfied on the information provided for the motion that the application will not be heard within two years after it was started or that the hearing will require more than two days, may convert the application to an action on the judge's own motion.

6.04 Evidence for converting an application

(1) A party who makes a motion to convert an application to an action must, by affidavit, provide all of the following:

(a) a description of the evidence the party would seek to introduce;

(b) the party's position on all issues raised by the application;

(c) disclosure of all further issues the party would raise by way of either a notice of contest, if the proceeding remains an application, or a statement of defence, if the proceeding is converted to an action.

(2) Despite Rule 6.03(1), a party who wishes to withhold disclosure of evidence the party will produce only to impeach a witness need not describe the evidence, or the investigations to be undertaken to obtain the evidence.

Rule 7 - Judicial Review and Appeal

7.01 Interpretation in Rule 7

In this Rule,

"decision", includes all of the following:

(i) an action taken, or purportedly taken, under legislation,

(ii) an omission to take action required, or purportedly required, by legislation,

(iii) a failure to make a decision;

"decision-making authority" includes anyone who makes, neglects to make, takes, or neglects to take a decision.

7.02 Scope of Rule 7

(1) This Rule provides procedures for a judicial review by the court, or an appeal to the court.

(2) This Rule applies to each of the following:

(a) judicial review of a decision within the supervisory jurisdiction of the court;

(b) review of a decision under legislation authorizing review other than by appeal;

(c) *habeas corpus* for civil detention, and an application for *habeas corpus* to which the *Criminal Code* applies is started under Rule 64 - Prerogative Writ;

(d) an appeal to the court in accordance with legislation, except a summary conviction appeal is provided for in Rule 63 - Summary Conviction Appeal.

(3) A person may seek judicial review or bring an appeal, in accordance with this Rule.

7.03 Processes leading to hearing

(1) A person may seek judicial review, except *habeas corpus*, by filing a notice for judicial review under Rule 7.05.

(2) A person may start an application for *habeas corpus* by filing a notice for *habeas corpus* under Rule 7.12.

(3) A person may start an appeal by filing a notice of appeal under Rule 7.19.

7.04 Legislation prevails

The provisions of legislation, such as the regulations under the *Small Claims Court Act*, establishing procedures to be followed on a judicial review or an appeal prevail over an inconsistent provision of this Rule.

7.05 Judicial review application

(1) A person may seek judicial review of a decision by filing a notice for judicial review before the earlier of the following:

(a) twenty-five days after the day the decision is communicated to the person;

(b) six months after the day the decision is made.

(2) A person who files a notice for judicial review must include, in the notice for judicial review, a notice of motion for directions to organize the judicial review.

(3) The date for hearing of the motion for directions must be no later than twenty-five days after the day the notice is filed.

(4) The notice must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice for Judicial Review", be dated and signed, and include all of the following:

(a) a notice that the applicant requests judicial review of a decision including the name of the decision-making authority, the date of the decision, and the legislative or other authority under which the decision was made or which requires the decision to be made;

(b) the date when the decision was communicated to the applicant;

(c) if available, an attached copy of the decision or documents showing what decision was made and, otherwise, an attached summary of the decision;

(d) a concise statement of the grounds for the review;

(e) a description of the order the applicant seeks;

(f) a notice that a respondent may participate in, and be entitled to notice of further steps in the judicial review, if the respondent files a notice of participation no more than ten days after the day the respondent is notified of the proceeding for judicial review;

(g) a statement of what the record will include, when it is likely to be produced, and whether the applicant believes there will be any difficulty obtaining it;

(h) a notice of the obligations of the decision-making authority under Rule 7.09;

(i) a statement of whether the applicant will make a motion for a stay or other interim remedy;

(j) a statement explaining how documents are filed and the requirement for immediate delivery to a party entitled to notice;

(k) if there is only one applicant, a designation of an address for delivery of documents to that applicant and, if there is more than one applicant, a designation of one address for delivery to all applicants or separate addresses for each;

(l) notice of a motion for directions and the appointment of a time, date, and place for the judicial review to be heard;

(m) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(n) notice that the judge and the court may proceed in the absence of the respondent if the respondent, or the respondent's counsel, does not attend the hearing of the motion for directions.

(5) The notice for judicial review may be in Form 7.05.

7.06 Date for motion for directions

(1) A person who wishes to start a proceeding for judicial review must request the prothonotary appoint a time and date for the motion for directions to be heard.

(2) Outside of Halifax, the request may be made to the prothonotary or a judge.

(3) The prothonotary, or a member of the judge's office, must immediately appoint a time and date for the motion to be heard.

(4) The date must be no more than twenty-five days after the day the request is made, unless the parties agree or a judge orders otherwise.

(5) The applicant must file the notice no more than one day after the day the prothonotary provides a time and date.

7.07 Notification

(1) The applicant must notify all of the following persons in accordance with Rule 31 - Notice, not more than ten days after the day the notice for judicial review is filed:

(a) each respondent;

(b) the Attorney-General of Canada, if the decision-making authority is appointed or employed by anyone under an enactment of Parliament;

(c) the Attorney-General of Nova Scotia, if the decision-making authority is appointed or employed by anyone under an enactment of the Nova Scotia Legislature.

(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.

7.08 Participation by respondent

(1) A respondent who wishes to participate in a proceeding for judicial review must file a notice of participation.

(2) A notice of participation must be filed no more than ten days after the day the respondent is notified of the proceeding in accordance with Rule 31 - Notice.

(3) A notice of participation must contain the standard heading, be entitled "Notice of Participation", be dated and signed, and include all of the following:

(a) a statement giving notice of the participation;

(b) a concise statement of the respondent's position on the review, including whether the respondent supports the decision in whole or in part and, if in part, the part the respondent does not support;

(c) if the person contends that the decision under review is justified by grounds different than those expressed in the decision or should be reviewed on grounds different than the applicant's grounds, a concise statement of the alternate grounds;

(d) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(e) if the notice is for only one respondent, a designation of the address for delivery of documents to the respondent and, if it is for more than one respondent, a designation of one address for delivery to all respondents, or, a separate address for each respondent.

(4) The notice of participation may be in Form 7.08.

7.09 Production of record by decision-making authority

(1) The decision-making authority must file with the court, and deliver to the applicant, one of the following no more than five days after the day the decision-making authority is notified of the proceeding for judicial review:

(a) a complete copy of the record, with copies of separate documents separated by pages with numbered or lettered tabs;

(b) a statement indicating that the decision-making authority has made arrangements with the applicant to produce the record, providing details of those arrangements, and estimating when the record will be ready;

(c) an undertaking that the decision-making authority will appear before the judge at the time of the motion for directions and seek directions concerning the record.

(2) A decision-making authority who gives reasons orally without a record must include in the record a summary of the reasons and the decision-making authority's certificate that the summary is accurate.

(3) A judge may grant an injunction against a decision-making authority who fails to comply with this Rule 7.09, and the judge may order the authority to indemnify each other party for expenses resulting from the failure, including expenses caused by an adjournment if that is a result.

7.10 Directions for judicial review

A judge hearing a motion for directions may give any directions that are necessary to organize the judicial review, including a direction that does any of the following:

(a) settles what will make up the record and whether something is part of the record;

(b) assigns responsibility to prepare, file, and deliver the record;

(c) directs the format in which the record will be produced, and whether a party must receive a paper copy of a record that is in electronic format;

(d) provides for the protection of information claimed to be privileged or otherwise subject to a confidentiality protected by law, delivery of the information to the judge who determines the claim, and maintenance of a record for review by the Court of Appeal, under Rule 85 - Access to Court Records;

(e) allows an amendment to the notice for judicial review or a notice of participation;

(f) directs whether there are interested persons who are not parties and, if necessary, adjourns the motion until an interested person is made a party or joins an interested person as a respondent;

(g) rules on the admissibility of evidence sought to be introduced at the review hearing;

(h) provides for the introduction of admissible evidence by affidavit or otherwise, and provides for any reply affidavits, cross-examination at the hearing, or cross-examination outside court with a transcript;

(i) sets deadlines for filing the record, the applicant's brief, the respondent's brief, and any reply brief of the applicant;

(j) directs further appearances before a judge, if necessary, and directs whether those appearances will be before the same judge and whether they will be in chambers, in conference, or by appearance motion;

(k) appoints the time, date, and place for the hearing of the judicial review.

7.11 Order following review

The court may grant any order in the court's jurisdiction that will give effect to a decision on a judicial review, including any of the following orders:

(a) an order dismissing the proceeding;

(b) an order setting aside the decision under review, or part of it, and terminating any legal process flowing from the decision, or the part;

(c) an injunction preventing a respondent from doing anything, or requiring a respondent to do anything;

(d) a declaration that the respondent lacks the authority or has authority to do something;

(e) an order providing anything formerly provided by prerogative writ.

7.12 Notice for *habeas corpus*

(1) A person under detention whose liberty is being deprived may request the court to review the legality of the deprivation of liberty by filing a notice for *habeas corpus*.

(2) For the purpose of the *Liberty of the Subject Act*, a notice for *habeas corpus* is an application for an order in lieu of a writ of *habeas corpus ad subjiciendum*, including an order *nisi* and an order in the nature of *certiorari*.

(3) The Attorney General of Canada or the Attorney General of Nova Scotia, or both of them, must be respondents if the deprivation of liberty has any connection with the government of Canada, the government of Nova Scotia, or both.

(4) The notice must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice for *Habeas Corpus*", be dated and signed by the applicant, the applicant's counsel, or an agent approved by a judge, and, unless the applicant cannot obtain the information, include all of the following:

(a) the name and place of detention;

(b) a description of how the applicant's liberty is being deprived;

(c) the name of the official that notified the applicant of the deprivation of liberty;

(d) any reasons given to the applicant for the deprivation of liberty;

(e) the request for *habeas corpus*;

(f) the grounds on which the applicant contends that the deprivation of liberty is illegal;

(g) a statement that information about the means for communicating with the applicant and the respondent have been given to the prothonotary.

(5) A notice for *habeas corpus* may be in Form 7.12.

(6) A notice for *habeas corpus* to review a deprivation of liberty in a provincial correctional facility or a federal penitentiary in Nova Scotia must be filed at the office of the prothonotary in the district in which the facility or penitentiary is situate, unless a judge permits otherwise.

(7) A prothonotary must not refuse to file or act on a document purporting to seek review by way of *habeas corpus* unless a judge concurs in writing, but a prothonotary in one district who receives a notice for *habeas corpus* to review a deprivation of liberty in a provincial correctional facility or a federal penitentiary located in another district in Nova Scotia may deliver the notice to the office of the prothonotary in that other district, unless a judge directs otherwise.

7.12A Notice of contest

(1) Upon receipt of a notice of *habeas corpus* related to a facility, the Attorney General of Nova Scotia and/or the Attorney General of Canada, must, as soon as practicable but no later than two days after receipt, file on behalf of the identified correctional facility a notice of contest:

(a) designating the name and job title of the respondents' document manager and primary witness;

(b) identifying the name of the individual that notified the applicant of the deprivation of liberty;

(c) identifying the date and time that the deprivation of liberty began;

(d) stating the reason provided to the applicant for the deprivation of liberty;

(e) indicating whether the deprivation of liberty continues or if there have been any changes to the conditions of the deprivation of liberty and the nature of those changes;

(f) indicating whether there is any present plan for future changes to the conditions of the deprivation of liberty, and the nature of those changes;

(g) indicating whether there has been any internal appeal or grievance of the deprivation of liberty and if so the status of the appeal or grievance;

(h) providing a summary of why the deprivation of liberty is lawful and reasonable;

(i) attaching copies of all relevant documents relating to the deprivation of liberty in the custody, possession or control of the respondents.

(2) A notice of contest may be in Form 7.12A.

7.13 Order for *habeas corpus*

(1) *Habeas corpus* takes priority over all other business of the court.

(2) When a notice for *habeas corpus* is filed, a judge must immediately do all of the following:

(a) appoint the earliest practical time, date, place, and means for a judge to give directions on the course of the proceeding;

(b) order any person detaining the applicant to bring the applicant before the judge in person, by video, or by telephone, at the set time and date;

(c) order a respondent to produce all documents relating to the detention immediately to the court;

(d) cause the parties to be notified of the time, date, place, and means of the hearing for directions.

(3) An order to bring the applicant before a judge may include the statement, "Failure to obey this order may lead to contempt proceedings."

(4) The order may be in Form 7.13.

7.14 Directions to determine legality of deprivation of liberty

A judge may provide directions necessary for a quick and fair determination of the legality of the applicant's deprivation of liberty, including any of the following:

(a) set a date for the court to determine the legality of the deprivation of liberty and whether the hearing shall be held in person, by video conference, by telephone or by some combination of these means;

(b) order a person detaining the applicant to bring the applicant before the court for the hearing in person, by video conference or by telephone;

(c) set dates for filing affidavits and briefs;

(d) order production of a document not already produced;

(e) order attendance of a witness for direct examination, if the evidence is not obtained by affidavit;

(f) order attendance of a witness for cross-examination;

(g) determine what documents will constitute the record;

(h) start a proceeding, under Rule 89 - Contempt, against a person who receives an order to bring the applicant before the judge or produce a document and fails to make every reasonable effort to comply with the order;

(i) adjourn the proceeding and make any order necessary to obtain the presence of the applicant.

7.15 Interim release on *habeas corpus*

A judge may order bail for an applicant.

7.16 Final determination following *habeas corpus*

A judge may release or remand the applicant on determining whether or not the deprivation of liberty is legal.

7.17 Abuse of *habeas corpus*

(1) A person who applies for *habeas corpus* commits an abuse of process if both of the following apply:

(a) the deprivation of liberty has already been determined to be legal by the court;

(b) no new ground has arisen since the determination.

(2) The abuse may be dealt with under Rule 88 - Abuse of Process.

7.18 Other forms of *habeas corpus*

This Rule does not apply to the powers of the court or a judge regarding *habeas corpus ad testificandum*, the powers under Rule 50 - Subpoena, or any power of a judge or the court to order prisoners to be transported for attendance at court.

7.19 Notice of appeal

(1) A person may bring an appeal under legislation that provides for an appeal to the court or a judge by filing a notice of appeal before the earlier of the following:

(a) thirty days after the day the decision is communicated to the person;

(b) six months after the day the decision is made.

(2) A person who files a notice of appeal must, in the notice, provide for a motion to be heard no more than twenty-five days after the day the notice of appeal is filed, for directions and for setting a time and date when the appeal is to be heard.

(3) The notice of appeal must have a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Appeal", be dated and signed, and include all of the following:

(a) a notice that the appellant appeals a decision, including a reference to the legislation authorizing the appeal, the name of the decision-making authority, and the date of the decision;

(b) the date on which the decision was communicated to the appellant;

(c) if available, an attached copy of the decision and, otherwise, an attached summary of the decision;

(d) a concise statement of all grounds of appeal;

(e) a description of the order the appellant seeks;

(f) a description of the arrangements for production of the record, the expected content of the record, and when the record will be produced;

(g) if there is only one appellant, a designation of an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of one address for delivery to all appellants or separate addresses for each;

(h) a statement explaining how documents are filed, the requirement for immediate delivery to the appellant and other parties entitled to notice;

(i) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary;

(j) notice of a motion for directions and for the appointment of a time, date, and place for the appeal to be heard;

(k) a notice that the judge may proceed in the absence of the respondent, and the court may determine the appeal if the respondent, or the respondent's counsel, does not attend the motion for directions.

(4) The notice of appeal may be in Form 7.19.

(5) A copy of a written decision that is appealed from must be filed with the notice of appeal.

(6) The appellant must notify each respondent in accordance with Rule 31 - Notice no less than ten days before the day the motion for directions is to be heard.

7.20 Freedom of Information and Protection of Privacy Appeal

(1) For the purposes of s. 41(1) of the *Freedom of Information and Protection of Privacy Act* and s. 49 of the *Judicature Act*, a person who wishes to appeal a decision on a request for access to a record or for correction of personal information under sections 32 and 41 of the statute, and a person who wishes to appeal a decision of the head of a public body under sections 40 and 41, may do so by filing a notice of appeal that conforms with this Rule 7 - Judicial Review and Appeal, but with all of the following modifications:

(a) the head of the public body who made the decision under appeal or, if it is a corporation, the public body itself must be named as a respondent;

(b) in an appeal of a refusal of a request for access to information, the notice of appeal must include a statement about the requirement for production to the court by the public body and the process for protecting documents claimed to be confidential;

(c) unless a judge orders otherwise, in an appeal of a refusal of a request for access to a record or for correction of personal information, the notice of appeal must state that no third party was notified under section 22 of the statute or attach as an appendix a copy of the consent required by subsection 32(3) of the statute.

(2) A judge may order that the Minister of Justice who becomes a party by filing a notice under subsection 41(1B) of the *Freedom of Information and Protection of Privacy Act* is a party in addition to, or in substitution for, the head of a public body or the public body.

(3) A judge who adds, or substitutes, a party may amend the heading for the appeal accordingly.

(4) For the purposes of section 49 of the *Judicature Act*, the appellant must notify the Information and Privacy Commissioner of the appeal by delivering a copy of the notice of appeal to the commissioner's office no less than ten days before the day the motion for directions is to be heard, and the commissioner may attend hearings of motions or the appeal with a watching brief.

(5) For the purposes of section 49, the head of a public body, or the public body itself, named as a respondent must, unless a judge orders otherwise, deliver to the prothonotary, for sealing and delivery to a judge under Rule 85.07 of Rule 85 - Access to Court Records, copies of the documents that are the subject of the appeal, and the delivery must be made before the motion for directions is heard.

(6) The other provisions of this Rule 7 about appeals apply to an appeal under the *Freedom of Information and Protection of Privacy Act*, except procedural provisions of the statute or the Freedom of Information and Protection of Privacy Regulations prevail other than as modified by this Rule 7.20.

(7) This Rule 7.20 applies to appeals under section 494 of the *Municipal Government Act*, with necessary changes including both of the following:

(a) the procedural provisions in the *Municipal Government Act* are altered by authority of s. 49 of the *Judicature Act* only;

(b) where the rest of this Rule 7.20 refers to the head of a public body it means the responsible person under the *Municipal Government Act*.

7.21 Cross-appeal and contention

The provisions under Rule 90 - Civil Appeal, made from time to time by judges of the Court of Appeal for a cross-appeal and a contention, are incorporated as if the text were included in this Rule 7, except the notice of cross-appeal, and the notice of contention, must be filed no less than one day before the day the motion for directions is to be heard.

7.22 Date for motion for directions

(1) A person who wishes to start an appeal must request the prothonotary to appoint a time and date for the motion for directions to be heard.

(2) Outside of Halifax, the request may be made to the prothonotary or a judge.

(3) The prothonotary, or a member of the judge's office, must immediately appoint a time and date for the motion to be heard.

(4) The date must be no more than twenty-five days after the day the request is made, unless the parties agree, or a judge directs, otherwise.

(5) The party making the request must file the notice of appeal immediately after the prothonotary assigns a date.

7.23 Notification

(1) The appellant must notify each other party of the motion for directions in accordance with Rule 31 - Notice not more than ten days after the day the notice of appeal is filed.

(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.

7.24 Directions for an appeal

The judge hearing the motion for directions for an appeal may do any of the following:

(a) appoint a time, date, and place for hearing the appeal;

(b) make an order settling each respondent's address for delivery;

(c) set dates for filing the appeal book, the appellant's brief, the respondent's brief, and an appellant's brief in reply to arguments on a cross-appeal or notice of contention;

(d) give the kinds of directions referred to in Rule 7.10.

7.25 Appeal Book

The appeal book must include all of the following, unless a judge orders otherwise:

(a) copies of all documents by which the proceeding under appeal was initiated;

(b) copies of pleadings or documents similar to pleadings;

(c) the decision under appeal, if it is not included in the transcript;

(d) any agreed statement of facts on which the decision was made;

(e) if there is a record, all of the following:

(i) a transcript of the hearing under appeal, or such excerpts as the parties may agree or the judge may direct,

(ii) copies of documentary exhibits,

(iii) copies of documents that were considered by the decision-making authority, but were not marked as exhibits,

(iv) a list of exhibits that are not documentary;

(f) copies of written orders or directions given by the decision-making authority in the course of the proceeding under appeal;

(g) any other material a judge directs be included in the book.

7.26 Applicant or appellant to pay expenses of record

The applicant for judicial review, or the appellant, must pay for transcriptions and duplications provided in the record.

7.27 Consolidation of judicial review or appeal

(1) A judge may order two or more proceedings for judicial review or appeal to be consolidated, or heard together.

(2) A motion for consolidation, or hearing together, must be made at the same time as the motion for directions, unless a judge orders otherwise.

7.28 Evidence on judicial review or appeal

(1) A party who proposes to introduce evidence beyond the record on a judicial review or appeal must file an affidavit describing the proposed evidence and providing the evidence in support of its introduction.

(2) An applicant for judicial review, or an appellant, must file the affidavit when the notice for judicial review or the notice of appeal is filed, and a respondent must file the affidavit no less than five days before the day the motion for directions is to be heard.

(3) A motion for permission to introduce new evidence must be made at the same time as the motion for directions, unless a judge orders otherwise.

7.29 Stay pending judicial review or appeal

(1) A judge may stay a decision under judicial review or appeal and any process flowing from the decision until the determination of the judicial review or appeal.

(2) A motion for a stay must be made at the same time as the motion for directions, unless a judge orders otherwise.

(3) The motion must be made by notice of motion in accordance with Rule 23 - Chambers Motion, although it is mentioned in the notice of appeal or notice for judicial review.

(4) A judge may grant an interim stay until the hearing of a motion for a stay.

(5) The judge may grant any order, including an injunction, as may be necessary to effectively stay a decision.

7.30 Dismissal of dormant review

The prothonotary must make a motion to dismiss a judicial review, *habeas corpus*, or appeal five years after the notice for judicial review, notice for *habeas corpus*, or notice of appeal is filed, if no hearing date is set.

Part 3 -Default and Discontinuance

Rule 8 - Default Judgment

8.01 Scope of Rule 8

(1) A party who makes a claim against another party in an action may make a motion for default judgment, in accordance with this Rule.

(2) This Rule does not apply to an application, and an applicant may make a motion for summary disposal of an application in accordance with Rule 5 - Application.

8.02 Default judgment by prothonotary

(1) The prothonotary may grant default judgment, if all of the following apply:

(a) the party against whom judgment is sought is notified of the claim in accordance with Rule 31 - Notice;

(b) the time for filing a defence is expired under Rule 31 - Notice;

(c) no defence is filed;

(d) the judgment is for damages only;

(e) the proceeding does not include an outstanding claim for enforcement of security, such as a claim for foreclosure, foreclosure and sale, or possession in relation to a mortgage loan.

(2) A motion for a default judgment must be made in one of the following ways:

(a) if no demand for notice was filed by the party against whom judgment is sought, by filing a draft order for judgment, a bill of costs, and proof of notification as provided in Rule 31 - Notice;

(b) if a demand for notice was filed or the party seeking default judgment chooses to do so on notice, by making a motion to the prothonotary on notice in accordance with Rule 30 - Motion to Prothonotary.

8.03 Default judgment by judge

(1) A judge may grant default judgment in any action on any claim, if the party against whom judgment is sought is notified in accordance with Rule 31 - Notice, the time for filing a defence is expired, and no defence is filed.

(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.

8.04 Judgment on one claim only

A party may have default judgment on an undefended claim against another party, and proceed to trial on another claim defended by that same party.

8.05 How terms of default judgment are determined

The terms of a default judgment may be determined on the basis that all pleadings in support of the claim have been admitted.

8.06 When amount is determined by prothonotary

A prothonotary must refer the assessment of the amount of a default judgment to a judge, unless the judgment is sought in an action brought by notice of action for debt, or the pleadings of the party who makes a motion for default judgment provide both of the following:

(a) a claim in the same amount as in the default judgment or a claim for an amount to be calculated in accordance with a formula that leads to the same amount as in the proposed default judgment

(b) pleaded facts that, taken as admitted, clearly show that the amount is due, such as a liquidated demand pleaded in sufficient detail.

8.07 How amount is determined by prothonotary

(1) The prothonotary must assess the amount for judgment in an action brought by notice of action for debt, in accordance with the following formula:

(a) the amount claimed for principal;

(b) the dollar amount claimed for interest, if there is an express agreement for payment of interest;

(c) calculated interest from the day stated in the notice of action for debt, if there is an express agreement for payment of interest;

(d) if there is no claim for agreed interest but prejudgment interest is claimed, interest at five percent a year calculated simply from the day the debt came due according to the pleadings;

(e) necessary and reasonable disbursements approved by the prothonotary, including the cost of giving notice and filing documents; plus

(f) costs under Tariff D referred to in Rule 77 - Costs; less

(g) any credits to which the judgment debtor is entitled.

(2) The prothonotary must allow disbursements, costs, and credits in an action the same as in an action brought by notice of action for debt, and must assess damages in accordance with the following formula:

(a) the specific amount pleaded or specifically calculated; plus

(b) prejudgment interest, if it is claimed, at five percent a year calculated simply from the day the claim arose according to the pleadings; less

(c) any credits to which the judgment debtor is entitled.

8.08 Assessment or other remedy by judge

(1) A judge may assess damages, or grant any other remedy, on a default judgment.

(2) The judge may defer the assessment of damages, or granting another remedy, in either of the following situations:

(a) a claim on which damages are to be assessed is defended by another party and the amount is in issue;

(b) the judgment debtor is defending another claim of the judgment creditor in the same action, and facts to be found on assessment of damages, or for granting another remedy, are in issue in the defended claim.

(3) Rule 70 - Assessment of Damages, including Rules 70.03 and 70.04 about notice, applies to a motion for an assessment or other remedy by a judge under this Rule.

8.09 Setting aside default judgment

A judge may set aside a default judgment issued by the prothonotary or made on an *ex parte* motion by a judge.

8.10 Judgment by sharp practice

(1) It is an abuse of process to obtain a default judgment without giving reasonable warning to a party who does any of the following:

(a) in writing, advises the party making the claim that the party intends to defend it;

(b) to the knowledge of the party making the claim, makes or defends another claim in the same action;

(c) in writing, advises that counsel has been retained in respect of the claim and gives information by which counsel may be contacted.

(2) An abusively obtained default judgment may be set aside under Rule 88 - Abuse of Process.

Rule 9 - Discontinuance

9.01 Scope of Rule 9

A party who starts a proceeding may discontinue the proceeding, and a party advancing a claim or defence in a proceeding may withdraw the claim or defence, in accordance with this Rule.

9.02 Discontinuing a proceeding

(1) A party who starts an action may discontinue the proceeding before the day of the trial readiness conference and a party who starts an application, a proceeding for judicial review, or an appeal, may discontinue the proceeding before the day of the hearing.

(2) A party may discontinue a proceeding at any time with the permission of a judge.

(3) A party may discontinue a proceeding by filing a notice of discontinuance.

(4) The notice of discontinuance must contain the standard heading, be entitled "Notice of Discontinuance", be dated and signed, and include a statement that the party discontinues the proceeding.

(5) A notice of discontinuance of an action, or an application, must also state that a counterclaim, crossclaim, or third party claim in a discontinued action, or a respondent's claim in a discontinued application, is also discontinued unless the party who made the claim files a notice continuing the proceeding for the purpose of the counterclaim, crossclaim, third party claim, or respondent's claim.

(6) The notice of discontinuance may be in Form 9.02.

9.03 Effect on counterclaim, crossclaim, third party claim

A counterclaim, crossclaim, third party claim, or respondent's claim is discontinued ten days after the day the plaintiff delivers the notice of discontinuance to the party making the counterclaim, crossclaim, third party claim, or respondent's claim unless that party files a notice continuing the counterclaim, crossclaim, third party claim, or respondent's claim.

9.04 Mandatory discontinuance of action for debt

(1) A plaintiff in an action brought by notice of action for debt must deliver a receipt to the defendant when the defendant pays the amount, other than disbursements that are to be taxed, stated in the notice.

(2) The receipt must contain the standard heading, be entitled "Receipt", be dated and signed, and include both of the following:

(a) an acknowledgement of the amount paid;

(b) a statement of whether disbursements remain to be taxed and, if so, the amount claimed.

(3) The action is discontinued when the receipt is filed, unless the receipt states that disbursements remain to be taxed.

(4) An action in which a party files a receipt stating that disbursements remain to be taxed is discontinued when a party files an affidavit showing that the disbursements have been settled, or taxed and paid.

(5) A receipt may be in Form 9.04.

9.05 Withdrawal

(1) A party may wholly withdraw a counterclaim, crossclaim, third party claim, or respondent's claim with the permission of a judge.

(2) A party may withdraw a claim or defence in an action before a trial readiness conference.

(3) A party may withdraw a ground in an application, notice of contest, judicial review, appeal, or contention before the day of the hearing.

(4) A party may withdraw a claim, defence, ground, counterclaim, crossclaim, third party claim, or respondent's claim at any time with the permission of a judge.

(5) The withdrawing party may file one of the following documents:

(a) a notice of withdrawal stating the party withdraws a counterclaim, crossclaim, or third party claim;

(b) a notice of withdrawal stating which of the party's claims, defences, or grounds are withdrawn;

(c) a consent to judgment stating the party withdraws all defences to a claim or all grounds contesting an application.

(6) The notice of withdrawal, or the consent to judgment, must contain the standard heading, be entitled "Notice of Withdrawal" or "Consent to Judgment" as is applicable, be dated and signed, and include both of the following statements:

(a) whether disbursements remain to be taxed and, if so, the amount claimed;

(b) whether the party waives further notice the party is entitled to under Rule 31 - Notice.

(7) A notice of withdrawal may be in Form 9.05A, and a consent to judgment may be in Form 9.05B.

9.06 Costs

(1) A party who files a notice of discontinuance, consent to judgment, or notice of withdrawal must, unless a judge orders otherwise, pay costs of the opposing party in an amount to be fixed under Rule 77 - Costs.

(2) A judge or adjudicator who assesses costs must consider the stage of the proceedings at which the notice or consent was filed, among the other factors under Rule 77 - Costs.

9.07 Cause of action remains

(1) Discontinuance of a proceeding or withdrawal of a cause of action does not give rise to a defence in subsequent proceedings for the same, or substantially the same, cause.

(2) A judge who allows a proceeding to be discontinued or a claim to be withdrawn may impose terms concerning a subsequent proceeding for the same cause against the same parties.

(3) A subsequent proceeding that amounts to an abuse of process may be controlled under Rule 88 - Abuse of Process.

Part 4 - Alternative Resolution or Determination

Rule 10 - Settlement

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.

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:

(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.

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 Determining 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.

10.10 Formal offer of contribution

(1) A party may deliver a formal offer of contribution in an action, or on a counterclaim, crossclaim, 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;

(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.

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.

(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;

(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 effect the agreement may have on requirements for trial or hearing dates.

10.16 Confidentiality

(1) The privilege attached to settlement discussions applies to all written and oral communications between a party and the judge who conducts a settlement conference and between the parties themselves in connection with or at the 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.

(6) The prothonotary need not keep correspondence to schedule a settlement conference confidential or the fact that the conference is scheduled, unless a confidentiality order under Rule 85 - Access to Court Records provide otherwise.

Rule 11 - 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.

(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 professional 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.

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 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 - Question of Law

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.

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;

(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

13.01 Scope of Rule 13

(1) This Rule is for summary judgment on evidence in an action and summary judgment on pleadings in an action or an application.

(2) This Rule is not for economical disposal of a claim or defence that may have some merit, to be determined through assessment of credibility or otherwise, which purpose may be served by any of the following:

(a) provisions of Rule 4 - Action for early assignment of trial dates;

(b) provisions of Rule 5 - Application for an application in court and Rule 6 - Choosing Between Action and Application;

(c) Part 4 - Alternative Resolution or Determination, except Rule 13 - Summary Judgment;

(d) Part 12 - Actions Under $150,000.

(3) This Rule is not for disposal of frivolous, vexatious, scandalous, or otherwise abusive pleadings, which purpose is served by Rule 88 - Abuse of Process.

13.02 Interpretation

In this Rule 13, “statement of claim” includes all or part of a statement of claim, statement of claim against third or subsequent party, statement of counterclaim, and statement of crossclaim, and the grounds in a notice of application and in a notice of respondent's claim, and “statement of defence” includes all or part of a statement of defence and the grounds in a notice of contest in answer to a statement of claim.

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 or tribunal;

(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 party making a claim, 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.

13.04 Summary judgment on evidence in an action

(1) A judge who is satisfied on both of the following must grant summary judgment on a claim or a defence in an action:

(a) there is no genuine issue of material fact, whether on its own or mixed with a question of law, for trial of the claim or defence;

(b) the claim or defence does not require determination of a question of law, whether on its own or mixed with a question of fact, or the claim or defence requires determination only of a question of law and the judge exercises the discretion provided in this Rule 13.04 to determine the question.

(2) When the absence of a genuine issue of material fact for trial and the absence of a question of law requiring determination are established, summary judgment must be granted without distinction between a claim and a defence and without further inquiry into chances of success.

(3) The judge may grant judgment, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.

(4) On a motion for summary judgment on evidence, the pleadings serve only to indicate the issues, and the subjects of a genuine issue of material fact and a question of law depend on the evidence presented.

(5) 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.

(6) A judge who hears a motion for summary judgment on evidence has discretion to do either of the following:

(a) determine a question of law, if there is no genuine issue of material fact for trial;

(b) adjourn the hearing of the motion for any just purpose including to permit necessary disclosure, production, discovery, presentation of expert evidence, or collection of other evidence.

13.05 Time for bringing motion for summary judgment on evidence

(1) A motion for summary judgment on evidence may be made any time after pleadings close and before a date assignment conference is requested, unless a judge directs otherwise.

(2) A judge who conducts a date assignment conference and directs that a motion for summary judgment on evidence may be made must set a deadline by which the motion is to be heard.

13.06 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 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.

13.07 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.

13.08 Hearing after dismissal of motion for summary judgment on evidence

(1) A judge who dismisses a motion for summary judgment on evidence must, as soon as is practical after the dismissal, schedule a hearing to do either of the following:

(a) give directions for the conduct of the action, if it is not converted to an application;

(b) on the motion of a party or on the court's own motion, convert the action to an application in court, set a time and date for the hearing of the application, and give further directions as called for in Rule 5 - Application.

(2) A judge who gives directions for the conduct of an action that is not converted may include 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 specifying what facts are not in dispute;

(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.

Part 5 - Disclosure and Discovery

Rule 14 - Disclosure and Discovery in General

14.01 Meaning of "relevant" in Part 5

(1) In this Part, "relevant" and "relevancy" have the same meaning as at the trial of an action or on the hearing of an application and, for greater clarity, both of the following apply on a determination of relevancy under this Part:

(a) a judge who determines the relevancy of a document, electronic information, or other thing sought to be disclosed or produced must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the document, electronic information, or other thing relevant or irrelevant;

(b) a judge who determines the relevancy of information called for by a question asked in accordance with this Part 5 must make the determination by assessing whether a judge presiding at the trial or hearing of the proceeding would find the information relevant or irrelevant.

(2) A determination of relevancy or irrelevancy under this Part is not binding at the trial of an action, or on the hearing of an application.

14.02 Interpretation in Part 5

(1) In Part 5,

"actually possess" means to have physical control of a thing or the ability to take physical control of the thing by one's self, through one's employee, or, in the case of a corporation, through an officer, without the assistance or permission of another person;

"computer" means a device that can store, read, and present electronic information, whether or not it can also process data, such as a personal computer, personal digital assistant, or fax machine with memory;

"designated manager" means a person designated by a corporate party under Rule 14.14;

"document" means a document that is not electronic information, including a print version of electronic information and a non-digital sound recording, video recording, photograph, film, plan, chart, graph, or record;

"electronic information" means a digital record that is perceived with the assistance of a computer as a text, spreadsheet, image, sound, or other intelligible thing and it includes metadata associated with the record and a record produced by a computer processing data, and all of the following are examples of electronic information:

(i) an e-mail, including an attachment and the metadata in the header fields showing such information as the message's history and information about a blind copy,

(ii) a word processing file, including the metadata such as metadata showing creation date, modification date, access date, printing information, and the pre-edit data from earlier drafts,

(iii) a sound file including the metadata, such as the date of recording,

(iv) new information to be produced by a database capable of processing its data so as to produce the information;

"exactly copy" means to make an electronic copy of electronic information in such a way that the copy is a mirror image of the original in a computer, storage medium, or other source;

"sort" means to do all of the following:

(i) physically separate relevant, non-privileged documents from other documents and distinguish relevant, non-privileged electronic information from other electronic information,

(ii) separate or redact irrelevant or privileged information from a document or electronic information containing some information that is relevant and not privileged,

(iii) place the document or electronic information where it will be preserved for disclosure;

"storage medium" means a thing on which electronic information is stored other than a computer, such as a digital versatile disc, a backup tape, and a hard drive removed from a computer.

(2) A Rule in Part 5 that refers to a copy of, or copying, electronic information calls for a copy that is in a readily exchangeable format, unless the Rule refers to an exact copy, a judge directs what format is to be used, or the parties agree on a format.

14.03 Collateral use

(1) Nothing in Part 5 diminishes the application of the implied undertaking not to use information disclosed or discovered in a proceeding for a purpose outside the proceeding, without the permission of a judge.

(2) The implied undertaking extends to each of the following, unless a judge orders otherwise:

(a) documentation used in administering a test, such as test documents supplied to and completed by a psychologist;

(b) all notes and other records of an expert;

(c) anything disclosed or produced for a settlement conference.

14.04 Relationship between discovery and interrogatories

A party may only demand an answer to a question under Rule 19 - Interrogatories not already answered by the same witness under Rule 18 - Discovery, and a party may only ask a question at discovery not already answered by the same witness in answer to a demand under Rule 19 - Interrogatories.

14.05 Privilege

(1) Nothing in Part 5 requires a person to waive privilege or disclose privileged information.

(2) A provision in a Rule in Part 5 for disclosure of a relevant document, electronic information, or other thing means disclosure of a relevant document, electronic information, or other thing that is not privileged.

(3) A provision in a Rule in Part 5 that requires an answer to a question calling for relevant evidence, or information that reasonably could lead to relevant evidence, means relevant evidence that is not privileged, or information, not itself privileged, that could lead to relevant evidence that is not privileged.

(4) A judge may determine a claim for privilege, except the information and confidences referred to in sections 37 to 39 of the *Canada Evidence Act* are determined under that *Act*.

(5) A judge who is required to determine a claim for privilege may direct a person to deliver the thing claimed to be privileged to the judge in order that it may be dealt with under Rule 85.06, of Rule 85 - Access to Court Records.

14.06 Disclosure of privileged information by mistake

(1) Delivery by mistake of privileged information when making disclosure under Part 5 does not extinguish the privilege, unless the mistake results from one of the following:

(a) a system of records management that is ineffective, or otherwise unreasonable;

(b) inadequate security measures for protecting confidential information;

(c) carelessness in disclosure, such as disclosing masses of documents or electronic information without taking reasonable steps to review the documents or making a reasonable search of the electronic information in an attempt to identify privileged information.

(2) A party who makes disclosure under Part 5 must exercise care to avoid delivering privileged information.

(3) A party to whom disclosure is made and who discovers that the disclosure includes apparently privileged information must immediately notify the disclosing party and not do any of the things mentioned in Rule 14.06(7) until five days after the day the receiving party notifies the disclosing party.

(4) A party who learns, by receiving a notice under Rule 14.06(3) or otherwise, that the party delivered privileged information by mistake must, no more than five days after the day the party learns of the disclosure, notify the receiving party of the claim that privileged information was disclosed by mistake, or the privilege is waived.

(5) A party who claims privileged information was delivered by mistake may require the receiving party to do any of the following:

(a) return the document, if the information is in a physical document;

(b) delete the privileged information, if it was delivered in electronic form;

(c) return the storage medium, if the privileged information was delivered on a storage medium.

(6) Counsel who receives information claimed to be privileged and to have been delivered by mistake must not provide the information to anyone, including counsel's client, unless a judge determines the information is not privileged.

(7) A party who receives information claimed to be privileged and to have been delivered by mistake must not do any of the following, unless a judge determines the information is not privileged:

(a) review the information;

(b) keep a reproduction or record of the information;

(c) communicate the information to another person;

(d) ask a question based on the information in interrogatories, in discovery, on a hearing, or at a trial;

(e) repeat the information.

(8) A judge may make an order to protect a privilege in anything disclosed by mistake under Part 5.

14.07 Expense of disclosure

(1) The party who makes disclosure must pay for the disclosure, unless the parties agree or a judge orders otherwise.

(2) A judge may order another party to provide an indemnity to the disclosing party for an expense of disclosure, if all of the following apply:

(a) considering the disclosing party's means, the indemnity is clearly necessary to achieve proportionality within the meaning of Rule 14.08(3);

(b) the expense is not the result of a system of records management that is ineffective, or otherwise unreasonable;

(3) The order may require the disclosing party to do any of the following, if it is covered by the indemnity:

(a) acquire more information about the disclosing party's records management system, the location of the party's documents and electronic information, or how they are accessed, and report to the indemnifying party or the court;

(b) perform a search for relevant documents or electronic information, report on the results to the indemnifying party or the court, and produce a copy of any relevant document or electronic information the party finds;

(c) acquire and produce a copy of a relevant document or electronic information;

(d) take other steps that may assist the indemnifying party to receive disclosure.

(4) The provisions of an indemnity must be taken into account in the assessment of costs under Rule 14.08(3).

14.08 Presumption for full disclosure

(1) Making full disclosure of relevant documents, electronic information, and other things is presumed to be necessary for justice in a proceeding.

(2) Making full disclosure of documents or electronic information includes taking all reasonable steps to become knowledgeable of what relevant documents or electronic information exist and are in the control of the party, and to preserve the documents and electronic information.

(3) A party who proposes that a judge modify an obligation to make disclosure must rebut the presumption for disclosure by establishing that the modification is necessary to make cost, burden, and delay proportionate to both of the following:

(a) the likely probative value of evidence that may be found or acquired if the obligation is not limited;

(b) the importance of the issues in the proceeding to the parties.

(4) The party who seeks to rebut the presumption must fully disclose the party's knowledge of what evidence is likely to be found or acquired if the disclosure obligation is not limited.

(5) The presumption for disclosure applies, unless it is rebutted, on a motion under Rule 14.12, Rule 15.07 of Rule 15 - Disclosure of Documents, Rules 16.03 or 16.14 of Rule 16 - Disclosure of Electronic Information, Rule 17.05 of Rule 17 - Disclosure of Other Things, or Rule 18.18 of Rule 18 - Discovery.

(6) In an application, a judge who determines whether the presumption has been rebutted must consider the nature of the application, whether it is chosen as a flexible alternative to an action, and its potential for a speedier determination of the issues in dispute, when assessing cost, burden, and delay.

14.09 Demand for production of undisclosed copy

(1) After the time for making disclosure under Rule 15 - Disclosure of Documents, or Rule 16 - Disclosure of Electronic Information, a party who is satisfied another party has not disclosed a relevant document or electronic information required to be disclosed may demand that the other party deliver a copy of the document or electronic information.

(2) A party to whom a demand for a copy of a document or electronic information is delivered must respond to the demand in one of the following ways no more than fifteen days after the day the demand is delivered:

(a) accept the demand, and deliver a copy of the document or electronic information;

(b) refuse the demand on the ground that the document or electronic information is privileged, irrelevant, or not in the control of the party;

(c) make a motion to limit the party's obligation to produce the document or electronic information, and seek to rebut the presumption in favour of disclosure by establishing that compliance with the demand is disproportionate under Rule 14.08.

(3) A judge may order a party who fails to respond to a demand for production to indemnify the other party for the expenses of obtaining an order for production.

14.10 Demand for production of, or access to, original

(1) After the parties have complied with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information, a party may deliver to another party a demand for production for inspection of the original of a relevant document in the control of the other party, or for access to relevant electronic information in the control of the other party.

(2) The party who accepts a demand for production for inspection of an original document must do both of the following, unless a judge orders otherwise:

(a) not more than fifteen days after the day the demand is delivered, arrange a time, date, and place for the production;

(b) produce the document for inspection and permit the document to be copied at the arranged time, date, and place.

(3) The party who accepts a demand for access to electronic information must do each of the following, unless a judge orders otherwise:

(a) not more than fifteen days after the day the demand is delivered, offer reasonable terms under which the other party will have access to a computer or storage medium in the control of the disclosing party or to another source of electronic information the party accesses to the exclusion of another party;

(b) within the same time, arrange a convenient time and way for the other party to have access;

(c) provide access accordingly.

(4) The party who refuses a demand for access to electronic information must give reasons for the refusal, and the other party may make a motion for an order under Rule 14.12.

14.11 Demand for production at trial or hearing

(1) A party may, before the finish date in an action or the day of the hearing of an application, deliver to another party a demand that the party produce any of the following at the trial or hearing:

(a) the original of a relevant document, or an exact copy of relevant electronic information;

(b) a copy of a relevant document, or a copy of relevant electronic information accurately copied in a readily exchangeable format;

(c) a computer or storage medium containing relevant electronic information;

(d) another means for accessing a source of relevant electronic information the party accesses to the exclusion of the demanding party.

(2) The party to whom the demand for production is delivered and who has control of the document, information, computer, medium, or source must produce it or provide access to it at the trial or hearing, unless a judge orders otherwise.

14.12 Order for production

(1) A judge may order a person to deliver a copy of a relevant document or relevant electronic information to a party or at the trial or hearing of a proceeding if the moving party provides all of the following representations:

(a) the party is in compliance with Rule 15 - Disclosure of Documents and Rule 16 - Disclosure of Electronic Information;

(b) the party believes the delivery would promote the just, speedy, and inexpensive resolution of the proceeding, including a concise statement of the grounds for the belief;

(c) the party will pay the reasonable costs of making the delivery, unless a judge directs otherwise.

(2) A judge may order a person to produce the original of a relevant document, or provide access to an original source of relevant electronic information, to a party or at the trial or hearing.

(3) A judge who orders a person to provide access to an original source of relevant electronic information may include in the order terms under which the access is to be exercised, including terms on any of the following:

(a) a requirement that a person assist the party in obtaining temporary access to the source;

(b) permission for a person to take temporary control of a computer, part of a computer, or a storage medium;

(c) appointment of an independent person to exercise the access;

(d) appointment of a lawyer to advise the independent person and supervise the access;

(e) payment of the independent person and the person's lawyer;

(f) protection of privileged information that may be found when the access is exercised;

(g) protection of the privacy of irrelevant information that may be found when the access is exercised;

(h) identification and disclosure of relevant information, or information that could lead to relevant information;

(i) reporting to the other party on relevant electronic information found during the access.

(4) A judge who is satisfied that the requirement is disproportionate under Rule 14.08 may limit a requirement to produce a copy of a document, to produce exactly copied electronic information, or to provide access to electronic information.

(5) A motion for an order for production must be made on notice, unless it is permitted to be made *ex parte* as provided in Rule 22 - General Provisions for Motions.

14.13 Order to process data

A judge may order a party to cause data on a computer or in a storage medium actually possessed by the party, or in a database accessed by the party to the exclusion of another party, to be processed so as to produce relevant electronic information.

14.14 Designated manager for discovery

(1) A corporate party to a defended action must designate a manager for discovery of the corporation and notify the other parties of the name of the designated manager no more than twenty days after the day pleadings close.

(2) A judge may designate a manager for a corporate party who fails to do so in an action.

(3) A judge may substitute a manager for a corporate party in an action who makes an unreasonable designation, such as designating a person who has no real connection with the party's claim or defence even though such a person is available and able to act as manager.

(4) A designated manager in an action must, before being discovered, become informed about relevant information available to the party.

(5) A corporate party to an application need not designate a manager unless a judge directs otherwise, and the judge may set the terms that apply to the manager.

14.15 Public archives and other public repository

Despite the provisions of Part 5, a party who controls a public archive, museum, or other place where the public has access to documents or electronic information is not obligated to search there for relevant documents or electronic information that are available to all parties.

Rule 15 - Disclosure of Documents

15.01 Scope of Rule 15

(1) This Rule provides for making disclosure of documents, not electronic information.

(2) A party must disclose documents in the control of the party, in accordance with this Rule.

15.02 Duty to make disclosure of documents

(1) A party to a defended action or a contested application must do each of the following:

(a) make diligent efforts to become informed about relevant documents the party has, or once had, control of;

(b) search for relevant documents the party actually possesses, sort the documents, and either disclose them or claim a document is privileged;

(c) acquire and disclose relevant documents the party controls but does not actually possess.

(2) The party must also disclose information about all of the following:

(a) a relevant document the party once controlled but no longer controls, such as a lost document or a document given away;

(b) a claim that a document in the control of the party is subject to a privilege in favour of the party or another person, to the extent it is possible to inform another party without infringing the privilege;

(c) a relevant document newly created, discovered, or acquired;

(d) a relevant document that has ceased to be privileged.

15.03 Disclosure in an action

(1) A party to a defended action must deliver to each other party an affidavit that fulfills the party's duty to make disclosure of documents no more than forty-five days after the day pleadings close.

(2) The affidavit must contain the standard heading, be entitled "Affidavit Disclosing Documents (Individual)" or "Affidavit Disclosing Documents (Corporate)", and be sworn or affirmed by an individual party, the litigation guardian of an individual party, or an officer or employee of a corporate party.

(3) The person making the affidavit must swear to or affirm all of the following:

(a) an attached certificate of advice or understanding about disclosure duties under this Rule 15, and Rule 16 - Disclosure of Electronic Information, is true;

(b) the person has thoroughly searched for, or supervised a thorough search for, relevant documents that are actually possessed by the party;

(c) the person has become informed about relevant documents in control of, but not actually possessed by, the party and has acquired the documents, or disclosed otherwise in the affidavit;

(d) an attached Schedule A lists all relevant, non-privileged documents that are actually possessed by the party;

(e) the person has arranged for delivery of copies of the listed documents in a printed booklet, or in a readily exchangeable electronic format, that is organized in a way that corresponds to Schedule A;

(f) an attached Schedule B provides the date of retention of counsel, claims privilege over communications with counsel unless the party waives the privilege, and provides information on all claims that a document, other than a communication with counsel, is privileged in favour of the party or another person;

(g) an attached Schedule C describes each relevant document in the party's control that has not yet been acquired by the party and provides the party's undertaking to acquire the document or the reasons for not doing so;

(h) an attached Schedule D accurately describes any document once, but no longer, in the control of the party;

(i) to the best of the person's knowledge, the party has never had control of a relevant document except as disclosed in the affidavit;

(j) disclosure of electronic information is the subject of another affidavit, an agreement, or directions of a judge.

(4) The certificate attached to the affidavit must be of one of the following kinds:

(a) if the person is represented by counsel, a certificate signed by counsel stating that counsel has advised the person providing the affidavit of the duties under Rule 14 - Disclosure and Discovery in General, this Rule 15, and Rule 16 - Disclosure of Electronic Information to search for, make diligent efforts to become informed about, acquire, sort, and disclose relevant documents and electronic information, and of the kinds of documents and electronic information that may be relevant in the proceeding;

(b) if the party is acting on their own, a certificate of the party that they have taken any assistance they require to understand the duties under Rule 14 - Disclosure and Discovery in General, this Rule 15, and Rule 16 - Disclosure of Electronic Information to search for, make diligent efforts to become informed about, acquire, sort, and disclose relevant documents and electronic information, and the party understands the duties.

(5) Each schedule attached to the affidavit must describe a document so it is easily identifiable from the description, and if copies of documents are to be delivered in an electronic format rather than a printed booklet, Schedule A must conform with Rule 16.09(3)(d).

(6) The affidavit disclosing documents may be in Form 15.03A for an individual party, or Form 15.03B for a corporate party.

15.04 Supplementary affidavit disclosing documents

A party who delivers an affidavit disclosing documents must, immediately on becoming aware of any of the following, deliver to each other party a supplementary affidavit disclosing documents:

(a) a relevant document in the actual possession of the party is not covered by the affidavit disclosing documents;

(b) a further relevant document is found or acquired;

(c) a relevant document claimed to be privileged is no longer claimed to be privileged.

15.05 Book or electronic copy of documents

(1) A party who delivers an affidavit disclosing documents, or a supplementary affidavit, must, at the same time, deliver to each other party a book of copies of all documents listed in Schedule A of the affidavit, or referred to in the supplementary affidavit.

(2) The documents must be provided in a sequence, and with identifying numbers or letters, so that they are easily matched with the list in the Schedule.

(3) Each page of a document containing more than one page must have a sequential page number.

(4) A document that cannot be bound conveniently into a booklet, may be placed in a sleeve or delivered separately with a cross-reference in the booklet.

(5) Instead of a booklet, a party to a proceeding in which all parties have means for reading electronic information may scan the documents and deliver copies in a readily exchangeable electronic format.

(6) A party who delivers documents in an electronic format must comply with Rule 16.12, of Rule 16 - Disclosure of Electronic Information, as if the scanned documents were electronic information, and the party must provide in the party's affidavit of documents a Schedule "A" that conforms with Rule 16.09(3)(d).

15.06 Disclosure in an application

(1) A party to a contested application must deliver to each other party copies of all documents required to be disclosed under this Rule 15 and a list by which the documents can be identified and put in order.

(2) The copies must be delivered in a booklet, or in a readily exchangeable electronic format.

(3) A judge may give directions for delivery of a list identifying, or an affidavit disclosing, documents in an application.

15.07 Directions for disclosure

(1) A judge may give directions for disclosure of documents, and the directions prevail over this Rule 15.

(2) A judge may not give directions limiting disclosure or production of a relevant document, unless the presumption in Rule 14.08, of Rule 14 - Disclosure and Discovery in General, is rebutted.

Rule 16 - Disclosure of Electronic Information

16.01 Scope of Rule 16

(1) This Rule prescribes duties for preservation of relevant electronic information, which may be expanded or limited by agreement or order.

(2) This Rule also prescribes duties of disclosure of relevant electronic information and provides for fulfilling those duties in one of the following ways:

(a) first, an agreement made by the parties;

(b) second, to the extent that an agreement is not made, disclosure according to default Rules;

(c) third, if no agreement can be made and the default rules cannot be complied with, directions of a judge under Rule 16.14.

(3) A party must preserve and disclose electronic information in the control of the party, in accordance with this Rule.

16.02 Duty to preserve electronic information

(1) This Rule 16.02 provides for preservation of relevant electronic information after a proceeding is started, and it supplements the obligations established by law to preserve evidence before or after a proceeding is started.

(2) A party who becomes aware that a proceeding is to be defended or contested, must take measures to preserve relevant electronic information that is of one of the following kinds:

(a) it is readily identifiable in a computer, or on a storage medium, the party actually possesses;

(b) it is accessible by the party to the exclusion of another party, such as information in a database the party accesses by password on a computer the party does not actually possess.

(3) Electronic information that is within any of the following descriptions is readily identifiable:

(a) it was created, or regularly accessed, by a party during events related to a claim, defence, or ground, and if the information is still accessible;

(b) the party finds it while doing anything in connection with the proceeding, such as preparing the party's own case or defence;

(c) it is stored under a relevant name;

(d) it is capable of being found by performing thorough keyword searches.

(4) The party must exactly copy the relevant electronic information required to be preserved, unless the parties agree or a judge orders otherwise (see the definition of "exactly copy" in Rule 14.02, of Rule 14 - Disclosure and Discovery in General).

(5) Rules 16.02(1) to (4) do not require a party to freeze a database or file that changes significantly and rapidly in ordinary use, such as a file for inventory control.

(6) A party may demand that a party who controls a database preserve relevant information in the database, and the party who receives the demand must immediately do one of the following:

(a) preserve the information from being overwritten or otherwise altered;

(b) explain in writing why the party cannot comply with the demand.

(7) A party may make a motion for an order requiring another party to preserve information in a database or a file that changes significantly and rapidly in ordinary use.

(8) A judge may make an order for preservation of relevant electronic information, in accordance with Rule 42 - Preservation Order.

16.03 Duty to disclose electronic information

(1) A party to a defended action or a contested application must do each of the following:

(a) make diligent efforts to become informed about relevant electronic information the party controls, or once controlled;

(b) search for relevant electronic information the party can access to the exclusion of another party, sort the information, and either disclose it or claim it is privileged;

(c) acquire and disclose relevant electronic information the party controls but can access only through a custodian who is not an employee or an officer of the party.

(2) A party must also disclose all of the following about relevant electronic information:

(a) a description of a computer or storage medium that the party once actually possessed but no longer actually possesses and that may contain relevant electronic information;

(b) information about any deletion or destruction of relevant electronic information of which the party is aware;

(c) a claim that electronic information is subject to a privilege in favour of the party or another person, to the extent it is possible to inform another party without infringing the privilege.

(3) A party must disclose relevant electronic information that has ceased to be privileged or is newly created, discovered, or acquired.

16.04 Agreement about preservation

The parties may, by agreement, and a judge may, by directions under Rule 16.14, expand or limit a party's duty to preserve electronic information.

16.05 Agreement for disclosure

(1) Parties may make an agreement for disclosure of relevant electronic information, and a term of the agreement prevails over an inconsistent provision of Rule 15 - Disclosure of Documents, or this Rule 16.

(2) A judge may make an order to enforce a term in an agreement for disclosure of electronic information.

(3) Breach of a term in an agreement for disclosure of electronic information is the same as breach of a Rule for the purpose of Rule 88 - Abuse of Process.

16.06 Rules for disclosure in default of agreement

(1) A party to either of the following proceedings must make disclosure of relevant electronic information in accordance with the following default Rules, to the extent there is no agreement on a subject pertaining to the default Rules:

(a) a defended action, in accordance with Rules 16.07 to 16.11 and Rule 16.13;

(b) a contested application, in accordance with Rules 16.12 and 16.13.

(2) A party who does not have an agreement covering a subject provided for in the default Rules and determines they cannot fulfill a default duty, or cannot comply with an applicable default Rule, must immediately notify each other party of the inability and reason for it.

(3) All parties must negotiate in good faith for an agreement under Rule 16.05 as soon as possible after being notified of an inability to fulfill a default duty or comply with a default Rule.

(4) If agreement is not reached in a reasonable time, the party who cannot fulfill a default duty, or comply with an applicable default Rule, must apply for directions under Rule 16.14.

16.07 Time for disclosure in an action (default provision)

A party to a defended action must disclose relevant electronic information no more than forty-five days after the day pleadings close.

16.08 Sufficient search (default provision)

(1) A party who does all of the following performs a sufficient search for relevant electronic information:

(a) identifies computers and storage media the party actually possesses that are likely to contain relevant electronic information;

(b) identifies other sources that are likely to contain relevant electronic information, such as a source the party accesses to the exclusion of another party on computers the party does not actually possess;

(c) performs all reasonable searches, including thorough keyword searches, to find relevant electronic information in the computers, storage media, or other sources;

(d) identifies persons who hold, or are likely to hold, relevant electronic information the party controls;

(e) takes reasonable steps to acquire information from a person identified as holding information the party controls.

(2) A party performs a sufficient search without searching free space for file fragments, attempting to restore and search deleted files, or searching a backup file or tape containing only duplicate information.

16.09 Disclosure in an action (default provision)

(1) A party to a defended action must deliver to each other party an affidavit disclosing relevant electronic information that fulfills the party's duties to make disclosure in the time allowed by Rule 16.07.

(2) The affidavit must contain the standard heading, be entitled "Affidavit Disclosing Electronic Information (Individual)" or "Affidavit Disclosing Electronic Information (Corporation)", and be sworn or affirmed by an individual party, the litigation guardian of an individual party, or an officer or employee of a corporate party.

(3) The person making the affidavit must swear to, or affirm, all of the following:

(a) the information in an attached certificate of advice or understanding about disclosure duties under this Rule 16 and Rule 15 - Disclosure of Documents, is true;

(b) the person has searched, or has supervised a search, for relevant electronic information in computers and storage media the party actually possesses and in sources exclusively accessed by the party;

(c) the person has made diligent efforts to become informed about relevant electronic information that is in the control of, but not held by, the party and the person has acquired the information except as disclosed in the affidavits;

(d) an attached Schedule A is provided in print and in a readily exchangeable electronic format, describing each discrete item of electronic information according to identification number or letters, date of creation, type of communication or other information, author or author and organization, and recipient;

(e) the person has arranged for the electronic information referred to in Schedule A to be prepared in a readily exchangeable electronic format, organized in a way that corresponds with Schedule A, and delivered to each other party;

(f) an attached Schedule B provides the date of retention of counsel and claims privilege over communications with counsel, unless the party waives the privilege, and provides information on all claims that a communication, other than a communication with counsel, is privileged in favour of the party or another person;

(g) an attached Schedule C provides information about relevant electronic information in the party's control but which the party has not yet found or acquired, and an undertaking to act diligently to find or acquire the information;

(h) an attached Schedule D describes relevant electronic information once, but no longer, in the control of the party and provides details about how the party ceased to have control of it;

(i) to the best of the person's knowledge, the party has never had control of relevant electronic information except as disclosed in the affidavit;

(j) disclosure of documents is the subject of another affidavit.

(4) The certificate of advice or understanding attached to the affidavit must be the same as the certificate attached to an affidavit of documents.

(5) The affidavit may be in Form 16.09A for an individual party, or Form 16.09B for a corporate party.

16.10 Supplementary affidavit of electronic information in an action (default provision)

A party who delivers an affidavit disclosing electronic information must, immediately on becoming aware of any of the following, deliver to each other party a supplementary affidavit disclosing further electronic information:

(a) some relevant electronic information in the control of the party is not covered by the affidavit disclosing electronic information;

(b) further relevant electronic information is found or acquired;

(c) relevant electronic information claimed to be privileged is no longer claimed to be privileged.

16.11 Copy of electronic information in an action (default provision)

A party who delivers an affidavit, or supplemental affidavit, disclosing electronic information must, at the same time, deliver to each other party a copy of the electronic information referred to in Schedule A of the affidavit, or in the supplementary affidavit.

16.12 Making disclosure in an application (default provision)

(1) A party to an application who becomes aware that the application is contested must, as soon as possible, deliver to each other party copies of electronic information required to be disclosed by Rule 16.03.

(2) A party to an application who is requested by another party to provide a description of relevant electronic information must, as soon as possible, deliver a description to the requesting party that conforms with the requirements for Schedule A of an affidavit disclosing electronic information.

(3) The disclosing party must answer questions asked by another party that will inform the other party about any of the following subjects:

(a) a claim for privilege, to the extent information can be given without infringing the privilege;

(b) measures the disclosing party has taken to preserve, or acquire, relevant electronic information in the control of the party;

(c) details of the searches made by the disclosing party;

(d) details about a source of electronic information that may be used to produce new, relevant information;

(e) any information that could reasonably lead to the location and preservation of relevant electronic information that has not been acquired.

(4) The inquiring party may require that the questions and answers be put in writing, recorded, or asked and answered at a discovery.

(5) A party to an application must copy relevant electronic information immediately on becoming aware that the information has ceased to be privileged, is newly created, discovered, or acquired, or was not disclosed when it should have been disclosed, and deliver a copy to each other party.

16.13 Deletion or destruction of electronic information

(1) Deliberate or reckless deletion of relevant electronic information, expunging deleted information, or destruction of anything containing relevant electronic information after a proceeding is started may be dealt with under Rule 88 - Abuse of Process.

(2) Failure to comply with an order directing preservation of electronic information may be dealt with under Rule 89 - Contempt.

16.14 Directions for disclosure

(1) A judge may give directions for disclosure of relevant electronic information, and the directions prevail over other provisions in this Rule 16.

(2) The default Rules are not a guide for directions.

(3) A judge may limit preservation or disclosure in an action only to the extent the presumption in Rule 14.08, of Rule 14 - Disclosure and Discovery in General, is rebutted.

16.15 When loss of electronic information may be abuse

(1) A party who deliberately or recklessly does any of the following may be dealt with under Rule 88 - Abuse of Process:

(a) deletes relevant electronic information;

(b) expunges deleted, relevant, electronic information;

(c) destroys a thing that contains relevant electronic information.

(2) A party who acts in good faith and who loses relevant electronic information as a result of the routine operation of a computer or database does not commit an abuse of process.

Rule 17 - Disclosure of Other Things

17.01 Scope of Rule 17

(1) This Rule provides for disclosure and inspection of things other than documents and electronic information, including all of the following:

(a) land and fixtures, such as a building, structure, and fixed machinery;

(b) moveables, such as a machine, model, or sample;

(c) anything containing information that is not a document or electronic information.

(2) A person must disclose all relevant things in the control of the person, and a party may inspect a relevant thing, in accordance with this Rule.

17.02 When to disclose

A party to a defended action or contested application must make disclosure of a thing to which this Rule 17 applies at the following times, in the following circumstances:

(a) no more than forty-five days after the day pleadings close, when the evidence is in the control of the party at the beginning of the proceeding;

(b) immediately after the evidence comes into the control of the party, or ceases to be privileged, when either happens after the beginning of the proceeding;

(c) immediately on the party becoming aware that the party failed to disclose a thing that should have been disclosed.

17.03 How to make disclosure

The party must make the disclosure by delivering to the other party a written description of the thing, including all of the following

(a) how it is relevant;

(b) where it is, and who has physical control of it;

(c) how and when it may be inspected.

17.04 Demand for inspection

(1) A party may deliver to another party a demand for inspection of a relevant thing in the control of the other party.

(2) A party to whom a demand for inspection is delivered must do either of the following no more than ten days after the day the demand is delivered:

(a) arrange a convenient time, date, and place for the inspection;

(b) refuse the demand and give grounds.

17.05 Order for inspection

(1) A judge may order a person to permit inspection of a thing, and the order may include terms to assist the inspection, including terms on any of the following subjects:

(a) permission to enter on lands and inspect the land, a fixture, or a movable;

(b) a time, date, and place for the inspection;

(c) an injunction or other order to secure the cooperation of a named or unnamed person;

(d) a requirement that a person deliver a thing to a person or place.

(2) An order for inspection may permit testing, taking a sample, or conducting an experiment.

(3) An order for inspection may include the statement, "Failure to obey this order may be punished as contempt of court."

17.06 Expert's report

A party who inspects a thing under a demand or order, and who obtains from an expert an agreement to prepare a report under Rule 55 - Expert Opinion, may involve the expert in the inspection, including performing, taking, or making a permitted test, sample, or experiment.

Rule 18 - Discovery

18.01 Scope of Rule 18

(1) This Rule allows a party to question a witness by discovery, unless the question was answered by the witness in response to interrogatories.

(2) Provisions about discovery in Rule 55 - Expert Opinion, and in Rule 57 - Action for Damages Under $150,000, prevail over this Rule.

(3) A party may discover a witness by agreement, under a discovery subpoena, or by order, in accordance with this Rule.

18.02 Duties of party in an action

(1) After pleadings close in a defended proceeding, a party must do all of the following:

(a) in deciding whether a witness needs to be discovered, consider whether the discovery would promote the just, speedy, and inexpensive resolution of the proceeding;

(b) cooperate with each party to organize a required discovery so it is held quickly and conveniently;

(c) prepare, or direct officers or employees to prepare, for discovery of the party so that questions are answered with a refreshed memory;

(d) become informed before the discovery of all discoverable information reasonably accessible by the party so questions may be answered without delay;

(e) make best efforts to conduct discovery so as to further the just, speedy, and inexpensive resolution of the proceeding.

(2) A party may consider Rule 18.24(1) when determining whether a discovery would promote the just, speedy, and inexpensive resolution of a proceeding for the purpose of Rule 18.02(1)(a), 18.04(2)(b), and 18.05(2)(a)(ii).

18.03 Interview or discovery by agreement

(1) Nothing in these Rules prevents a party from interviewing a witness with the agreement of the witness and, if the witness is known to be represented on the subject of the interview, the permission of the witness' lawyer.

(2) A party may interview a witness who is not a party, or an employee or officer of a party, under oath or affirmation and record the interview or take a sworn or affirmed statement without affecting the admissibility of the witnesses' evidence.

(3) A party may discover an individual party or an employee or officer of a corporate party by agreement of the party seeking discovery and the party to be discovered.

(4) A party may discover a witness who is not a party with the agreement of the witness.

(5) A party who wishes to discover anyone under an agreement must make best efforts to schedule the discovery at a time and place convenient for each party.

18.04 Discovery subpoena in an action (party)

(1) A party to an action who provides required representations may obtain a discovery subpoena (party) to discover any of the following witnesses:

(a) an individual party;

(b) the designated manager and one other officer or employee of a corporate party;

(c) further officers and employees, if the party also provides required undertakings to pay expenses.

(2) A party requesting a discovery subpoena (party) directed to an individual party must provide both of the following representations to the court:

(a) that the party is in compliance with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information;

(b) that the party believes the discovery would promote the just, speedy, and inexpensive resolution of the proceeding, including a concise statement of the grounds for the belief and an explanation of why a discovery subpoena is required instead of, or in addition to, an agreement.

(3) A party requesting a discovery subpoena (party) directed to a designated manager, or one other officer or employee of a corporate party, must provide all representations required for a subpoena directed to an individual party and a representation that the designated manager, or the other officer or employee, has not yet been discovered in the proceeding.

(4) A party requesting a discovery subpoena (party) directed to a further officer or employee must provide all of the following representations to the court and file the following undertaking:

(a) all representations required for a subpoena directed to an individual party;

(b) a representation that the designated manager and one other officer or employee have been discovered;

(c) an undertaking to pay the charges of the reporter to record and transcribe the discovery and the reasonable expenses of the witness to attend the discovery, including transportation, accommodation, and meals.

(5) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Party)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness;

(b) if the witness is an individual party, the address for delivery designated by the witness, and, if the witness is an officer or employee of a corporate party, the address for delivery designated by the corporate party;

(c) requirements that the witness attend the discovery, answer questions properly asked by a party and bring, or provide access to, described documents, electronic information, or other things;

(d) the time, date, and place of the discovery;

(e) a warning that failure to obey the subpoena may be punished as contempt of court.

(6) A party who obtains a discovery subpoena (party) must deliver a certified copy of subpoena to the address for delivery of the individual party to be discovered or the party whose officer or employee is to be discovered no less than ten days before the day the discovery is to be held.

(7) The party who obtains the subpoena must notify each other party by delivering a copy of the subpoena to the other party no less than ten days before the day the discovery is to be held.

(8) A corporate party whose officer or employee is to be discovered under subpoena must do both of the following:

(a) deliver a copy of the discovery subpoena (party) to the officer or employee;

(b) take all reasonable steps to have the officer or employee attend the discovery.

(9) The subpoena may be in Form 18.04A.

(10) The undertakings and representations may be attached to, or printed on the back of, the subpoena and they may be in Form 18.04B.

18.05 Discovery subpoena in an action (non-party)

(1) A party to an action who provides required representations and undertakings may obtain a discovery subpoena directed to a witness who is not a party, an officer of a party, or an employee of a party.

(2) A party requesting a discovery subpoena directed to a non-party witness must provide both of the following representations to the court and file all of the following undertakings:

(a) representations that

(i) the party is in compliance with Rule 15 - Disclosure of Documents, and Rule 16 - Disclosure of Electronic Information,

(ii) the party believes the discovery would promote the just, speedy, and inexpensive resolution of the proceeding, including a concise statement of the grounds for the belief and an explanation of why a discovery subpoena is required instead of, or in addition to, an interview or a discovery by agreement;

(b) undertakings to pay

(i) all charges of the reporter to record and transcribe the discovery,

(ii) immediately on presentation of receipts or other evidence, the reasonable expenses of the witness to attend the discovery, including transportation, accommodation, and meals,

(iii) immediately on conclusion of the discovery, an attendance fee for the witness of thirty-five dollars per hour.

(3) A judge who is satisfied that it is necessary for a non-party witness to be represented by counsel at a discovery held under subpoena may order a party who obtains the discovery subpoena to pay for the attendance at the discovery of the witness' counsel.

(4) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Non-party)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness and the community in which the witness resides;

(b) requirements that the witness attend the discovery, answer questions properly asked by a party, and bring, or provide access to, described documents, electronic information or other things;

(c) the time, date, and place of the discovery;

(d) a warning that failure to obey the subpoena may be punished as a contempt of court;

(e) notice that the witness may make a motion to revoke the subpoena no less than two days before the day the discovery is to be held;

(f) a statement of the witness' rights to be reimbursed expenses, be paid a witness fee, and have counsel present.

(5) The discovery subpoena (non-party) may be in Form 18.05A.

(6) The undertakings and representations may be attached to, or printed on the back of, the subpoena and they may be in Form 18.05B.

18.06 Notice of discovery of non-party in an action

A party entitled by agreement or subpoena to discover a non-party must do each of the following no less than ten days before the day the discovery is to be held:

(a) if the discovery is by subpoena, deliver a certified copy of the discovery subpoena (non-party) to the witness personally;

(b) if the discovery is by agreement, deliver written confirmation of the agreement to the residence or business address of the witness, which confirmation must include the time, date, and place of the discovery, the names of the parties entitled to question the witness, the names of each counsel, and a record of the arrangements for reimbursing the witness' expenses and attendance fee;

(c) notify each other party by delivering a copy of the confirmation or subpoena.

18.07 Waiving a discovery subpoena in an action

A party who obtains a discovery subpoena in an action may waive compliance with the subpoena by delivering a notice to all parties, and to a non-party witness under subpoena to the discovery, immediately on deciding to waive the discovery.

18.08 Revoking a discovery subpoena in an action

(1) A judge may revoke a discovery subpoena that results from, or would lead to, an abuse of process in an action.

(2) A judge may revoke a discovery subpoena (party) issued in an action to an officer or employee of a corporate party, if both of the following apply:

(a) two of the corporate party's employees or officers have already been discovered;

(b) the further discovery would not promote the just, speedy, and inexpensive resolution of the proceeding.

(3) A judge may revoke a discovery subpoena (non-party) that would lead to a discovery that does not promote the just, speedy, and inexpensive resolution of an action.

18.09 Discovery in an application

Under Rule 5.13(4)(d), a party to an application may discover a witness only if the witness has relevant information but refuses to cooperate in the production of an affidavit. Such discovery may be by agreement of all parties and any non-party witness, or under a discovery subpoena (application).

18.10 Approval and directions

(1) A party may make a motion for an order approving the issuance of a discovery subpoena (application) with respect to a Rule 5.13(4)(d) uncooperative witness after the notice of application is filed.

(2) An order approving the issuance of a discovery subpoena (application) may provide for any of the following:

(a) a method for delivery of the subpoena to the witness and any respondent who is within time for filing a notice of contest but has not yet designated an address for delivery of documents;

(b) a timeline for delivery of notice to the witness of the day the discovery is to be held;

(c) payment of the expenses of recording and transcribing the examination;

(d) reimbursement of a non-party witness' transportation, accommodation, and meals and payment of an attendance fee;

(e) a right to make a motion to revoke the subpoena;

(f) any other terms governing the discovery.

(3) A judge who approves the issuing of a discovery subpoena in an application may require the party who obtains the subpoena to file an undertaking to indemnify the witness for the expenses of attending the discovery and to pay witness fees.

(4) A judge may impose on parties to an application duties to cooperate in the organization of discovery, prepare for discovery, or become informed before discovery.

18.11 Discovery subpoena for discovery approved in application

(1) The prothonotary may only issue a discovery subpoena in an application with the permission of a judge.

(2) The subpoena must contain the standard heading, be entitled "Discovery Subpoena (Application)", be issued by the prothonotary, and include all of the following:

(a) the name of the witness and the designated address of a party witness or the name of the community in which a non-party witness resides;

(b) requirements that the witness attend the discovery, answer questions properly asked by a party, and bring, or provide access to, described documents, electronic information, or other things;

(c) the time, date, and place of the discovery;

(d) a warning that failure to obey the subpoena may be punished as a contempt of court.

(3) The discovery subpoena (application) may be in Form 18.11.

18.12 Discovery by order

(1) A judge may order a witness or a custodian of a document, electronic information, or other thing to submit to discovery.

(2) A judge may order discovery before a proceeding has started in one of the following circumstances:

(a) the party who moves for the discovery wishes to start a proceeding but is prevented from doing so immediately, and evidence needs to be preserved;

(b) the party wishes to start a proceeding on a cause of action that appears to have merit, and discovery is needed to identify a person against whom the proceeding is to be brought;

(c) a proceeding is likely to be started against the party who moves for the discovery, and evidence needs to be preserved;

(d) a court outside Nova Scotia requests assistance.

(3) A judge may order a discovery during a proceeding if both of the following apply:

(a) the person to be discovered is in a place outside Nova Scotia, and a discovery subpoena cannot be enforced, but an order would be enforced or obeyed;

(b) the proceeding cannot be determined justly without the discovery.

(4) Discovery may be held after a proceeding has concluded in accordance with Rule 79 - Enforcement by Execution Order.

18.13 Scope of discovery

(1) A witness at a discovery must answer every question that asks for relevant evidence or information that is likely to lead to relevant evidence.

(2) A witness at a discovery must produce, or provide access to, a document, electronic information, or other thing in the witness' control that is relevant or provides information that is likely to lead to relevant evidence.

(3) A witness who cannot comply with Rule 18.13(2) may be required to make production, or provide access, after the discovery or at a time, date, and place to which the discovery is adjourned under Rule 18.18.

(4) A party who withholds privileged information but decides to waive the privilege must disclose the information to each party and submit to discovery if required by another party.

(5) An expert retained by a party is not subject to discovery, except as permitted under Rule 55 - Expert Opinion.

18.14 Place of discovery

(1) A discovery may be held at any place in or outside the province.

(2) A judge may request the assistance of a court or another authority outside the province for holding a discovery and securing the attendance of a witness at a discovery.

(3) A party proposing to examine a non-party witness must endeavor to agree with the witness and the other parties on a place for discovery.

(4) A judge may designate a place for a discovery to be held.

(5) A discovery subpoena must name either the agreed place, the place designated by a judge, or a place that is convenient for the witness.

18.15 Recording discovery

(1) A discovery must be recorded in a way suitable for accurate transcription.

(2) The parties and the witness may agree, or a judge may order, that a discovery be recorded audio-visually.

18.16 Conduct of discovery

(1) A party at a discovery must abide by both of the following rules for conduct of discovery, unless the parties agree or a judge directs otherwise:

(a) the party who obtains a discovery subpoena or who first requests a discovery held by agreement has conduct of the discovery, including directing the order in which the parties will question the witness;

(b) the order in which discoveries will be held when more than one witness is present for discovery at the same time may be determined by the party who requests any of the discoveries or obtains any subpoena, and whose name appears first in the heading.

(2) Each party is entitled to attend a discovery.

(3) A court reporter, or a person competent to log and record testimony, must accurately record the communications at the discovery, mark exhibits, and log questioning of witnesses, exhibits produced, undertakings made, adjournments, and the conclusion.

(4) For the purpose of Section 64 of the *Evidence Act*, Section 26 of the *Interpretation Act*, and Section 49 of the *Judicature Act*, the court reporter may administer oaths and affirmations at the discovery.

(5) Translation or interpretation must be in accordance with Rule 48 - Translation, Interpretation, and Assistance.

(6) A party who undertakes to do anything in the course of a discovery must perform the undertaking no more than sixty days after the day the undertaking is made, unless the parties agree or a judge directs otherwise.

18.17 Objections to questions at discovery

(1) Making no objection to a question, or making an objection but giving an answer, at a discovery is not an admission that the subject of the question, or the answer, is admissible.

(2) Withdrawing a question is not an admission that the subject of the question is inadmissible.

(3) The only person who may object to a question is the person who is being questioned, a person who claims privilege over the information to be given in answer to the question, or a party whose officer or employee is being questioned.

(4) A person who is represented by counsel must make an objection through counsel.

(5) A party who objects to a question must do both of the following:

(a) state why the party contends the subject of the question is irrelevant, will not lead to relevant evidence, or is privileged;

(b) provide a description of any series of questions, or of any subject for examination, to which the objection would generally apply.

(6) A party who objects to a question may, nevertheless, rely on Rule 18.17(1) and answer the question, and otherwise the party questioning must respond to the objection in one of the following ways:

(a) withdraw the question;

(b) continue with the discovery, if that is possible, and reserve the question, line of questions, or subject for ruling by a judge;

(c) adjourn the discovery, if there is no reasonable alternative, and bring a motion for a ruling on the objection as soon as is practical.

(7) A judge may determine an objection to a question, or a line of questions, made at discovery.

(8) A judge may order resumption of the discovery, and provide any directions for its further conduct.

18.18 Production or access after discovery or at adjournment

(1) A party may require a witness who is examined at a discovery to produce, or provide access to, a document, electronic information, or other thing referred to by the witness but not brought to, or accessible at, the discovery, unless one of the following applies:

(a) the document, information, or thing is not in the control of the witness;

(b) it is not relevant and is not likely to lead to relevant evidence;

(c) it is privileged.

(2) A judge may order a witness who fails to comply with a requirement for production or access to make production or provide access, and the judge may order the witness to indemnify the party who seeks the order for the expense of obtaining the production or access.

(3) A party who requires production or access before the party completes examination of a witness at discovery may adjourn the discovery.

(4) A judge may relieve a party or a non-party witness from a requirement to produce, or provide access, at discovery examination if the party or witness rebuts the presumption for disclosure in accordance with Rule 14.08, of Rule 14 - Disclosure and Discovery in General.

18.19 Error in discovery answer

(1) A party who becomes aware that they, or their employee or officer, gave an erroneous or incomplete answer at discovery must immediately notify each other party of the error or incompleteness and, unless the parties agree or a judge orders otherwise, provide the correct and complete information in a written statement signed by the person who gave the answer.

(2) A corporate party whose designated manager gives erroneous testimony on discovery that the party does not have relevant information, or does not control a relevant document, electronic information, or other thing may not present the evidence that would have been disclosed at discovery if the error had not been made, unless the party does one of the following:

(a) corrects the error no less than one day before either the finish date in an action or the day of the hearing of an application;

(b) obtains the agreement of each other party, or the permission of the presiding judge, to present the evidence.

(3) A judge who gives permission to present evidence must consider ordering the corporate party to indemnify another party for expenses resulting from the error.

18.20 Use of discovery

(1) Answers given by a witness at discovery may be used to impeach the witness at trial, or on the hearing of an application or motion.

(2) Evidence given by an individual party, or a designated manager, at discovery may be used for any purpose by an adverse party.

(3) Evidence given by an officer or employee of a corporate party who is not a designated manager may be used for any purpose by an adverse party, except answers outside the witnesses' scope of authority are not admissions by the corporate party.

(4) Evidence given by a witness at a discovery may be used by any party against any party who had notice of the discovery, if it is necessary to provide the evidence through the discovery transcript.

(5) The following are examples of cases in which it is necessary to provide evidence through a discovery transcript:

(a) the witness cannot testify;

(b) the witness is too ill or infirm to attend court, and commission evidence is not available or is inappropriate;

(c) the court cannot compel the witness to attend the trial or hearing, and commission evidence is not available or is inappropriate.

(6) A party who establishes all of the following may use evidence given by a witness at discovery against a party who did not have notice of the discovery:

(a) it is necessary to provide the evidence through the discovery transcript;

(b) the answers are sufficiently reliable, although the party against whom they are offered had no opportunity to cross-examine the witness;

(c) it was through no fault of the party offering the evidence that the party against whom it is offered did not receive notice of the discovery.

(7) A party who uses evidence given at discovery makes the person who gave the evidence a witness for that party only when the evidence is used as provided in Rules 18.20(4) and (6).

18.21 Proof of discovery questions and answers

(1) A transcript with the certificate and purported signature of a certified court transcriber is presumed to have been certified by a certified court transcriber and to be an accurate record of the discovery, unless the contrary is proved.

(2) A party may tender an excerpt from a discovery transcript by agreement or by showing the judge the transcript and satisfying the judge that the proposed excerpt is covered by the certified court transcriber's certificate.

(3) After authenticity is agreed or established, excerpted questions and answers may be made part of the record by reading questions and answers into the record, tendering excerpts from the transcript as an exhibit, or any means directed by the judge.

(4) The judge may permit a party to use excerpts from an audio recording or an audio-visual recording of a discovery if the corresponding excerpts from the discovery transcript are made part of the record.

18.22 Failure to attend or refusal to answer

A witness who fails to attend under a discovery subpoena or order, refuses to answer a question properly put at a discovery, or refuses to produce or provide access to a document, electronic information, or other thing required by a subpoena or order may be punished under Rule 89 - Contempt.

18.23 Supervision of discovery by judge

(1) A party who believes that a discovery is being conducted abusively may undertake to bring a motion to terminate or limit the discovery as soon as is practical, and adjourn the discovery to do so.

(2) A judge may terminate or limit a discovery that is conducted abusively.

(3) The following are examples of conduct that may be abusive:

(a) asking a question or demanding production for a purpose ulterior to the preparation or advancement of a case;

(b) questioning a witness in a manner calculated to annoy, embarrass or oppress the witness;

(c) asking the same question repeatedly although it has been fully answered;

(d) persistently asking questions that are clearly not relevant;

(e) continuing to seek an answer to a question to which a party has clearly objected.

18.24 Examples of just, speedy, and inexpensive discovery

(1) The following are examples of circumstances in which, depending on the circumstances as a whole, holding a discovery would promote the just, speedy and inexpensive resolution of a proceeding:

(a) a non-party witness has information properly obtained by discovery and there are no other reasonable means for obtaining the information, such as conducting an interview;

(b) a designated manager was ill-informed on discovery and discovery of other corporate officers or employees is necessary to obtain information the designated manager should have provided;

(c) a party gave undertakings at a previous discovery that have not been fulfilled as promised and, as a last resort, the information is sought through further discovery;

(d) because of illness, the court will not be able to compel a witness to attend trial or to answer questions, and commission evidence is inappropriate without discovery.

(2) The examples in Rule 18.24(1) are to assist both of the following:

(a) a party who determines whether a discovery would promote the just, speedy and inexpensive resolution of a proceeding, for the purpose of Rules 18.02(1)(a), 18.04(2)(b), or 18.05(2)(a)(ii);

(b) a judge who hears a motion to revoke a discovery subpoena under Rules 18.08(2) or 18.08(3).

Rule 19 - Interrogatories

19.01 Scope of Rule 19

(1) This Rule allows a party to an action to question a person in writing, unless the question was answered by the witness on discovery.

(2) A party may demand answers in writing from any person and the person must provide the answers, in accordance with this Rule.

19.02 Interpretation of Rule 19

In this Rule, "party" means a party to an action unless the word is followed by the phrase "to an application".

19.03 Demand for answers

(1) A party may deliver a demand for answers if the party is satisfied that obtaining the answers in that manner will promote the just, speedy, and inexpensive resolution of the proceeding.

(2) A party who decides to deliver a demand for answers must make best efforts to prepare clearly and plainly stated questions in a number and manner that promotes the just, speedy, and inexpensive resolution of the proceeding.

19.04 Questions that may be asked

A demand for answers must demand answers that are not privileged and are relevant or provide information that is likely to lead to relevant information.

19.05 Time for demand

(1) A demand for answers from an individual party or designated manager may be delivered anytime after the day pleadings close in an action or the day a notice of contest is filed in an application.

(2) A demand for answers from an officer or employee of a corporate party other than the designated manager, or from a non-party, may only be made after the party making the demand has finished discovery of parties.

19.06 Contents of demand

(1) The demand for answers must contain the standard heading, be entitled "Interrogatories", be dated and signed, and include all of the following:

(a) a statement that the party making the demand is satisfied that obtaining the answers in that manner will promote the just, speedy, and inexpensive resolution of the proceeding;

(b) the name of the person required to answer the questions;

(c) a demand that the person provide a response no more than twenty days after the day the demand is delivered;

(d) questions listed by number, each one of which asks only one question, simply and concisely;

(e) a statement that the person must not fail to respond to the demand;

(f) a statement that the person may refuse to answer a question that calls for privileged information, or information that is irrelevant and will not lead to relevant information;

(g) a statement that the person may make a motion to a judge to excuse the person from answering a question;

(h) a warning that a judge may award costs against the person, if the judge orders the person to answer a question;

(i) a requirement that the person deliver the response to the party making the demand and deliver copies to each other party, at the party's address for delivery.

(2) The demand for answers may be in Form 19.05.

19.07 Who must respond

A person whose answers are demanded must answer the questions, except any of the following persons may answer for another person if the answering person first obtains all information that is known by or available to the other person:

(a) a litigation guardian, for a party who is a child or person with a disability;

(b) a parent or guardian, for a child who is not a party or a person who is unable to manage their affairs and is not a party;

(c) a designated manager, for an officer or employee of a corporate party.

19.08 Response

(1) A person to whom a demand for answers is delivered must deliver a response to each party no more than twenty days after the day the demand is delivered.

(2) The person must answer each question, unless the question is of one of the following kinds:

(a) the question calls for information that is irrelevant and will not lead to relevant evidence;

(b) it calls for privileged information;

(c) the question was fully answered on discovery;

(d) taken alone, or in combination with related questions, it is expressed with such complexity or elaboration that the person should not have to answer it.

(3) The response must contain the standard heading, be entitled "Response to Interrogatories", be sworn or affirmed by the person answering the questions, and provide a reference to each question and either of the following:

(a) the answer to the question;

(b) a refusal to answer the question and the reason for the refusal.

(4) The response may be in Form 19.07.

19.09 Enforcement and discretion to excuse

(1) A judge may order a person to answer a question in a demand, or excuse a person from answering a question, absolutely or on conditions.

(2) A judge may order a person who fails to respond to a demand or unreasonably refuses to answer a question to indemnify the party who made the demand for the expense of obtaining an answer.

19.10 Interrogatories in an application

A judge may permit interrogatories in an application and set the terms under which the interrogatories are asked and answered.

19.11 Error in answer to interrogatory

A party, to an action and a party to an application, who discovers that they, or their employee or officer, gave an erroneous or incomplete response to a demand for answers must immediately notify each other party of the error or incompleteness and, unless the parties agree or a judge orders otherwise, provide the correct and complete information in a new response to interrogatories.

19.12 Use of answer

A response may be used at trial, on an application, or on a motion, in the same way evidence given at discovery may be used under Rule 18.20, of Rule 18 - Discovery.

Rule 20 - Admission

20.01 Scope of Rule 20

(1) This Rule provides a process for obtaining an admission during a proceeding.

(2) This Rule does not affect the rules of evidence concerning admissions.

20.02 Making admission

(1) A party may admit to any material fact.

(2) The admission may be made in pleadings, by other writing, orally, at a discovery, or by formal admission under this Rule.

(3) A party may withdraw an admission made during a proceeding, if the parties agree or a judge permits.

20.03 Requesting admission

(1) A party may, at anytime before the finish date in an action or the day of the hearing of an application, request another party to admit a relevant fact, in accordance with this Rule 20, and do one of the following:

(a) rely on the admission, if it is expressly given;

(b) obtain the admission under Rule 20.05, if it is not expressly denied;

(c) take advantage of the cost consequences in Rule 20.06, if the admission is unreasonably denied.

(2) The request for an admission must contain the standard heading, be entitled "Request for Admission", be dated and signed, and include all of the following information:

(a) the name of the party requested to make an admission;

(b) a statement that the party requests an admission, followed by a statement of the fact requested to be admitted;

(c) a statement that the party to whom the request is addressed must respond to the request no more than fifteen days after the day the request is delivered to the party or the admission will be taken to have been made.

(3) A request for admission may be made in Form 20.03.

20.04 Response to request for admission

(1) A party to whom a request for admission is delivered must provide a response no more than fifteen days after the day the request is delivered.

(2) The response must contain the standard heading, be entitled "Response to Request for Admission", be signed by the party requested to make an admission or their counsel, and include both of the following:

(a) the facts the party admits as requested;

(b) requested admissions the party does not admit, and the reasons for the refusal.

(3) A response to request for admission may be in Form 20.04.

20.05 Presumed admission

A party who does not expressly admit or deny a requested admission by delivering a response no more than fifteen days after the day the request is delivered is taken to have made the admission.

20.06 Costs on unreasonable refusal

A judge may order a party who unreasonably refuses to admit a requested admission to indemnify the party who made the request for the expense of proving the material fact.

20.07 Judgment on admission of fact

An admission may be proved at trial or hearing, and on a motion to which the admission is relevant.

Rule 21 - Medical Examination and Testing

21.01 Scope of Rule 21

A judge may order a medical examination or test, in accordance with this Rule.

21.02 Medical examination

(1) A party who, by a claim, defence, or ground, puts in issue the party's own physical or mental condition may be ordered to submit to a physical or mental examination by a medical practitioner.

(2) The party who puts their own physical or mental condition in issue has the burden to satisfy the judge that the party should not be examined.

(3) A party who puts in issue the physical or mental condition of another party may make a motion for an order that the other party submit to a physical or mental examination by a medical practitioner, and the party must satisfy the judge on all of the following:

(a) the party has, by a claim, defence, or ground, put in issue the other party's physical or mental condition;

(b) the claim, defence, or ground putting the other party's condition in issue is supported by evidence;

(c) the examination may result in evidence that proves or disproves the claim, defence, or ground.

(4) A party being examined under an order must co-operate in the examination, including giving answers to questions asked by the practitioner as part of the examination.

(5) An order for a medical examination must include a description of the purpose of the examination and a requirement that the party to be examined attend for the examination, including the name of the practitioner and either the time, date, and place of the appointment or a method to determine a time, date, and place for the examination.

(6) The order may contain any other necessary provisions, including any of the following requirements:

(a) the party to be examined undergo a test and deliver evidence of the results to the practitioner before the examination;

(b) a person deliver relevant documents to the practitioner before the examination;

(c) the practitioner, by a deadline, deliver an expert's report to the party who obtains the order;

(d) the party receiving the report, by a deadline, deliver a copy to each other party.

21.03 Number of medical examinations

A judge may order more than one examination of the same party if different physical or mental conditions in issue pertain to different medical specialities, the same condition clearly calls for opinions from different specialists, or justice will be served by permitting an additional examination.

21.04 Who may attend an examination

Only the party, the examining practitioner, the practitioner's medical assistants, and one qualified medical practitioner appointed by the party as an observer may attend the examination, unless the parties agree or a judge orders otherwise.

21.05 Medical report

(1) A practitioner who completes an examination must deliver an expert's report, conforming with Rule 55 - Expert Opinion, to the party who obtains the order.

(2) The party who obtains the order must immediately deliver the report to all other parties.

21.06 Medical test

(1) A judge who is satisfied on both of the following may order a party to undergo a test recognized by medical science, to provide a sample or permit a sample to be taken from the party's body for use in a test recognized by medical science, or to both undergo a test and provide a sample:

(a) compliance with the order will likely lead to relevant evidence;

(b) the value of the evidence outweighs the inconvenience or embarrassment that would be caused to the person giving the sample or undergoing the test.

(2) An order for a medical test must include a requirement that the party undergo the test, provide the sample, or permit the sample to be taken, and include all of the following information:

(a) the name and address of the person to whom, or the address of the place at which, the party must report;

(b) a method by which the time and place for taking or providing the sample, or administering the test, is to be determined.

(3) The party is entitled to have one person accompany the party, as an observer, when the sample is provided or taken, or the test is administered.

(4) The order may contain any other provisions, including any of the following requirements:

(a) a person deliver relevant documents for the use of the person testing a sample or administering a test;

(b) a person administering a test, or taking a sample, exclude persons except as permitted in the order;

(c) by a deadline, the person administering the test or taking the sample, or another person involved with the testing, deliver a report of the results of the test to the party who obtained the order;

(d) the party receiving the report, by a deadline, deliver a copy to each other party.

(5) A party who intends to prove the results of a test as an expert opinion must deliver an expert's report in compliance with Rule 55 - Expert Opinion.

21.07 Information and reports

A party may provide any information, including information disclosed in the proceeding, to a medical practitioner examining a party, or a person testing a party or taking a sample.

21.08 Cost of medical examination and test

(1) The party who obtains an order for an examination or test must pay all of the following expenses:

(a) professional and technical charges, except the charges of a person attending as an observer for the party being examined;

(b) reasonable costs of the party being examined or tested to attend the examination or test, or to provide a sample;

(c) wages lost by the party as a result of attending an examination or test, or providing a sample.

Part 6 - Motions

Rule 22 - General Provisions for Motions

22.01 Scope of Part 6 - Motions

(1) A motion is an interlocutory step in a proceeding, not an original proceeding (for kinds of original proceedings, see Part 2 - Civil Proceedings).

(2) Part 6 provides general procedures for all motions (Rule 22 - General Provisions for Motions) and specific procedures for the motions made in the ways listed below:

(a) in chambers (Rule 23 - Chambers Motion);

(b) by appearance motion (Rule 24 - Appearance Motion);

(c) by special appointment with a judge in person or by teleconference (Rule 25 - Motion by Appointment);

(d) at a meeting or conference (Rule 26A - Conference);

(e) by correspondence (Rule 27 - Motion by Correspondence);

(f) in an emergency (Rule 28 - Emergency Motion);

(g) to a judge who presides or presided over the trial of an action, or hearing of an application (Rule 29 - Motion to Presiding Judge);

(h) to the prothonotary (Rule 30 - Motion to Prothonotary).

(3) A person may make or respond to a motion, in accordance with this Part 6.

22.02 Notice

A party must make a motion on notice unless the party satisfies the judge hearing the motion that it is properly made *ex parte*.

22.03 *Ex parte* motion

(1) A party may make an *ex parte* motion in one of the following circumstances:

(a) the order sought does not affect the interests of another person;

(b) the party makes a motion in an *ex parte* application;

(c) the other party is disentitled to notice under Rule 31 - Notice;

(d) legislation or these Rules permit the motion to be made *ex parte*;

(e) there are circumstances of sufficient gravity to justify making a motion without notice, for which examples are listed in Rule 22.03(2).

(2) Each of the following is an example of circumstances of sufficient gravity to justify an *ex parte* motion:

(a) a child may be harmed if notice is given, and the court's obligation to secure the best interests of the child requires the court to proceed without notice;

(b) notice will likely lead to violence, and an *ex parte* order will likely avoid the violence;

(c) notice will likely lead to destruction of evidence or other serious loss of property, and an *ex parte* order will likely avoid the destruction or loss;

(d) a party facing an emergency has a right to make a motion, but the motion cannot be determined on notice within the time provided by these Rules, even if a judge exercises the power to shorten a notice period, or to direct a speedy method of notice.

22.04 Continuing *ex parte* motion on notice

A judge who hears an *ex parte* motion may require that the motion continue on notice and give directions for notice to each other party.

22.05 Full and fair disclosure on an *ex parte* motion

(1) The party who makes an *ex parte* motion must include, in an affidavit filed for the motion, any evidence known to the party, personally or by information, that weighs against granting the order.

(2) A party who makes a motion for an *ex parte* order must advise the judge hearing the motion of any fact that may weigh against granting the order.

(3) A judge who is satisfied that an *ex parte* order was obtained without full and fair disclosure may set aside the order.

22.06 Rehearing of *ex parte* motion

(1) A party who obtains an *ex parte* order affecting the rights of a party not disentitled to notice must immediately deliver a copy of the order to the affected party, unless a judge orders otherwise.

(2) A party who is affected by an *ex parte* order may require the motion to be heard again in chambers by filing a notice to that effect.

(3) The judge rehearing the motion may set aside, vary, or continue the order.

22.07 Notice of rehearing *ex parte* motion

The prothonotary must notify the parties of the time, date, and place for rehearing an *ex parte* motion no more than two days after the day a notice for a rehearing is filed.

22.08 Affidavits for rehearing

(1) A party who obtains an *ex parte* order may only rely on the following affidavits at a rehearing:

(a) the affidavit filed on the *ex parte* motion;

(b) an affidavit filed by another party;

(c) an affidavit substituting direct evidence for hearsay in the affidavit filed on the *ex parte* motion;

(d) a rebuttal affidavit limited to new points raised by the other party's affidavit;

(e) an affidavit allowed by a judge who is satisfied that the party has good reason for not having provided the evidence on the *ex parte* motion.

(2) The affidavit substituting direct evidence for hearsay may be filed no later than the deadline for filing a supporting affidavit in Rule 23.11, of Rule 23 - Chambers Motion.

(3) A judge who rehears a motion may only consider hearsay in the affidavit filed on the *ex parte* motion that is admissible under an exception recognized by the rules of evidence or is within the further exceptions provided by Rule 22.15.

22.09 Application of Rule 23 - Chambers Motion on rehearing

Rules 23.08 to 23.10, the deadlines in Rule 23.11 except the deadlines for a notice of motion and supporting affidavit, Rule 23.12 and Rule 23.15 apply to the rehearing of an *ex parte* motion.

22.10 Acting on own motion

A judge, prothonotary, referee, or commissioner may make an order on their own motion.

22.11 Motion involving non-parties

(1) A person who is appointed by a judge to carry out an assignment, such as a sheriff or receiver, may make a motion in connection with the assignment.

(2) A person who is not a party to a proceeding, and is not appointed in the proceeding, may make a motion in the proceeding only if a judge permits, except the person requires no permission to make a motion to intervene under Rule 35 - Parties.

(3) A party may move for an order binding a non-party only if legislation or these Rules allow, or a judge permits.

(4) A non-party who makes a motion, or against whom a motion is made, may be joined as a party to the proceeding in accordance with Rule 35 - Parties.

(5) In addition to the obligation to give notice to the other party, a party who moves for an order binding a non-party must make the motion on notice to the non-party, unless the party satisfies the judge hearing the motion that it is properly made without notice to the non-party.

(6) Rules applicable to a party on a motion, including Rules about an *ex parte* motion, must, as nearly as possible, be applied to a non-party who moves for an order or who is sought to be bound by an order, as if the non-party were a party.

22.12 Motion by prothonotary

(1) A prothonotary may make a motion to a judge in any manner the prothonotary sees fit, unless these Rules or legislation provides or a judge directs otherwise.

(2) The prothonotary may make a motion based on the prothonotary's representations, unless a judge directs that an affidavit be provided.

(3) The prothonotary may file a "Notice of Prothonotary's Motion" signed by the prothonotary to make a motion in chambers, by appearance motion, or in court.

(4) The notice of prothonotary's motion must state all of the following:

(a) the time and date when, and the place where, the motion is to be heard;

(b) the contents of the proposed order;

(c) a reference to the legislation, Rule or point of law under which the motion is made;

(d) the prothonotary's representations of the facts supporting the order.

(5) The notice may be in Form 22.12.

(6) Rules applicable to a party on a motion apply to a prothonotary as if the prothonotary were a party, unless these Rules provide or a judge directs otherwise.

22.13 Motion to commissioner or referee

A party may make a motion to a commissioner or a referee appointed in the proceeding, and the motion may be made in one of the ways a motion may be made to a judge, except under Rule 23 - Chambers Motion, and Rule 24 - Appearance Motion.

22.14 When appointments required

A party who wishes to make any of the following motions must obtain an appointment:

(a) a motion in the Family Division, a motion that requires more than a half-hour in chambers, a motion by special appointment, and an emergency motion;

(b) a motion to a judge assigned to a trial or hearing, unless the motion is made at the trial or hearing or the judge permits the motion to be made without an appointment;

(c) a motion to the prothonotary, a referee, or a commissioner concerning the conduct of a hearing by the prothonotary, an inquiry by a referee, or the taking of evidence by the commissioner, unless the motion is made at the hearing or inquiry or when the commission evidence is taken.

22.15 Rules of evidence on a motion

(1) The rules of evidence apply to the hearing of a motion, including the affidavits, unless these Rules or legislation provides otherwise.

(2) Hearsay not excepted from the rule of evidence excluding hearsay may be offered on any of the following motions:

(a) an *ex parte* motion, if the judge permits;

(b) a motion on which representations of fact, instead of affidavits, are permitted, if the hearsay is restricted to facts that cannot reasonably be contested;

(c) a motion to determine a procedural right;

(d) a motion for an order that affects only the interests of a party who is disentitled to notice or files only a demand of notice, if the judge or the prothonotary hearing the motion permits;

(e) a motion on which a Rule or legislation allows hearsay.

(3) A party presenting hearsay must establish the source, and the witness' belief, of the information.

(4) A judge, prothonotary, commissioner, or referee may act on representations of fact that cannot reasonably be contested.

22.16 Transferring motion to courtroom

A party who is notified of a motion to be heard outside a courtroom, or who is present for a motion being heard outside a courtroom, may make a motion to transfer the hearing to, or continue the hearing in, a courtroom.

22.17 Notify court of failure to deliver notice of motion

A party who fails to deliver a notice of a motion before a deadline for doing so must immediately notify the court of that fact and whether, when the party appears on the motion, the party will consent to dismissal, request an adjournment, or make a motion for an order excusing compliance with the deadline and permitting the motion to proceed.

22.18 Attendance, withdrawal, and adjournment

(1) A party who makes a motion to be heard at a time and date set by the party or appointed by the court at the party's request must appear at the time and date, and in the place or by the method set for the hearing, unless one of the following apply:

(a) all parties consent to the motion being withdrawn or adjourned, the party making the motion immediately advises the prothonotary and the judge of the agreement, and the party confirms the advice in writing delivered to the prothonotary and the judge's office;

(b) a judge gives permission to withdraw the motion, or adjourns the hearing of the motion.

(2) A motion for permission to withdraw or adjourn a motion may be made under Rule 28 - Emergency Motion, or such other Rule in Part 6 - Motion as a judge permits.

(3) A new time and date may be appointed for a motion adjourned by agreement in the same manner as the time and date of the adjourned motion was appointed or as a judge directs.

Rule 23 - Chambers Motion

23.01 Scope of Rule 23

(1) This Rule provides for the standard way to make a motion to a judge outside the trial of an action or hearing of an application, judicial review, or appeal.

(2) A motion in chambers is made on written notice, with affidavits, in a courtroom, and on record.

(3) A party may make a motion in chambers, in accordance with this Rule.

23.02 Starting a motion in chambers

A party may start a motion in chambers by filing a notice of motion and a draft order, or an *ex parte* motion and a draft order.

23.03 Motion on notice

(1) A notice of motion must contain the standard heading, be entitled "Notice of Motion", be dated and signed, and include all of the following:

(a) the motion, including the name of the party who makes the motion and a concise statement describing the order the party seeks;

(b) the time and date when, and the place where, the motion is to be heard;

(c) whether the motion will require a half-hour or less in chambers, more than a half-hour but less than a half-day, or more than a half-day;

(d) references to applicable legislation, Rules, or points of law;

(e) a reference to each affidavit relied on by the party, identified by the name of the affiant and either the date it was sworn or a brief description of the contents;

(f) a statement that the other party may file an affidavit or a brief, and attend the hearing of the motion and make submissions;

(g) a warning that an order may be made although the party does not attend.

(2) The reference in the notice of motion to an affidavit may be a reference to an affidavit already filed, an affidavit filed with the notice, or an affidavit to be filed later but before the deadline in Rule 23.11.

(3) The notice of motion may be in Form 23.03.

23.04 Motion set by party (½ hour or less)

(1) A party who makes a motion, except a motion in the Family Division, and who is satisfied on all of the following, may select the time, date, and place of the motion:

(a) the motion will take less than a half-hour in chambers;

(b) no party will require cross-examination in court;

(c) no party will require cross-examination out of court, or the parties have reached an agreement under which cross-examination will be completed in sufficient time for a transcript to be filed no less than two days before the date of the hearing.

(2) The party must select a time, date, and place when and where the court regularly holds chambers and the time when chambers opens.

(3) The party must take reasonable steps to ascertain and, if possible, meet the convenience of each party who wishes to participate in the hearing of the motion.

23.05 Motion set by court (½ day or less) (more than ½ day)

(1) A party may request the prothonotary provide a time, date, and place for the hearing of any of the following kinds of motion in chambers:

(a) a motion in the Family Division;

(b) a motion at which a party cross-examines a witness;

(c) a motion that requires more than a half-hour in chambers.

(2) The party must provide the information needed to assess the amount of time required, select an appropriate place, assess whether the place proposed by the moving party is reasonable, and ascertain when counsel for the other parties, or a party who acts on their own, will be available.

(3) The court must, as soon as possible, provide to the party making the request a written notice of a time and date for the hearing that is more than the following number of days after the day the notice of motion is expected to be delivered to each other party:

(a) ten days, if the motion requires less than a half-day;

(b) fifteen days, if the motion requires more than a half-day.

(4) A judge may convene a conference to assign a time, date, and place and give other directions, if the prothonotary or the judge is satisfied that the motion is too complicated for a date to be assigned without a conference.

(5) The judge may give any directions at the date assignment conference, including directions on any of the following subjects:

(a) the deadlines for filing the notice of motion, affidavits, and briefs;

(b) the place for the motion;

(c) necessary disclosure of documents;

(d) cross-examination in or outside chambers;

(e) limits on the duration of, or subjects for, cross-examination.

23.06 File notice of motion when date obtained

(1) A party who obtains a date for a motion in chambers must file the notice of motion no more than one day after the court delivers to the party a written notice of the date.

(2) The prothonotary may cancel the date if a notice of motion is not filed after one day.

23.07 Disagreements about time or place

A party who disagrees with the estimate of time required, or the place selected, for a motion in chambers may make a motion for a new date or place.

23.08 Manner of providing evidence

(1) A party may provide evidence for a chambers motion by filing any of the following documents:

(a) an affidavit that conforms with Rule 39 - Affidavit;

(b) admissible excerpts from a discovery transcript in the proceeding under Rules 18.20 and 18.21, of Rule 18 - Discovery;

(c) admissible excerpts from a transcript of commission evidence taken in the proceeding, under Rule 56 - Commission Evidence and Testimony by Video Conference;

(d) an agreed statement of facts signed by all parties to the motion.

(2) An affidavit may prove a written statement admissible under legislation, a Rule, or the common law.

(3) A party may provide evidence by cross-examination as provided in Rule 23.09 and by re-direct examination.

(4) A person may give evidence in chambers by direct examination, followed by cross-examination, only if a judge is satisfied that it is impossible or undesirable for a party to present the evidence by affidavit.

23.09 Cross-examination

(1) A party may cross-examine an affiant on an affidavit filed by another party.

(2) A judge may restrict cross-examination in any of the following ways:

(a) refuse cross-examination to a party who has the same interest in the motion as the party who files the affidavit;

(b) limit the time for, or subjects of, cross-examination before it takes place;

(c) impose a time limit before, or during, cross-examination.

(3) A party who intends to cross-examine an affiant must immediately notify each other party in writing and either the judge who is to hear the motion or, if no judge is assigned, the prothonotary.

(4) The witness who provides an affidavit on which cross-examination is required must be cross-examined and examined in re-direct in chambers, unless the parties agree or a judge orders otherwise.

(5) On cross-examination out of court, the witness must be sworn, the cross-examination must be recorded by a court reporter, and a transcript certified by the reporter must be obtained.

(6) A party who files the affidavit of a witness cross-examined out of court must file a transcript of the cross-examination.

(7) A party who files an affidavit must pay the expense of presenting the witness for cross-examination, unless the parties agree or a judge orders otherwise.

(8) A judge who hears a motion in which a witness is cross-examined and determines the cross-examination was unnecessary may order the party who required cross-examination to indemnify another party for the expense of the cross-examination.

23.10 Briefs

A party moving, or opposing, a motion must deliver a brief to the judge hearing the motion.

23.11 Deadlines applicable to chambers motion

(1) Documents for a motion on notice in chambers must be filed no later than the deadlines in the following chart:

Document	*½ Hour or Less*	*½ Day or Less*	*More Than ½ Day*
notice of motion and draft order	5 days before hearing	10 days before hearing	15 days before hearing
supporting affidavit	5 days before hearing	10 days before hearing	15 days before hearing
supporting brief	5 days before hearing	10 days before hearing	15 days before hearing
response affidavit	2 days before hearing	5 days before hearing	10 days before hearing
response brief	2 days before hearing	5 days before hearing	10 days before hearing
rebuttal affidavit	1 day before hearing	3 days before hearing	5 days before hearing
notice that cross-examination is required	reschedule	3 days before hearing, except 1 day for rebuttal affidavit	5 days before hearing, except 3 days for rebuttal affidavit
cross-examination transcript	not applicable	3 days before hearing, except one day for cross-examination on rebuttal affidavit	3 days before the hearing.

(2) A party who certifies on a notice of motion that no party will oppose the motion may file a notice of motion, draft order, supporting affidavit, and supporting brief two days before the motion is to be heard.

(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.

23.12 No further affidavit

(1) A party may only file an affidavit after a deadline in Rule 23.11 with the permission of a judge.

(2) On a motion to permit a late affidavit, the judge must consider all of the following:

(a) the prejudice that would be caused to the party who offers the affidavit, if the motion proceeds without that affidavit;

(b) the prejudice that would be caused to other parties by allowing the affidavit to be filed, including the prejudice caused by an adjournment, if an adjournment would result;

(c) the prejudice caused to the public if motions set by appointment are frequently adjourned when it is too late to make the best use of the time of counsel, the judge or court staff.

(3) A judge who allows a late affidavit may order the party filing the affidavit to indemnify any other party for expenses resulting from the filing, including expenses resulting from any adjournment.

23.13 Subpoena

The prothonotary may only issue a subpoena for attendance at the hearing of a motion with permission of a judge.

23.14 *Ex parte* motion

(1) An *ex parte* motion must contain all of the following:

(a) everything required by Rule 23.03(1) in a notice of motion, except the title of the document is "*Ex Parte* Motion" and Rules 23.03(1)(f) and (g) do not apply;

(b) a statement explaining why it is appropriate for the judge to grant the order without notice to another person, if the motion is made in a proceeding other than an *ex parte* application.

(2) The *ex parte* motion may be in Form 23.14.

(3) An *ex parte* motion, draft order, affidavit, and brief must be filed no later than five days before the motion is to be heard.

23.15 Attendance in chambers

(1) A party may attend chambers in person, personally by counsel, or, in the case of a corporation, personally by agent.

(2) A chambers judge may permit a party, counsel, or a corporation's agent to attend chambers by audiovisual conference, if the judge is satisfied on both of the following:

(a) the party, counsel, or agent lives or has a place of business more than fifty kilometers from the courthouse;

(b) the chambers courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in chambers.

(3) The chambers judge may permit a party, counsel, or a corporation's agent to attend chambers by teleconference only if the attendance is necessary and there is no other way the party, counsel, or agent can attend chambers.

Rule 24 - Appearance Motion

24.01 Scope of Rule 24

In certain circumstances, the court permits a party, or the prothonotary, to make a motion without an affidavit or a brief and the court acts on representations made in abbreviated documents or during the appearance.

24.02 When appearance motion is heard

(1) Appearance motions may be heard at the Law Courts in Halifax in chambers, referred to as Appearance Day Chambers, at a time provided by the court, usually noon on Fridays.

(2) In the judicial districts outside Halifax, an appearance motion may be heard in regular chambers or as the district judge directs.

(3) An appearance motion must be brought in the judicial district in which the action or application was initiated.

24.03 When appearance motion appropriate

(1) A party may make an appearance motion, if a Rule permits or all of the following circumstances exist:

(a) the motion is brought to determine a procedural issue in dispute between parties or to compel compliance with a Rule;

(b) no relevant fact can reasonably be contested;

(c) the motion can be heard and determined quickly;

(d) no judge has been assigned to preside at the trial or hearing of the proceeding.

(2) The following are examples of a procedural issue in dispute between parties that is usually suitable to an appearance motion:

(a) a disagreement about how much time will be required for the hearing of a motion in chambers or an application;

(b) a disagreement about whether a date assignment conference should be allowed on the ground that the other party is lagging in making disclosure or conducting a discovery;

(c) an objection to setting trial dates following a request for a date assignment conference;

(d) an objection to the time, date, or place selected for a discovery, or for a motion or application in chambers, unless a motion by teleconference is more appropriate than a motion on appearance day;

(e) a dispute about the method of recording, exclusion of witnesses, or order of witnesses at a discovery;

(f) a dispute about the need for, or terms of, the variation;

(g) appointment of a case management judge.

(3) The following are examples of a non-compliance with a Rule that may lead to an appearance motion to compel compliance with the Rule:

(a) not disclosing relevant documents or electronic information;

(b) not performing a discovery undertaking;

(c) failing to give an answer to interrogatories;

(d) failing to adhere to a deadline set by a Rule.

24.04 Appearance notice

(1) A party may make an appearance motion by filing an appearance day notice.

(2) The appearance notice must contain the standard heading, be entitled "Appearance Notice", be signed by the party or counsel, and include all of the following:

(a) the name of the moving party;

(b) a concise description of the proposed order;

(c) the time and date when, and place where, the moving party will appear before a judge hearing the appearance motion;

(d) a representation that the motion can be heard and determined quickly;

(e) a concise statement of the reason for the motion;

(f) notice that a party may make representations to the judge of any fact that is not reasonably in contention, affidavits and testimony are not provided, and the judge may act on the representations;

(g) notice of the other party's right to be present and to provide representations briefly;

(h) a warning that an order may be made although the other party does not attend.

(3) The appearance notice may be in Form 24.03.

24.05 Deadline

The appearance notice must be filed no less than five days before the day of the hearing.

24.06 Evidence

(1) A party may make representations to the judge hearing an appearance motion of a fact that could not reasonably be in contention.

(2) The representations may be made in the appearance notice and in oral submissions to the judge when the motion is heard.

(3) The judge may act on the representations.

Rule 25 - Motion by Appointment

25.01 Special appointment

(1) A party may request a judge provide a special appointment for a motion to be heard by the judge.

(2) A judge may provide for the hearing of a motion by personal attendance, or if necessary by teleconference, in accordance with this Rule 25.

25.02 Hearing by attendance in courtroom

(1) A judge may appoint a time, date, and place for parties to attend before the judge in a courtroom for the hearing of a motion.

(2) A party may attend the hearing in person, personally by counsel, or, in the case of a corporation, personally by agent.

(3) A judge may permit a party, counsel, or a corporation's agent to attend the hearing by video conference, if the judge is satisfied on all of the following:

(a) it is impractical or unfair to require personal attendance;

(b) attendance by video conference will save significant expense;

(c) the courtroom has been equipped with an audiovisual system of sufficient quality that the person is as good as physically present in the courtroom.

25.03 Hearing by teleconference without public access

(1) A judge may appoint a time and date for a motion to be heard in less than a half-hour by teleconference, if all of the following apply:

(a) it is impractical or unfair to require the parties to attend before the judge;

(b) a hearing by teleconference will save significant time or expense;

(c) there is no serious disagreement on the facts in relation to the motion, or the difficulties arising from any disagreement are outweighed by the practicality or fairness of proceeding by teleconference;

(d) there is to be a recording sufficient to allow public scrutiny.

(2) Each of the following is an example of circumstances in which it may be appropriate to request a short hearing by teleconference:

(a) parties cannot resolve an important procedural question for an upcoming trial or hearing, the parties are not able to conveniently appear before the judge, and the trial or hearing judge's ruling in advance of the trial or hearing may avoid an adjournment or other significant expense;

(b) a party has strong reasons for requesting an adjournment, the parties are not able to appear before the judge immediately, and significant expenses may be avoided if the request is determined promptly;

(c) a party moves to change the place of an application or motion and, for the same reasons as support the change, it is unfair to require the party to appear at a place where the judge is available;

(d) the court has provided a time, date, and place for an emergency chambers hearing and the parties may be available by teleconference for a motion to shorten a notice period or provide for a speedy method of giving notice.

(3) The party who requests a motion be held by teleconference must initiate the teleconference and the court must record it, unless a judge directs otherwise.

25.04 Hearing by teleconference with public access

(1) A judge who is satisfied on all of the following may provide a time and date for a motion to be heard by teleconference:

(a) the teleconference will be accessible by the public in a courtroom;

(b) a court reporter will be present in the courtroom;

(c) the hearing will be logged and recorded in the same way as a hearing in a courtroom;

(d) it is impractical or unfair to require the parties to attend before the judge;

(e) a hearing by teleconference will save significant time or expense;

(f) there is no serious disagreement on the facts in relation to the motion, or the difficulties arising from any disagreement are outweighed by the practicality or fairness of proceeding by teleconference.

(2) A judge who determines whether to allow a hearing by teleconference must weigh the benefits of holding the teleconference against the need for the court to be physically present in the community and other advantages of personal attendance before a judge.

25.05 Directions or Rule 23 - Chambers Motion applies

(1) A judge may give directions for notice, form of documents, filing deadlines, evidence, and conduct of a motion heard by appointment under Rules 25.02, 25.03, or 25.04.

(2) In the absence of directions, the provisions of Rule 23 - Chambers Motion apply to the form of documents, filing deadlines, evidence, and conduct of the motion, except a notice of motion, or an *ex parte* motion, must state the name of the judge and either of the following:

(a) the place of a motion to be heard in a courtroom;

(b) how each party and the judge, or the judge hearing an *ex parte* motion, will be contacted by the moving party at the time of a motion by teleconference.

(3) Unless the parties agree or a judge directs otherwise, a teleconference must be set up so that each party is present before the judge in the same way, including both of the following:

(a) no party is to be in the same room as the judge;

(b) a party will only have access to a visual transmission, if all parties have access to it.

Rule 26A - Conference

26A.01 Conference

A judge may convene a conference, at which the parties meet with the judge with or without a record.

26A.02 When conference appropriate

(1) The court must convene a conference required by a Rule, such as a date assignment conference or a trial readiness conference.

(2) A conference may be convened to provide any of the following:

(a) organization of a trial or hearing;

(b) hearing a motion to appoint a time and date, and provide directions, for an application in court, a judicial review, or an appeal;

(c) case management by a case management judge;

(d) anything that may aid the disposition of a proceeding or motion, and may properly be dealt with outside a courtroom.

26A.03 Motions at conference

(1) A judge who presides at a conference may do any of the following:

(a) give directions;

(b) appoint a time, date, and place for a trial or hearing;

(c) rule on an issue of procedure or evidence for an upcoming trial or hearing, if the parties consent to the issue being determined at a conference.

(2) Directions given at a conference may be varied.

(3) A ruling on an issue submitted by consent is binding at the trial or hearing.

26A.04 Record of conference

(1) A conference must be recorded by the court, unless the judge who presides at the conference directs otherwise.

(2) A judge who presides at a conference that is not recorded must make a record after the conference of each of the following:

(a) the subjects discussed, and agreements made, at the conference;

(b) directions given at the conference;

(c) a ruling on an issue of evidence or procedure for an upcoming trial or hearing submitted to the judge at the conference with the consent of the parties.

(3) A direction, including a ruling, made at a conference may be enforced as provided in Rule 78 - Order.

Rule 26B - Case Management

26B.01 Scope of Rule 26B

(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.

26B.02 Appointment

(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.

26B.03 First conference

(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.

26B.04 Further case management

(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.

26B.05 Motions in cases under management

(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.

Rule 27 - Motion by Correspondence

27.01 Motion by correspondence to judge

(1) A party may make a motion to a judge by delivering correspondence only in one of the following situations:

(a) a Rule permits a motion to be made by correspondence;

(b) the party seeks an adjournment of, or the dismissal of, an *ex parte* application or *ex parte* motion brought by the party;

(c) the party seeks permission to withdraw or adjourn the hearing of an application, and the parties agree the motion may be made by correspondence;

(d) the party seeks permission to withdraw a motion or adjourn the hearing of a motion, another party does not consent as required for automatic withdrawal or adjournment under Rule 22.18(1)(a), of Rule 22 - General Provisions for Motions, and the parties agree that the motion for permission to withdraw or for adjournment may be made by correspondence;

(e) the party moves for a consent order;

(f) the party requests a special appointment, conference, emergency hearing outside court hours or a courthouse, directions for making a motion to a presiding judge or the prothonotary, or permission to make a motion by correspondence;

(g) a judge permits a motion to be made by correspondence to that judge.

(2) Unless a judge permits otherwise, a motion by correspondence, other than a motion to grant an order consented to by all interested persons, must include a notice of motion, a supporting affidavit, a draft order, and a brief.

(3) The correspondence may be delivered to the prothonotary, the judge's office, or another person authorized by the judge.

27.02 Motion by correspondence to prothonotary

A party may make an *ex parte* motion to the prothonotary by delivering correspondence, unless the prothonotary directs otherwise.

Rule 28 - Emergency Motion

28.01 Request for emergency hearing

(1) A party may request the court appoint a time, date, and place for a motion to be heard as an emergency.

(2) The party must make the request for an emergency hearing by providing all of the following information to the prothonotary:

(a) details of the motion the party wishes to make;

(b) all information concerning the availability of, and means of communicating with, a party who is to receive notice of the motion;

(c) the reasons for proceeding *ex parte*, if the party proposes an *ex parte* motion;

(d) a description of the evidence to be presented;

(e) references to applicable legislation, Rules, or points of law;

(f) a statement of when the party will be ready to file an affidavit;

(g) the amount of time the hearing is likely to require;

(h) the reasons for concluding that an emergency exists.

(3) The information must be in writing, unless a judge permits otherwise.

28.02 Emergency motion on notice

(1) The court may provide a time, date, and place for an emergency motion to be heard on notice, if a judge is satisfied on each of the following:

(a) an emergency exists of sufficient gravity to require a speedy hearing;

(b) it is possible for all parties who wish to be heard to be in attendance for the motion;

(c) the gravity of the emergency outweighs any inconvenience to a party.

(2) The court must provide directions for giving notice, unless the parties agree on giving notice, and the directions may include a short notice period and a speedy method of giving notice.

(3) A judge may give directions for conduct of the motion, including directions on notice, form of documents, filing deadlines, or evidence.

(4) If a judge does not give directions on form of notice, the party who makes the motion may notify other parties by delivering a notice of motion under Rule 23 - Chambers Motion, with both of the following modifications:

(a) the notice need not refer to the time required for the motion to be heard, and it must not refer to the judge as presiding in chambers;

(b) the notice must state the name of the judge and that the motion is by special appointment to respond to an emergency.

28.03 *Ex parte* emergency motion

(1) The court may provide a time, date, and place for an *ex parte* emergency hearing, if a judge is satisfied that the motion falls within one of the circumstances in Rule 22.03 and that the motion cannot be heard in chambers.

(2) A judge may give directions for making the motion, responding to the motion, and conduct of the hearing.

28.04 Manner of providing evidence

(1) A judge may provide directions on the manner in which evidence is to be provided on an emergency motion.

(2) Evidence may be provided in the same ways as evidence is provided under Rule 23.08, of Rule 23 - Chambers Motion, unless the judge directs otherwise.

28.05 Emergency hearings outside court hours or courthouse

(1) A judge may hear a motion, at any time or place, if the judge is satisfied that the motion must be heard quickly and cannot be heard in the usual course of the court's business.

(2) The judge may give directions for the conduct of the motion, including directions for making and keeping a record.

Rule 29 - Motion to Presiding Judge

29.01 Assigned judge to hear all motions

(1) After it is confirmed in a trial readiness conference that the parties are ready for trial, all pretrial motions must be made to the judge assigned to preside at the trial, unless no judge has been assigned, the assigned judge determines that another judge should hear the motion, or the assigned judge is not available within the time required for the motion.

(2) A prehearing motion in an application, judicial review, or appeal to be heard less than sixty days before the hearing of the application, judicial review, or appeal must be made to the judge assigned to hear the proceeding, unless no judge is assigned as yet, the assigned judge determines that another judge should hear the motion, or the assigned judge is not available within the time required for the motion.

(3) The assigned judge may give directions for the procedure to be followed on a motion made before, during, or after the trial or hearing.

(4) In the absence of directions, the following Rules apply on a motion to a presiding judge:

(a) notice may be given orally during a trial or hearing;

(b) a written or oral notice must be given as soon as possible after the decision to make the motion is, itself, made;

(c) the evidence in support of the motion may be led at the trial, provided at the hearing, or provided under Rule 23.08, of Rule 23 - Chambers Motion;

(d) the motion may be dealt with by direction, ruling, or order made on record, by order made on record and to be confirmed later in a written order, or by written order.

Rule 30 - Motion to Prothonotary

30.01 Motion to prothonotary generally

(1) A party may make a motion to the prothonotary to do anything that the prothonotary is authorized to do under a Rule.

(2) The prothonotary may refer the motion to a judge, and the judge may determine the motion.

(3) The prothonotary may request an opinion from a judge before determining a motion.

(4) The prothonotary who refers a motion or requests an opinion must place a record of the reference and its result, or the request and the opinion, in the file for the proceeding.

(5) A prothonotary may direct a party who makes a motion to the prothonotary to make the motion to a judge in chambers or otherwise as the prothonotary and the party agree or, failing agreement, as the prothonotary directs.

30.02 *Ex parte* motion

(1) A party may make an *ex parte* motion to the prothonotary in writing or, unless the other party is entitled to notice, orally.

(2) The prothonotary must make a record of a motion made orally.

30.03 Motion on notice

(1) The prothonotary may give directions for making a motion to the prothonotary on notice.

(2) The prothonotary may direct any of the following:

(a) the time, date, and place when and where the motion will be heard;

(b) the form and content of a notice of motion;

(c) time for delivery of the notice of motion;

(d) the manner of presenting evidence, representations or submissions;

(e) whether the motion will be heard on record.

30.04 Review by judge

(1) A person affected by an order made by the prothonotary may make a motion to a judge under Rule 23 - Chambers Motion for a review of the prothonotary's order.

(2) The motion must be started by filing a notice of motion no more than ten days after the day the person receives notice of the order.

(3) On the review, the judge may consider the evidence placed on record before the prothonotary and further evidence provided by a party in accordance with Rule 23.

(4) The reviewing judge may exercise any discretion the prothonotary could exercise, and substitute the judge's opinion for that of the prothonotary.

(5) The judge may dismiss or grant the motion for review.

(6) A judge who grants the motion may make any of the following kinds of orders:

(a) an order the prothonotary could have made;

(b) an order providing relief from the order of the prothonotary or the consequences of it;

(c) an order referring the subject back to the prothonotary with directions.

Part 7 - Notice and Place of Proceeding

Rule 31 - Notice

31.01 Scope of Rule 31

(1) This Rule supplements other Rules that require a party to give notice, or that provide a consequence of receiving notice.

(2) A person who starts a proceeding against another person, or who makes a claim in an existing proceeding against another person, must notify the other person of the proceeding or claim, in accordance with Rules 31.02 to 31.11.

(3) A party is entitled to notice of further steps in a proceeding in accordance with Rule 31.14, unless the party becomes disentitled to further notice in accordance with Rules 31.12 and 31.13.

(4) A party may give notice of a step in a proceeding, in accordance with Rules 31.15 to 31.18.

(5) A party must give notice of a constitutional question to the Crown, in accordance with Rule 31.19.

31.02 Notifying party of proceeding

A party who starts a proceeding, or makes a third party claim in an action, may notify the party against whom the proceeding is started, or the third party, by causing a certified copy of the originating document to be served personally in accordance with Rules 31.03 to 31.05, or by giving notice by an alternative method in accordance with Rules 31.06 to 31.10.

31.03 Person to whom personal service is made

(1) Personal service must be effected as follows:

(a) **individual** - to an individual, by handing the document to the individual unless the party is a child or a person who is not capable of managing their affairs;

(b) **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;

(c) **child** - to a child, by handing it to a parent or guardian with whom the child resides, a person exercising care and control over the child, or a person as directed by a judge;

(d) **corporation registered under the *Corporations Registration Act*** - to a corporation registered under the *Corporations Registration Act*, by handing it to the recognized agent or, in the absence of the agent, as provided in the service of documents provisions of that legislation;

(e) **partnership registered under the *Partnerships and Business Names Registration Act*** - to a partnership registered under the *Partnerships and Business Names Registration Act*, by handing it to the recognized agent or, in the absence of the agent, as provided in the service of documents provisions of that legislation;

(f) **unregistered corporation, unregistered partnership, or society operating in Nova Scotia** - to an unregistered corporation, an unregistered partnership, or a society operating in Nova Scotia, by handing it to a director, officer, or apparent manager;

(g) **unregistered corporation or society not operating in Nova Scotia** - to an unregistered corporation or a society not operating in Nova Scotia, in accordance with the law of the place of incorporation for notifying the corporation or society of an originating civil process against it;

(h) **municipality** - to a municipality, by handing the document to the municipal clerk, solicitor, mayor, warden, chief executive officer, chief financial officer, or similar officer of a municipality;

(i) **board or commission** - to a board or commission, by handing it to a member or officer of the board or commission;

(j) **His Majesty the King in the Right of Nova Scotia** - to His Majesty the King in the Right of Nova Scotia, in accordance with the *Proceedings Against the Crown Act*;

(k) **His Majesty the King in the Right of Canada** - His Majesty the King in the Right of Canada, in accordance with the *Crown Liability and Proceedings Act* (Canada).

(l) **another province or territory of Canada** - to His Majesty the King in the Right of another province or to a territory of Canada, by following the provisions of the Crown or territorial proceedings legislation in the province or territory for service of an originating civil process, or for other notification of an originating civil process against the Crown in the right of the province or against the territorial government;

(m) **any other state** - to any other state, by following the domestic law for service or delivery of an originating civil process, or of notification of an originating civil process, against the state;

(n) **generally** - alternatively, by following the directions of a judge for effecting personal service.

(2) For the purpose of Section 49 of the *Judicature Act*, provincial legislation that provides a method for service of an originating process in conflict with Rule 31.03(1) is modified by that Rule, and legislation that provides an additional method is not modified.

31.04 Method of personal service

(1) A literate person who is not a party, or an officer, director, or employee of a party, may effect personal service in Nova Scotia, at any time, on any day, and at any place.

(2) In a place outside Nova Scotia, personal service may be effected by a person and at a time, date, or place allowed by the laws of that place.

31.05 Proof of personal service

(1) A party who causes a document to be personally served must obtain an affidavit of service that proves all material facts of the service.

(2) The affidavit of service must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled Affidavit of Service, and include all of the following:

(a) the name of the person swearing or affirming the affidavit and of the community where the person resides;

(b) a statement that the person personally delivered a certified copy of the notice to the person to be notified;

(c) a reference to an exhibited certified copy of the notice;

(d) the hour, date, and place of delivery;

(e) the name of the person to whom delivery was made;

(f) how the person swearing or affirming the affidavit identified the person as the one to whom delivery is to be made;

(g) a certified copy of the notice attached and marked as an exhibit to the affidavit.

(3) The affidavit may be in Form 31.05.

31.06 Acceptance of service as notice of proceeding

(1) A lawyer entitled to appear before the court may endorse an acceptance of service on a certified copy of an originating document.

(2) The endorsement must include the name of the party on behalf of whom it was made, the date of acceptance, and the lawyer's name printed legibly.

(3) An endorsement signed by a lawyer is proof of acceptance of service for the party, and proof the party was notified effective the date of the acceptance.

31.07 Filing responding document as proof of notice of proceeding

A party who has not been notified in accordance with other provisions of this Rule 31 and who files a document in response to the originating document is taken to have notice of the proceeding as of the day the responding document is filed.

31.08 Notice of proceeding under agreement

(1) A party who starts a proceeding in connection with a contract made by the party and another party may notify the other party of the proceeding by following a provision in the contract for notice of a proceeding in connection with the contract.

(2) A person in dispute with another person, who makes a written agreement with the other person for giving notice of a proceeding in connection with the dispute, may notify the other person of the proceeding as provided in the agreement.

31.09 Notification out of jurisdiction

(1) A party against whom a proceeding is started and who is in Canada, and outside Nova Scotia, may be notified of the proceeding without an order for service outside the jurisdiction.

(2) A party against whom a proceeding is started and who is outside Canada may be notified without an order for service outside the jurisdiction, if the person is in a state that is bound by the *Convention on Service Abroad of Judicial or Extrajudicial Documents in Civil or Commercial Matters*, 15 November 1965, Canada Treaty Series 1989/2.

(3) A party who wishes to give notice by personal service in any other state must make a motion for an order for service outside the jurisdiction.

(4) A party in a state that is bound by the *Convention* may be notified by personal service, unless the state objected under Article 10 to personal service within its territory.

(5) A party in a state that is bound by the *Convention* may be notified through the Central Authority of the state, as provided by Articles 2 to 7 of the Convention.

(6) A party in a state that is not bound by the *Convention*, but entered into a bi-lateral treaty with Canada on service of civil documents, may be notified in accordance with the bi-lateral treaty or directions given by the judge who grants the order for service outside the jurisdiction.

(7) A party in a state that is not bound with Canada by a treaty on service of civil documents may be notified in accordance with directions given by the judge who grants the order for service outside the jurisdiction.

(8) A party to an action or application who maintains that the court does not have jurisdiction over the subject of a proceeding, or over the party, may make a motion under Rule 4.07, of Rule 4 - Action, to dismiss the action or Rule 5.16, of Rule 5 - Application, to dismiss the application.

31.10 Order for substituted method of giving notice of proceeding

(1) A judge may order a substituted method of notification if the judge is satisfied that the party cannot be located, the party is evading service, or justice requires a substituted method for another reason.

(2) The following are examples of efforts to locate a party that, if proved, may establish that an order for substitute notification is to be granted on the basis that the party cannot be located:

(a) making inquiries of persons at the other party's places of recent residence or work;

(b) making inquiries of acquaintances of the other party;

(c) searching the records of the party who makes the motion to locate information about recent residences, places of work, and acquaintances of the party to be notified;

(d) engaging a trace service;

(e) performing searches on the internet;

(f) searching records of other actions against the party to be notified;

(g) engaging the services of a local process server, lawyer, detective, or other person to advise on locating a party who resides in an unfamiliar place.

(3) The following are examples of evidence that may establish that an order for substitute notification is to be granted on the basis that the party is evading service:

(a) evidence of places the party is likely to be found, such as a place of residence or work, and efforts to locate the party;

(b) evidence the party is likely at a place when service is attempted;

(c) attempts to effect service at the party's likely place of residence, place of work, or otherwise;

(d) efforts to identify persons in communication with the party;

(e) attempts to communicate with acquaintances to arrange personal service.

(4) An order for substitute notification made on the basis that the party cannot be located may include terms for advertising, service of a certified copy of the order and the originating document on a person who might communicate with the party, delivery or mailing of the order and document to a place where it may be received by the party, and any other terms for bringing the proceeding to the notice of the party.

(5) An order for substitute notification made on the basis that the party is evading service may contain terms for notification that assume the evading party will receive a certified copy of the order and the originating document left for the party with persons and at places associated with the party.

31.11 Counterclaim, crossclaim, and added party

(1) A plaintiff must be notified of a counterclaim by delivery of a certified copy of the notice of defence with counterclaim to the plaintiff's designated address, or delivery by agreed electronic means.

(2) A defendant must be notified of a crossclaim in one of the following ways:

(a) if the defendant crossclaimed against has not filed a notice of defence, notification in accordance with Rules 31.02 to 31.10;

(b) if a notice of defence is filed, delivery of a certified copy of the notice of defence with crossclaim to the designated address of the defendant crossclaimed against or delivery by agreed electronic means.

(3) Unless a judge directs otherwise, a party who is added to a proceeding by a party's amendment or by an order on an *ex parte* motion must be notified by personal service of certified copies of the notices in the proceeding, in accordance with Rules 31.03 to 31.05, or by an alternative method of notice, in accordance with Rules 31.06 to 31.10.

(4) A party who is added to a proceeding by order made on notice must be notified as the judge making the order directs.

(5) The following documents are the originating documents for the purpose of giving notice, respectively, of a defence with a crossclaim, the addition of a party by amendment, or the addition of a party by order:

(a) the notice of defence with crossclaim;

(b) the amended notice, and all previous notices, and, if the proceeding is an application, all filed affidavits;

(c) the order adding the party, a notice with the amended heading, all previous notices, and, if the proceeding is an application, all filed affidavits.

31.12 Disentitlement to further notice in an action

(1) A defendant or third party who wishes to defend an action or third party claim must file a notice of defence, and a defendant or third party who does not wish to defend but wishes to remain entitled to notice must file a demand for notice, no more than the following number of days after the day the defendant or third party is notified of the proceeding:

(a) fifteen days, if notification is by personal service in Nova Scotia or by other means completed entirely in Nova Scotia;

(b) thirty days, if the notification is by personal service elsewhere in Canada or by other means completed entirely in Canada;

(c) forty-five days, if the notification is by personal service elsewhere in the world or by other means not completed entirely in Canada.

(2) A party claimed against by counterclaim or crossclaim who wishes to defend the claim must file a notice of defence defending the counterclaim or crossclaim in the following times:

(a) no more than ten days after the day of delivery, if notification is made by delivery to the defendant's address for delivery;

(b) the same time as for a defence to an action, if a notice of crossclaim is delivered to a defendant who has not filed a notice of defence or demand for notice designating an address for delivery in the main action.

(3) The time between the day a demand for particulars of a claim is delivered and the day an answer to a demand for particulars is delivered is not counted among the days for filing a notice of defence or demand of notice.

(4) A party who does not file a notice of defence when required is taken to have admitted, for the purposes of the action, the claims made against the party, and the party making the claim may move for judgment under Rule 8 - Default Judgment.

(5) The party who does not file a notice of defence or a demand for notice is disentitled to notice of anything in the proceeding after the expiry of the deadline for filing the notice, unless a Rule expressly provides, the parties agree, or a judge orders otherwise.

(6) The parties may agree to, or a judge may order, longer or shorter periods than those provided in Rules 31.12(1) and (2).

(7) A party may file a notice of defence, with or without counterclaim or crossclaim, or a demand for notice anytime before default judgment is granted, and the following consequences apply:

(a) the party is no longer disentitled to notice;

(b) the party who files a notice of defence is no longer taken to have admitted the claims made against the party.

(8) A judge may order that a party need not be given further notice.

31.13 Disentitlement to further notice in application, judicial review, or appeal

(1) A judge who is satisfied that a respondent fails to file a notice of contest, or to appear at a hearing, after having been notified may order that the respondent is disentitled to further notice.

(2) A judge may order that a party to an application, judicial review, or appeal need not be given further notice.

31.14 Interlocutory notice

A party is entitled to notice of everything done in a proceeding, every written communication with a judge or the court, and every document filed, unless one of the following applies:

(a) the party is disentitled to notice;

(b) a motion is made *ex parte*;

(c) the parties agree, or a judge orders, that notice is not required.

31.15 Deliver copy to party on filing

(1) A party who files a document must deliver a copy of the document to each other party immediately before or immediately after it is filed, unless one of the following applies:

(a) the other party is disentitled to notice;

(b) a motion is made *ex parte*;

(c) the parties agree, or a judge orders, that notice is not required.

(2) Delivery to a party who is entitled to notice, but has not yet filed a document designating an address for delivery, may be made by personal service or such other means as satisfies a judge that the party receives sufficient notice.

(3) In all other cases, delivery may be made to the party's designated address.

31.16 Delivery to designated address

(1) A party entitled to further notice must do everything that is reasonable to allow for quick and economical delivery of documents to the party, including:

(a) designate an address for delivery of documents at which the party is assured of receiving a document when it is delivered;

(b) designate a new address for delivery of documents by filing a notice of change of designated address, if the party ceases to be assured of receiving a document when it is delivered to the former designated address;

(c) maintain the place at the address in such a way that there is no danger of a document being taken away by others or lost.

(2) A document may be delivered to a designated address by mail, hand, or, if both of the following apply, by electronic transfer, such as e-mail or fax:

(a) the transfer is by a method regularly used for delivering communications at the designated address;

(b) the receiving party does not, in writing, require that another method be used.

(3) A document delivered by mail to a designated address is taken to be received by the party three days after the date of mailing.

(4) A document delivered to a designated address by hand, fax, or e-mail is taken to be received immediately by the party.

(5) A judge may order that a party who fails to maintain a designated address is disentitled to further notice and grant judgment against the party, unless an injustice would result.

31.17 Other methods of interlocutory notice

The parties may agree in writing, and a judge may order, another method of giving notice to a party.

31.18 Form of designation of address for delivery

(1) A party who is not required to file a document that includes a designation of an address for delivery and a party who must designate a new address for delivery may file a designation of address for delivery.

(2) A designation of address for delivery must contain the standard heading, be entitled "Designation of Address for Delivery", be signed and dated, designate an address, and include an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(3) A designation of address for delivery may be in Form 31.18.

31.19 Notice of constitutional question

(1) A party who, in a proceeding to which the Crown is not a party, asserts that legislation is unconstitutional must give notice of the constitutional issue by one of the following means, depending on the following conditions:

(a) delivery to the Halifax office of the Attorney General of Canada, if the legislation is an Act of Parliament, a regulation under an Act of Parliament, or part of either;

(b) delivery to the main office of the Attorney General of Nova Scotia, if the legislation is an Act of the Legislature, a regulation under an Act of the Legislature, or part of either;

(c) delivery to the main office of the attorney general of another province or a territory, if the legislation is that of another province or territory.

(2) A notice of constitutional issue must contain the standard heading, be entitled "Notice of Constitutional Issue", be dated and signed, and include all of the following:

(a) notice to the appropriate attorney general that the party asserts legislation is unconstitutional;

(b) the citation for the legislation;

(c) a concise statement of the reason the party asserts the legislation is unconstitutional;

(d) an attached copy of the pleading or other document in which the party asserts the legislation is unconstitutional;

(e) a statement that the attorney general may file a demand for notice of all steps in the proceeding or the Crown may make a motion to become a party;

(f) a statement that delivering the notice to the Attorney General of Nova Scotia does not relieve the party of the obligation to give further notice under the *Constitutional Questions Act*;

(g) a list of the parties entitled to notice and their designated addresses.

(3) The notice must be delivered immediately after the filing of a pleading or other document in which a party asserts legislation is unconstitutional.

(4) A notice of constitutional issue may be in Form 31.19.

(5) A party to a proceeding in which an attorney general files a demand for notice in response to a notice of constitutional issue must give the same notice to the attorney general as to a party who is entitled to notice.

(6) Nothing in this Rule 31.19 allows the Crown to participate in a proceeding without being joined as a party.

(7) This Rule 31.19 is additional to, and does not modify, the *Constitutional Questions Act*.

31.20 Notice to non-party by mail

A notice or other document delivered by mail to a non-party under a Rule or order permitting or requiring delivery by mail is taken to be received by the person three days after the mailing.

Rule 32 - Place of Proceeding

32.01 Scope of this Rule 32

A party may select the office of the prothonotary at which documents may be filed in a proceeding or request a change in the place of the proceeding, in accordance with this Rule.

32.02 Place of proceeding

(1) The party who starts a proceeding may select the place of the proceeding by inserting one of the following sets of registry codes before the abbreviation "No." in the heading of the document that starts the proceeding and filing the document in the corresponding office of the prothonotary:

"Amh"	Amherst
"Ann"	Annapolis
"Ant"	Antigonish
"Bwt"	Bridgewater
"Dig"	Digby
"HFD"	Halifax Family Division
"Hfx"	Halifax, except Family Division
"Ken"	Kentville
"Pic"	Pictou
"PtHFD"	Port Hawkesbury Family Division
"PtH"	Port Hawkesbury, except Family Division
"SFD"	Sydney Family Division
"Syd"	Sydney, except Family Division
"Tru"	Truro
"Yar"	Yarmouth.

(2) All documents filed in a proceeding must be filed at the office of the prothonotary in the selected place.

(3) A document to be filed at an office not regularly open Monday to Friday, save holidays, may be delivered on days the part-time office is closed to any prothonotary and that prothonotary shall note the filing on behalf of the prothonotary at the part-time office on the day of delivery and transmit the document to that prothonotary.

(4) A party may make a motion to change the place of a proceeding.

(5) A prothonotary may make a motion to a judge to change the place of a proceeding, a group of proceedings, or all proceedings, from the office of one prothonotary to that of another.

(6) An order changing the place of a proceeding must provide for the amendment of the heading to replace the initials of the former place with those of the new place.

Part 8 - Counsel, Parties, and Claims

Rule 33 - Counsel

33.01 Scope of Rule 33

(1) A lawyer may become counsel of record, and be removed as counsel of record, in accordance with this Rule.

(2) A party who replaces counsel, or discharges counsel and acts on their own, must comply with this Rule.

33.02 Counsel of record

(1) A lawyer becomes counsel of record for a person by signing and filing one of the following, or by representing to the court that the lawyer acts for the person in a proceeding without stating that the retention is limited:

(a) the notice by which the party starts, defends, contests, or responds to a proceeding, or seeks to become a party;

(b) a notice of new counsel;

(c) a court document after a party who had been acting on their own retains the counsel.

(2) Counsel may authorize another lawyer entitled to represent parties before the court to substitute for counsel.

(3) One counsel may start a proceeding on behalf of more than one person.

(4) Two or more counsel may start a proceeding on behalf of different parties by each signing the originating document, the statement of claim in the case of an action, and a statement showing the party on whose behalf each counsel is signing.

33.03 Ceasing to be counsel of record

A lawyer ceases to be counsel of record when one of the following events occurs:

(a) the proceeding concludes;

(b) the lawyer is discharged and new counsel files a notice of new counsel under Rule 33.06;

(c) the lawyer is discharged, the party files a notice of intention to act on one's own under Rule 33.07, and no trial or hearing is scheduled;

(d) the lawyer is discharged when a trial or hearing is scheduled, no notice of new counsel is filed, and a judge removes the lawyer as counsel of record under Rule 33.10;

(e) the lawyer finds it necessary to withdraw from being counsel, and a judge removes the lawyer under Rule 33.11.

33.04 Counsel for a non-party

Counsel who represents a person who is not a party but is entitled, or is seeking to become entitled, to be heard in a proceeding must notify the parties and the court of the representation as soon as is possible.

33.05 Discharge of counsel

(1) A party who discharges counsel and retains new counsel must, through the new counsel, immediately file a notice of new counsel.

(2) A party who discharges counsel and acts on their own must file a notice of intention to act on one's own.

(3) The designated address for delivery of documents to a party does not change until the notice of change of solicitor, or the notice of intention to act on one's own, is filed.

33.06 Change of counsel

(1) Counsel replacing the counsel of record, or taking over for a party who was acting on their own, must file a notice of new counsel immediately.

(2) A notice of new counsel must contain the standard heading, be entitled "Notice of New Counsel", be signed by the new counsel, and include all of the following:

(a) the name of the party represented;

(b) the name of the former counsel, if counsel is replaced;

(c) the name of the new counsel;

(d) a designation of a new address for delivery of documents to the party;

(e) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(3) The new counsel must also provide the prothonotary with information for communicating with the new counsel, such as a telephone number, fax number and e-mail address.

(4) The notice of new counsel may be in Form 33.06.

(5) New counsel must deliver a copy of the notice to the former counsel, and to each party entitled to notice in the proceeding.

33.07 Party acting on own after discharging counsel

(1) A party who discharges counsel and wishes to act on their own must attend the prothonotary's office to file a notice of intention to act on one's own, unless the prothonotary directs in writing that a personal attendance is not required.

(2) The notice of intention to act on one's own must contain the standard heading, be entitled "Notice of Intention to Act on One's Own", be signed by the party, and include all of the following:

(a) a statement indicating that the former counsel has been discharged;

(b) the date of the discharge;

(c) a statement that the party has decided to act on their own;

(d) an acknowledgement that the party must personally deliver the notice to the prothonotary;

(e) a designation of a new address for delivery of documents for the party;

(f) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(3) The party must also provide the prothonotary with information for communicating with the party, such as a telephone number, fax number, and e-mail address.

(4) The notice of intention to act on one's own may be in Form 33.07.

(5) The party must immediately deliver a copy of the notice to the former counsel, and to each party entitled to notice in the proceeding.

33.08 Information provided by prothonotary

The prothonotary must, before accepting for filing a notice of intention to act on one's own, provide the information required to be provided by the prothonotary under Rule 34.06, of Rule 34 - Acting on One's Own.

33.09 Counsel for a limited purpose

(1) A judge may permit a lawyer to act as counsel for a limited purpose on behalf of a party who otherwise acts on their own.

(2) A judge may require a party who acts on their own to retain counsel for a limited purpose, such as for discovery or cross-examination of a witness who may suffer serious emotional harm if required to communicate directly with the party.

33.10 Duty of discharged counsel

(1) A lawyer who is discharged by a party the lawyer represented as counsel must complete all tasks the lawyer undertook to perform for the court, or was directed to perform for the court, such as to draft and submit a form of order.

(2) A lawyer who is discharged after a time and date have been appointed for the trial of an action or the hearing of an application, proceeding for judicial review, appeal, or motion must personally appear before the judge assigned to preside at the trial or hearing to be removed as counsel of record, unless a notice of new counsel is filed or the judge permits otherwise.

(3) If a judge has not been assigned, or the assigned judge is unavailable, the lawyer may appear before any judge.

33.11 Withdrawal of counsel

(1) Counsel who finds it necessary to withdraw must make a motion to be removed as counsel of record.

(2) Counsel who makes a motion for an order to be removed as counsel of record must deliver the notice of motion to the party counsel represents or represented, unless a judge orders otherwise.

33.12 New designated address for delivery

A lawyer who is discharged as counsel or withdraws, and whose address is the address designated for delivery to the party the lawyer represented, may make a motion for an order designating a new address for delivery.

Rule 34 - Acting on One's Own

34.01 Scope of Rule 34

A party may act on their own, in accordance with this Rule.

34.02 Party requiring counsel

Each of the following kinds of parties must be represented by counsel, unless a judge allows otherwise:

(a) a person who requires a litigation guardian;

(b) a party named in a representative capacity, such as a trustee, executor, administrator, or receiver;

(c) an unascertained party.

34.03 Corporation acting on its own

(1) A corporate party that acts on its own must appoint an agent in writing before filing a document.

(2) The agent must be an officer of the corporation, unless a judge orders otherwise.

(3) The agent must be authorized to speak for, and bind, the corporation on subjects relating to the proceeding.

(4) The corporation must file a copy of the appointment of agent.

(5) The appointment of agent must contain the standard heading, be entitled "Appointment of Agent", be signed by an authorized person, and include all of the following:

(a) the name of the corporate party;

(b) the appointment, including the name, office, and authority of the agent;

(c) an acknowledgement that the agent's authority continues until a notice of replacement of agent, or a notice of new counsel, is filed;

(d) a personal representation by the person who signs the appointment that that person has authority to make the appointment and that the appointment is properly executed.

(6) The agent must also provide the prothonotary with information for communicating with the agent, such as a telephone number, fax number, and e-mail address.

(7) The notice of appointment of agent may be in Form 34.03.

34.04 Replacing agent

(1) A corporation may replace its agent by filing a replacement of agent.

(2) The replacement of agent must contain the appointment, the same signature and information as the notice of appointment of agent, the names of the former agent and the replacement agent, and be entitled "Replacement of Agent".

(3) The replacement of agent may be in Form 34.04.

34.05 Communicate with counsel

(1) Counsel may direct a party acting on their own to communicate only through counsel, and not directly with the party counsel represents.

(2) Counsel's direction may be absolute or limited to subjects or circumstances.

(3) A party who is directed by counsel about communicating with the party represented by counsel must comply with the direction.

34.06 Information for party on their own

(1) The prothonotary must inform a party acting on their own of how the party, or a person assisting the party, can find these Rules, and instruct the party on all of the following:

(a) these Rules apply to the party and the proceeding;

(b) the party must make best efforts to understand these Rules and to comply with them;

(c) it is improper to communicate with a judge outside a trial or hearing, unless the prothonotary or a member of the judge's office gives permission and every effort is made to include all parties in the communication;

(d) the party must communicate with a represented party only through that party's counsel, unless counsel gives written permission to contact the party directly;

(e) each party must maintain the designated address so that everything delivered there is received by the party, and the party will be taken to have received the document even if the party fails to get it.

(2) The prothonotary may refuse to file a document from a party acting on their own until the party has received the required instructions.

(3) The prothonotary must file a statement that the required instructions were provided to the party acting on their own.

34.07 Further information

The prothonotary may provide information to a party acting on their own about the Rules and practices of the court.

34.08 Assistant

(1) A judge may permit a person to assist, and if necessary speak on behalf of, an individual party at a trial or hearing.

(2) A party on behalf of whom an assistant is permitted to speak must be present when the assistant speaks, unless a judge allows otherwise.

34.09 Restrictions on agent or assistant

(1) A person may not speak for a party at a trial or hearing unless the person is within subsection 16(2) of the *Legal Profession Act*, is the appointed agent of a corporate party, or has the permission of a judge to speak on behalf of a party.

(2) A judge may require a corporate party to replace its appointed agent.

(3) The presiding judge may withdraw permission for a person to assist, or speak for, an individual party.

Rule 35 - Parties

35.01 Scope of Rule 35

The following persons may do the following things, in accordance with this Rule:

(a) persons may join together as plaintiffs, applicants, applicants for judicial review, or appellants to start a proceeding;

(b) a person who starts a proceeding may make two or more persons defendants or respondents;

(c) a party may make a motion to be removed, or to remove another party;

(d) a party may make a motion to add another person as a party;

(e) a person may make a motion to be added as a party, including as an intervenor.

35.02 Joining parties who claim together

(1) Two or more persons may start an action or application together as plaintiffs or applicants if the parties make claims that give rise to a common question of law or fact or that arise out of a single occurrence, transaction, or series of occurrences or transactions.

(2) Two or more persons may start a proceeding for judicial review or an appeal together as applicants for judicial review or appellants in one of the following circumstances:

(a) legislation allows them to do so;

(b) each was a party to a process that led to the decision under judicial review or appeal;

(c) the decision under judicial review or appeal affects the interests of each;

(d) a judge permits, in accordance with Rule 35.08.

(3) Two or more defendants may make a counterclaim, crossclaim, or third party claim together if they make claims that give rise to a common question of law or fact or that arise out of a single occurrence, transaction, or series of occurrences or transactions.

35.03 Joining parties claimed against in an action or application

(1) A party who starts an action or application or makes a third party claim may, in one of the following circumstances, name two or more defendants, respondents, or third parties:

(a) there is a common question of fact or law relating a claim against one party to a claim against another;

(b) a claim against one party arises out of the same occurrence, transaction, or series of occurrences or transactions as the claim against another;

(c) there is doubt about which party is liable to the party, whether a remedy should be awarded against one party or several parties, or whether an apportionment should be made.

(2) Persons may not join together as plaintiffs, applicants, or third party claimants under Rule 35.02, unless they agree on which defendants, respondents, or third parties are to be joined.

(3) If a defendant or respondent is jointly liable to more than one person and one of those persons refuses to be joined as a plaintiff or applicant, the plaintiff or applicant must join that person as a defendant or respondent although no claim is made against the person.

(4) A plaintiff, applicant, or defendant making a third party claim must join each of the following persons as an opposite party:

(a) a person who is jointly, but not severally, entitled to relief with the plaintiff, applicant, or defendant making a third party claim;

(b) an assignor of a debt or other chose in action under an assignment that is not absolute, unless notice in writing of the assignment is given to the defendant, respondent, or third party against whom judgment is claimed on the debt or other chose in action;

(c) a person who must be bound by a judgment in the action, application, or third party claim in order for the proceeding to be effectively determined.

35.04 Parties in a judicial review or an appeal

(1) A party who starts a proceeding for judicial review or an appeal must, unless a judge orders otherwise, name as respondents the decision-making authority, each person who is a party to the process under review or appeal or the process that led to the decision under review or appeal, and any other person required by legislation to be a respondent.

(2) An arm of a decision-making authority that is not legally separate from the authority and that prosecuted a complaint, opposed an application, or otherwise sought or opposed a decision by the authority must be included as an applicant for judicial review, an appellant, or a respondent to a judicial review or appeal of the decision.

(3) The arm must be named in such a way as to distinguish it from the decision-making authority, such as in one of the following ways:

(a) placing the words "Staff of" before the name of the authority;

(b) naming a department, division, or office of the authority;

(c) naming the authority followed by the words "in its capacity as" then describing the function of the arm, such as "prosecutor" or "complainant".

35.05 How a party joins further parties

A party who starts a proceeding may join a further party by amending the originating document, or notice of claim against third party, as provided in Rule 83 - Amendment.

35.06 Error in joining party

(1) No proceeding is defeated by reason of a wrong person having been joined as a party or a right person having not been joined, unless an order removing or adding a party would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.

(2) A judge may make an order removing or adding a party to prevent the defeat of a proceeding, unless doing so would cause serious prejudice that cannot be compensated in costs or an abrogation of an enforceable limitation period.

(3) No proceeding is defeated by reason of a party having been wrongly named, unless both of the following apply:

(a) because of the misnaming, the misnamed party was unaware of the proceeding;

(b) the correction will cause serious prejudice that cannot be compensated in costs, and would not have been suffered if the party had been properly named originally.

(4) A judge may correct the name of a party to prevent the defeat of a proceeding.

(5) A corrected proceeding continues as if the correction had been made originally.

(6) A proceeding may be stayed if a judge is satisfied that one of the following deficiencies applies, and the stay ends when the deficiency is rectified:

(a) a party was joined by mistake;

(b) a person who is a necessary party is not a party;

(c) a person was misnamed when the person was joined as a party.

35.07 Judge removing party

(1) A judge who is satisfied on any of the following may remove a party:

(a) the party was joined in circumstances that do not conform with Rules 35.02 and 35.03;

(b) a respondent in a judicial review or an appeal should cease to be a party;

(c) a third party proceeding was taken in circumstances outside those in Rule 4.11, of Rule 4 - Action;

(d) the person has ceased to be in circumstances that justify being joined as a party;

(e) an injustice would result if the person continues to be a party.

(2) Instead of removing the party, the judge may make an order, under Rule 37 - Consolidation and Separation, separating the claim by or against the party.

35.08 Judge joining party

(1) A judge may join a person as a party in a proceeding at any stage of the proceeding.

(2) It is presumed that the effective administration of justice requires each person who has an interest in the issues to be before the court in one hearing.

(3) The presumption is rebutted if a judge is satisfied on each of the following:

(a) joining a person as a party would cause serious prejudice to that person, or a party;

(b) the prejudice cannot be compensated in costs;

(c) the prejudice would not have been suffered had the party been joined originally, or would have been suffered in any case.

(4) Despite Rule 35.08(1), a judge may not join a person as a plaintiff, applicant, applicant for judicial review, or appellant, unless the person consents.

(5) Despite Rule 35.08(1), a judge may not join a party if a limitation period, or an extended limitation period, has expired on the claim that would be advanced by or against the party, the expiry precludes the claim, and the person protected by the limitation period is entitled to enforce it.

(6) A judge who joins a person as a party to a proceeding may give directions for the party's participation in the proceeding, including any of the following:

(a) an amendment to the heading;

(b) a process by which the party may give notice of a claim, defence, or ground;

(c) a process by which each other party may respond to the notice;

(d) requirements for the new party to make disclosure and be discovered.

35.09 Provisions for peripheral defendant or respondent

A judge may do any of the following for a defendant or respondent who has been joined in a proceeding that includes claims in which the party has no interest:

(a) limit the party's duties to make disclosure;

(b) limit discovery or provide for separate discovery on a subject of interest to the defendant or respondent;

(c) excuse the party from attending parts of a trial or hearing;

(d) consider the circumstance of the party when awarding or fixing costs.

35.10 Person intervening

(1) A person who is not a party to a proceeding and wishes to be joined may move for an order joining the person as an intervenor.

(2) A judge who is satisfied that the intervention will not unduly delay the proceeding, or cause other serious prejudice to a party, may grant the order in one of the following circumstances:

(a) the person has an interest in the subject of the proceeding;

(b) the person may be adversely affected by the outcome of the proceeding;

(c) the person ought to be bound by a finding on the determination of a question of law or fact in the proceedings;

(d) intervention by the person is in the public interest.

(3) Unless a judge orders otherwise, an intervenor must comply with all Rules applicable to a defendant, including the Rules in Part 5 - Disclosure and Discovery.

(4) Unless a judge orders otherwise, an intervenor is entitled to all of the procedural rights of a party.

(5) The judge may make an order restricting an intervenor's procedural duties and rights, and generally, regulating the intervenor's participation in an action or application.

35.11 Stay when death, bankruptcy, assignment, or mistake occurs

(1) A proceeding is stayed from when a party dies until an executor, administrator, or other personal representative of the estate of the deceased becomes a party, or a judge appoints a representative under Rule 36 - Representative Party.

(2) A judge may stay a proceeding started by a party who becomes bankrupt until the trustee in bankruptcy becomes a party or assigns or abandons the claim, (a stay of a proceeding against the bankrupt is provided in the *Bankruptcy and Insolvency Act*).

(3) A proceeding in which a plaintiff or applicant assigns the claim to another person is stayed from the date when the defendant is notified of the assignment until the assignee becomes a party.

(4) A proceeding by or against a person who is not capable of managing their affairs and who does not have a litigation guardian, or a child who does not have a litigation guardian, is stayed from when another party becomes aware the party is a person who is not capable of managing their affairs, or a child, until a litigation guardian's statement is filed or a litigation guardian is appointed.

(5) A judge may order a stay of any other proceeding in which a party is mistakenly joined, a necessary party is mistakenly not joined, or a party is misnamed.

35.12 Subsequent encumbrancer

(1) A subsequent encumbrancer need not be named as a defendant or respondent in a proceeding for foreclosure, sale, and possession, a proceeding for receivership to enforce a charge, or another proceeding to foreclose the equity of redemption in property.

(2) A judge may make an order to foreclose interests of a subsequent encumbrancer who is not a party, and the order must contain the following terms unless the judge directs otherwise:

(a) the party who seeks foreclosure is required to deliver a notice to subsequent encumbrancers in a time and manner provided in the order;

(b) a subsequent encumbrancer is bound by the provisions of an order for foreclosure when delivery is made as provided;

(c) the subsequent encumbrancer may defend or contest the claim in the manner provided in the order.

(3) The notice to subsequent encumbrancer must contain the standard heading, be entitled "Notice to Subsequent Encumbrancer", be dated and signed, and include all of the following:

(a) a statement that the action or application was started for foreclosure of the equity in the property described as approved by the judge;

(b) a statement that the person has been identified as having a subsequent interest in the equity, such as a mortgage, judgment, other charge, right of way, or tenancy;

(c) notice that the subsequent encumbrancer's interest will be foreclosed, unless the person defends or contests the proceeding as provided in these Rules and within the time provided in the order;

(d) a statement that the only claim against the subsequent encumbrancer is for foreclosure;

(e) the address of the prothonotary;

(f) the address for delivery of the plaintiff or applicant;

(g) in a claim for simple foreclosure, notice of the amount at which the court has settled the mortgage debt;

(h) in a claim for simple foreclosure, notice that the subsequent encumbrancers may be entitled to redeem the property under foreclosure by paying the mortgage debt and information about how that may be done.

(4) The notice to subsequent encumbrancer may be in Form 35.12.

35.13 Proprietorship

A claim brought by or against a proprietorship may be brought in the name of the proprietor, such as "Mary MacDonald", or in the name of the proprietor and the firm, such as "Mary MacDonald, carrying on business as ACME".

35.14 Partnership

(1) Members of a partnership may be named as parties individually by name, unless the partnership is a limited liability partnership.

(2) Common members of two or more partnerships individually named in a proceeding between the partnerships must be named as a partner of each partnership, such as "John Smith as a partner of ACME", as a plaintiff, and "John Smith as a partner of WHYCO", as a defendant.

(3) Partners of an unlimited liability partnership may be named by the firm name, if the firm is not dissolved and the partners are not named individually.

(4) A judge may order that a firm name replace individual member names, or members' names replace the firm name of an unlimited liability partnership.

(5) A partnership named by firm name must do all of the following, unless the partnership does not defend an action, respond to an application, or participate in a proceeding for judicial review or an appeal:

(a) appoint one counsel, if it chooses to be represented;

(b) appoint one member to speak for and bind the partnership in the proceeding, if it chooses to act on its own;

(c) file a pleading in the partnership name, not on behalf of any member individually;

(d) on demand made to a partnership that is not limited, deliver to each other party a list of the members of the firm including those who were partners on the earliest material date, all who became partners afterward, the date each became a partner, the date of retirement of those who retired after the earliest material date, the present address of each member, and information known to the partnership about the present address of a former member who retired after the earliest material date;

(e) assist in providing notice to each member if a claim is made against an unlimited partnership and the party making the claim delivers a notice of possible enforcement against members under Rule 79 - Enforcement by Execution Order.

(6) A party may not name, as another party, a member of a limited partnership or partnership named by firm name, unless one of the following exceptions applies:

(a) the member is a party claiming against the partnership;

(b) the member is a party claimed against by the partnership;

(c) a judge permits.

35.15 Consequential provisions

(1) A party who successfully moves to be joined in a proceeding must do all of the following, unless a judge orders otherwise:

(a) obtain copies of all pleadings, affidavits, and notices that have been filed in the proceeding;

(b) become informed of an outstanding motion and dates set for a motion, the status of the proceeding, including dates set for discovery, motion, conference, trial, hearing, or other steps;

(c) deliver to each other party a certified copy of the order joining the party.

(2) A party who successfully moves to join a person as a party must do all of the following, unless a judge orders otherwise:

(a) deliver copies of all pleadings and notices, documents effecting disclosure, and discovery transcripts to the new party;

(b) inform the new party of the status of the proceeding, including dates set for discovery, motion, conference, trial, hearing, or other steps;

(c) deliver a certified copy of the order to each other party.

(3) A new party joined by amendment or order must be notified in accordance with Rule 31.11, of Rule 31 - Notice.

Rule 36 - Representative Party

36.01 Scope of Rule 36

(1) This Rule allows for a party to represent the interests of another person in a proceeding, in one of the following ways:

(a) as a public official, in an official capacity;

(b) as litigation guardian for a child, or person who has been found not to have capacity to act on their own or to instruct counsel;

(c) as guardian under the *Guardianship Act* or a statutory representative;

(d) under a private instrument giving the party management of the property or affairs of the other person or appointing the party as representative, such as an executor under a will, a trustee under a trust that includes powers to sell or manage, or an attorney under a power of attorney;

(e) under a public instrument, such as a trustee in bankruptcy, a receiver under an order, an administrator of a deceased's estate, or an authority appointed by a tribunal or by a public authority under legislation;

(f) by appointment under this Rule.

(2) This Rule does not apply to a class proceeding or the appointment of a person to represent a group under Rule 68 - Class Proceeding.

(3) Rule 35 - Parties applies to a representative party, unless a provision is inconsistent with this Rule.

36.02 Describing representative

(1) A public official may be named as a party to a proceeding in the party's official capacity and be described, in the standard heading, by name, the name of the office, or both.

(2) In a relator proceeding, the public official on behalf of whom the relator acts must be described by the name of the office and that description must be followed by the words "by a relator" and the name of the relator, unless the public official refuses permission to bring the relator proceeding and is named as a defendant or respondent.

(3) All other representatives must be described by name, followed by the title given to them by the authority under which they are acting, followed by the name of the person they represent or estate they manage, such as "John Smith as trustee in bankruptcy of the estate of Jane MacDonald", or "Jane MacDonald as litigation guardian of John Smith", or "Jane MacDonald as receiver of Acme Limited".

36.03 Authority, approval, and directions

(1) A representative party who is a defendant or respondent may decide not to defend an action, contest an application, or participate in a judicial review or appeal, and a judge or the court may make the same order against the representative party or the represented person as would be made against an ordinary party who does not defend, contest, or participate in the proceeding.

(2) A representative party must obtain the permission of a judge to do any of the following, unless the representative party has the authority to do so under a private instrument or legislation:

(a) consent to judgment;

(b) settle a claim or proceeding;

(c) refrain from participating in a hearing for the assessment of damages or to determine another remedy;

(d) pay counsel's or the representative's fees or expenses.

(3) A representative party may request directions of a judge on any subject.

36.04 Representative must have counsel

(1) A representative party must act by counsel, unless a judge permits otherwise.

(2) A judge may withdraw permission for a representative to act without counsel, and require the representative to appoint a solicitor of record.

36.05 Public officials

(1) A proceeding by or against a public official in that person's official capacity does not terminate when the person ceases to hold the office.

(2) After a public official is replaced in office, a party may make a motion to amend the name of the public official in the heading and pleadings.

36.06 When litigation guardian required

(1) A child, or a person who has been found not to have capacity to act on their own or to instruct counsel, must start, defend, contest, or respond to a proceeding by a named litigation guardian, or a guardian under the *Guardianship Act* or a statutory representative.

(2) A person must start a proceeding against a child who has a guardian under the *Guardianship Act*, or person who has been found not to have capacity to act on their own or to instruct counsel and has a statutory representative, by naming both the person and the guardian or representative in the manner shown in this example: "Mary MacDonald, by her Guardian John Doe".

(3) A person may start a proceeding against a child who does not have a guardian under the *Guardianship Act*, or against a person who appears to lack the capacity to act on their own or to instruct counsel and who does not have a guardian under the *Incompetent Persons Act*, in either of the following ways:

(a) if a copy of a litigation guardian's statement under Rule 36.07 is delivered to the person, in the names of the child, or the person who appears to lack the capacity to act on their own or to instruct counsel, and the litigation guardian in the manner shown in this example: "John Smith by his litigation guardian, Mary Smith";

(b) otherwise, in the name of the child, or the person who appears to lack the capacity to act on their own or to instruct counsel, alone.

(4) A party who starts a proceeding, without a named guardian, against a child or a person who appears likely to be found not to have capacity to act on their own or to instruct counsel and who is, or becomes, aware of the age or incapacity of the other party may only take the following further steps in the proceeding until a litigation guardian's statement is filed or a judge appoints a litigation guardian:

(a) taking steps necessary to start the proceeding;

(b) giving notice of the proceeding in accordance with Rule 31 - Notice;

(c) making a motion for the appointment of a litigation guardian.

(5) The heading of a proceeding started in the name of a child, or a person who has been found not to have capacity to act on their own or to instruct counsel, without a guardian must refer to the litigation guardian after a litigation guardian's statement is filed or an order is made appointing a litigation guardian.

36.07 Becoming litigation guardian

(1) A guardian of a child under the *Guardianship Act* must start, defend, contest, or respond to a proceeding involving the child, in the name of the child and by the guardian, unless a judge orders that another person act as litigation guardian.

(2) 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.

(3) In all other instances, a person may become the litigation guardian by filing a litigation guardian's statement. The litigation guardian's statement must be filed when the notice of action is filed, unless otherwise ordered by a judge.

(4) The litigation guardian's statement must include one of the following kinds of headings:

(a) a standard heading with the words "Intended Proceeding in the Supreme Court of Nova Scotia" instead of "Supreme Court of Nova Scotia", if the statement is signed before a proceeding is started;

(b) the standard heading of the proceeding, modified if necessary to add the litigation guardian's name and title.

(5) The litigation guardian's statement must be entitled "Litigation Guardian's Statement", be signed personally by the litigation guardian, and include all of the following:

(a) the guardian's consent to be litigation guardian for the party;

(b) a description of the litigation guardian's relationship to the party;

(c) confirmation the litigation guardian has appointed counsel for the party;

(d) a representation that the litigation guardian has no interest in the proceeding adverse to that of the party;

(e) an acknowledgment that costs are normally awarded for or against a party rather than the party's litigation guardian, but that a litigation guardian may be liable for costs if the guardian abuses the court's processes.

(6) The litigation guardian's statement may be in Form 36.07.

36.08 Replacing or discharging litigation guardian

(1) A judge may appoint, discharge, or replace a litigation guardian.

(2) A litigation guardian for a child ceases to have authority when the party ceases to be a child, and the party must make a motion to amend the heading to remove the reference to the guardian.

36.09 Duties of litigation guardian

(1) A litigation guardian may make any decision a party could make in a proceeding except the litigation guardian must make decisions according to what, in like circumstances, a reasonable person would do in the person's own interests.

(2) The litigation guardian of a child sixteen or more years of age must keep the child informed of the proceeding, consult the child before making decisions that affect the child, and encourage the child to consult directly with counsel.

(3) A litigation guardian who, despite the litigation guardian's statement, has an interest in the proceeding adverse to that of the represented party must obtain the appointment of a replacement guardian or make a motion for directions.

(4) All duties of a party in a proceeding must be discharged by the litigation guardian on behalf of the party.

(5) A litigation guardian for a child must advise each other party of the child's date of birth.

(6) A litigation guardian for a person who has been found not to have capacity to act on their own or to instruct counsel must advise each other party of the details of the disability and any orders or decisions of a judge, court, or tribunal regarding the party and the incapacity.

36.10 Representative of unknown persons

(1) In a proceeding concerning the administration of an estate of a deceased, property subject to a trust, or the interpretation of an instrument or legislation, a judge may appoint a person to be a party to represent any of the following persons:

(a) unborn and other unascertained persons;

(b) the members of a class who may have a future, contingent, or unascertained interest in a subject of the proceeding;

(c) persons who may be affected by the proceeding but cannot reasonably be identified or found.

(2) An order in a proceeding in which a person is represented under this Rule 36.10 binds the represented person.

36.11 Executor, administrator, or trustee

(1) An executor, administrator, or trustee may bring a proceeding for the benefit of an estate without joining a beneficiary as a party, and a person may bring a proceeding against an executor, administrator, or trustee without joining a beneficiary, except a beneficiary is required to be a party in each of the following kinds of proceedings:

(a) proof of a will in solemn form;

(b) a proceeding in which a will or trust instrument is to be interpreted, if the interpretation may affect the interests of the beneficiary;

(c) a proceeding in which the executor, administrator, or trustee claims against the beneficiary, or the beneficiary claims against the executor, administrator, or trustee;

(d) an application to remove an executor, administrator, or trustee;

(e) an application for the court to appoint a new executor, administrator, or trustee, or for court administration of an estate, or for the execution of a trust.

(2) Two or more executors of the estate of the same deceased may join as plaintiffs, applicants, applicants for judicial review, or appellants, or one must join the other as a defendant or respondent.

(3) A proceeding is properly commenced against an executor or administrator before the grant of probate or administration, if the grant is subsequently obtained.

36.12 Representative of deceased person's estate

(1) A judge may appoint a person to be a party representing the estate of a deceased person whose estate has no executor, administrator, or other personal representative.

(2) An order in the proceeding binds the estate to the same extent as it would do so had an executor, administrator or other personal representative been a party.

(3) A judge may replace a representative party with an executor, administrator, or other personal representative who is appointed, or whose appointment becomes known, after the representative party is appointed.

(4) A failure to name a representative of an estate, or a failure to secure the appointment of a representative and name that party, may be corrected under Rule 35.08, of Rule 35 - Parties.

36.13 Settlement by representative

(1) A person who requires the approval of a judge for a settlement on behalf of, or for the benefit of, another person may seek the approval by making a motion in a proceeding or, if there is no proceeding, by starting one under Rule 5 - Application.

(2) All of the following are necessary parties to an application for an order approving a settlement:

(a) as applicant, the personal representative or, if there is no personal representative, a litigation guardian and the child or person who appears likely to be found not to have capacity to act on their own or to instruct counsel;

(b) as respondent, the other party to the settlement.

(3) The motion or application must be supported by an affidavit providing all of the following evidence, unless a judge directs otherwise:

(a) the material facts and expert opinions, both of which may be sworn to or affirmed on information and belief;

(b) the proposed terms of settlement;

(c) counsel's opinion or, a lawyer's opinion provided to a representative who is permitted to act on their own, that the settlement is in the best interests of the represented party;

(d) the grounds for the opinion expressed by counsel, or another lawyer, in detail;

(e) the guardian's or litigation guardian's position on the settlement.

(4) The affidavit evidence in a proceeding in which a child is a party must include all of the following additional information, unless a judge directs otherwise:

(a) proof of the child's date of birth by birth certificate, or by other means if a birth certificate cannot be obtained;

(b) the consent of a child who is sixteen years of age or more, or the reason consent is not given and the reason for not leaving the proceeding in abeyance until the child is nineteen years of age.

(5) The affidavit evidence in a proceeding for personal injuries suffered by a represented party must include all of the following information, unless a judge directs otherwise:

(a) a report containing a medical opinion, grounds, and all other information necessary to determine the status of the injuries and prognosis for recovery;

(b) a report updating the report containing the medical opinion, if further relevant information comes to light;

(c) the opinion of counsel, or the opinion of a lawyer provided to a representative who is permitted to act on their own, on the amount a court would likely award under each head of damages put forward on behalf of the represented party, including, if applicable, pain and suffering and loss of amenities of life, loss of past income, loss of future income earning capacity, loss of ability to do valuable but unpaid work, actual and future medical expenses, actual care expenses, future cost of care, out of pocket expenses, and prejudgment interest.

(d) counsel's assessment of the risk in proceeding to trial or hearing, or the assessment of a lawyer provided to a representative who is permitted to act on their own.

(6) A judge may approve a settlement, including a structured settlement, if the judge is satisfied the settlement is in the best interests of the represented party, and any fund or property for the represented party is adequately protected by the terms of a trust.

36.14 Trust for represented party

(1) A judge who approves a settlement that produces a fund or other property for the represented party must order that the fund or property be held in trust, and appoint a trustee.

(2) The person who seeks approval of the settlement must file each of the following documents:

(a) a draft order that includes all the proposed terms of the trust;

(b) the proposed trustee's undertaking to account to the court and to the represented party, including by filing and delivering a statement of receipts and disbursements when a judge directs, when the trust terminates, and, if the represented party is a child, no more than six months after the represented party's nineteenth birthday;

(c) a certificate signed by a lawyer, who may be counsel, that the lawyer explained to the proposed trustee the duties the trustee would have under the order and the undertaking.

(3) The trust must include terms for all of the following:

(a) appointment of the litigation guardian, or some other fit person, as trustee;

(b) payment of the trustee's fees and expenses;

(c) payments for the benefit of the represented party, including a specific description of the kinds of payments that may be made;

(d) safe investment of trust funds, or provisions for the safekeeping of other property;

(e) variation of the trust on motion of an interested person;

(f) termination of the trust and distribution to the represented party if a represented child turns nineteen, or a represented person who was not capable of managing their affairs becomes capable and the guardian is discharged;

(g) compliance with the undertaking to account to the court and the represented party.

(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.

36.15 Approval of counsel's accounts

(1) Counsel who is to be paid by a represented party from a fund owned directly or beneficially by a represented party, or from funds of an estate, must make a motion for a judge to allow counsel's account, unless the instrument or other authority under which the representative was appointed provides otherwise.

(2) The motion must be supported by an affidavit providing evidence of all of the following:

(a) the terms of retention and, if the terms included payment on a contingency, a copy of the contingency agreement;

(b) a description of the services rendered by counsel, including, unless a judge permits a summary, the date, amount of time, and description of each service;

(c) details of the disbursements;

(d) counsel's usual hourly rate, if counsel has established an hourly rate;

(e) the hourly rate charged on the account, if counsel charges the representative party by the hour;

(f) an explanation of the risks undertaken by counsel, if the retention was on a contingency;

(g) a copy of the account, which may include an amount required to conclude counsel's work.

(3) The affidavit may provide other relevant information, such as information for evaluating counsel's charges based on results achieved, skill, experience, and timeliness.

(4) A representative may make a motion for directions about an account submitted by counsel.

36.16 Approval of representative's accounts

(1) A representative who wishes to be paid for services from a fund owned directly or beneficially by the represented party must make a motion for permission to make the payment.

(2) A representative who has expended the represented party's funds, proposes to expend the funds, or wishes to be reimbursed from the funds may make a motion to approve the representative's receipts and disbursements.

(3) A representative who does not have authority to pay themselves, or to make expenditures without court approval, must make a motion for allowance of an account for services and approval of an account for receipts and disbursements.

Rule 37 - Consolidation and Separation

37.01 Scope of Rule 37

A judge may consolidate proceedings, trials, or hearings or may separate or sever parts of a proceeding, in accordance with this Rule.

37.02 Consolidation of proceedings

A judge may order consolidation of proceedings if the proceedings to be consolidated are of the same kind, that is to say, actions, applications, applications for judicial review, or appeals, and one of the following conditions is met:

(a) a common question of law or fact arises in the proceedings;

(b) a same ground of judicial review or appeal is advanced in the applications for judicial review or appeals and the ground involves the same or similar decision-makers;

(c) claims, grounds, or defences in the actions or applications involve the same transaction, occurrence, or series of transactions or occurrences;

(d) consolidation is, otherwise, in the interests of the parties.

37.03 Proceedings to be tried or heard together

A judge may order that proceedings be tried or heard together, or in sequence.

37.04 Issues to be tried or heard together

(1) A judge may order common issues in two or more proceedings be tried, or heard, together.

(2) The judge who orders the trial, or hearing, together of common issues may provide times for the trial, or hearing, of the issues that are to be tried, or heard, separately.

37.05 Separating parts of a proceeding

A judge may separate parts of a proceeding for any of the following reasons:

(a) a party joined a party or claim inappropriately;

(b) although appropriately joined in the first place, it is no longer appropriate for the party or claim to be joined with the rest of the parties and claims in the proceeding;

(c) the benefit of separating the party or claim from another party or claim outweighs the advantage of leaving them joined.

37.06 Directions

A judge who orders consolidation of proceedings, trials, or hearings or separates parts of a proceeding may give directions for the course of a proceeding in which the order is made, including directions on any of the following subjects:

(a) in an action, the status of each party as plaintiff, defendant, third party or intervenor;

(b) in an action, the status of each claim as main claim, counterclaim, crossclaim or third party claim;

(c) amendments;

(d) place of the proceeding, trial, or hearing.

Part 9 - Pleading, Affidavit, and Brief

Rule 38 - Pleading

38.01 Scope of Rule 38 and definition

(1) A party may prepare a pleading, claim a declaratory judgment, or obtain particulars of a claim, defence or ground, in accordance with this Rule.

(2) In this Rule,

"statement of claim" includes a statement of counterclaim, crossclaim, and claim against third party;

"statement of defence" includes a statement of defence to counterclaim, crossclaim, third party claim, or subsequent claim.

38.02 General principles of pleading

(1) A party must, by the pleading the party files, provide notice to the other party of all claims, defences, or grounds to be raised by the party signing the pleading.

(2) The pleading must be concise, but it must provide information sufficient to accomplish both of the following:

(a) the other party will know the case the party has to meet when preparing for, and participating in, the trial or hearing;

(b) the other party will not be surprised when the party signing the pleading seeks to prove a material fact.

(3) Material facts must be pleaded, but the evidence to prove a material fact must not be pleaded.

(4) A party may plead a point of law, if the material facts that make it applicable are also pleaded.

38.03 Pleading a claim or defence in an action

(1) A claim or defence in an action, and a claim or defence in a counterclaim, crossclaim, or third party claim, must be made by a statement of claim that conforms with Rules 4.02(4) and 4.03(5), of Rule 4 - Action, or a statement of defence that conforms with Rule 4.05(4) of Rule 4.

(2) The following additional rules of pleading apply to all pleadings in an action:

(a) a description of a person in pleadings must not contain more personal information than is necessary to identify the person and show the person's relationship to a claim or defence;

(b) claims or defences may be pleaded in the alternative, but the facts supporting an alternative claim or defence must be pleaded distinctly;

(c) a pleading that refers to a material document, such as a contract, written communication, or deed must identify the document and concisely describe its effect without quoting the text, unless the exact words of the text are themselves material;

(d) a pleading that alleges notice is given must state when the notice was given, identify the person notified, and concisely describe its content without quoting the text, unless the exact words of the text are themselves material.

(3) A pleading must provide full particulars of a claim alleging unconscionable conduct, such as fraud, fraudulent misrepresentation, misappropriation, or malice.

38.04 Further rules for pleading a claim in an action

The performance or occurrence of a condition necessary to a claim is implied from the pleading of the claim and need not be included in a statement of claim, and the party who alleges non-performance or non-occurrence of the condition must specifically plead it in the statement of defence.

38.05 Further rules for pleading a defence

The following further rules of pleading apply to a statement of defence:

(a) it must, if it is denied, expressly and specifically deny the right of a party to claim in an alleged representative capacity, the constitution of an alleged partnership, the incorporation of an alleged corporation, the legality of a contract, or the binding effect of an alleged contract;

(b) it must, if it is claimed, specifically plead non-performance or non-occurrence of a condition to a right or obligation;

(c) it must specifically plead any material fact or points of law on which the party intends to rely at trial and that, if not specifically pleaded, would take the other party by surprise or raise an issue not clearly raised by the statement of claim and the party's denials and version of the material facts.

38.06 Pleading grounds in an application

The following rules of pleading apply to a statement of grounds or notice of contest in an application and they are further to the rules of pleading provided in Rules 5.02 to 5.04, 5.07, and 5.08, of Rule 5 - Application:

(a) the grounds must be stated in such a way that the relevance of each statement in an affidavit filed, or to be filed, by the party is apparent;

(b) a description of a person must not contain more personal information than is necessary to identify the person and show the person's relationship to a claim or ground of contest.

38.07 Claiming a remedy in an action or application, including declaratory judgment

(1) A statement of claim, an *ex parte* application, and a notice of application must state the remedy the party seeks from the court, except that a claim for costs is presumed.

(2) A statement of defence, or contest, need not claim a dismissal of the action, counterclaim, crossclaim, third party claim, or application, and a claim for costs is presumed.

(3) The statement of claim must state each of the following:

(a) the amount claimed for damages, if the claim is only on a debt, another liquidated demand, or an ascertained amount;

(b) the particulars of a claim for damages other than damages referred to in Rule 38.07(3)(a), but not the amount the party seeks;

(c) all remedies other than damages claimed by the party.

(4) The *ex parte* application or notice of application must state the remedy sought by describing the order the applicant seeks.

(5) A party making a claim in an action or an application may plead or apply for a declaration of the legal status or right of a person.

38.08 Requiring particulars in an action

(1) A party to an action may deliver to another party a demand for a further and better statement of a claim or defence.

(2) The party may only demand a statement that the other party could have included in the original pleading, and the party must not demand evidence or a description of evidence.

(3) The demand must contain the standard heading, be entitled "Demand for Particulars", be dated and signed, demand particulars, and describe each particular in separately numbered sentences.

(4) The demand for particulars may be in Form 38.08.

(5) The demand may not be filed with the court.

(6) A judge may order a party to provide a further or better statement of a claim or defence.

38.09 Providing particulars in an action

(1) The party to whom a demand for particulars is delivered must file an answer no more than ten days after the day the demand is delivered.

(2) The answer must contain the standard heading, be entitled "Answer to Demand for Particulars", be dated and signed, identify the party demanding particulars and the party answering, repeat each numbered demand and, after each demand, provide one of the following statements:

(a) a response to the demand that becomes part of the pleading to which it relates;

(b) a refusal to respond and the reason for the refusal.

(3) The answer to demand for particulars may be in Form 38.09.

38.10 Obtaining particulars in an application, judicial review, or appeal

(1) A party to an application, proceeding for judicial review, or an appeal may request particulars of a ground, and the party to whom the request is delivered must, in writing, answer the request or reserve the request for direction of a judge.

(2) A party to an application who is requested to provide particulars may give an answer by referring to evidence in an affidavit.

38.11 Close of pleadings

Pleadings close in an action on the day when each party claimed against has filed a notice of defence, has filed a demand of notice, or has become disentitled to further notice, unless the parties agree or a judge orders otherwise.

38.12 Amendment of pleading

Pleadings are amended as provided in Rule 83 - Amendment.

Rule 39 - Affidavit

39.01 Scope of Rule 39

A party may make and use an affidavit, and a judge may strike an affidavit, in accordance with this Rule.

39.02 Affidavit is to provide evidence

(1) A party may only file an affidavit that contains evidence admissible under the rules of evidence, these Rules, or legislation.

(2) An affidavit that includes hearsay permitted under these Rules, a rule of evidence, or legislation must identify the source of the information and swear to, or affirm, the witness' belief in the truth of the information.

39.03 Editing exhibit

(1) A party must edit out personal information not required to prove or disprove a fact in issue from an exhibit attached to, or referred to in, an affidavit to be filed by the party.

(2) A party who edits information from an exhibit must do so in such a way that the reader of the exhibit sees where text has been edited out, such as by obliterating text on part of a page, leaving a shaded blank in the text of electronic information, or inserting a note that indicates a number of pages or a quantity of text has been removed.

(3) The party must, on demand, produce the unedited document or electronic information for inspection by another party.

39.04 Striking part or all of affidavit

(1) A judge may strike an affidavit containing information that is not admissible evidence, or evidence that is not appropriate to the affidavit.

(2) A judge must strike a part of an affidavit containing either of the following:

(a) information that is not admissible, such as an irrelevant statement or a submission or plea;

(b) information that may be admissible but for which the grounds of admission have not been provided in the affidavit, such as hearsay admissible on a motion but not supported by evidence of the source and belief in the truth of the information.

(3) If the parts of the affidavit to be struck cannot readily be separated from the rest, or if striking the parts leaves the rest difficult to understand, the judge may strike the whole affidavit.

(4) A judge who orders that the whole of an affidavit be struck may direct the prothonotary to remove the affidavit from the court file and maintain it, for the record, in a sealed envelope kept separate from the file.

(5) A judge who strikes parts, or the whole, of an affidavit must consider ordering the party who filed the affidavit to indemnify another party for the expense of the motion to strike and any adjournment caused by it.

39.05 Scandalous affidavit

A party who files a scandalous, irrelevant, or otherwise oppressive affidavit is subject to the provisions of Rule 88 - Abuse of Process.

39.06 Use of affidavit in same proceeding

(1) An affidavit may be filed for use on a motion or application.

(2) An affidavit filed on a motion in a proceeding may be used on another motion in the proceeding, if the party who wishes to use the affidavit files a notice to that effect before the deadline for that party to file an affidavit on the motion.

(3) The affidavit may be used for other purposes in the proceeding, if a judge permits.

39.07 Use of affidavit in other proceeding

An affidavit filed with the court may be used, in whole or in part, in another proceeding for either of the following purposes:

(a) to impeach the witness who swore or affirmed the affidavit;

(b) to prove a fact, if the affidavit or the part does not contain hearsay or the hearsay is admissible under legislation, these Rules, or a rule of evidence that provides an exception to the rule excluding hearsay.

39.08 Form of affidavit

(1) An affidavit must be entitled “Affidavit” and the title may include other words to distinguish it from other affidavits, such as including the name of the witness who swears or affirms the affidavit, the date it is sworn or affirmed, or the word “supplementary”.

(2) An affidavit must contain the standard heading, and include all of the following:

(a) the opening, identifying the witness and showing that the witness is giving sworn or affirmed evidence;

(b) the witness' statement, by which the relationship of the witness to the proceeding is stated, and the witness swears or affirms that the affidavit contains only information based on personal knowledge, or hearsay with a statement of the source and the witness' belief of the information;

(c) the body, providing the main evidence, with each sentence set out separately and numbered and with references to exhibits by letter, number, or other identifier;

(d) a jurat showing that an oath or affirmation was administered, and the date and place when and where the witness personally appeared before the authority administering it;

(e) the printed name and official capacity of the authority administering the oath or affirmation.

(3) An exhibit that can be attached conveniently to the affidavit must be attached when it is sworn or affirmed, and an exhibit that cannot be attached conveniently must be filed with the affidavit.

(4) The pages of a long exhibit must be numbered, and ten or more exhibits attached to the same affidavit must be separated by a numbered or lettered tab.

(5) An affidavit with ten or more exhibits must include, before the exhibits, a table of contents identifying each exhibit and its tab number or letter.

(6) An affidavit may be in Form 39.08.

39.09 Proof of exhibit

(1) A party who files an affidavit that includes an exhibit must ensure that the authority who administers the oath or affirmation marks the exhibit so it is clear that it is the exhibit referred to in the affidavit.

(2) An exhibit is adequately marked if the following are placed on, or attached to, the exhibit and the exhibit is signed by the authority administering the oath or affirmation:

(a) the registry number;

(b) the number, letter, or other identifier by which the exhibit is referred to in the affidavit;

(c) the name of the witness;

(d) a reference to the witness' oath or affirmation;

(e) the date the affidavit is sworn or affirmed.

(3) The writing that marks an exhibit may be in Form 39.09.

39.10 Administering oath or affirmation

(1) Two or more witnesses may swear or affirm a single affidavit with separate jurats for each witness, if they are sworn or affirmed separately, and a single jurat if they are sworn or affirmed together.

(2) A witness who cannot read may swear or affirm an affidavit certified by the authority who administers the oath or affirmation as having been read to the person, or the person may give evidence orally under oath or affirmation before a court reporter who provides a certified transcript.

(3) A witness who reads, but does not read English, may swear or affirm an affidavit in a language the witness does read, or swear an affidavit in English certified by the authority who administers the oath or affirmation to have been translated for, and apparently understood by, the witness.

(4) A witness who cannot see may swear or affirm an affidavit in Braille or swear or affirm an affidavit certified by the authority who administers the oath or affirmation to have been read to the witness.

(5) An affidavit that has been marked or written on, such as where a witness writes on or draws a line through words in a draft affidavit to correct it, may be sworn or affirmed if the authority administering the oath or affirmation initials a mark or writing to show it was there when the affidavit was sworn.

(6) An officer or employee of a corporate party may swear or affirm an affidavit required to be sworn or affirmed by a party and any partner may swear or affirm such an affidavit for a partnership.

Rule 40 - Brief

40.01 Scope of Rule 40

A party may prepare and submit a brief, in accordance with this Rule.

40.02 Counsel's discretion

(1) A brief must concisely summarize the facts, applicable law, and arguments and be signed by the person making the submission.

(2) Copies of authorities referred to in the brief must be delivered with the brief, unless the judge directs otherwise.

(3) A judge may require that the brief and materials filed with it be printed, provided in an electronic format, or both.

(4) The form of a brief is in the discretion of counsel or that of a party acting on their own, except as provided in this Rule 40.02.

40.03 Filing brief and delivering duplicate

(1) A party who submits a brief, other than a brief for a settlement conference, must file the brief, a duplicate of the brief for the judge, one book of authorities that conforms with Rule 40.06, and no duplicate brief of authorities.

(2) The duplicate must be delivered to the prothonotary with the copy for the record or to the judge's office, as the judge directs.

40.04 Suggestions for form and content

(1) A brief may be on neutral paper rather than letterhead, or in a neutral electronic format, similar to other court documents.

(2) The cover page may provide all of the following:

(a) the standard heading, or just the names of the parties and the court number;

(b) the date and place of the motion, settlement conference, application, or trial to which the brief relates;

(c) the name of counsel submitting the brief and the party counsel represents, or the name of the party submitting the brief on their own;

(d) the names of all other counsel, the name of the party counsel represents, information for contacting counsel, and the names and designated addresses of parties acting on their own.

(3) In providing the concise summary of the facts, applicable laws, and argument, the brief may be divided into numbered paragraphs, one for each new subject.

40.05 Book of documents with trial brief

A brief for a trial that refers to a provision of a document or electronic information to be proved at trial may, if the authenticity of the document or electronic information is uncontested, be filed with one book, or an electronic copy, of the documents or electronic information made in accordance with the following requirements:

(a) include a table of contents identifying each document, or item of electronic information, by its identifier;

(b) provide only copies of crucial documents, or electronic information, admitted to be authentic;

(c) edit the copies to remove extraneous material, or highlight the relevant provisions;

(d) separate each copy of a document or item of electronic information;

(e) number the pages of a long document that is not numbered in the original and provide identifiers for the paragraphs of electronic information that are lengthy and do not identify paragraphs.

40.06 Book of authorities with brief

(1) A brief for a trial or hearing that refers to authorities must be filed with one book of authorities made in accordance with the following requirements:

(a) include a table of contents identifying each authority by its neutral citation;

(b) edit each authority to remove all text the judge does not need to read to understand the point made in the brief;

(c) if the text to be copied omits paragraph numbers provided in the original publication, insert numbers;

(d) separate the copies by physical tabs or by identifiers.

(2) The book of authorities must be printed, unless a judge directs that it is to be produced electronically.

40.07 Destruction or return

(1) The judge to whom a brief is delivered, or a person authorized by the judge, may destroy or return a booklet of documents, a booklet of authorities, and the judge's copy of the brief after the judge is finished with them.

(2) A brief, booklet of documents, and booklet of authorities for a settlement conference must be destroyed or returned when the settlement conference concludes.

Part 10 - Temporary Remedies

Rule 41 - Interlocutory Injunction and Receivership

41.01 Definitions

In this Rule,

"interim injunction" and "interim receivership" mean an order for an injunction or receivership effective before a motion for an interlocutory injunction or interlocutory receivership is determined;

"interlocutory injunction" and "interlocutory receivership" mean an order for an injunction or receivership granted on notice of motion and effective before the trial of an action or hearing of an application to which the interlocutory injunction or interlocutory receivership relate;

41.02 Scope of Rule 41

(1) Nothing in this Rule alters the general law about obtaining an interim or interlocutory injunction before a dispute is heard and determined on the merits.

(2) An interim receivership serves to control a corporation or other entity, or to protect assets, until a motion for an interlocutory receivership is determined.

(3) An interlocutory receivership serves one of the following purposes:

(a) to control a corporation or other entity during a dispute about the corporation or entity;

(b) to liquidate some or all assets at issue so as to preserve the value of the assets pending the outcome of a dispute;

(c) to serve a function similar to an interlocutory injunction before default judgment, summary judgment, or the trial or hearing of a defended or contested proceeding for a final receivership order;

(d) otherwise, to achieve justice in a proceeding about a corporation, another entity, or assets.

(4) An order for a permanent injunction or a final order for receivership may be obtained after an action or an application is determined, under Rule 73 - Receiver, or Rule 75 - Injunction.

(5) This Rule has no application to a motion for the appointment of an interim receiver under the *Bankruptcy and Insolvency Act*.

(6) A party may make a motion for an interim or interlocutory injunction, or an interim or interlocutory receivership, in accordance with this Rule.

(7) A judge may grant an injunction, or appoint a receiver, before the trial of an action or hearing of an application, in accordance with subsection 43(9) of the *Judicature Act* and this Rule.

41.03 Motion on notice

A party who moves for an interlocutory injunction or interlocutory receivership must make the motion by notice of motion to be heard in chambers or by special appointment.

41.04 Interim injunction or receivership

(1) A party who files an undertaking as required by Rule 41.06 may make a motion for an interim injunction or interim receivership.

(2) A judge who is satisfied on all of the following may grant the motion:

(a) the party claims an injunction or receivership as a final remedy in the proceeding, or it is in the interests of justice that an injunction or receivership be in place before determination of the claims in the proceeding;

(b) the party has moved, or will move, for an interlocutory injunction or interlocutory receivership and is proceeding without delay;

(c) an urgency exists and it cannot await the determination of the motion for an interlocutory injunction or interlocutory receivership;

(d) considering all of the circumstances, it is just to issue an order for an interim injunction or interim receivership.

41.05 *Ex parte* interim injunction or receivership

(1) A judge who is satisfied there are circumstances of sufficient gravity to justify making a motion for an interim injunction or interim receivership without notice may grant an *ex parte* order.

(2) Rules 22.04 to 22.09 of Rule 22 - General Provisions for Motions apply to an *ex parte* motion for an interim injunction or interim receivership.

41.06 Undertaking and award of damages

(1) A party who makes a motion for an interim or interlocutory injunction, or an interim or interlocutory receivership, must file, with the *ex parte* motion or notice of motion, an undertaking to do all of the following:

(a) indemnify another party for losses caused by the interim or interlocutory injunction or the interim or interlocutory receivership if a judge who finally determines the claim is satisfied that the injunction or receivership is not justified in light of the findings on final determination;

(b) move without delay for an interlocutory injunction or interlocutory receivership, if the party successfully makes a motion for an interim injunction or interim receivership;

(c) bring the party's claim to a final determination without delay.

(2) A judge may assess damages, and grant an order for judgment on an undertaking after a claim is discontinued or dismissed.

(3) A failure to proceed without delay may be dealt with under Rule 88 - Abuse of Process.

41.07 Powers and duties of interim or interlocutory receiver

(1) A judge who orders the appointment of an interim or interlocutory receiver may specify powers and duties of the receiver in the order.

(2) A judge may vary the powers and duties of the receiver by subsequent order.

(3) The duties of a receiver and powers of a judge, under Rule 73 - Receiver, apply to an interim or interlocutory receivership.

41.08 Restraining or mandatory injunction

An interim or interlocutory injunction may be restraining, mandatory, or part restraining and part mandatory.

41.09 Termination and variation

(1) An interlocutory injunction or interlocutory receivership terminates when the claim to which it relates is discontinued, or the claim is finally disposed of and the final disposition does not provide for the interlocutory injunction or interlocutory receivership to continue as a final injunction or final receivership.

(2) A judge who is satisfied that circumstances have changed may terminate, or vary the terms of, an interlocutory injunction or interlocutory receivership.

41.10 Order in aid of another court

(1) A judge who is satisfied on all of the following may, in a proceeding started under Rule 5 - Application, grant an order for an interim or interlocutory injunction or receivership to aid the similar order of a court of another jurisdiction:

(a) the order of the other court is made on a basis on which a similar order may be made in Nova Scotia;

(b) the order of the Supreme Court of Nova Scotia will aid the enforcement or effectiveness of the order of the other court;

(c) there is no proceeding under which the same issues in the proceeding before the other court are to be determined by the Supreme Court of Nova Scotia;

(d) the party against whom the order is made is protected in ways similar to the requirement for an undertaking to pay damages, and to proceed without delay, in Rule 41.06.

(2) An interlocutory injunction or interlocutory receivership order made by a superior court of another province or a territory of Canada is presumed to be made on a basis on which a similar order may be made in Nova Scotia.

Rule 42 - Preservation Order

42.01 Scope of Rule 42

(1) A party to a proceeding may make a motion for an order preserving any of the following, in accordance with this Rule:

(a) evidence that is relevant to an issue in the proceeding;

(b) property claimed in the proceeding;

(c) assets that would be available to satisfy a judgment claimed in the proceeding.

(2) A similar motion may be made to a prothonotary in limited circumstances under Rule 43 - Temporary Recovery Order, and Rule 44 - Attachment.

42.02 Preservation of evidence or property by injunction

(1) A party who files an undertaking as required by Rule 42.07 may make a motion for an injunction to preserve evidence relevant to an issue in, or to preserve property claimed in, a proceeding.

(2) The motion must be made on notice to each party and the person in control of the evidence or property, unless the motion may be made *ex parte* under Rule 22.03, of Rule 22 - General Provisions for Motions.

(3) The order may be restraining, mandatory, or part restraining and part mandatory.

42.03 Preservation of evidence or property by seizure (*Anton Piller* or similar orders)

(1) A party who files an undertaking as required by Rule 42.07 may make an *ex parte* motion for an order for seizure of evidence relevant to an issue in, or property claimed in, a proceeding.

(2) The party must satisfy the judge that the party has met requirements of the common law for an order for seizure, such as the requirements on each of the following subjects:

(a) the need for an *ex parte* order to preserve the property or evidence;

(b) the strength of the party's case;

(c) the likelihood of the evidence or property being hidden, removed, lost, or destroyed;

(d) the seriousness of the damage to the party if the evidence or property is hidden, removed, lost, or destroyed.

(3) An order for delivery or seizure must include terms for preserving the thing that is the subject of the order while causing the least intrusion on the party who holds it, and each of the following kinds of orders is less intrusive than the next:

(a) a preservation order restraining the person who holds the thing from disposing of it, requiring the person to preserve it, or providing a combination of restraints and mandatory requirements necessary in the circumstances;

(b) seizure by injunction to put another person in control of the thing by forced delivery, such as a mandatory injunction requiring the person holding the thing to deliver it to the sheriff, an experienced insolvency practitioner, or another person approved by the judge;

(c) an order for seizure of the thing by the sheriff, an experienced insolvency practitioner, or another person approved by the judge.

(4) The order must provide a time, date, and place for a rehearing on notice.

(5) The order may provide terms, including terms for storage of the thing until the rehearing.

42.04 Entry, contempt, and use of force

(1) An order for delivery or seizure may authorize a person appointed under the order to enter on lands or to take control of a moveable.

(2) The order may include a direction requiring a person who receives notice of the order to cooperate in the delivery or seizure.

(3) The provision in the order containing the direction may include the words "Failure to obey this direction may be punishable as a contempt of court."

(4) The order must not authorize the use of force against a person, but it may authorize the person appointed under the order to open a building or moveable, including to break a lock or take down a barrier.

(5) The order must require the appointed person to do all of the following:

(a) hold the thing delivered or seized;

(b) not permit access by a party until further order;

(c) file a report in writing about the enforcement of the order before the date set for the rehearing.

42.05 Supervising lawyer

(1) A judge who grants an order for delivery or seizure may appoint a lawyer to supervise the delivery or seizure.

(2) The judge must appoint a lawyer to act as supervisor of a delivery or seizure that may include the delivery or seizure of a thing containing privileged information.

(3) The person appointed to take delivery or make a seizure must follow the directions of a supervising lawyer.

42.06 Rehearing

The provisions about rehearing an *ex parte* motion, in Rule 22 - General Provisions for Motions, apply to an *ex parte* motion for a preservation order.

42.07 Undertaking and award of damages

(1) A party who makes a motion for an order preserving evidence or property must file, with the *ex parte* motion or notice of motion, an undertaking to do all of the following:

(a) indemnify a person who has an interest in the property that is the subject of the order for losses caused by the enforcement of the order, if a judge who finally determines the claim is satisfied that the order is not justified in light of the findings on final determination;

(b) move without delay for an interlocutory injunction or interlocutory receivership, if the party successfully makes a motion for an interim injunction or interim receivership;

(c) bring the party's claim to a final determination without delay.

(2) A judge may assess damages, and grant an order for judgment on an undertaking, after a claim is discontinued or dismissed.

(3) A failure to proceed without delay may be dealt with under Rule 88 - Abuse of Process.

42.08 Privilege and other confidential information

(1) A preservation order that might cause one of the following to be taken from a person, or shown to anyone other than the person holding it, must include terms protecting confidential information:

(a) records that are likely to include communications between a lawyer and the lawyer's client;

(b) records that are likely to include other privileged communications;

(c) anything that, when inspected or tested, may give up a trade secret or otherwise disclose confidential information.

(2) The terms of the order may include a process for making and determining claims of privilege or confidentiality and a requirement that a judge, the court, or an independent lawyer hold the thing preserved until the claims are determined.

42.09 Sale of property

(1) A judge who is satisfied that the property is perishable or is diminishing in value, or that it is otherwise in the interests of justice to order a sale, may order the sale of property, including land, that is the subject of a claim in a proceeding.

(2) The property may be sold in accordance with Rule 74 - Other Sales by the Court.

(3) The proceeds of the sale must be paid into court, unless the order for sale provides otherwise.

(4) Interests in the property continue as interests in the proceeds of sale as if the proceeds were the property.

42.10 Dispute about security interest

(1) A party who claims property held, or claimed to be held, by another party under an instrument that secures the payment of money may pay into court the amount claimed, interest calculated under the instrument to the date when the claim is likely to be finally determined, and estimated costs.

(2) A judge may order the party claiming property under a security instrument to deliver the property to the party paying the money into court.

(3) The security interest, and any other interest in the property, continues against the fund in court as if the fund were the property.

42.11 Preservation of assets (*Mareva* Injunction)

(1) A party who files an undertaking required by Rule 41.06, of Rule 41 - Interlocutory Injunction and Receivership, may make a motion for an interim or interlocutory injunction that does any of the following:

(a) restrains a party from disposing of assets available to satisfy a judgment claimed in the proceeding;

(b) restrains a party from removing assets from Nova Scotia;

(c) requires a party or other person to cooperate in preserving assets.

(2) The party must satisfy the judge that the party has met requirements of the common law for an injunction preserving assets, such as the requirements on each of the following subjects:

(a) a claim for damages;

(b) the strength of the party's case;

(c) the risk that assets will be made unavailable to satisfy a judgment for the damages;

(d) the likelihood of recovery on a judgment for the damages if the assets are not preserved.

(3) Rule 41 - Interlocutory Injunction and Receivership, applies to an injunction preserving assets, except an interlocutory injunction for preservation of assets continues until judgment is satisfied.

(4) An injunction preserving assets may be directed to a person who has control of an asset belonging to a party claimed against, or in which the party has an interest.

Rule 43 - Temporary Recovery Order

43.01 Scope of Rule 43

(1) A temporary recovery order is available in limited circumstances, before a proceeding is heard and determined, to obtain possession of property claimed in the proceeding.

(2) A party may obtain temporary possession of property, in accordance with this Rule.

43.02 Motion for temporary recovery order

(1) A party who claims possession of property in an action or application may make a motion to the prothonotary for a temporary recovery order.

(2) The motion must be supported by an affidavit and either of the following:

(a) the bond of a recognized surety company;

(b) the party's own bond with, unless the prothonotary permits otherwise, two or more sureties.

(3) If the party's own bond is filed with sureties, the motion must also be supported by affidavits of the sureties proving that, collectively, they have sufficient net worth to cover a claim in an amount one and a quarter times the value of the property.

43.03 Affidavit

The party who seeks a temporary recovery order must provide reliable evidence of the value of the property and establish all of the following:

(a) the party is entitled to possession of the property, the party who has possession of the property is not entitled to withhold possession from the party seeking the order, a demand for possession has been made, and the demand has been refused;

(b) the party has retained a lawyer to advise the party about the motion, and received advice about the party's entitlement to possession and the party's obligation under the bond.

43.04 Obligation and bond securing it

(1) A party who obtains a temporary recovery order must bring the party's claim for possession to final determination without delay and, if the party's claim is dismissed, do both of the following:

(a) deliver the property to the party determined to be entitled to it;

(b) indemnify the party for losses resulting from the party having been deprived of possession.

(2) The bond supporting the motion for the order must be for an amount one and a quarter times the value of the property and be payable when the party fails to return property, or to indemnify another party, as required by this Rule 43.04.

(3) The bond must be executed by a recognized surety company, or be signed and sealed by the party who makes the motion and, unless the prothonotary permits otherwise, at least two sureties.

(4) The bond must continue until either the court allows the claim of the party who makes the motion, or the court dismisses the claim and the party who obtains the temporary recovery order delivers the property to the party determined to be entitled to it and indemnifies the other party for losses resulting from having been deprived of the possession.

(5) A party's own bond must contain the standard heading, be entitled "Bond for Temporary Recovery Order", be signed by the party, the sureties, and a subscribing witness, and include all of the following:

(a) a reference to the motion and statement of the purpose of the bond;

(b) a description of the property;

(c) the bond of the party seeking the order and of the sureties;

(d) the conditions of the bond;

(e) a term that the bond is for the benefit of each other party to the proceeding and the parties' heirs, representatives, successors, and assigns;

(f) a term that the bond is assignable at the direction of the court.

(6) The bond may be in Form 43.04.

(7) A surety may take security from the party who makes the motion for the temporary recovery order.

43.05 Form of order

(1) A temporary recovery order must contain the standard heading, be entitled "Temporary Recovery Order", provide a reference to the motion made for the order, and include all of the following provisions:

(a) a direction to the sheriff to immediately take possession of the property;

(b) a description of the property;

(c) authority to come on land, open a building, take control of a moveable, and break a lock or other barrier;

(d) an injunction to restrain a person who has notice of the order from obstructing the seizure and to require a person who has a means of access to provide access;

(e) authority for the sheriff to store and protect the property, a requirement the party who obtained the order pay all expenses of enforcing it, and permission for the sheriff not to act on the order if the party fails to make a payment or provide a reasonable advance;

(f) a direction to the party who obtains the order to deliver a certified copy of the order to the party from whom the property is recovered and immediately advise the sheriff in writing of the time, date, and place of the delivery;

(g) if the property is land, a direction to the party who obtains the order to deliver a certified copy of the order to each person who has a recorded interest in the land and, on behalf of the sheriff, to record the order under the *Land Registration Act* or register it under the *Registry Act*;

(h) a provision allowing the party from whom the property is recovered to reacquire possession of the property by filing a bond and obtaining a prothonotary's certificate in accordance with these Rules before the sheriff turns the property over to the party who obtains the order;

(i) a direction to the sheriff to turn the property over to the party who obtains the order, unless the certificate is delivered no more than five days after the day of the seizure, or the day a certified copy of the order is delivered to the party from whom the property is recovered, whichever is later;

(j) a requirement that the sheriff file a report of the actions taken under the order no more than fifty days after the date the order is issued and file a further report when further action is taken.

(2) he temporary recovery order may be in Form 43.05.

43.06 Party reacquiring property

(1) A party who wishes to keep property that is the subject of, or reacquire property taken under, a temporary recovery order must obtain a prothonotary's certificate that the party has filed the required bond, and deliver the certificate to the sheriff before the property is turned over to the party who obtains the temporary recovery order.

(2) A party who keeps or reacquires property by obtaining and delivering a prothonotary's certificate has the same duties as the party who obtains the recovery order to bring the party's claim for possession to final determination, to deliver the property to the other party if the claim is dismissed, and to indemnify the other party if the claim is dismissed.

(3) The reacquiring party's bond must be in the same amount as the bond to obtain the temporary recovery order and conform with the requirements for a bond for a temporary recovery order as if the reacquiring party were the party who obtains the order, except the bond must be entitled "Bond to Retain Property" and describe the location, at which and the way the party holds or held, the property.

(4) A party who files the party's own bond to reacquire or keep property must attach to the bond affidavits of the sureties proving that, collectively, the sureties have sufficient net worth to cover a claim in the amount of the moving party's bond.

(5) The party's bond may be in Form 43.06A.

(6) The prothonotary's certificate may be in Form 43.06B.

(7) A surety may take security from the reacquiring party.

43.07 Other person reacquiring property

A person who is not a party and claims an interest in property seized, or to be seized, under a temporary recovery order may make a motion to be joined as a party or a motion for directions under Rule 43.11.

43.08 How land is seized

The sheriff may take possession of land by any reasonable means, such as changing locks or boarding up premises.

43.09 How corporate shares or securities are seized

(1) The sheriff may seize corporate shares, or securities such as bonds or debentures, by delivering a copy of the recovery order to the issuing corporation and providing sufficient information about the holder that the corporation can identify the share, or security, to which the temporary recovery order relates.

(2) A corporation to whom a temporary recovery order is delivered must do all of the following:

(a) freeze transactions in reference to shares or securities described in the recovery order;

(b) deliver to the sheriff a statement providing details of the shares or securities, including the measures that are required to record a transfer;

(c) abide by the sheriff's directions, or make a motion for directions by a judge;

(d) take all steps necessary to prevent an interest in the shares or securities from being transferred, except a transfer permitted by the sheriff or a judge.

43.10 Sheriff to deliver property

(1) The sheriff must hold property seized under a temporary recovery order until five days after the day the property is recovered or the day a copy of the order is delivered to the party from whom the property is recovered, whichever is later.

(2) The sheriff must deliver the property to one of the following parties, in the following circumstances:

(a) the party who obtains the order, if no prothonotary's certificate is delivered during or before the five day period;

(b) the party who delivers a prothonotary's certificate to the sheriff before the property is delivered to the party who obtains the order.

(3) A sheriff who is unsure to whom property should be delivered, or how to make delivery, may hold the property while the sheriff requests directions of a judge.

43.11 Judge's directions

(1) A judge may give directions on any subject regarding the enforcement of a temporary recovery order, the seizure of property, or the delivery of property, including on the following subjects:

(a) protection of property claimed to be unique;

(b) delivery of corporate shares or securities;

(c) disclosure of information about the property;

(d) sale of property that is perishable or likely to depreciate in value;

(e) sufficiency of a bond;

(f) a deadline for compliance with a provision in the temporary recovery order.

(2) The directions prevail over the terms of the temporary recovery order.

(3) A party, interested non-party, prothonotary, or sheriff may make a motion for directions.

43.12 Termination by judge

(1) A judge may terminate a temporary recovery order and give directions for release, assignment, or other disposition of the bond.

(2) The judge who terminates a temporary recovery order may, instead, grant an interlocutory injunction or a preservation order.

43.13 Final order, damages, and assignment

(1) The court may grant a remedy available at law on final disposition of a claim to recovered property, such as any of the following remedies:

(a) an order for possession of the property;

(b) an injunction requiring one party to deliver the property to another;

(c) a declaration of interests in the property;

(d) damages for the value of the property, if it can no longer be delivered and the claim to possession of the party who temporarily acquired or reacquired the property is dismissed;

(e) damages for losses caused to a party deprived of the property but found to be entitled to possession.

(2) A judge may direct the prothonotary to assign a bond to a party entitled to indemnification, and the judge may permit the party to recover up to the full limit of the bond or order a limit on the amount that may be recovered.

Rule 44 - Attachment

44.01 Scope of Rule 44

(1) An attachment order is available in limited circumstances to preserve assets to satisfy a judgment that may be granted in the future.

(2) A party may obtain an order attaching assets of another party, in accordance with this Rule.

44.02 Motion for attachment

(1) A party who claims for damages against another party, and has evidence establishing one of the following grounds against the other party, may make an *ex parte* motion to the prothonotary for an attachment order:

(a) the other party resides out of Nova Scotia and does not appear to have assets in Nova Scotia, or assets that can be obtained by order or request of the court, sufficient to satisfy a judgment for the amount of the claim;

(b) the other party is a corporation not registered under the *Corporations Registration Act*;

(c) the other party evades delivery of the document originating the proceeding;

(d) the other party leaves, or is about to leave, Nova Scotia with intent to defraud a creditor or to avoid delivery of the document originating the proceeding;

(e) the other party does anything to put an asset out of the reach of a creditor, or is about to do so;

(f) the other party fraudulently incurred a debt or other liability at issue in the proceeding.

(2) The motion must be supported by an affidavit and either the bond of a recognized surety company or, unless the prothonotary permits otherwise, the party's own bond with two or more sureties.

44.03 Affidavit

(1) The party who makes a motion for an attachment order must establish all of the following by affidavit:

(a) the amount of a claim for a debt or other liquidated demand, or the amount likely to be assessed on a claim for damages;

(b) the amount the party proposes for a limit to the attachment order, which amount may be equal to or less than the value of the moving party's claim;

(c) that there is evidence supporting the party's claim;

(d) one or more of the grounds for obtaining an attachment;

(e) retention of a lawyer to advise the party about the motion and the fact, without details, that the lawyer provided advice about the requirements for an attachment and obligations under the bond.

(2) A party who claims the other party fraudulently incurred a debt or other liability must provide all of the following by affidavit:

(a) all evidence, without hearsay, reasonably available to the party that establishes the claim of fraud;

(b) reference to all information known to the party that tends to contradict the claim of fraud;

(c) disclosure of information known to the party that tends to support the claim of fraud but which is not reasonably available to the party for inclusion in an affidavit.

(3) If the party's own bond is filed, the motion must also be supported by affidavits of two or more sureties proving that, collectively, they have sufficient net worth to cover a claim in an amount one and one quarter times the limit of the proposed attachment order.

44.04 Obligation and bond securing it

(1) The party who obtains an attachment order must bring the party's claim for judgment to final determination without delay and, if the claim is dismissed or it is allowed in an amount substantially less than the limit of the order, indemnify the other party for losses caused by the attachment.

(2) The bond supporting the attachment must be for an amount one and one quarter times the limit of the attachment order.

(3) It must be executed by a recognized surety company, or signed and sealed by the party who makes the motion and, unless the prothonotary permits otherwise, at least two sureties.

(4) The bond must continue until both of the following conditions are fulfilled:

(a) the party who obtains the attachment order brings the claim to a final determination;

(b) either the court allows the claim, or the court dismisses the claim and the party who obtains the attachment order indemnifies the other party for losses resulting from the attachment.

(5) A party's bond must be entitled "Bond for Attachment" and, otherwise, be as provided in Rule 43.04(5), of Rule 43 - Temporary Recovery Order, except references are to be to an attachment order rather than a recovery order.

(6) The bond may be in Form 44.04.

(7) A surety may take security from the moving party.

44.05 Attachment

The interest of a party in one of the following kinds of property is attached when a certified copy of the attachment order is recorded, registered, or delivered as follows:

(a) land under the *Land Registration Act*, when the copy, and the description referred to in subsection 71(1) of the *Land Registration Act*, are recorded in accordance with that legislation;

(b) land under the *Registry Act*, when the copy, and the description and appraisement referred to in subsection 23(1) of the *Registry Act*, are registered in accordance with that legislation;

(c) a moveable in the actual possession of the party, when the copy is delivered to the party;

(d) a moveable held by another person, when the copy is delivered to the other person;

(e) a debt or obligation due, or to come due, when the copy is delivered to the person who owes the debt or obligation;

(f) corporate shares or securities, when the copy is delivered to the issuing corporation;

(g) other property, when the copy is delivered to the party.

44.06 Attachment order

(1) The party who seeks an attachment order must state an amount as the limit of the value of the property to be taken and held by the sheriff, and the amount must be equal to, or less than, the value of the party's claim against the party whose property is to be attached.

(2) An attachment order must contain the standard heading, be entitled "Attachment Order", provide a reference to the motion for the order, and include all of the following:

(a) a statement giving effect to the attachment, stating when it is effective, and limiting the value of property to be attached;

(b) a direction to the sheriff to take and hold, as a receiver, attached property about which the sheriff becomes informed including, if information is provided about it, a debt, rent, legacy, share, bond, debenture, other corporate security, currency, fund, demand, or demand accruing due;

(c) a mandatory injunction requiring the party, and a person who holds property in which the party has an interest, to immediately deliver the property to the sheriff, unless the sheriff allows otherwise in writing;

(d) a mandatory injunction requiring a person who owes a debt or other obligation to the party to pay the debt to the sheriff immediately or immediately after it comes due, and to liquidate and pay to the sheriff any other liquidable obligation as soon as possible under the terms for liquidating the obligation, unless the sheriff permits otherwise in writing;

(e) permission, but not a requirement, for the sheriff to make inquiries;

(f) a direction for the sheriff to act on relevant and reliable information;

(g) a mandatory injunction requiring a person to whom a certified copy of the order is delivered to answer the sheriff's questions and provide information about attached property;

(h) a direction to the party who obtains the attachment order to immediately deliver a certified copy of the attachment order to the party whose property is attached, and, if land is to be attached, to take steps on behalf of the sheriff to effect recording under the *Land Registration Act* or registration under the *Registry Act*;

(i) permission for the sheriff to make reasonable arrangements for storage and protection of property and a direction to the sheriff to make an inventory of the property taken and held including a description of each attached item, its location, and, if land is to be attached, its value, and provide a copy of the inventory to a party on request;

(j) as conditions of the sheriff acting on the order, requirements that the moving party pay the expenses of attachment, taking possession, and holding the property, and provide a reasonable advance required by the sheriff;

(k) a direction that the sheriff cease taking property when the value of the attached property reaches the stated limit;

(l) a provision that the attachment terminates, obligations to hold property or to make a payment to the sheriff cease, and the sheriff must return property delivered and pay to the other party debts collected under the order if the party whose property is attached delivers a prothonotary's certificate under Rule 44.07.

(m) a provision that the order continues until the claim for damages is dismissed or a judgment for the damages is satisfied, unless it is terminated by delivery of a certificate of the prothonotary or a judge orders termination;

(n) a requirement the sheriff file a report of the actions taken under the order no more than seventy days after the date the order is issued and file a further report when further action is taken;

(o) a statement saying "Failure to comply with this order may be punished as a contempt."

(3) The attachment order may be in Form 44.06.

(4) An attachment order does not attach property exempt from execution.

44.07 Terminating attachment

(1) A party whose property is attached may cause the attachment order to be terminated by obtaining from the prothonotary, and delivering to the sheriff, the prothonotary's certificate that the party has filed a bond to terminate the attachment.

(2) A party who causes an attachment order to be terminated must promise the party will have sufficient assets to satisfy a judgement in favour of the other party of a value equal to or greater than the amount of the limit of the attachment order.

(3) The party's bond must conform with the requirements for a moving party's bond as if the party seeking termination were the party seeking attachment, except for each of the following differences:

(a) the bond must be entitled "Bond to Terminate Attachment";

(b) the bond must be payable when execution is levied against the party on the claim for which the attachment was issued and the execution fails to attach assets of a value equal to, or greater than, the amount of the limit of the attachment order;

(c) the bond must continue until the claim for damages is dismissed, or the claim is allowed and the judgment is satisfied fully or to the extent of the limit of the attachment order.

(4) A party who files the party's own bond to terminate an attachment must attach to the bond affidavits of the sureties proving that, collectively, the sureties have sufficient net worth to cover a claim in the amount of the attachment order.

(5) The party's own bond may be in Form 44.07A.

(6) The prothonotary's certificate may be in Form 44.07B.

(7) A surety may not take security from the terminating party, but may take security from another person.

44.08 More than one attachment

The sheriff must seize and hold property under attachment orders against the same person in chronological sequence of the orders, such that when assets are held to the limit of the first order the sheriff begins to comply with the next.

44.09 Disputes about attached property

Disputes about whether the party against whom an attachment order is issued has an interest in something, or an interest that must give way to another interest, may be determined under Rule 76 - Interpleader.

44.10 Motion to judge

A party, or sheriff, may make a motion to a judge to do any of the following about an attachment order:

(a) terminate the attachment order, if the party who obtained it does not make sufficient efforts to bring the claim to a final determination;

(b) terminate the order, if the judge is satisfied the order is not required to secure the party who obtained it, there were not grounds for the order, or there are other good reasons for termination;

(c) vary the order;

(d) amend the order, including an amendment having retroactive or retrospective affect;

(e) order sale of attached property, if it is perishable, or if both of the following apply:

(i) the property will be worth substantially less when the claim to judgment is finally determined,

(ii) the property does not have substantial intangible value for a party opposed to the sale;

(f) order a person to disclose information to the sheriff or a person on behalf of the sheriff;

(g) give directions to the sheriff;

(h) substitute an experienced insolvency practitioner for the sheriff;

(i) direct the prothonotary to assign a bond to a party entitled to indemnification, unconditionally or on a condition that limits the amount that may be recovered under the bond.

Rule 45 - Security for Costs

45.01 Scope of Rule 45

(1) This Rule provides a remedy for a party who defends or contests a claim and will experience undue difficulty realizing on a judgment for costs if the defence or contest is successful.

(2) A party against whom a claim is made may make a motion for security for costs, in accordance with this Rule.

45.02 Grounds for ordering security

(1) A judge may order a party who makes a claim to put up security for the potential award of costs in favour of the party against whom the claim is made, if all of the following are established:

(a) the party who makes a motion for the order has filed a notice by which the claim is defended or contested;

(b) the party will have undue difficulty realizing on a judgment for costs, if the claim is dismissed and costs are awarded to that party;

(c) the undue difficulty does not arise only from the lack of means of the party making the claim;

(d) in all the circumstances, it is unfair for the claim to continue without an order for security for costs.

(2) The judge who determines whether the difficulty of realization would be undue must consider whether the amount of the potential costs would justify the expense of realizing on the judgment for costs, such as the expense of reciprocal enforcement in a jurisdiction where the party making the claim has assets.

(3) Proof of one of the following facts gives rise to a rebuttable presumption that the party against whom the claim is made will have undue difficulty realizing on a judgment for costs and that the difficulty does not arise only from the claiming party's lack of means:

(a) the party making the claim is ordinarily resident outside Nova Scotia;

(b) the party claimed against has an unsatisfied judgment for costs in a proceeding in Nova Scotia or elsewhere;

(c) the party making the claim is a nominal party, or a corporation, not appearing to have sufficient assets to satisfy a judgment for costs if the defence or contest is successful;

(d) the party making the claim fails to designate an address for delivery or fails to maintain the address as required by Rule 31 - Notice.

(4) A judge may also order security for costs in either of the following circumstances:

(a) the security is authorized by legislation;

(b) the same claim is made by the same party in another proceeding, and it is defended or contested by the party seeking security for costs on the same basis as in the proceeding in which security for costs is sought.

45.03 Terms of order

(1) An order for security for costs must require the party making the claim to give security of a kind described in the order, in an amount equal to or lower than that estimated for the potential award of costs, by a date stated in the order.

(2) The judge may require any kind of security, including payment of money into court.

(3) A judge who requires payment into court may fix a deadline for paying the entire amount, or permit the paying party to make the payment in installments.

45.04 Stay and dismissal

(1) An order for security for costs stays the proceeding, or that part of the proceeding for which the security is due, until the security is given or the claim is dismissed.

(2) An order for security for costs to be paid by installments stays the proceeding until the first installment is made or the claim is dismissed.

(3) A party who obtains an order for security for costs may make a motion for dismissal of the claim if the party ordered to provide security fails to do so as ordered.

Rule 46 - Payment into Court

46.01 Scope of Rule 46

(1) This Rule allows a party to pay money into court because of a claim, as distinct from Rule 76 - Interpleader, which provides for payment of a fund that is the subject of a dispute.

(2) This Rule requires a person who defends or contests a claim on the basis of tender to pay money into court.

(3) Money paid into court is held, and accounted for, as provided in the *Payment into Court Act* and Rule 82 - Administration of Civil Proceedings.

(4) A party may make a payment into court, in accordance with this Rule.

46.02 Purposes of payment

A party may make a payment into court to do any of the following:

(a) comply with an order requiring the payment to be made;

(b) provide security for an offer to settle or contribute;

(c) satisfy a claim but leave in issue some amount of the claim, a claim for interest, or a claim for costs;

(d) permit a defence of tender;

(e) obtain a discharge of a conditional claim to property under legislation, such as an order vacating the registration of a lien under the *Builders' Lien Act*;

(f) do as allowed or required by legislation or a Rule, such as payment into court by a trustee under the *Trustee Act* or by a party under Rule 42.10, of Rule 42 - Preservation Order.

46.03 Defence of tender

A party making a claim answered by a defence of tender of money may have summary judgment on the claim, unless the party defending on the basis of tender pays the amount of the alleged tender into court.

46.04 Payment into court on notice

(1) A party may pay money into court by delivering to the prothonotary, and each other party, a notice of payment into court and making the payment to the prothonotary to secure an offer to settle or contribute, satisfy a claim, permit a defence of tender, or provide security required by an order.

(2) The notice of payment into court must not contain the heading of the proceeding, and it must be entitled "Notice of Payment into Court", be signed by each paying party, and include all of the following information:

(a) the registry number;

(b) the name of the party making the payment;

(c) the name of the party for whose benefit the payment is made;

(d) the names of each other party;

(e) a statement of the amount and purpose of the payment;

(f) a statement of the requirement for keeping the notice confidential.

(3) The prothonotary must, until the proceeding ends, keep confidential a notice of a payment into court that provides security for an offer to settle or contribute, and a person may not have access to the notice under Rule 85 - Access to Court Records, unless a judge directs otherwise.

(4) The notice of payment into court may be in Form 46.04.

46.05 Payment into court on order

(1) A payment into court not referred to in Rule 46.04 must be made under an order.

(2) A person who is allowed or required by legislation to pay money into court, and who is not a party to a proceeding in which the money is at issue, may apply for an order for payment into court.

(3) A person who applies for an order for payment of money into court must include, as respondents, all persons who are known to have an interest in the money and, include in the affidavit, evidence of all of the following:

(a) the material facts and documents giving rise to the payment;

(b) persons who may have an interest in the disposition of the money;

(c) all known information about an interested person's identity and residence.

46.06 Reduction of payment

(1) A party may make a motion to a judge to reduce the amount of a payment made into court.

(2) An order for reduction of the amount of a payment into court must provide directions to the prothonotary for the amount of the payment out of court and the person to whom it is to be made.

46.07 Payment of money out of court

(1) A prothonotary may pay money held in court as all parties not disentitled to notice agree, unless one of the following exceptions applies:

(a) a child, or a person who is not capable of managing their affairs, is a party;

(b) the prothonotary is aware that a person who may be interested in the fund is not a party;

(c) the prothonotary refers the motion to a judge.

(2) A party may make a motion to a judge for an order requiring payment of money by the prothonotary and the affidavit for the motion must include evidence from the prothonotary of the payment into court, interest earned on it, and any payments out of court from the same fund.

Part 11 - Trial and Hearing

Rule 47 - Place of Trial or Hearing

47.01 Scope of Rule 47

A party may select the place for the trial of an action, or the hearing of an application or proceeding for judicial review, or request a change in the place of the trial or hearing, in accordance with this Rule, unless legislation such as the *Land Actions Venue Act* provides otherwise.

47.02 Application of Rule 47

(1) This Rule applies to proceedings other than proceedings in the Family Division.

(2) Rule 59 - Supreme Court (Family Division) Rules, and Rule 60A - Child and Adult Protection, provide for the place in which a Family Division proceeding is heard.

47.03 Selecting place of trial or hearing

(1) A party who starts a proceeding, or makes a motion, must select one of the following places for the trial or hearing:

(a) a courthouse where there is an office of a prothonotary;

(b) another courthouse approved by the Chief Justice of the Supreme Court of Nova Scotia for sittings of the court.

(2) The party must state the selected place of trial or hearing in the notice by which the proceeding is started, or the motion is made.

(3) A notice of application in court, a notice for judicial review, or a notice of appeal may state one place for the motion for directions and another place for the hearing of the application, judicial review, or appeal.

47.04 Changing place of trial or hearing

(1) A party may make a motion to change the place of trial or hearing.

(2) The judge presiding at a trial or hearing may direct that the trial or hearing, or part of it, be held at any place and in any suitable building.

(3) Rule 25 - Motion by Appointment provides for a motion that may be made by teleconference.

47.05 Adjourning place of trial or hearing

The presiding judge may adjourn a trial or hearing to any place.

Rule 48 - Translation, Interpretation, and Assistance

48.01 Scope of Rule 48

A party who has difficulty understanding what is being said in court, a witness who has a difficulty communicating in court, and a person with a disability that impedes them in court may be assisted in accordance with this Rule.

48.02 Assistance for party to understand proceeding

(1) A party with a hearing impairment, or who has difficulty understanding the language in which a trial or hearing is conducted, may make a motion to be assisted by a translator, interpreter, or signer.

(2) A party with a mental or physical disability that impedes them in court may make a motion for appropriate assistance.

(3) A judge who makes an order to assist a party may include terms to ensure a fair balance between the need of the party to understand the trial or hearing and the need of all parties for a trial or hearing conducted without unnecessary disruption.

48.03 Assistance for witness to communicate

(1) A party who calls a witness at trial, or presents a witness on the hearing of an application, must provide a translator or signer if the witness cannot adequately understand the questions, or cannot give answers that are adequately understood, without the assistance of a person who is able to translate or sign.

(2) The party must satisfy the judge that the proposed translator or signer has the ability to clearly understand the questions to be asked and the answers to be given, and to accurately translate the questions and answers.

(3) The translator or signer must swear to or affirm all of the following, unless the judge permits otherwise:

(a) the translator or signer will accurately translate each question asked of, and each answer given by, the witness;

(b) except to translate, the translator or signer will not communicate with the witness during the examination without advising the judge and awaiting the judge's permission;

(c) the translator or signer is not related by blood or marriage to the witness, is not an employer or employee of the witness, and is independent of the witness.

(4) A party who calls a witness with another kind of difficulty communicating in court may make a motion for means to assist the communication.

48.04 Assistance for person with disability

A judge presiding at a trial or hearing may order services for a person with a disability that impedes the person in court.

48.05 Expense of assistance

(1) A judge may determine who must bear the expense of assistance not covered by a government authority, an insurer, or another person.

(2) A party who makes a motion for a government authority, an insurer, or another person to pay the expense of assistance must deliver a copy of the notice of motion and documents filed in support of the motion to the person in the same manner as a person is notified of a proceeding under Rule 31 - Notice, unless the authority, insurer, or other person agrees or a judge orders otherwise.

Rule 49 - Sittings

49.01 Scope of Rule 49

(1) This Rule provides for chambers and sittings of the court without a jury at any time or place in Nova Scotia, and it sets the periods and places for jury trials.

(2) This Rule also modifies procedures provided in legislation so as to adapt the procedures to open sittings of the court and to hold chambers.

49.02 Sittings of the court, or a judge, without jury

(1) The court sits when and where the court is called into session.

(2) A judge holds chambers whenever the judge conducts business of the court without the court being called into session, such as in chambers or during a motion heard by conference.

49.03 References to sittings in legislation

For the purpose of Section 49 of the *Judicature Act*, legislation requiring something to be done at or before a sitting or session of the court is satisfied if it is done in accordance with these Rules, or at the direction of a judge.

49.04 Jury sittings

The court may sit for jury trials on any day that the office of the Prothonotary is open excepting from the third Friday in December until the first day that the office of the Prothonotary is open in January.

49.05 Scheduling sittings

The judges, including the Chief Justice, of the Supreme Court of Nova Scotia establish sessions, sittings, and circuits without making a Rule under Section 29 of the *Judicature Act*.

Rule 50 - Subpoena

50.01 Scope of Rule 50

A witness may be compelled to give evidence, in accordance with this Rule.

50.02 Power of prothonotary to compel attendance

(1) A prothonotary at any courthouse may issue a subpoena for the attendance of a witness at a trial, or at the hearing of an application, an inquiry by a referee, an appeal at which evidence is to be taken, or a commission under Rule 56 - Commission Evidence and Testimony by Video Conference.

(2) A prothonotary may only issue a subpoena for the attendance of a witness at the hearing of a motion, if a judge permits.

(3) Only the prothonotary at the office where the documents in a proceeding are filed may issue a discovery subpoena in accordance with Rule 18 - Discovery.

(4) A prothonotary may issue a subpoena addressed to a witness who appears to reside outside Nova Scotia, whether or not the party makes a motion for certification of the subpoena under the *Interprovincial Subpoena Act*.

(5) The subpoena may require the witness to bring documents or other evidence.

(6) A prothonotary who believes that issuing a subpoena may lead to an abuse of the court's processes may require the party who seeks the subpoena to make the motion for the subpoena on notice to each other party and the witness, or refer the motion to a judge.

50.03 Power of judge to compel attendance

(1) A judge may order a witness to attend before the court, a judge, a referee, or a commissioner and to bring documents or other evidence.

(2) A judge may order a witness in Nova Scotia, or direct the prothonotary to issue a subpoena compelling the witness, to attend before a commissioner in Nova Scotia appointed by a court outside Nova Scotia and authorized under Section 70 of the *Evidence Act*.

50.04 Issuing subpoena

(1) A prothonotary may issue a subpoena at the place where the documents in the proceeding are filed by filing the original and delivering two or more certified copies to the moving party.

(2) A prothonotary may issue a subpoena at another place by delivering two or more certified copies to the moving party and the original to the prothonotary at whose office the documents in the proceeding are filed.

50.05 Form of subpoena

(1) A subpoena must contain the standard heading, be entitled "Subpoena", be issued by the prothonotary, be addressed to the witness, and include all of the following:

(a) the name of the witness and, if it is known, the community in which the witness resides;

(b) requirements that the witness attend a trial, hearing, inquiry, appeal, or commission and bring, or provide access to, documents, electronic information, or other evidence;

(c) the time, date, and place of the trial, hearing, inquiry, appeal, or commission;

(d) the name of the party who obtains the subpoena;

(e) a requirement the witness attend the entire trial, hearing, inquiry, appeal, or commission unless excused by a judge;

(f) a warning of the possible consequences of failing to obey the subpoena.

(2) The subpoena may be in Form 50.05.

50.06 Prisoner witness

(1) A judge may order an authority who has custody of a witness to deliver the witness to the sheriff.

(2) The judge may order the sheriff to bring the witness before the court, judge, referee, or commissioner to give evidence and to return the witness after the evidence is given.

(3) The judge may remand the witness during an adjournment.

50.07 Subpoena in aid of another judicial body

(1) A prothonotary or judge may compel the attendance of a witness at the request of a person or body who makes a judicial decision, such as an arbitrator or tribunal.

(2) The prothonotary or judge may compel attendance before a person or body in a similar way as attendance is compelled under Rule 50.02 or 50.03.

(3) A subpoena in aid of a person or body must contain a standard heading in which the person who applies for the subpoena is named as applicant, it must conform with Rule 50.05 as if the reference to a trial, hearing, inquiry, appeal, or commission were a reference to the proceeding before the person or body, and it must include both of the following:

(a) a statement identifying the person or body who requests the subpoena;

(b) a description of the proceeding before the person or body.

50.08 Assisting attendance

(1) A judge may order a person to do what is necessary to secure the attendance of a witness who is the subject of a subpoena issued by the prothonotary, an order for attendance, or a subpoena under the *Interprovincial Subpoena Act*.

(2) The following are examples of orders that may be necessary to secure attendance:

(a) an order for a witness with a disability to be assisted in ways related to the disability;

(b) an order that a person who has custody of a witness provide transportation;

(c) an order that a person explain the subpoena to a witness who may not otherwise understand it.

(3) The judge who orders assistance may include in the order a provision for payment of expenses related to the assistance.

50.09 Delivery of subpoena

A subpoena, including a replacement subpoena under Rule 50.11, is ineffective unless a certified copy of it is personally delivered to the witness, except a subpoena directed to a party who designates an address for delivery may be delivered to that address.

50.10 Travel money

(1) A subpoena is ineffective unless the payment of fees and travel expenses required by the *Costs and Fees Act*, or the *Interprovincial Subpoena Act*, is delivered with the subpoena.

(2) A party may supply a witness with reasonable transportation, meals, and accommodations in addition to fulfilling the requirements of the *Costs and Fees Act*, or the *Interprovincial Subpoena Act*.

50.11 Replacement subpoena

(1) A prothonotary may issue a subpoena to replace another subpoena, such as a replacement subpoena to correct the date of trial.

(2) The party who obtains the replacement subpoena must hold the old subpoena if it was not delivered, and, if the old subpoena was delivered, the party must deliver a written explanation of the change with the replacement subpoena when it is delivered in accordance with Rule 50.09.

(3) A party who obtains a replacement subpoena may deliver the subpoena without further payment, if both of the following apply:

(a) the old subpoena was delivered to the witness with the required payment;

(b) the witness did not travel in obedience to the old subpoena.

50.12 Duration of subpoena

A subpoena continues in effect until the end of the trial, hearing, inquiry, appeal, commission, or proceeding before a person or body who makes a judicial decision and requested the subpoena, or when one of the following occurs:

(a) a judge excuses the witness from the subpoena;

(b) the person or body who makes a judicial decision and requested the subpoena notifies the witness that attendance is no longer required;

(c) counsel who obtained the subpoena notifies the witness that the issues are settled and the trial, hearing, inquiry, appeal, or commission is not to go ahead.

50.13 Arrest

(1) A person who fails to attend at the time and place provided in a subpoena or order for attendance that is delivered, with the required travel money, to the person may be dealt with under Rule 89 - Contempt.

(2) In addition to the contempt power, a judge may issue a warrant to arrest the witness, detain the person for no more than one day, and bring the person before a judge on the day of the arrest.

(3) An arrest warrant for failure to attend a trial, hearing, inquiry, appeal, or commission must contain the standard heading, be entitled “Warrant for Arrest of Defaulting Witness”, be addressed to the sheriff for the municipality in which the witness is to be found, and include all of the following:

(a) a statement of the judge's findings by which the warrant is authorized;

(b) a direction to the sheriff to arrest the witness and bring the witness before a judge on the day of the arrest;

(c) a statement of the purpose in bringing the witness before the judge, namely, to secure the witness' attendance to give evidence and, if required by the judge, to start contempt proceedings;

(d) a direction to the sheriff to inform the witness promptly of the reasons for, and purpose of, the arrest and detention and of the witness' right to retain and instruct counsel without delay;

(e) a direction to assist the witness who wishes to seek, or communicate with, counsel.

(4) The warrant for arrest of defaulting witness may be in Form 50.13.

(5) An arrest warrant for failure to attend before a person or body who requested a subpoena may be in a similar form, with necessary changes.

(6) The sheriff is not obligated to execute the warrant, unless a judge is available on the day of the arrest and at a time when the witness can be brought before the judge.

50.14 Arrested witness

(1) A judge before whom an arrested witness is brought may do any of the following:

(a) resume a trial or hearing and require the witness to testify;

(b) direct that the witness be taken immediately to give evidence in the proceeding for which the subpoena, or order for attendance, was issued;

(c) remand the witness to a lock-up facility until the trial or hearing of the proceeding resumes, if it is to resume in a reasonable time;

(d) order the release of the witness, on the condition that the witness promises to attend the trial or hearing when it resumes and on any other conditions, such as posting security or providing a surety, as the judge considers necessary.

(2) The judge who remands the witness must provide for return of the witness to give testimony as soon as is reasonable.

(3) A judge who decides to start a contempt proceeding may grant bail or remand the witness as provided in Rule 89 - Contempt.

(4) Without starting contempt proceedings, the judge may order the witness to indemnify a party for the expenses resulting from an adjournment caused by the witness' failure to attend.

Rule 51 - Conduct of Trial

51.01 Scope of Rule 51

A judge who presides at the trial of an action directs the conduct of the trial and, unless the judge directs otherwise, the trial may be conducted in accordance with this Rule.

51.02 Notice of some kinds of evidence

(1) Nothing in this Rule 51.02 diminishes the requirements for making disclosure under Part 5 - Disclosure and Discovery, or Rule 55 - Expert Opinion.

(2) A party must notify each other party of a decision to offer any of the following evidence at trial as soon as the decision is made, but no later than the finish date:

(a) an affidavit to be tendered in accordance with Rule 51.07;

(b) an excerpt from a record of evidence given already in the proceeding, or on a trial or hearing in another proceeding;

(c) a plan, photograph, audio recording, visual recording, audio-visual recording, model, or other real or demonstrative evidence;

(d) proof of foreign law;

(e) evidence that was the subject of a claim of privilege made by the party, but which the party decides to use as evidence in the proceeding;

(f) the subject of a question on discovery or interrogatory, or of a demand for production, if the party objects to the question, interrogatory, or demand and later decides the subject is admissible, such as when the party decides to call evidence on the subject.

(3) A judge may order a party who unreasonably delays making a decision about evidence mentioned in Rule 51.02(2) to indemnify another party for expenses caused by the delay.

51.03 Exclusion of evidence for non-compliance

(1) A judge who presides at a trial must exclude evidence of the following kinds, unless the party offering the evidence satisfies the judge it would be unjust to exclude it:

(a) evidence for which notice is required, but for which notice is not given;

(b) evidence required to be disclosed under, but not disclosed in accordance with, Part 5 - Disclosure and Discovery;

(c) evidence offered by a party who fails to give the evidence, or to give information leading to the evidence, in response to a direct question asked at discovery or by interrogatory, such as by answering that the party does not know the answer and failing to make disclosure when the answer becomes known or by objecting to the question on the ground of relevancy;

(d) expert opinion not disclosed under Rule 55 - Expert Opinion.

(2) A judge who admits evidence despite non-compliance with the Rules for notice, disclosure, or discovery must consider ordering the party proposing the evidence to indemnify each other party for expenses caused by the introduction of the evidence, including expenses resulting from an adjournment.

51.04 Trial brief

A party must file a brief no less than ten days before the day a trial is scheduled to start.

51.05 Order for presentations, role of counsel, and new evidence

(1) The parties in a trial without a jury may make presentations as follows:

(a) the plaintiff opens the plaintiff's case without making a speech and does so by tendering agreed exhibits, causing a record to be made of agreed facts, and calling the first witness;

(b) the plaintiff adduces the rest of the plaintiff's evidence and, when the evidence is finished, closes the case and tenders the exhibits of the plaintiff;

(c) the defendant announces that the defendant calls no evidence and tenders exhibits the defendant proved during the plaintiff's case, or opens the case in defence by calling the first witness;

(d) the defendant who opens a case in defence adduces the defendant's evidence and, when it is finished, closes the case in defence and tenders exhibits of the defendant;

(e) the plaintiff announces there is no rebuttal, or adduces rebuttal evidence after informing the trial judge and the other parties of the subject to be dealt with on rebuttal;

(f) the parties make a closing speech, the one who last opened a case going first with the opportunity to make a reply on new points raised by the other party.

(2) Rules 51.05(3) to (6) apply to a trial with a jury or without a jury.

(3) If there is more than one defendant and at least one of them acts on their own or by different counsel, the following order of opening cases or announcements about not calling evidence applies, unless the judge directs otherwise:

(a) first, the defendant whose name is first in the heading and, if that defendant is represented, all others represented by the same counsel;

(b) second, the next named defendant who has not opened or announced, and all others represented by the same counsel;

(c) third and so on, in the order provided in the heading.

(4) The presiding judge must provide directions for the order of presentations in a trial that includes a third party claim.

(5) A party represented by counsel must speak, and adduce evidence, through that counsel.

(6) The presiding judge may direct any order of presentations, and may permit a party to present further evidence at any time before the final order is issued in an action tried without a jury or after the jury begins deliberations in a trial with a jury.

51.06 Non suit

(1) At the close of the plaintiff's case and before the defendant elects whether to open the defendant's case and present evidence, the defendant may make a motion for dismissal of the proceeding, or a claim in the proceeding, on the ground that there is no evidence on which a properly instructed jury could find for the plaintiff.

(2) A defendant who unsuccessfully makes a motion for a non suit must elect whether to open the defendant's case and call evidence when the motion is dismissed.

51.07 Proof of facts

(1) A party may prove a fact in a way permitted by legislation, established at common law, or permitted by these Rules.

(2) A party may prove a fact in any of the following ways:

(a) tendering an agreed statement of fact signed by each party for whom the fact is material to a claim or defence;

(b) obtaining, in open court, a stipulation of the truth of a fact by each party for whom the fact is material to a claim or defence;

(c) tendering a document, electronic information, or other evidence with the consent of all parties for whom the document, information, or other evidence is relevant to a claim or defence, and stating any conditions on the consent;

(d) tendering a request for admissions under Rule 20 - Admission, and either proving the request was not answered or tendering an admissible answer;

(e) tendering excerpts from a certified discovery transcript, as provided in Rule 18 - Discovery;

(f) tendering a certified transcript of commission evidence, as provided in Rule 56 - Commission Evidence and Testimony by Video Conference;

(g) tendering an affidavit, if the judge permits and the witness is, or will be, available for cross-examination;

(h) tendering an affidavit, if the judge is satisfied that the evidence in the affidavit cannot reasonably be contested.

(3) A presiding judge may order any method of proving a fact or document, or of adducing evidence, if the judge is satisfied that the method is consistent with the rules of evidence.

51.08 Testimony by video conference

A presiding judge may permit testimony by video conference, or by telephone or other telecommunication, in accordance with Rule 56 - Commission Evidence and Testimony by Video Conference.

51.09 Control of witness

(1) A presiding judge may order that a witness who is not a party, a designated manager of a party, or an officer of a party be excluded from the courtroom until called, and the judge may extend the exclusion after the witness has testified if there is a likelihood the witness will be recalled.

(2) The judge who orders exclusion of a witness may direct a party who intends to testify to do so before an excluded witness is called by that party.

(3) A presiding judge may order a witness not to communicate with any other witness about the case until all witnesses have testified.

(4) No person may communicate about evidence, submissions, or rulings with a witness who is excluded.

(5) A presiding judge who is satisfied that the exclusion of a witness is necessary for either of the following purposes may exclude a party, a designated manager of a party, or an officer of a party from all or part of a trial:

(a) conducting the trial in an orderly way, for example when a witness persistently interrupts the trial without good reason;

(b) finding the truth through testimony, for example when a witness' presence is likely to have a severe adverse affect on the testimony of another witness.

51.10 Common book or file

(1) The parties must communicate with each other before trial for the production of a common documents book, or a common file of electronic information that the presiding judge or jurors can read.

(2) All documents and electronic information a party wishes to offer, and to which no other party will object, must be bound in the common book, or placed in the common file.

(3) The common book or file may be presented at the beginning of trial as containing jointly offered exhibits or exhibits to be tendered separately when the party offering the exhibits closes the party's case.

(4) A document in a common book, or electronic information in a common file, may be removed if no witness has identified the document, or information.

(5) Unless the judge orders otherwise, a document or electronic information is taken as admitted if it is not removed from a common book or a common file when the last party closes that party's case.

(6) The contents, including hearsay, of a document or electronic information taken as admitted are taken to be evidence for all purposes unless the parties agree, or the judge rules, that the document or information is admitted for a limited purpose.

51.11 How to prove a document, or electronic information

(1) The presiding judge may give directions for proof of a document, and this Rule 51.11 applies in the absence of directions.

(2) A party who wishes to have a document or electronic information admitted by consent of each party, or by operation of law permitting admission without a sponsoring witness, may prove the document by doing all of the following:

(a) show the document, or information, to each other party by physical or electronic means;

(b) establish the consent, or the requisites for admission by operation of law;

(c) deliver the document physically to the court reporter, or deliver a storage medium containing only the electronic information to be admitted;

(d) deliver a copy of the document, or information, by physical or electronic means to the court reporter for delivery or transmission to the judge;

(e) request that the judge direct the document, or storage medium, given to the reporter be entered as an exhibit.

(3) A party who seeks to prove a document or electronic information, the authenticity of which is admitted, must do all of the following:

(a) show the document, or information, by physical or electronic means to each other party, and to the court reporter for delivery or transmission to the judge;

(b) show the document or information to the witness;

(c) through the witness, prove what the document or information is;

(d) await cross-examination on admissibility, or on admissibility for a limited purpose only;

(e) if, after submissions, the judge admits the document or information, deliver the document physically, or deliver a storage medium containing only the admitted electronic information, to the court reporter.

(4) A party who seeks to prove a document or electronic information, the authenticity of which is not admitted, may do so in the same way another document or electronic information is proved except the party must present evidence proving authenticity and, unless the judge directs otherwise, each of the following applies:

(a) the original of a document must be available for inspection or introduction;

(b) the original source of electronic information must be available for inspection;

(c) the document or electronic information is not shown to the judge, or read aloud, until the judge rules on authenticity.

(5) Electronic information must be proved on a storage medium in which it cannot be rewritten, unless the judge directs otherwise.

(6) A copy of a document, or electronic information, for the judge or jurors may be provided on paper or electronically, as the judge directs.

(7) A presiding judge may order a document or electronic information be removed from the record, if the document or information is marked or tendered in error.

51.12 Taking a view

(1) A presiding judge may inspect a place or thing outside court in the presence of the parties.

(2) A party may inform the judge in court, and on record, of that which the party wishes the judge to observe.

(3) No one may communicate with the judge about the issues or the evidence when the inspection is being made, except a party may point the way to that which the party wishes the judge to observe.

51.13 Judge intervening in examination

(1) A presiding judge must give directions necessary to curtail an examination that is abusive or clearly duplicative.

(2) The judge may give directions that tend to cause an examination to move more swiftly, distinctly, or effectively.

51.14 Judge calling, or recalling, witness

(1) A presiding judge may call a witness, and the judge may examine the witness or provide directions for direct examination and cross-examination of the witness.

(2) The discretion to call a witness includes recalling a witness called by a party.

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.

51.16 Record of document, or electronic information, objected to

(1) A party against whom an objection to a document or electronic information has been made may have the document, or information, marked as an exhibit in the hearing of the objection.

(2) A document marked as an exhibit in the hearing of an objection that is sustained must be kept separate from the exhibits in the trial.

Rule 52 - Trial by Jury

52.01 Scope of Rule 52

A jury trial may be conducted in accordance with the applicable provisions of Rule 51 - Conduct of Trial and in accordance with this Rule.

52.02 Jury election

(1) For the purpose of Section 34 of the *Judicature Act*, the provisions in that Section respecting jury trials and procedure are modified by this Rule 52.02.

(2) An application, and an action to which Part 12 - Actions Under $150,000 applies, must be heard or tried by a judge without a jury.

(3) Parties to an action, to which Part 12 does not apply, must elect trial by judge or trial by jury in the request for a date assignment conference or the memorandum for the date assignment conference judge.

(4) An action must be tried by a judge without a jury, unless a party elects trial by jury in accordance with this Rule 52.02.

(5) An action in which a party elects trial by jury must be tried by a jury, unless another party makes a motion for an order that the action be tried by a judge and satisfies the judge hearing the motion on either of the following:

(a) under a Rule, under legislation, or by operation of other law, the action cannot be tried by a jury;

(b) the action is not for a cause referred to in subclause 34 (a)(i) of the *Judicature Act*, and justice requires trial by a judge rather than by a jury.

52.03 Jury selection

(1) This Rule does not modify the provisions of the *Juries Act* for constituting or selecting a civil jury, except Rule 52.03(2) provides for excusing a jury panel member after jury selection begins, Rule 52.05(2) provides for peremptory challenges by a third party, and Rule 52.10(1) allows for continuation of the selection after a juror is excused.

(2) A judge who is satisfied that a member of the jury panel is unable to perform the duties of a juror may excuse the person from the panel anytime until the person is sworn or affirmed as a juror.

(3) A juror is discharged in accordance with Rule 52.10.

52.04 Challenge for cause

(1) A party who wishes to challenge every potential juror for cause must, no less than ten days before the first day of trial, file a notice of motion for directions.

(2) A party who determines to challenge a potential juror for cause must notify the judge and the other parties of the grounds for the challenge as soon as the party makes the determination.

(3) A challenge for cause must be determined by two triers.

(4) One of the following pairs must be called to be the triers each time a challenge is made:

(a) the last two jurors sworn or affirmed, if there are two or more jurors;

(b) the only juror sworn or affirmed and another person selected at random from the jury panel, if there is only one juror;

(c) two persons selected at random from the jury panel, if no jurors have been sworn or affirmed;

(d) jurors or persons selected at random as the judge may direct, to replace triers who are unable to determine a challenge.

(5) A trier who is to determine a challenge based on partiality, must swear or affirm that the trier will make a fair and just inquiry whether the potential juror is impartial as between the parties and will give a true verdict according to the evidence.

(6) A trier who is to determine a challenge not based on partiality must swear or affirm a form of oath or affirmation directed by the trial judge.

(7) When the triers determine a challenge to be true, the person called to be a juror must be directed to rejoin the other jury panel members, or be permitted to leave.

52.05 Peremptory challenge

(1) A peremptory challenge must be made in the following ways, unless the presiding judge directs otherwise:

(a) the first person called into the jury box is asked to stand and the plaintiff or all plaintiffs represented by the same counsel say “content” or “challenge”, and nothing more;

(b) if there is more than one plaintiff and they are separately represented or act on their own, the plaintiff whose name appears first in the heading and those commonly represented with the first plaintiff, are given the first opportunity to challenge the first juror, followed by the plaintiff whose name appears next or those commonly represented with that plaintiff, and so on;

(c) if the potential juror is not challenged by a plaintiff, a defendant or all defendants represented by the same counsel, then say "content" or "challenge", and nothing more;

(d) if there is more than one defendant and they are separately represented or act on their own, the order is the same as with plaintiffs;

(e) if the potential juror is challenged peremptorily by a party who has not used all peremptory challenges, the person is directed to join the other members of the jury panel or permitted to leave;

(f) the second potential juror is asked to stand, and the order for challenges is reversed, and so on until seven jurors are selected.

(2) A third party may peremptorily challenge four jurors, and the judge must give directions for the order in which challenges are to be made in a trial that includes a third party claim.

52.06 Becoming juror

(1) A potential juror is selected to be a juror when either of the following occurs:

(a) the potential juror is called into the jury box and is not challenged peremptorily or for cause;

(b) the potential juror is challenged for cause, the triers determine the challenge is not true, and no peremptory challenge is exercised.

(2) A selected juror becomes a juror when the selected juror swears or solemnly affirms to try the action impartially, give a true decision according to the evidence, and keep jury deliberations secret.

52.07 Assistance for juror with disability

The presiding trial judge may order assistance for a juror with a disability.

52.08 Roll call

On each of the following occasions, a presiding judge or the court reporter may announce for the record that all jurors are present and, otherwise, the court reporter must call the name of each juror and note the juror's response:

(a) when the jurors have been selected and first appear in court to begin the trial;

(b) each day the jurors are required to attend, when they first appear in court;

(c) on days of deliberation, before the deliberations begin for the day;

(d) when the jurors assemble to receive further instruction or announce a verdict.

52.09 Order of presentations

(1) The parties in a jury trial must make all of the following presentations in the following order, unless the presiding judge directs otherwise:

(a) the plaintiff makes a speech opening the plaintiff's case;

(b) the defendant, who undertakes to open a case in defence and not to make a motion for non suit, makes a speech about the anticipated case in defence;

(c) the plaintiff adduces the plaintiff's evidence, and when it is finished, closes the case and tenders exhibits without a speech;

(d) the defendant who did not elect to make a speech before the plaintiff's evidence is adduced makes a speech opening the case in defence or announces to the jury, without a further speech, that the defendant calls no evidence and tenders exhibits proved by the defendant and admitted into evidence during the plaintiff's case;

(e) the defendant who opens a case, adduces the defendant's evidence and, when it is finished, closes the case and tenders exhibits without a speech;

(f) the plaintiff announces there is no rebuttal or adduces rebuttal evidence after informing the judge and the other parties, without the jury being present, of the subject to be dealt with on rebuttal;

(g) the parties make a closing speech, the one who last opened a case going first, without a reply.

(2) The judge may direct that the order of presentations is reversed in a trial in which the defendant bears the burden of proof on all issues to be determined by the jury.

52.10 Discharge of jurors and mistrial

(1) A presiding judge who, before any party opens a case, is satisfied that a selected juror is unable to perform the duties of a juror may discharge the juror and resume jury selection.

(2) A judge may discharge one of the seven jurors after a party's case is opened and direct that the trial proceed, in accordance with Section 18 of the *Juries Act*.

(3) A judge who discharges jurors such that five or less remain on the jury must declare a mistrial, except the judge may discharge all the jurors and continue the trial without a jury in either of the following circumstances:

(a) the discharge did not result from the misconduct of a party and all parties consent;

(b) the discharge resulted from the misconduct of a party and all other parties consent.

(4) After a judge declares a mistrial, a party may make a motion under Rule 52.02(5)(b) that the action be tried by a judge without a jury.

52.11 Taking a view

A presiding judge may permit the jury to inspect any place or thing, and the judge must accompany the jury during the inspection.

52.12 Instructions on damages

A judge who instructs a jury on assessment of damages may give guidance, and the parties may make submissions, to the jury on the amount of damages.

52.13 Verdict and answers

(1) A presiding judge may direct a jury to give a general verdict, to give a special verdict, or to answer jury questions and, in the absence of directions, the jury may return a general verdict or a special verdict.

(2) A judge may not direct a jury to return a special verdict or answer questions in an action for defamation, unless all parties consent.

(3) A judge who directs a jury to answer jury questions must settle the wording of the questions and provide them in writing to the jurors.

(4) The questions must be such that the answers will determine all issues in the action, except issues that must be determined by the judge.

(5) A party who is not satisfied that the jury questions cover all issues in the action may request the judge to include a supplementary question.

(6) The judge may provide the jurors with a form on which to record the agreement of the jury on the verdict or an answer, and the form may provide for the signature of the foreperson if the jury chooses one, or of all jurors if the jury chooses to proceed without a foreperson.

52.14 Sequestration

(1) Jurors need not remain together before deliberations start, unless the judge directs otherwise.

(2) Jurors must not separate during deliberations, unless the judge permits otherwise.

(3) From when deliberations start until the jurors are discharged by the judge, jurors must avoid communicating with others, except as the judge or jury manager permits.

52.15 Jury manager

(1) A presiding judge must appoint a sheriff as a jury manager to supervise the sequestration of a jury, provide for the needs of a juror during sequestration, and relay permissible communications.

(2) The jury manager must swear an oath or make an affirmation to keep the jurors together, and apart from other persons who may influence a juror, except as permitted by the trial judge.

(3) A juror may communicate with the jury manager to obtain services, to pass a question to the judge, to advise that a verdict has been reached, or for any other practical purpose that does not involve discussing the issues, evidence, or deliberations.

52.16 Questions and announcement by jury

A jury may, in writing, ask the trial judge a question or announce deliberations have ended by giving the writing to the jury manager, and the manager must deliver the writing to the judge.

52.17 Majority verdict or answers

(1) A verdict or answers must be unanimous if given before the jury deliberates for four hours.

(2) A verdict may be given, and a question may be answered, by five jurors after four hours of deliberations.

(3) Jury questions may be answered by differently composed majorities of five jurors.

52.18 Conditional verdict

(1) A presiding judge may permit a party to prove a fact, document, electronic information, or other thing at a later time.

(2) The judge who permits later proof must either adjourn the trial to the later time or instruct the jury to treat the fact, document, electronic information, or other thing as proved.

(3) The judge must conditionally accept the verdict of a jury instructed to treat something as proved, until it is proved to the satisfaction of the judge or the judge finds it is not proved.

(4) The judge may grant a final order in accordance with the verdict or, if the judge finds the fact, document, electronic information, or other thing is not proved, in accordance with the verdict as modified in light of the finding.

52.19 Mistrial after jury deliberates

(1) A presiding judge must declare a mistrial when one of the following occurs:

(a) the required majority is unable to agree on a verdict or answers to jury questions;

(b) the jury returns a special verdict without making findings on which judgment can be granted;

(c) the jury answers some questions, but not all of them, and judgment cannot be granted on the answers that are given;

(d) the jury gives conflicting answers, such that judgment cannot be granted on the apparent findings.

(2) The judge may grant judgment on some claims and order a mistrial on others if the jury returns a special verdict, or answers some questions, and the verdict, or answers, entitle a party to judgment on some claims.

(3) The prothonotary must schedule a date assignment conference as soon as possible after a mistrial, unless the judge directs otherwise.

(4) For the purpose of Section 34 of the *Judicature Act*, the judge who declares a mistrial may order that the new trial is to be conducted without a jury, if justice requires.

52.20 Record of verdict or answers

(1) A foreperson chosen by the jurors, or each juror if there is no foreperson, must announce the verdict or answers after court is opened for that purpose, and the presence of all jurors is announced or the roll call is taken.

(2) After a foreperson announces the verdict or answers, a party may require a poll of the jurors.

(3) A form provided by the judge to record the agreement of the jury on the verdict or questions must be delivered to the court reporter for inspection by the presiding judge and the parties, and it must be marked as an exhibit.

(4) The judge must grant an order for judgment consistent with the verdict or answers.

Rule 53 - Conduct of Hearing

53.01 Scope of Rule 53

A judge who presides at the hearing of an application directs the conduct of the hearing, and, unless the judge directs otherwise, the hearing may be conducted in accordance with this Rule.

53.02 Direct evidence by affidavit

The direct evidence of a witness on a motion or application must be provided through an affidavit, unless a presiding judge permits direct examination.

53.03 Cross-examination

(1) No cross-examination is permitted at the hearing of an application in regular chambers, and a party who wishes to exercise a right of cross-examination must arrange for a hearing at an appointed time or in court.

(2) Cross-examination and any re-direct examination must be conducted before the presiding judge, unless the judge directs that cross-examination and any re-examination be conducted out-of-court.

(3) A party who seeks to have cross-examination conducted out of court must undertake to file a transcript of the testimony no less than two days before the day the hearing starts.

(4) The judge may direct that the cross-examination and re-direct examination out-of-court be recorded visually, as well as sound recorded.

53.04 Order of presentation and limits

(1) The order of presentation in a hearing scheduled to take a half-hour or more must be as follows, unless a judge directs otherwise:

(a) the applicant refers to the affidavits in support of the application;

(b) the respondent makes objection to anything in an affidavit that is inadmissible, the parties are heard, and the judge rules on the objection;

(c) the applicant calls witnesses of whom a respondent gave notice that cross-examination is required;

(d) the respondent cross-examines each, and the applicant questions the witness on re-direct examination if permitted;

(e) the applicant conducts a direct examination of a witness the applicant has permission to call without an affidavit;

(f) the respondent cross-examines, followed by re-direct examination if permitted;

(g) the respondent refers to the affidavits in support of the respondent, the applicant makes objections on admissibility, and the respondent calls witnesses, as in the applicant's case;

(h) the applicant cross-examines each, and the respondent questions the witness on re-direct examination if appropriate;

(i) there is no rebuttal;

(j) the applicant makes submissions, followed by the respondent, followed by a brief reply.

(2) The judge assigned to hear the application may, before or during the hearing, set limits on the time for examinations and submissions.

53.05 Cross-examination by video conference

A judge may permit cross-examination on an affidavit by video conference, or by telephone or other telecommunication, by appointing a commissioner under Rule 56 - Commission Evidence and Testimony by Video Conference, and limiting the commission to cross-examination.

53.06 Control of witness

(1) A presiding judge may order that a witness, who is not a party, a designated manager of a party, or an officer of a party be excluded from the hearing until cross-examined, and give directions to the witness about communicating with other witnesses.

(2) A presiding judge who is satisfied that the exclusion of a witness is necessary for either of the following purposes may exclude a party, a designated manager of a party, or an officer of a party from all or part of a hearing:

(a) conducting the hearing in an orderly way, for example when a witness persistently interrupts the trial without good reason;

(b) finding the truth through testimony, for example when a witness' presence is likely to have a severe adverse affect on the testimony of another witness.

53.07 Trial Rules

Rules 51.12 to 51.15, of Rule 51 - Conduct of Trial, apply to the conduct of a hearing.

53.08 No jury

For the purpose of Section 34 of the *Judicature Act*, an application is heard by a judge without a jury.

Rule 54 - Supplementary Rules of Evidence

54.01 Scope of Rule 54

(1) This Rule provides for rules of evidence and proof, in addition to those of the common law.

(2) Legislation that provides for rules of evidence or proof prevails over this Rule, to the extent the legislation is inconsistent with this Rule.

54.02 Proof of delivery

An affidavit of delivery of a document required to be delivered in accordance with a Rule proves delivery at the time and in the manner stated in the affidavit, in the absence of evidence to the contrary.

54.03 Proof of law of another province

(1) The legislation of another Canadian province or territory may be proved by reference to the official publication.

(2) The common law of a Canadian province or territory may be proved by reference to decisions of the courts and authoritative sources.

(3) The civil law of Québec may be proved by reference to the *Code Civil du Québec*, other applicable legislation, decisions of the courts, and authoritative sources.

(4) A party who satisfies the presiding judge on both of the following may lead opinion evidence on the law of another province:

(a) the party has provided a report under Rule 55 - Expert Opinion;

(b) the assistance of an expert is necessary and the opinion is otherwise admissible.

54.04 Proof of law of foreign state

(1) The law of a foreign state may be proved in either of the following ways:

(a) reference to official publications of legislation, judicial decisions, and authoritative sources;

(b) expert opinion, introduced in accordance with Rule 55 - Expert Opinion and the rules of evidence.

(2) The law of a foreign state is presumed to be the same as the law of Nova Scotia, unless a party gives notice by a pleading that the law of a foreign state is in issue and proves that that law is not the same as the law of Nova Scotia.

54.05 Presumptions about disclosed documents or electronic information

(1) The presumptions in this Rule 54.05 apply to a document, or electronic information, disclosed in accordance with Part 5 - Disclosure and Discovery, unless a party opposed to introduction of the document, or electronic information, does either of the following:

(a) denies that a presumption is true for a specific document, or electronic information, and gives reasons for the denial in writing delivered to the disclosing party no more than twenty-five days after the day a copy of the document, or electronic information, is delivered for disclosure to the denying party;

(b) proves the contrary at the trial or hearing.

(2) A copy of a disclosed document is presumed to be an exact copy of the original, and disclosed electronic information that is copied to a storage medium is presumed to have been copied from the original source.

(3) The original of a disclosed document is presumed to have been authentically written, signed, executed, or sealed as it purports.

(4) The original of disclosed electronic information is presumed to have been authentically created and authored as it purports.

(5) A disclosed document or electronic information that purports to have been transmitted, or otherwise delivered, is considered to have been transmitted or otherwise delivered when, where, and how it purports.

54.06 Calling adverse party for cross-examination

(1) In addition to cross-examination in accordance with the rules of evidence about a hostile witness, a party may call and cross-examine a party who is adverse in interest or a person who is, when the person is called, an officer, director, or employee of a party who is adverse in interest.

(2) The party who is called as a witness, or whose officer, director, or employee is called as a witness, by an adverse party may cross-examine the witness on subjects touched upon during the cross-examination by the adverse party.

(3) A witness called by an adverse party, and cross-examined, may be directly examined on new subjects at the conclusion of the first cross-examinations or on recall.

Rule 55 - Expert Opinion

55.01 Scope of Rule 55

(1) This Rule provides procedure about expert opinion sought to be introduced at the trial of an action or hearing of an application in court, and it does each of the following:

(a) requires disclosure of an expert opinion to be offered on a trial or hearing;

(b) provides for exclusion of expert opinion evidence that is not disclosed as required;

(c) requires experts to make written representations to the court about the independence of the expert and the expert's participation in the proceeding;

(d) limits discovery of experts.

(2) This Rule does not affect the rules of evidence by which expert opinion is determined to be admissible or inadmissible.

(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.

55.02 Report required

A party may not offer an expert opinion at the trial of an action or hearing of an application in court unless an expert's report, or rebuttal expert's report, is filed in accordance with this Rule.

55.03 Deadline for filing report

(1) A party to an action who wishes to offer an expert opinion, other than in rebuttal of an expert opinion offered by another party, must file the expert's report no less than six months before the finish date, or by a deadline set by a judge.

(2) A party to an action who receives an expert's report stating an opinion the party contests, and who wishes to offer a rebuttal expert opinion, must file a rebuttal expert's report no more than three months after the day the expert's report is delivered to the party, or by a deadline set by a judge.

(3) A party to an application in court who wishes to offer an expert opinion, or a rebuttal expert opinion, must file an expert's report, or a rebuttal expert's report, before the deadline set by the judge who gives directions and appoints a date for the hearing of the application.

(4) Despite Rules 55.03(1) to (3), in a family proceeding reports must be filed at either of the following times, unless a judge directs otherwise:

(a) an expert's report, the day before a conference at which a judge appoints the date for the hearing of the proceeding;

(b) a rebuttal expert's report, no more than thirty days after the day of the conference.

55.04 Content of expert's report

(1) An expert's report must be signed by the expert and state all of the following as representations by the expert to the court:

(a) the expert is providing an objective opinion for the assistance of the court, even if the expert is retained by a party;

(b) the witness is prepared to testify at the trial or hearing, comply with directions of the court, and apply independent judgment when assisting the court;

(c) the report includes everything the expert regards as relevant to the expressed opinion and it draws attention to anything that could reasonably lead to a different conclusion;

(d) the expert will answer written questions put by parties as soon as possible after the questions are delivered to the expert;

(e) the expert will notify each party in writing of a change in the opinion, or of a material fact that was not considered when the report was prepared and could reasonably affect the opinion, as soon as possible after arriving at the changed opinion or becoming aware of the material fact.

(2) The report must give a concise statement of each of the expert's opinions and contain all of the following information in support of each opinion:

(a) details of the steps taken by the expert in formulating or confirming the opinion;

(b) a full explanation of the reasons for the opinion including the material facts assumed to be true, material facts found by the expert, theoretical bases for the opinion, theoretical explanations excluded, relevant theory the expert rejects, and issues outside the expertise of the expert and the name of the person the expert relies on for determination of those issues;

(c) the degree of certainty with which the expert holds the opinion;

(d) a qualification the expert puts on the opinion because of the need for further investigation, the expert's deference to the expertise of others, or any other reason.

(3) The report must contain information needed for assessing the weight to be given to each opinion, including all of the following information:

(a) the expert's relevant qualifications, which may be provided in an attached resumé;

(b) reference to all the literature and other authoritative material consulted by the expert to arrive at and prepare the opinion, which may be provided in an attached list;

(c) reference to all publications of the expert on the subject of the opinion;

(d) information on a test or experiment performed to formulate or confirm the opinion, which information may be provided by attaching a statement of test results that includes sufficient information on the identity and qualification of another person if the test or experiment is not performed by the expert;

(e) a statement of the documents, electronic information, and other things provided to, or acquired by, the expert to prepare the opinion.

55.05 Content of rebuttal expert's report

A rebuttal expert's report must be signed by the expert and provide all of the following:

(a) representations and information required in an expert's report;

(b) the name of the expert with whom the rebuttal expert disagrees and the date of that expert's report;

(c) a quotation of the statement of opinion with which the rebuttal expert disagrees;

(d) a statement that the rebuttal opinion is strictly confined to the same subject as the quoted opinion;

(e) the rebuttal opinion and no further opinion.

55.06 Reports in an application

(1) An expert's report may be filed in an application as an exhibit to the expert's affidavit, or as a judge directs.

(2) The affidavit and report stand as the entire direct evidence of the expert, except that in an application in which qualification is not admitted by the other party the judge may permit the party who files the affidavit to ask supplementary questions on qualification.

(3) The party who files an expert's report in an application must arrange to have the expert present at the hearing if another party gives notice that the party disputes qualification or requires cross-examination.

55.07 Expert jointly retained by adverse parties

(1) Parties who are adverse to one another in a proceeding may agree to jointly retain an expert, and jointly file the expert's report.

(2) The parties may agree that they will admit to the opinion when it is delivered, and, if they agree to make such an admission, the opinion may be proved against a party as an admission.

(3) Parties who file a joint expert's report may not file the report of another expert on an issue about which an opinion is given in the joint report, unless a judge permits.

(4) Despite the deadline for filing a report provided in Rule 55.03(1), a party to an action may file a joint expert's report anytime before the finish date.

55.08 Consequential disclosure

(1) A party who files an expert's report or a rebuttal expert's report must disclose, by supplementary affidavit of documents or the applicable method of disclosing electronic information, a document or electronic information considered by the expert that is in the control of the party.

(2) The disclosure must be made no later than the day the report is filed.

(3) The party must also disclose any real or demonstrative evidence considered by the expert that is in the control of the party.

(4) The expert must provide a copy of the document or electronic information, or provide disclosure of another thing, that was considered by the expert and is in the control of the expert but not the party.

55.09 How expert proposed to be qualified

A party who files an expert's report or a rebuttal expert's report, and a party who wishes to prove an opinion formed by a treating physician in the course of treatment without filing an expert report, must also file a statement of the qualification to be sought from the court at the trial or hearing, which statement may take the form, "[name of party] will ask that [name of expert] be found to qualify as an expert in the field of [field], capable of giving opinion evidence on the subject of [describe the subject of the opinion]."

55.10 Objection to report and advance ruling

(1) A party who receives a report and who wishes to have the opinion evidence excluded at the trial or hearing on the basis that the report does not sufficiently conform with this Rule must, in a reasonable time, notify the party who delivers the report of the deficiency.

(2) A party may make a motion for an order determining whether a report sufficiently conforms with this Rule to permit the purported expert to testify at a trial or hearing.

(3) An order under this Rule is binding at the trial of an action or hearing of an application only on the issue of conformity with Rule 55.04 or 55.05.

55.11 Questioning expert in writing

(1) A party may not obtain a discovery subpoena for or deliver interrogatories to an expert witness, but a party may interview or discover an expert if the expert and the party who delivers the expert's report agree.

(2) A party who receives an expert's report, or a rebuttal expert's report, may, no more than thirty days after the day the report is delivered, deliver to the other party written questions to be answered by the expert.

(3) The questions may only call for information that is not privileged and is relevant to one of the following:

(a) the expert's qualifications;

(b) a factual assumption made by the expert;

(c) the basis for an opinion expressed in the expert's report.

(4) The party who receives written questions must deliver them to the expert immediately.

(5) The expert must fully answer the questions in writing, sign the answer, and deliver it to each party no more than thirty days after the day the questions are delivered to the expert.

(6) A party may not submit supplementary questions, unless the parties agree or a judge allows otherwise.

(7) A party who receives written questions may make a motion to set aside or limit the questions.

(8) The opinion of an expert who fails to answer questions in compliance with this Rule 55.11 is inadmissible, and the party who asks the questions may make a motion for an order that the opinion is inadmissible on that ground.

55.12 Court expert

(1) A judge who is satisfied on both of the following may appoint a person to formulate an opinion, and report the opinion to the court:

(a) the person is qualified to give the opinion;

(b) the opinion is likely to be admissible.

(2) An order appointing an expert may contain any of the following terms:

(a) the appointment and a statement of the subjects about which an opinion is required;

(b) a requirement that the expert prepare an expert's report;

(c) directions to the expert on the contents of the report and whether the expert must answer written questions;

(d) a requirement that the expert file the report and immediately deliver a copy to each party;

(e) a deadline for filing the report;

(f) permission for a party to question the expert in writing or a direction that there will be no questions before the expert gives evidence;

(g) terms for payment of the expert by a party or the parties, which may provide for payment of fees for a custody or access assessment in accordance with the *Costs and Fees Act*;

(h) any other term the judge requires.

(3) Questions under an order that permits questioning of a court appointed expert must be asked and responded to in accordance with all of the following, unless the order provides otherwise:

(a) a party to whom the court appointed expert's report is delivered may, no more than thirty days after the day the report is delivered, submit questions directly to the court appointed expert;

(b) the expert must answer the questions in writing, sign the answer, and deliver it to each party as soon as possible;

(c) a party may not submit a supplementary question, unless all parties and the expert agree, or a judge permits.

(4) A party may not obtain a discovery subpoena for a court appointed expert, deliver interrogatories to the expert, or obtain an order for discovery of the expert.

(5) The court must arrange for a court appointed expert to be called for cross-examination by a party who gives reasonable notice that the party wishes to cross-examine the expert.

55.13 Testimony by expert

(1) A party to whom an expert's, or rebuttal expert's, report is delivered must determine whether to admit or contest the proposed qualification, and the admissibility of the opinion, by no later than the finish date.

(2) A party may not call an expert whose qualifications, and the admissibility of whose opinion, are admitted, unless one of the following applies:

(a) the expert is also a fact witness and the direct examination is confined to the facts;

(b) the party is notified, before the finish date, that another party requires the expert to be called for cross-examination;

(c) the presiding judge is satisfied that justice requires that the expert testify.

(3) A party must call an expert whose qualifications are contested, prove the report through the expert, and conduct any supplementary direct examination on qualifications.

(4) A party must call an expert the admissibility of whose opinion is contested, prove the report through the expert for the purpose of obtaining a ruling on admissibility, and conduct no further direct examination unless the presiding judge permits.

(5) A judge who determines that calling an expert was clearly unnecessary may order the party who caused the expert to be called to indemnify another party for the expenses caused by the expert being called.

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.

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.

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.

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.

Rule 56 - Commission Evidence and Testimony by Video Conference

56.01 Scope of Rule 56

(1) This Rule provides for obtaining evidence from a witness who does not personally attend court.

(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) This Rule also provides for assistance to a court outside the province that takes evidence from a witness within Nova Scotia.

56.02 Order for transcription or transmission

(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.

56.03 Rules of evidence and procedure on commission

(1) The rules of evidence apply to evidence taken or transmitted under this Rule 56.

(2) A witness who gives evidence under this Rule must answer a question to which an objection is made, unless one of the following applies:

(a) the appointment of a commissioner who takes evidence, or a provision in an order, provides otherwise;

(b) the questioner withdraws the question;

(c) the evidence is being transmitted and the presiding judge rules that the question is not to be answered;

(d) 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 undertakes to seek that ruling as soon as is practical;

(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.

(3) The presiding judge must rule on the admissibility of an answer given to a question objected to, but answered, at a commission.

(4) The rules for order of examinations, and all other rules of trial procedure or procedure on a hearing, apply when evidence is taken or transmitted by commission, unless a judge orders or the parties agree otherwise.

56.04 Content of order for commission

(1) An order for evidence to be taken under commission must appoint a commissioner, authorize the commissioner to administer an oath or affirmation to the witness to be examined, state how the testimony is to be recorded, provide instructions for carrying out the commission and for reporting the evidence, and provide that the appointment is conditional on the acceptance of the instructions.

(2) The instructions may be provided in a separate document authorized by the order.

(3) The order must name the witness to be examined and provide the time, date, and place for the examination under commission or provide a method by which the party conducting the direct examination, or the commissioner, gives adequate notice of the time, date, and place of the examination.

(4) The order for commission may be in Form 56.04.

56.05 Instructions for taking evidence

(1) Instructions to a commissioner for taking evidence in Nova Scotia may explain that the appointment of the commissioner is conditional on the instructions being accepted and may include instructions on each of the following subjects:

(a) impartial taking, and accurate recording, of the evidence;

(b) administering an oath or affirmation;

(c) the order of examinations;

(d) objections and the need for the witness to answer all questions including those objected to;

(e) the need to mark an exhibit;

(f) appointing, and swearing or affirming, a translator or signer;

(g) the requirement to cause a transcript to be prepared of everything said during the proceeding;

(h) the requirement that the commissioner certify that the transcript accurately transcribes the evidence and all else that was said during the proceeding;

(i) the requirement to deliver to the court a report, the original transcript, and each exhibit.

(2) Instructions to a commissioner for taking evidence outside Nova Scotia may inform the commissioner of the effect of Sections 2 and 67 of the *Evidence Act*, include the instructions required for an examination in Nova Scotia, and provide that the commissioner is authorized to do each of the following:

(a) take steps to ensure that the laws of perjury of the place where the examination is conducted apply to the taking of evidence;

(b) follow instructions given by the judicial authority of the place of the examination as a condition of compelling attendance.

(3) Instructions to a commissioner for an out-of-court examination may be in Form 56.05.

56.06 Instructions for transmitting evidence

(1) Instructions to a commissioner for transmitting evidence by video conference of such quality the witness is as good as present in the courtroom may include instructions on each of the following subjects:

(a) impartial taking, and careful simultaneous transmission, of the evidence;

(b) administering an oath or affirmation, unless the judge determines the witness may only testify on a promise to tell the truth;

(c) following the directions of the presiding judge;

(d) describing on record at the beginning of the conference the room in which the witness is situate and the persons present;

(e) reporting on anything unusual that happens in the room, unless it appears in the transmission;

(f) communicating with the court if the transmission fails;

(g) the subjects referred to in Rule 56.05(2), if the examination is outside Nova Scotia;

(h) the need to mark exhibits as directed by the judge and to deliver them to the court.

(2) Instructions to a commissioner for transmitting evidence by any other kind of teleconference may include additional instructions on both of the following subjects:

(a) the need to keep the witness from communicating with others during the examination and from looking at a note or other thing containing information, except as directed by the examining party or the judge;

(b) showing the witness an exhibit and stating, for the record, that is being done.

(3) The instructions to a commissioner to transmit evidence may be in Form 56.06.

56.07 Judge as commissioner

The judge presiding, or assigned to preside, at a trial or hearing may be appointed a commissioner to take evidence outside Nova Scotia.

56.08 Order for transmission without commissioner

(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.

56.09 Compelling attendance before commissioner

(1) A witness is compelled to attend a commission in Nova Scotia in accordance with Rule 50 - Subpoena.

(2) A party may make a motion for a letter of the court requesting an appropriate judicial authority to require attendance for examination under a commission to be held outside Nova Scotia, and the party must do all of the following:

(a) satisfy the judge that, under the law of the other jurisdiction, the judicial authority has the power to compel the attendance;

(b) inform the judge of the method used to compel attendance, the existence or otherwise of a perjury offence, the penalty for perjury, and the oath, affirmation, or other prerequisite in the law of perjury of the other jurisdiction;

(c) satisfy the judge that the request is in the interests of justice.

(3) The letter may contain the heading of the proceeding, be entitled "Letter of Request", be addressed to the other judicial authority by its proper name, be issued by the prothonotary, and include all of the following information and requests:

(a) a description of the proceeding;

(b) a record of the judge's finding that the examination is in the interests of justice;

(c) a description of the commission, including whether it is to take or transmit evidence;

(d) a request that the authority permit the commission to proceed in accordance with the instructions, modified as required by the laws of the other jurisdiction;

(e) the request to compel attendance, including any requirement to bring a document;

(f) a reference to reciprocity (see Rule 50.03(2) of Rule 50 - Subpoena, Sections 70 to 72 of the *Evidence Act*, and Rule 56.09).

(4) The letter of request may be in Form 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.

56.10 Conduct of commission for another jurisdiction

For the purpose of Section 72 of the *Evidence Act*, a commission authorized by a judge at the request of the court of another jurisdiction may be conducted in accordance with the following procedures:

(a) procedures directed by the authorizing judge;

(b) procedures in the appointment or other instrument of the requesting jurisdiction, unless otherwise directed by the judge;

(c) procedures provided in this Rule for the conduct of a commission in Nova Scotia, unless they are inconsistent with the direction of the judge or procedures in the appointment or other instrument of the requesting jurisdiction.

Part 12 - Actions Under $150,000

Rule 57 - Action for Damages Under $150,000

57.01 Definition

In this Rule, “action under $150,000" means an action to which this Rule applies.

57.02 Scope of Rule 57

(1) This Rule provides for the economical conduct of certain defended actions by limiting pretrial and trial procedures.

(2) A party to an action under $150,000 must advance the claim, or conduct the defence, within the limits prescribed by this Rule.

57.03 Application of Rule 57

(1) This Rule applies to an action in which the plaintiff, acting in accordance with Rule 57.04, states in a notice of action or notice of action for debt that the action is within this Rule.

(2) Rule 57.04 applies to all actions.

(3) A judge who continues an application as an action under Rule 6 - Choosing between Action and Application, or severs a claim in an action under Rule 37 - Consolidation and Separation, may order that this Rule 57 applies to the action, or severed claim, if the judge is satisfied the action or severed claim is within clauses (a), (b), and (c) of Rule 57.04(1).

(4) Under Rule 58 - Action for Claim Valued under $150,000, a judge may order that this Rule applies to an action.

(5) A judge who is satisfied on one of the following may except an action under $150,000 from the provisions of this Rule:

(a) justice cannot be done by applying this Rule;

(b) a party or the public has a significant intangible interest at stake in the outcome of the action;

(c) a counterclaim, crossclaim, or third party claim is filed, it would be unjust to limit procedures applicable to the counterclaim, crossclaim, or third party claim as provided in this Rule, and the counterclaim, crossclaim, or third party claim is not to be separated under Rule 37 - Consolidation and Separation.

57.04 Plaintiff's statement applying Rule 57

(1) A person who starts an action, other than an action to enforce a builder's lien, must do all of the following:

(a) determine whether the claim is for damages only;

(b) if so, determine whether the claim is based only on debt, injury to property, personal injury, supply of goods or services, or losses caused by breach of contract, breach of trust, or dismissal from employment;

(c) if so, estimate whether the total of all claims, except costs and future interest, is less than $150,000.

(2) A plaintiff who makes the determinations and estimates under Rule 57.04(1) in the affirmative must state, in the notice of action or notice of action for debt, that the action is within this Rule.

(3) A plaintiff who states in the notice of action, or notice of action for debt, that this Rule applies may not have judgment for more than $149,999.99, plus interest after the day the action is started and costs.

(4) A plaintiff who would otherwise be entitled to costs but who unreasonably states that an action is not within this Rule is disentitled to costs, including an indemnification for disbursements.

(5) A judge who determines to order costs against a plaintiff may take an unreasonable statement that the action is not within this Rule into consideration when fixing the amount of costs.

57.05 Unreasonable counterclaim, crossclaim, or third party claim

A judge who finds that a party obtained an order under Rule 57.03(5) excepting an action from the provisions of this Rule on the basis of an unreasonably high counterclaim, crossclaim, or third party claim may do either of the following:

(a) deprive the party of costs, including an indemnity for disbursements, if the party would otherwise be entitled to costs;

(b) increase the amount of costs that would otherwise be ordered against the party.

57.06 Early date assignment conference

Despite Rule 4.13(1), of Rule 4 - Action, a party to an action under $150,000 may obtain a date assignment conference to organize trial dates any time after pleadings close.

57.07 Preservation of electronic information

Despite Rule 16.02(4), of Rule 16 - Disclosure of Electronic Information, a party to an action under $150,000 may preserve relevant electronic information by copying it from the original source to a storage medium, unless the parties agree or a judge orders that the information must be copied exactly.

57.08 Economical disclosure

(1) A judge may, in an action under $150,000, give directions for economical ways of making full disclosure of documents, electronic information, or other evidence.

(2) Each of the following is an example of directions that may provide economical ways of making full disclosure:

(a) attend a conference of the parties with or without a judge, bring all relevant documents and electronic information to the conference, exchange copies there, and answer questions about the documents or electronic information;

(b) attend a conference of the parties without a judge to discuss and, if possible, agree to terms for disclosure of electronic information;

(c) attend a conference of the parties with a judge to settle terms for disclosure of electronic information;

(d) exchange copies of relevant documents and electronic information without affidavits, if the judge is satisfied each party has fully informed the other about relevant documents and electronic information in the party's control.

57.09 No interrogatories

A party to an action under $150,000 may not demand answers under Rule 19 - Interrogatories, except a judge may give permission for a party to demand answers from a person who is not a party or an officer or employee of a party.

57.10 Economical discovery

(1) Discovery in an action under $150,000 is restricted to the witnesses, the length of time, and the number of sessions provided in this Rule 57.10.

(2) A party to an action under $150,000 may only discover, or seek a discovery subpoena addressed to, an individual party, a designated manager of a corporate party, and one other officer or employee of a corporate party.

(3) A party to an action under $150,000 who is not represented by the same counsel as another party and who is adverse in interest to all other parties, and parties who are represented by the same counsel or are not adverse in interest, must complete all discoveries required by the party, or parties, in no more than three hours, over no more than two sessions.

(4) The parties may agree to or a judge may permit an extension of the length of time for discovery, an increase in the number of sessions of discovery, or the obtaining of a discovery subpoena not otherwise permitted under this Rule 57.10.

(5) A judge who permits an extension on the obtaining of a subpoena must be satisfied that, despite the need for economy, permission is necessary because a claim is sufficiently complex, a witness is uncooperative in answering questions efficiently, or there are other similar grounds.

(6) The three hours of discovery allowed to parties who are not adverse in interest must be divided evenly among them, whether or not a party is represented by the same counsel as another party.

57.11 Economical trial

(1) A date assignment conference judge must take into account the need for economy in an action under $150,000 when setting the number of days for trial.

(2) The parties must do everything that is reasonable to keep the trial within the time allotted by the date assignment conference judge.

(3) A presiding judge may apportion time for examinations and preclude a party from examining a witness beyond the apportioned time.

57.12 No jury trial

For the purpose of Section 34 of the *Judicature Act*, an action under $150,000 must be tried without a jury.

57.13 Witnesses

(1) A party to an action under $150,000 must, before a date assignment conference, file a list of the witnesses the party intends to call, and a description of the subjects about which each witness may testify.

(2) Before the finish date, the party must file a final list of witnesses the party will call at trial and deliver to each other party a will-say statement for each witness on the list who is not an expert or who has not been discovered.

(3) A party may only call a witness whose name is on the final witness list, unless the presiding judge is satisfied the party could not reasonably have been aware of the witness before the finish date and, as soon as the party became aware, the party disclosed the name of the witness and what the witness will say to each other party.

(4) A party who calls a witness may lead evidence only on subjects expressly covered in the will-say statement, unless the presiding judge is satisfied the subject was left out of the statement for reasons beyond the control of the party.

Rule 58 - Action for Claim Valued Under $150,000

58.01 Scope of Rule 58

(1) This Rule allows for the economical conduct of both of the following kinds of actions:

(a) an action that is not for damages, or not exclusively for damages, but in which the value of the interest in dispute is less than $150,000;

(b) an action for damages valued at less than $150,000 and based on a cause of action not mentioned in Rule 57.04(1)(b), of Rule 57 - Action for Damages Under $150,000.

(2) The parties to a defended action may agree to economical limits on interrogatories, discovery, the time for trial or examination of witnesses, or any other procedure.

(3) A party who is unable to obtain an agreement for economical limits may seek to limit pretrial and trial procedures in certain actions valued under $150,000, in accordance with this Rule.

58.02 Motion for economical procedures

(1) A party to a defended action may make a motion for an order applying Rule 57 - Action for Damages Under $150,000, to an action to which Rule 57 does not otherwise apply.

(2) The party must satisfy the judge hearing the motion on each of the following:

(a) the value of the claims in the action can be estimated in money, and there is no significant intangible interest at stake in the outcome of the action;

(b) the fair estimated value of the plaintiff's claims is less than $150,000 and no counterclaim, crossclaim, or third party claim has a fair estimated value in excess of $150,000;

(c) the expense of taking the action to its conclusion will be out of proportion to the interests at stake in the action unless provisions of Rule 57 apply, or directions to similar effect are given.

58.03 Order for economical procedures

A judge who is satisfied in accordance with Rule 58.02(2) may order that Rule 57 - Action for Damages Under $150,000 applies to the action, or do any of the following:

(a) give directions for full disclosure of documents, electronic information, and other evidence to make disclosure more economical than otherwise is the case;

(b) order limitations on discovery, or the time for trial and examination;

(c) direct disclosure of witnesses and delivery of summaries of the expected testimony or will-say statements;

(d) give any other directions to make the cost of procedures proportionate to the interests at stake in the action.

Part 13 - Family Proceedings

Rule 59 – Supreme Court (Family Division) Rules

59.01 Definitions

In this Rule 59,

"application" means a proceeding started by filing a notice of application or notice of variation application;

"court officer" means a court official at an office of the Supreme Court (Family Division) who performs duties and provides services on behalf of the court such as reviewing statements and documents submitted for filing, conducting conciliation, directing and ordering disclosure, arranging and scheduling for parties to appear before a judge, and determining interim child support in some circumstances;

"*Guidelines*" means the *Federal Child Support Guidelines* or the provincial *Child Support Guidelines* or both, as the context requires;

"judge" means a judge of the Supreme Court (Family Division) and any other judge of the Supreme Court determining or hearing a proceeding brought in the Supreme Court (Family Division);

"response" means either the response to application or response to variation application provided for in this Rule;

"statement" means any of the parenting statement, and the financial statements provided for in this Rule, and when reference is made to a document in the Rules outside Part 13 - Family Proceedings, it includes a statement under this Rule;

"spouse" means either of two persons who

(i) are married to each other,

(ii) are married to each other by a marriage that is voidable and has not been annulled by a declaration of nullity,

(iii) have entered into a form of marriage with each other that is void, if either or both of them believed that the marriage was valid when entering into it,

(iv) are domestic partners or are former domestic partners within the meaning of Section 52 of the *Vital Statistics Act*,

(v) not being married to each other, cohabitated in a conjugal relationship with each other continuously for at least two years, or

(vi) not being married to each other, cohabitated in a conjugal relationship with each other and have a child together.

"support" means either support or maintenance, as the context or applicable legislation provides;

"written agreement" means an agreement in writing that is signed by the parties and witnessed.

59.02 Scope of Rule 59

(1) This Rule applies to a proceeding in the Supreme Court (Family Division) that is within section 32A of the *Judicature Act* and is not transferred by a judge under section 32C of the *Act*, except a proceeding provided for in Rule 60A - Child and Adult Protection, Rule 60B - *Involuntary Psychiatric Treatment Act* and *Hospitals Act* Applications, or Rule 61 - Adoption.

(2) The Rules outside Part 13 - Family Proceedings, with any necessary changes, apply to practice or procedure in the Supreme Court (Family Division) that is not governed by Part 13.

(3) A judge who is satisfied that a procedure provided by a Rule outside this Rule 59 is better suited to a proceeding in the Supreme Court (Family Division) than those provided in this Rule may order that the Rule outside this Rule applies.

(4) This Rule provides for an action that leads to a divorce and corollary relief, but an uncontested divorce proceeding and all other family proceedings in the Supreme Court (Family Division) may be started by application.

(5) Rules applicable to an action apply to a divorce action as if the petitioner were a plaintiff, the respondent were a defendant, the petition were a notice of action, the answer were a notice of defence, and pleadings close when an answer is filed, unless this Rule 59 provides differently.

59.03 Where a proceeding is started and heard

(1) A proceeding in the Supreme Court (Family Division) must be started, dealt with and heard:

(a) if the proceeding is not a divorce and involves decision-making responsibility or custody of a child, time or interaction with a child or parenting arrangements, in the judicial district where the child habitually resides;

(b) if the proceeding involves a divorce, in the judicial district where either party resides;

(c) if the proceeding does not involve (a) or (b), in the judicial district where the applicant resides.

(2) A judge may order that a proceeding may be started, transferred or adjourned to a court in a different judicial district if it is substantially more convenient to deal with the proceeding or part of the proceeding in that judicial district.

59.04 Starting a proceeding

(1) A person who wishes to start a proceeding, must file all of the following:

(a) a notice or petition referred to in Rule 59.06;

(b) documents, statements, and supporting disclosure required under Rules 59.20 to 59.23 or directed by a court officer to be filed.

(2) The documents, statements, and disclosure must be filed at the same time as the notice or petition is filed, unless a court officer permits otherwise.

(3) A person who wishes to start a proceeding must meet with a court officer to be informed of the filing and disclosure obligations and comply with them, unless the court officer is satisfied that all required information has been provided in the filed notice or petition, and all required documents, statements, and supporting disclosure have been filed.

(4) The court officer may authorize a notice, petition, document, or statement to be filed.

(5) No further step may be taken in an application until the court officer is satisfied that the notice or petition, documents, statements, and supporting disclosure required by this Rule have been filed.

(6) The court officer must determine the next step to be taken on the basis of the information in the filed documents, statements, and supporting disclosure, and the next step may include any of the following:

(a) a referral to an agency or service;

(b) a referral to a court officer for conciliation, case management, or both;

(c) an appearance before a judge.

(7) A court officer, instead of the prothonotary, must instruct a party as required by Rule 34 - Acting on One's Own.

59.05 Parties and counsel

(1) A person who files an application must be named as the applicant and if more than one person files the application, they each must be named as an applicant, and this Rule 59 applies as if "applicant" read "applicants".

(2) The person from whom relief is requested in an application must be named as the respondent, and if more than one person, they each must be named as a respondent, and this Rule 59 applies as if "respondent" read "respondents".

(3) A spouse who starts a divorce action must be named as the petitioner, and the other spouse must be named as the respondent.

(4) No other person may be made a party to a divorce action, unless a judge permits otherwise.

(5) A lawyer for a party becomes counsel of record as provided in Rule 33 - Counsel, and the lawyer who signs a certificate required by section 7.7 of the *Divorce Act* or an answer is counsel of record.

59.06 Types of proceeding

(1) An original proceeding, other than a divorce proceeding, is started by filing a notice of application.

(2) A divorce proceeding is started by filing one of the following:

(a) a petition for divorce to start a divorce action, in which a claim is made for a divorce and any corollary relief under the *Divorce Act*, or any other relief that a judge or court officer permits to be determined with a claim under the *Divorce Act*;

(b) an application for divorce by agreement, or a joint application for divorce, in which the parties consent to a divorce and any corollary relief, or other permitted relief.

(3) A reference in this Rule 59 to a claim, or order, for corollary relief includes a claim, or order, for a remedy outside the *Divorce Act* that is permitted under Rule 59.06(2)(a).

(4) A proceeding to vary, rescind, or suspend an order made under the *Divorce Act* is treated as an original proceeding, and it is started by filing a notice of variation application.

(5) A proceeding to vary, rescind, or suspend an order made under the *Parenting Support Act*, including an order made under the *Act*'s former title, the *Maintenance and Custody Act*, is treated as an original proceeding, and is started by filing a notice of variation application.

(6) A motion in a proceeding is started under Part 6 - Motions as modified by Rule 59.52.

59.07 Notice of application

(1) A notice of application must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Application", be dated and signed, and include all of the following:

(a) notice that the applicant is applying for an order and describing the relief that is sought;

(b) a reference to legislation or other law, including the relevant sections of legislation, relied on by the applicant;

(c) a list of the documents and statements that are filed with the application and a statement that a copy of each document is to be delivered to the respondent with the notice;

(d) notice of the respondent's right to file a response to application and that a judge or court officer will direct the respondent regarding the deadline for filing;

(e) notice that there are requirements for the parties to file documents and statements, and that a judge or court officer may require the respondent to provide information;

(f) notice of the circumstances in which the respondent may cease to be entitled to notice of steps in the proceeding;

(g) a statement explaining how documents and statements are filed and stating the requirement for immediate delivery to the other party;

(h) if there is only one applicant, a designation of an address for delivery of documents to the applicant and, if there is more than one applicant, a designation of one address for delivery to all applicants or a separate address for each applicant;

(i) an acknowledgement of the effect of delivery to the designated address;

(j) if there is only one respondent, the address of the respondent for delivery of documents to the respondent, until the respondent designates an address for delivery, and if there is more than one respondent, the address for delivery to all respondents or a separate address for each respondent;

(k) the applicant's declaration as required by sections 7.1 to 7.5 of the *Divorce Act* (if proceeding under the *Divorce Act*);

(l) the certificate of counsel for an applicant as required by section 7.7 of the *Divorce Act* or section 54(c) of the *Parenting and Support Act*;

(m) a statement of other relevant proceedings or circumstances affecting the well-being or safety of the children/parties.

(2) The notice of application may be in Form 59.07.

59.08 Response to application by respondent

(1) A respondent in a proceeding started by notice of application may apply for an order by filing a response to application.

(2) A respondent who seeks to obtain relief that is different from the types of order claimed in the notice of application must file a response to application.

(3) A respondent must file a response to application no less than fifteen days before the day of the hearing, unless a court officer or judge directs otherwise.

(4) The response to application must contain the standard heading, be entitled "Response to Application", be dated and signed, and include all of the following:

(a) notice of the relief requested;

(b) a reference to legislation or other law, including the relevant sections of legislation, relied on by the respondent;

(c) a list of the documents and statements that are filed with the response to application and a statement that a copy of each document is to be delivered to the applicant with the response;

(d) a designation of an address for delivery of documents to the respondent;

(e) an acknowledgement of the effect of delivery to the designated address;

(f) the respondent's declaration as required by sections 7.1 to 7.5 of the *Divorce Act* (if proceeding under the *Divorce Act*);

(g) the certificate of counsel for a respondent as required by section 7.7 of the *Divorce Act* or section 54(c) of the *Parenting and Support Act*;

(h) a statement of other relevant proceedings or circumstances affecting the well-being or safety of the children/parties.

(5) The response to application may be in Form 59.08.

59.09 Petition for divorce

(1) A petition for divorce must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Petition for Divorce", be dated and signed by the petitioner, and include all of the following:

(a) notice that action has been started for a divorce and for the corollary relief described in the notice;

(b) notice of the deadlines in Rule 31 - Notice for filing an answer;

(c) notice that the court may grant a divorce order and an order for the other relief claimed, unless the respondent files an answer;

(d) a statement of the restrictions on remarriage and notice of when the court issues a certificate of divorce;

(e) the claim for a divorce, and each other claim made by the petitioner, with references to the applicable legislation, including the relevant sections of legislation;

(f) the ground for divorce and particulars, details of the marriage, facts establishing jurisdiction, details about each child of the marriage if any, and details about agreements and earlier proceedings between the parties;

(g) a statement about the impossibility of reconciliation;

(h) a statement about the absence of collusion and when applicable, the absence of condonation and connivance;

(i) a list of the documents and statements that are filed with the petition for divorce and a statement that a copy of each document is to be delivered to the respondent with the petition;

(j) notice that there are requirements for the parties to file documents and statements, and that a judge or court officer may require the respondent to provide information;

(k) a statement explaining how documents are filed and stating the requirement for immediate delivery of a copy to the petitioner;

(l) a designation of an address for delivery of documents to the petitioner;

(m) an acknowledgement of the effect of delivery to the designated address;

(n) the designation of a place of trial under Rule 59.03 and Rule 47 - Place of Trial or Hearing;

(o) the petitioner's declaration verifying the statements in the notice;

(p) the address of the respondent for delivery of documents to the respondent, until the respondent designates an address for delivery;

(q) the petitioner's declaration as required by sections 7.1 to 7.5 of the *Divorce Act*;

(r) a statement of other relevant proceedings or circumstances affecting the well-being or safety of the children/parties.

(2) The petition for divorce may be in Form 59.09.

(3) The certificate of counsel for a petitioner required by section 7.7 of the *Divorce Act* may be placed after the signature of the party on the petition for divorce.

(4) A certificate of the marriage sought to be dissolved must be attached to the notice, unless it is not possible to do so at that time.

(5) Both of the following apply when a petition for divorce is filed without an attached certificate of the marriage:

(a) the certificate must be filed as soon as possible and before divorce trial dates are assigned, or a motion for divorce is made, unless it cannot be obtained;

(b) the party who requests a divorce and cannot obtain a marriage certificate, must prove the marriage in a manner directed by a judge.

(6) A spouse who files a petition for divorce is permitted to file a subsequent petition for divorce only if the first proceeding is discontinued and no other divorce proceeding has been started by the other spouse.

(7) A petition for divorce may be amended without a judge's permission at any time to add an allegation of marriage breakdown under section 8(2)(a) of the *Divorce Act*.

(8) A party claiming adultery is not required to name, in a petition or other filed documents, a person with whom the other party is alleged to have committed adultery, but a party who does name the person in the petition or documents must notify that person using the same means as a party is notified of a proceeding under Rule 31- Notice.

(9) A proceeding started by application under this Rule 59, that is not a divorce proceeding, such as a proceeding under the *Parenting and Support Act*, is taken to be consolidated, under Rule 37 - Consolidation and Separation, with a subsequent divorce proceeding started by a party to the other proceeding, unless a judge orders otherwise.

59.10 Answer to petition for divorce

(1) A respondent in a divorce action who wishes to contest a claim made by the petitioner, or to make a claim for a divorce or corollary relief, must file an answer.

(2) A respondent must file an answer no more than the following number of days after the day the respondent is notified of the proceeding:

(a) fifteen days, if notification is by personal service in Nova Scotia or by other means completed entirely in Nova Scotia;

(b) thirty days, if the notification is by personal service elsewhere in Canada or by other means completed entirely in Canada;

(c) forty-five days, if the notification is by personal service elsewhere in the world or by other means completed elsewhere in the world.

(3) A respondent may not file an answer after the deadline for doing so, unless a judge permits otherwise.

(4) A respondent who does not file an answer is taken to have admitted the facts and allegations in the petition for divorce and consented to the granting of the relief claimed against the respondent, and the respondent is disentitled to further notice in the proceeding, unless a judge orders otherwise.

(5) The answer must contain the standard heading, be entitled "Answer", be dated and signed by the respondent, and include all of the following:

(a) a statement of which of the claims in the petition for divorce are contested, or a statement that no claims are contested and the answer is only filed to make a claim;

(b) a statements of the facts pleaded in the petition for divorce that are admitted, and those that are not admitted with the respondent's particulars in reply;

(c) details about any child of the marriage that are incorrect or not included in the petition for divorce;

(d) details about agreements, or earlier proceedings, between the parties that are incorrect or not included in the petition for divorce;

(e) other corrections to statements in the petition for divorce;

(f) each claim made by the respondent, with references to the applicable legislation, including the relevant sections of legislation;

(g) if the respondent seeks a divorce, all of the following must be included:

(i) the ground for divorce and particulars,

(ii) a statement about the impossibility of reconciliation,

(iii) a statement about the absence of collusion and when applicable, the absence of condonation and connivance;

(h) a list of the documents and statements that are filed with the answer and a statement that a copy of each document is to be delivered to the petitioner with the answer;

(i) a designation of an address for delivery of documents to the respondent;

(j) an acknowledgement of the effect of delivery to the designated address;

(k) the respondent's declaration verifying the statements in the notice;

(l) the respondent's declaration as required by sections 7.1 to 7.5 of the *Divorce Act*;

(m) the certificate of counsel for a respondent as required by section 7.7 of the *Divorce Act* may be placed after the signature of the party on the Answer to the Petition for Divorce.

(6) The answer may be in Form 59.10.

59.11 Demand for notice

(1) A respondent who does not contest a claim made by the petitioner, and does not wish to make a claim, may demand notice of all steps in the divorce action by filing a demand for notice, referred to in Rules 59.11(2) and (3), by the filing deadline provided in Rule 31.12.

(2) The demand for notice must contain the standard heading, be entitled "Demand for Notice (Divorce Action)", be dated and signed, and contain notice that the demand is made, a designation of an address for delivery of documents to the respondent, an acknowledgement of the effect of delivery to the designated address.

(3) The demand for notice may be in Form 59.11.

59.12 Notice of variation application

(1) A notice of variation application must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Variation Application", be dated and signed, and include all of the following:

(a) notice that the applicant is applying to vary or change an order;

(b) a statement identifying the order sought to be varied, providing the date that the variation is sought to take effect, and providing notice that the applicant must present evidence to support this date;

(c) a reference to legislation or other law, including the relevant sections of legislation, relied on by the applicant;

(d) a summary of the variation or change that is sought;

(e) a list of the documents and statements that are filed with the variation application and a statement that a copy of each document is to be delivered to the respondent with the notice;

(f) notice of the respondent's right to file a response to variation application and that a judge or court officer will direct the respondent regarding the deadline for filing;

(g) everything required by Rules 59.07(1)(e) to (j);

(h) the applicant's declaration as required by sections 7.1 to 7.5 of the *Divorce Act* (if proceeding under the *Divorce Act*);

(i) the certificate of counsel for an applicant as required by section 7.7 of the *Divorce Act* or section 54(c) of the *Parenting and Support Act*;

(j) a statement of other relevant proceedings or circumstances affecting the well-being or safety of the children/parties.

(2) The notice of variation application may be in Form 59.12.

(3) A court officer must deliver a certified copy of an order that varies an order made by another court, other than provisionally, to the court that made the original order, and to any other court that made an order varying the original order, as soon as possible after it is issued.

59.13 Response to variation application by respondent

(1) A respondent to a proceeding started by notice of variation application may apply for a variation of an order by filing a response to variation application.

(2) A respondent who seeks to obtain relief that is different from the relief claimed in the notice of variation application must file a response to variation application.

(3) A respondent must file a response to variation application no less than fifteen days before the day of the hearing, unless a court officer or judge directs otherwise.

(4) The response to variation application must contain the standard heading, be entitled "Response to Variation Application ", be dated and signed, and include all of the following:

(a) notice that the respondent is applying to vary or change an order;

(b) a statement identifying the order sought to be varied, providing the date that the variation is sought to take effect, and providing notice that the respondent must present evidence to support this date;

(c) a reference to legislation or other law, including the relevant sections of legislation, relied on by the respondent;

(d) everything required by Rules 59.12(1)(d) and (e);

(e) a designation of an address for delivery of documents to the respondent;

(f) an acknowledgement of the effect of delivery to the designated address;

(g) the respondent's declaration as required by sections 7.1 to 7.5 of the *Divorce Act* (if proceeding under the *Divorce Act*);

(h) the certificate of counsel for a respondent as required by section 7.7 of the *Divorce Act* or section 54(c) of the *Parenting and Support Act*;

(i) a statement of other relevant proceedings or circumstances affecting the well-being or safety of the children/parties.

(5) The response to variation application may be in Form 59.13A.

(6) Where the former spouses reside in different provinces, the respondent in a variation application for support under section 17(1)(a) of the *Divorce Act* may elect to convert the application to an application under section 18.1(3) of the *Divorce Act*. The request to convert by the respondent may be in Form 59.13B and is made under the provisions of the *Divorce Act* and its regulations including provisions about forms, notices, delivery or service of documents, evidence, proceedings and orders.

59.14 Notice and disentitlement to further notice

(1) Rules in Rule 31 - Notice, for giving notice of a proceeding, apply to an application made under this Rule 59, unless a court officer or a judge directs that another method be used.

(2) Despite Rule 59.14(1), a person under the age of majority must be served personally, and Rule 31.03(1)(c) does not apply, in any of the following circumstances, unless a judge directs otherwise:

(a) the person is a party in a divorce proceeding;

(b) the person is a respondent in a proceeding started under the *Parenting and Support Act*.

(3) A court officer or a judge may direct that notice of a proceeding be given by mail to a respondent in a proceeding in which a conciliation meeting is scheduled.

(4) A party may make a motion to a judge for an order for substitute notification under Rule 31.10.

(5) In addition to the grounds in Rule 31.13, a judge who is satisfied that a respondent fails to comply with a direction, order, or notice made by a court officer or a judge requiring the respondent to appear, or to provide disclosure, may order that the respondent is disentitled to further notice.

59.15 Designated address

(1) A party who starts or responds to a proceeding, or appears before a court officer or judge, must designate an address for delivery of documents to that party.

(2) The Rules in Rule 31 - Notice, about maintaining an address for delivery, designating a new address, and delivery to the address, apply in a proceeding in the Supreme Court (Family Division), and delivery to that address is sufficient for notice of a proceeding, or a step in a proceeding, under this Rule.

(3) The contact information required by Rule 82 - Administration of Civil Proceedings to be given to a prothonotary may be given to a court officer, and the court officer may direct what further information is required and the form in which it is to be given.

(4) Rule 85.09, of Rule 85 - Access to Court Records, applies as if "the prothonotary" read "the prothonotary or a court officer".

(5) A court officer who is satisfied that a person may otherwise be at risk of harm may direct that contact information be kept confidential and may assist a party to designate a neutral address for delivery.

59.16 Expiry, discontinuance, and withdrawal

(1) An application notice or a petition for divorce expires six months after the day it is filed, unless the respondent is notified of the proceeding under Rule 59.14 or a judge or court officer extends the time for notification within the six months.

(2) A party may discontinue an application or petition, or withdraw a response or answer, as provided in Rule 9 - Discontinuance, unless this Rule 59.16 provides differently or a judge orders otherwise.

(3) An applicant or petitioner may not discontinue an application or divorce action under Rule 9 - Discontinuance, after an order for interim relief is made, without the permission of a judge, and a judge may refuse to permit discontinuance until a claim in a response or an answer is determined.

(4) Rule 4.22 which provides for motions by the prothonotary to dismiss a dormant action, and Rule 5.27 which provides for motions by the prothonotary to dismiss a dormant application, do not apply to an application or divorce proceeding under this Rule 59.

(5) A party affected by a discontinuance may make a motion for costs in an amount to be fixed under Rule 77 - Costs, and Rule 9.06(1), which provides for automatic costs, does not apply under this Rule 59, unless a judge orders otherwise.

(6) The notice of discontinuance must contain the standard heading, be entitled "Notice of Discontinuance (Family Proceeding)", be dated and signed, and include all of the following:

(a) a statement that the party discontinues the proceeding;

(b) a statement that the respondent must file a notice continuing the response or answer within ten days to continue the proceeding for the purpose of the relief sought in the answer or response.

(7) The notice of discontinuance may be in Form 59.16A.

(8) A response or answer expires ten days after the day the applicant delivers a notice of discontinuance to the respondent, unless the respondent files a notice continuing the response or answer within the ten days.

(9) The respondent may only seek the relief claimed in the response or answer when a notice of continuance is filed under this Rule 59.16.

(10) The notice of continuance must contain the standard heading, be entitled "Notice of Continuance", be dated and signed, and include a statement that the respondent continues the response or answer, and it may be in Form 59.16B.

(11) A respondent may withdraw a response to application, an answer, or a response to variation application, by filing a notice of withdrawal of response or answer at any time before the day of the hearing.

(12) The notice of withdrawal of response or answer must contain the standard heading, be entitled "Notice of Withdrawal of Response or Answer", be dated and signed, and include a statement that the respondent withdraws the response or answer, and it may be in Form 59.16C.

59.17 Parent information program

(1) A party to a proceeding that involves a child must attend the court's parent information program, unless the party is exempted from attending under Rule 59.17(5).

(2) One of the following must occur before a proceeding that involves a child may be heard by a judge:

(a) the party initiating the proceeding provides proof of attendance at the parent information program;

(b) the party is exempted from attending under Rule 59.17(5);

(c) a court officer or judge determines the hearing must be held so quickly that attendance in the program is not possible prior to the hearing.

(3) The following are examples of circumstances in which a hearing may be held quickly:

(a) a party alleges that a child has been, or is likely to be, kidnapped or abducted;

(b) a party alleges that a unilateral change in the child's physical care and custody or principal residence has occurred, or is about to occur.

(4) A party who is permitted to attend the parent information program after a hearing, because the hearing is held quickly, must arrange to attend the program as soon as possible after the hearing.

(5) A court officer or judge may exempt a party from attending the parent information program in any of the following circumstances:

(a) before or at the first conciliation meeting, the parties make an agreement, or agree to a consent order, settling all issues that involve a child between them;

(b) a party starts the proceeding only to register an agreement;

(c) the parties attended the parent information program under this Rule no more than twelve months before the day the application is filed;

(d) other exceptional circumstances.

(6) A judge may make any of the following orders against a party who fails to attend a parent information program and does not obtain an exemption:

(a) costs;

(b) dismissal of a claim made by the party or allowance of a claim made against the party;

(c) an order restricting the party's participation in a hearing;

(d) any other order the judge considers will achieve justice in the circumstance.

59.18 Mediation

(1) A court officer or judge may, after a proceeding has been started and with the consent of the parties, refer the parties to a mediator.

(2) The mediator may meet with the parties, a child of the parties, counsel for the parties, and other persons, as often as the mediator considers appropriate.

(3) The mediator, in a mediation in which the parties reach an agreement on all of the issues, must prepare a draft consent order that conforms with the agreement and advise the parties to obtain independent legal advice about the draft consent order.

(4) The mediator, in a mediation in which the parties are unable to reach an agreement on all issues but are able to reach an agreement on one or more of the issues, must do both of the following:

(a) prepare a draft consent order that conforms with the agreement reached by the parties on the agreed issues and advise the parties to obtain independent legal advice about the draft consent order;

(b) file a written report that the parties did not reach an agreement on the remaining issues.

(5) The mediator, in a mediation in which the parties are unable to reach an agreement on any issues, must file a written report about attendance and the failure to reach agreement, and the report may not contain any other information.

(6) A draft consent order signed by the parties must be referred to a judge for approval under Rule 78 - Order no less than ten days after the day the draft order is filed, unless a party files an objection in that time.

(7) When an objection to a draft consent order is filed within the required time, a court officer must refer the parties back to the mediator or, after consulting with the parties and counsel, determine the next step to be taken in the proceeding.

(8) Evidence of a communication during a mediation in which the parties are unable to reach an agreement on one or more issues is not admissible in a proceeding to determine the unresolved issues, and a mediator is not a competent or compellable witness to testify about any unresolved issues.

59.19 Disclosure obligations and notice of documents filed

(1) Rules 59.19 to 59.24 provide for disclosure of relevant information through the preparation, filing, and delivery of statements and documents.

(2) Rule 31.15 requiring delivery of a copy of a filed document to the other party applies in a proceeding under this Rule 59, and Rule 31.15(2) applies as if "judge" read "judge or court officer".

(3) Each filed statement must be immediately delivered to the other party under Rule 59.19(2), unless a judge or court officer directs otherwise.

(4) Rule 15 - Disclosure of Documents and Rule 16 - Disclosure of Electronic Information do not apply under this Rule 59, unless a judge orders otherwise.

59.20 Disclosure by parenting statement and deadline for filing

(1) A party who makes a claim for any of the following, must file a parenting statement with the notice by which the claim is made:

(a) decision-making responsibility or custody of a child,

(b) parenting time with a child,

(c) parenting arrangements for a child or about parenting of a child.

(2) A party who responds to, or contests, a claim for any of the following, must file a parenting statement no later than ten days after the day a direction to disclose is delivered to the party, unless a court officer gives directions for a different time:

(a) decision-making responsibility or custody of a child,

(b) parenting time with a child,

(c) parenting arrangements for a child or about parenting of a child.

59.20A(1) A party who makes a claim for contact time or interaction with a child must file a statement of contact time and interaction with the notice by which the claim is made.

(2) A party who responds to, or contests, a claim for contact time or interaction with a child must file a statement of contact time and interaction no later than ten days after the day a direction to disclose is delivered to the party, unless a court officer gives directions for a different time.

59.21 Disclosure by financial statements

(1) A party who makes a claim for support, and the party against whom the claim is made, must make disclosure as required by the applicable legislation, including the *Guidelines*, and this Rule 59 is not intended to alter those requirements.

(2) Required disclosure of information must be made in the following financial statements, which are further provided for in Rules 59.22 and 59.24:

(a) statement of income;

(b) statement of special or extraordinary expenses;

(c) statement of expenses;

(d) statement of undue hardship circumstances;

(e) statement of property.

(3) Parties who agree on the terms of an order for support, or a variation order for support, are not required to file financial statements if all of the following apply, unless a judge orders otherwise:

(a) the order does not affect support for a child;

(b) the agreement is in writing and signed by the parties or counsel on their behalf;

(c) the parties sign and file a waiver of financial statements.

59.22 Disclosure of financial information for child support and other claims

(1) A party who makes the following claim for child support, and the party against whom the claim is made, must file the following statement or statements:

Claim	*Statement*
child support in the table amount under the *Guidelines* and no other financial claim	by the party claiming, none by the party claimed against, a statement of income
special or extraordinary expenses under the *Guidelines* if the child is able to contribute to the special or extraordinary expenses	by the party claiming, a statement of special or extraordinary expenses by both parties, a statement of income by the party claiming, an additional statement of the child's income or ability to contribute
child support that is different from the table amount, or the table amount plus special or extraordinary expenses if child support is also for a child who is nineteen years of age or older	by both parties, a statement of income and a statement of expenses by the party claiming, an additional statement of the child's income and expenses

a claim that child support should be increased from, or decreased from, the table amount on the basis that child support in the table amount would cause undue hardship	by both parties, a statement of income and a statement of expenses, and both parties must also obtain from the other members of their households, as defined in Schedule II of the *Guidelines*, the members' income tax return and notice of assessment for the most recent tax year and any other information required to compare household standards of living in accordance with Schedule II, and file a copy, and the party making the claim must file a statement of undue hardship circumstances and the party's calculation and comparison of the household standards of living, as provided in Schedule II, and the party against whom the claim is made may file a separate calculation and comparison of the household standards of living, as provided in Schedule II.

(2) A party who makes any of the following claims, and the party against whom the claim is made, must file the following statements:

Claim	*Statement*
division of assets	by both parties - a statement of property
spousal support	by both parties - a statement of income, a statement of expenses and a statement of property, and by both parties - a statement of income, a statement of expenses and a statement of property by the party's spouse
variation of an order for spousal support	by both parties - a statement of income and a statement of expenses, and by both parties - a statement of income and a statement of expenses by the party's spouse

59.23 Disclosure by affidavit

An applicant or respondent in an application is required to file an affidavit by the deadlines provided in Rule 5 - Application, or a different deadline as directed by a judge or a court officer, unless a judge directs otherwise.

59.24 Deadlines for filing financial statements

(1) The following deadlines apply to the filing of statements or documents required by Rules 59.21 and 59.22:

(a) a party who makes a financial claim must file the required statements with the notice that includes the financial claim;

(b) a party who responds to a financial claim must file the required statements before the following deadlines after delivery of a direction to disclose:

(i) no more than fifteen days after delivery in Nova Scotia,

(ii) not more than thirty days after delivery elsewhere in Canada,

(iii) not more than forty-five days after delivery outside Canada;

(c) a party who claims that child support should be increased from, or decreased from, the table amount under the *Guidelines* on the basis that the table amount would cause undue hardship to a party or a child, must file the required statements and documents when the party files a notice in which the claim is made or, if there is no such notice, fifteen days after the day the other party delivers a required statement;

(d) a party responding to an undue hardship claim who files calculations and comparison of the household standards of living, in accordance with Schedule II of *Guidelines*, must file them no more than fifteen days after the day the calculations and comparison of the party claiming undue hardship are delivered.

(2) Despite Rule 59.24(1), a judge or court officer may permit a party, or direct a party, to file a required statement, or a required copy of a document, before a different deadline.

59.25 Direction to disclose

(1) A court officer may make a direction to disclose requiring a party to disclose relevant information by the applicable deadline in Rule 59.24 or a different deadline directed by a judge or a court officer.

(2) A court officer may order a party who fails to make disclosure to appear before a court officer or a judge and provide disclosure at that time, and a court officer who is satisfied that the party received actual notice of the direction to disclose may do any of the following:

(a) make an interim order for child support at the table amount under the *Guidelines*, under Rule 59.33;

(b) make an order for costs against the party;

(c) dismiss all or part of an application, motion, or claim or stay a proceeding.

(3) The direction to disclose must contain the standard heading, be entitled "Direction to Disclose", be dated and signed, and include all of the following:

(a) the name of the party;

(b) the address of the party, unless the court officer is satisfied that publication of the address may cause harm to a person;

(c) a statement that disclosure is required, a description of a statement or document to be filed or a summary of the information to be disclosed, a deadline and method for filing and providing copies to the other party or parties;

(d) a description of any document to be provided with the statement;

(e) a warning that failure by the party to disclose information as required may result in a court officer or judge ordering remedies referred to in this Rule 59.25;

(f) a notice to the party of the right to be represented by counsel.

(4) A direction to disclose may be in Form 59.25.

(5) The direction to disclose may be delivered by mail, or other means determined by the court officer.

59.26 Order to appear and disclose and order to disclose

(1) A court officer, or a judge, may make an order to appear and disclose that requires a party to appear before the court officer, or judge, and do any of the following:

(a) complete a required statement, file a required statement, or file a required document;

(b) file any other document that discloses relevant information;

(c) produce a document;

(d) answer a question that seeks relevant information, or otherwise provide relevant information.

(2) The order for a party to appear and disclose must contain the standard heading, be entitled "Order to Appear and Disclose" and contain all of the following:

(a) the name of the party;

(b) a requirement that the party appear before a court officer or a judge including the time, date, and place for the appearance;

(c) a requirement that the party make disclosure by bringing to the appearance three copies of a statement or document described in the order, or other information summarized in the order;

(d) a warning that failure by the party to appear before a court officer or judge and disclose as required may result in the court officer or judge making an order provided for in Rules 59.26(8) or (9);

(e) a warning that such a failure may also cause contempt proceedings to be started against the party;

(f) notice to the party of the right to make a motion to appeal, set aside, or vary an order made by a court officer.

(3) The order to appear and disclose may be in Form 59.26A.

(4) A court officer, or a judge, may make an order to disclose that requires a party to do any of the following:

(a) file a required statement or document;

(b) file any other document that discloses relevant information;

(c) otherwise, provide relevant information.

(5) The order to disclose must contain the standard heading, be entitled "Order to Disclose" and contain all of the following:

(a) the name of the party;

(b) a requirement that the party, by a stated deadline, make disclosure by filing three copies of a statement or document described in the order, or other information summarized in the order;

(c) a statement that the party must appear before the court officer, if the party does not file a required statement or document, or other information that makes the disclosure, by the stated deadline;

(d) a time, date, and place when and where the party must appear, if the party does not file the statement, document, or other information by the stated deadline;

(e) a warning that failure by the party to obey the order may result in the court officer or judge making an order provided for in Rules 59.26(8) or (9);

(f) a warning that such a failure may also cause contempt proceedings to be started against the party;

(g) notice to the party of the right to make a motion to appeal, set aside, or vary an order made by a court officer.

(6) The order to disclose may be in Form 59.26B.

(7) A court officer must arrange for service of an order to appear and disclose, or an order to disclose, on a party by one of the following methods:

(a) deliver the order to the party during a conciliation meeting referred to in Rule 59.30;

(b) direct one of the parties to arrange for personal service of the order by the same means as a party is notified of a proceeding under Rule 31- Notice and assist the party with the arrangements when the court officer is satisfied that assistance is required;

(c) direct one of the parties to arrange for service of the order under an order for substitute notification referred to in Rule 31.10.

(8) A court officer, or a judge, who is satisfied that a party fails to comply with an order to appear and disclose, or an order to disclose, may do any of the following:

(a) make an order for costs against the party;

(b) make an order under Rule 59.27 for disclosure by a person who is not a party;

(c) make an interim order for child support under Rule 59.33;

(d) dismiss all, or part, of an application, motion, or claim or stay the proceeding.

(9) In addition to the remedies in Rule 59.26(8), a judge who is satisfied that a party fails to comply with an order to appear and disclose, or an order to disclose, may do any of the following:

(a) make an order for costs against the party so as to fully or substantially indemnify the other party;

(b) grant an application or motion, in whole or in part, if it is the respondent who fails to appear or disclose;

(c) start contempt proceedings under Rule 89;

(d) make any other order the judge considers will achieve justice in the circumstance.

59.27 Order for disclosure by non-party

(1) A court officer who is satisfied on all of the following, may order a person who is not a party to disclose relevant information that is not privileged:

(a) the information is in the person's control;

(b) the information is about a party's income, expenses, employment, or contact information, such as the party's address or telephone number;

(c) the party fails to comply with an order to appear and disclose, or an order to disclose, or the party is evading service or cannot be located.

(2) In addition to an order made under Rule 59.27(1), a court officer may make either of the following orders to obtain disclosure from a person who is not a party if the person does not file the documents as required under Rules 59.22 and 59.23:

(a) an order that a member of a party's household, as defined in Schedule II of the *Guidelines*, disclose information or produce documents required to make a calculation and comparison of household standards of living for the purposes of an undue hardship claim, as provided in Schedule II of the *Guidelines*;

(b) an order that a person who is the spouse of a party or with whom a party is a registered domestic partner, file a statement of income, a statement of expenses, and a statement of property or any one of these statements, or disclose information or produce documents required by these statements.

(3) A court officer may permit a party to make an *ex parte* motion for an order for disclosure by a person who is not a party if a party fails to comply with an order to appear and disclose, or an order to disclose, or the party is evading service or cannot be located.

(4) An order under this Rule 59.27 may include a deadline for filing a financial statement or a document.

(5) The affidavit in support of a motion for disclosure by a person who is not a party must contain all of the following:

(a) a summary of the steps taken in the proceeding;

(b) information about the person who is not a party, including the name of the person, the name of the recognized agent of a corporation or partnership, and the address of the person or recognized agent;

(c) a statement of the reasons for the party's belief that the person has information relevant to the proceeding;

(d) a description of the information sought.

(6) The order must contain the standard heading, be entitled "Order for Disclosure by a Non-Party", be dated and signed, and include all of the following:

(a) a summary of the particulars of the motion;

(b) the name of the non-party required to make disclosure;

(c) a description of the information required to be disclosed, a requirement that it be disclosed, direction on how it is to be disclosed, and a deadline for filing the document making the disclosure;

(d) the name of the person, or of the recognized agent, and the person's address for personal service under Rule 59.27(8);

(e) the name, telephone number, and fax number of the court officer and the address of the office of the court for filing;

(f) notice of the person's right to make a motion to appeal, set aside, or vary the order made by a court officer.

(7) The order for disclosure by a non-party may be in Form 59.27.

(8) A court officer must arrange, or direct one of the parties to arrange, to personally serve a non-party with an order for disclosure by non-party using the same means as a party is notified of a proceeding under Rule 31- Notice.

59.28 Disclosure and discovery under Part 5

(1) Part 5 - Disclosure and Discovery applies in a proceeding in the Supreme Court (Family Division), with the following exceptions:

(a) Rule 15 - Disclosure of Documents and Rule 16 - Disclosure of Electronic Information do not apply, unless a judge orders otherwise;

(b) Rule 18 - Discovery does not apply in a proceeding in which the only disputed claim is for child support, unless a judge orders otherwise;

(c) Part 5 - Disclosure and Discovery does not apply in a proceeding in which the only disputed claim is for child support at the table amount or at the table amount plus special or extraordinary expenses, unless a judge orders otherwise.

(2) The fact that a discovery examination is scheduled is not a reason to delay the making or hearing of a motion for interim relief, unless the parties agree to the delay or a judge is satisfied that the delay is justified.

(3) A child may not be examined for discovery, and a prothonotary or court officer may not issue a discovery subpoena that requires a child to be examined, unless a judge permits.

(4) A judge who permits discovery of a child may give directions for the conduct of the examination, such as directions limiting the duration of the examination and the kinds of questions that may be asked.

(5) A judge may order a person to file any statement, disclose information, or produce documents the judge sees fit, and this power does not diminish a power of a judge under Part 5 - Disclosure and Discovery.

59.29 Conciliation

(1) The conciliation process includes the following steps, and the court officer must proceed with a step to the extent that the court officer is satisfied that the step is necessary to promote the just resolution of the proceeding:

(a) identify the issues involved;

(b) ensure proper disclosure by the parties concerning those issues;

(c) clarify the respective positions of the parties;

(d) facilitate negotiations between the parties;

(e) assist the parties to reach a resolution;

(f) determine the next steps required in the proceeding.

(2) A court officer conducting the conciliation process has all the powers of a prothonotary.

59.30 Conciliation meeting and directions

(1) A court officer who is satisfied it may promote the just resolution of the proceeding must arrange a conciliation meeting or meetings and give directions for the time, place, and conduct of the meeting or meetings.

(2) A court officer who arranges a conciliation meeting may require a party to appear, and to participate in, the meeting by delivering to the party a direction to appear.

(3) A direction to appear must contain the standard heading, be entitled “Direction to Appear”, be dated and signed, and include all of the following:

(a) the name of the party;

(b) the address of the party, unless the court officer is satisfied that publication of the address may cause harm to a person;

(c) notice of the time, date, and place of the conciliation meeting;

(d) a statement that the party is required to appear before a court officer for the meeting, make required disclosure as directed by the court officer or a judge, and discuss the issues;

(e) notice of the party's right to be represented by counsel.

(4) A direction to appear may be in Form 59.30.

(5) The direction to appear may be delivered by mail, or other means determined by the court officer, and the court officer may cause a direction to disclose under Rule 59.25 to be delivered with it.

59.31 Conduct of conciliation

(1) A court officer may do any of the following during the conciliation process:

(a) arrange a conciliation meeting or further conciliation meetings;

(b) adjourn a conciliation meeting;

(c) refer the parties to mediation;

(d) make an order to appear and disclose, or an order to disclose, against a party who fails to appear or disclose;

(e) prepare a draft consent order;

(f) prepare a conciliation record;

(g) make an order for costs under Rules 59.25 and 59.26;

(h) make an order under Rule 59.27 for disclosure by a person who is not a party;

(i) make an interim order for child support under Rule 59.33;

(j) arrange for the parties to appear before a judge for a conference, settlement conference, motion, hearing, or trial;

(k) refer the parties to a person or agency that provides a required service;

(l) recommend to a judge that the judge order a parenting assessment report;

(m) direct any other step that may lead to a resolution of the issues.

(2) A court officer may require a party to provide particulars of a claim at any time in the proceeding.

(3) The court officer, who becomes satisfied on all of the following during the conciliation process, may make an order for costs against the applicant, or dismiss all or part of an application, motion, or claim or stay the proceeding, under Rules 59.25 and 59.26:

(a) the applicant has received notice of a written request from the court officer to provide particulars of a claim or to confirm the intention to proceed with the application;

(b) six months have passed since the day the notice of the request was delivered to the applicant;

(c) no response is provided by the applicant.

(4) Rule 22.10, of Rule 22 - General Provisions for Motions, applies as if "prothonotary" read "prothonotary or court officer".

(5) Rule 30 - Motion to Prothonotary, applies as if "prothonotary" read "prothonotary or court officer".

59.32 Consent order in conciliation

(1) A court officer who conducts a conciliation in which the parties reach an agreement on one or more of the issues must prepare a draft consent order that conforms with the agreement and advise each party to obtain independent legal advice about the draft consent order.

(2) A draft consent order signed by the parties must be referred to a judge for approval under Rule 78 - Order no less than ten days after the day the draft order is filed, unless a party files an objection in that time.

(3) When an objection to a draft consent order is filed within the time provided in Rule 59.32(2), a court officer must either refer the issues back for conciliation or, after consulting with the parties and counsel, determine the next steps to be taken in the proceeding.

59.33 Interim order for child support

(1) A court officer who is satisfied on both of the following, may make an interim order for child support in the table amount under the *Guidelines*, and no other amount:

(a) the party against whom the order is sought has not already been ordered to pay support for the same child;

(b) a direction to appear, direction to disclose, order to appear and disclose, or order to disclose was delivered to the party against whom the order is sought in the manner provided by a Rule, direction, or order.

(2) The court officer may determine the income of, or attribute or impute income to, the party against whom the order is made on the basis of any of the following evidence:

(a) a financial statement, document, or other information filed, or otherwise provided, by the party against whom the order is made;

(b) a document provided by a person who is not a party although that person does not give evidence or a document provided by the person who seeks the order, if the court officer is satisfied that the document is authentic and reliable;

(c) evidence based on information and belief, if the court officer is satisfied it is reliable;

(d) a document or other evidence that is otherwise admissible.

59.34 Variation of, or setting aside, a court officer's order

(1) A party who fails to appear or disclose by mistake, because of insufficient notice, or for other good reason, may make a motion to a court officer to set aside or vary an order made under Rule 59.25, Rule 59.26, Rule 59.31, or Rule 59.33, no more than ten days after the day the order is delivered to the party.

(2) A person affected by an order of a court officer made under Rule 59.27, may make a motion to the court officer who made the order, to set aside or vary the order, no more than ten days after the day the order is delivered to the person and the court officer may set aside or vary the order.

(3) A court officer may set aside or vary an order made by that court officer.

(4) A court officer may refer a proposed order to a judge, who may make such order as is just or refer it back to the court officer with directions.

(5) A person affected by an order of a court officer, other than a consent order, may make a motion to a judge for a review of the court officer's order under Rule 30.04 of Rule 30 - Motion to Prothonotary, which applies as if "prothonotary" read "prothonotary or court officer".

59.35 Conciliation record

(1) A court officer may file a conciliation record at any stage of the conciliation process.

(2) A court officer must file a conciliation record when the court officer is satisfied that the conciliation process has concluded without all issues being settled, unless a judge directs otherwise.

(3) The conciliation record must contain the standard heading, be entitled "Conciliation Record ", be dated and signed by the court officer, and include all of the following:

(a) a list of the issues identified in the proceeding;

(b) a summary of the steps taken in the conciliation process;

(c) a list of the documents filed by each party and the date of filing;

(d) a list of the orders and written agreements, if any, made during the conciliation process;

(e) the name of each party's counsel or a statement that a party acts on their own;

(f) a summary of the relevant facts or issues which are agreed or are not in dispute;

(g) a summary of the positions of each of the parties on the issues to be resolved.

(4) A conciliation record may be in Form 59.35.

(5) The court officer who files a conciliation record must deliver a copy to each party at least four days before the day the parties are to appear before a judge.

(6) A party may object to any part of a conciliation record by filing a document summarizing the objection no more than two days after the day the record is delivered to the party.

(7) The conciliation record constitutes evidence at the hearing, except any part that is the subject of a written objection, and that part may be considered by a judge who rules against the objection.

59.36 Referral to court

(1) A court officer who is satisfied on all of the following must arrange for the parties to appear before a judge:

(a) the proceeding is not withdrawn or discontinued;

(b) the proceeding is not dismissed or stayed by a court officer;

(c) the proceeding is not resolved by a consent order following mediation or conciliation;

(d) the proceeding is not resolved by a consent order or written agreement, including a parenting plan or separation agreement, filed by a party;

(e) the applicant has filed all affidavits, documents, statements, and supporting disclosure required by this Rule 59;

(f) the respondent has filed all affidavits, documents, statements, and supporting disclosure required by this Rule 59, or all reasonable steps have been taken to obtain the required information.

(2) A court officer who arranges for the parties to appear before a judge may schedule a hearing, conference, date assignment conference, or other appearance, and the court officer must do one of the following:

(a) deliver a notice to appear in court to the parties by a means required for notice of a step in a proceeding under Rule 31 - Notice;

(b) direct one of the parties to arrange for personal service of the notice to appear in court to another party, by the same means as a party is notified of a proceeding under Rule 31 - Notice and assist the party with the arrangements when the court officer is satisfied that assistance is required;

(c) direct one of the parties to arrange for service of the notice to appear in court on another party under an order for substitute notification under Rule 31.10.

(3) The notice to appear in court must contain the standard heading, be entitled "Notice to Appear in Court", and contain all of the following:

(a) a requirement that the parties appear before a judge for the court proceeding;

(b) the type of court proceeding; for example, a trial, hearing, or conference;

(c) the time, date, and place of the hearing and the amount of time scheduled for it;

(d) a notice to the party of the right to be represented by counsel and a recommendation that the party obtain legal advice;

(e) a warning that a judge may do any of the following, if the party fails to appear as required by the notice:

(i) order costs against the party,

(ii) order a person who is not a party to disclose information,

(iii) dismiss the proceeding or motion, strike a claim, response, or answer, or stay the proceeding,

(iv) make an interim or final order, such as an order for custody of a child, time or interaction with a child, parenting arrangements, child or spousal support, division of property, or any other order sought;

(v) require the party to appear before a judge to explain the failure to comply with a court order and determine the issue including any additional order the judge deems necessary to ensure compliance, under section 41 of the *Parenting and Support Act*,

(vi) start contempt proceedings against the party;

(f) the names of the parties who are required to appear;

(g) the addresses of the parties, unless a court officer is satisfied that publication of the address may cause harm to a person.

(4) The notice to appear in court may be in Form 59.36.

(5) In the Supreme Court (Family Division), a person may make an application in chambers under Rules 5.02 to 5.06 of Rule 5 - Application, except each of the following apply:

(a) the person making the application must file a notice referred to in Rule 59.06 and not a notice under Rules 5.02 and 5.03;

(b) a person responding to an application must file a response referred to in Rules 59.08 and 59.13 and not a notice of contest under Rule 5.04;

(c) a judge or a court officer must appoint a time for the hearing of an application, including any application in chambers, and regardless of the duration of the hearing;

(d) notice of the time, date, and place for the application must be given by notice to appear in court and delivered as provided in Rule 59.36(2);

(e) a judge or court officer may extend or shorten a deadline in Rule 5.06;

(f) cross-examination is not permitted at a hearing scheduled for less than a half-hour, unless a judge otherwise orders;

(g) a judge, or court officer, may direct the parties to appear for a conference to organize an application that is to be heard in more than a half-hour.

59.37 Motion for directions

(1) A party who wishes to proceed to the hearing of an application may make a motion for directions, as provided in Rule 5 - Application, unless this Rule 59 provides otherwise.

(2) The motion for directions must be supported by an affidavit that conforms with Rule 5.07(4) of Rule 5 - Application.

(3) A court officer must determine whether the motion for directions is ready for hearing.

(4) A court officer who is satisfied the motion is ready for hearing must set a time, date, and place for the hearing and give notice to the parties in a way a party is notified under Rule 59.36.

(5) A court officer who is not satisfied the motion is ready for hearing must notify the parties of what steps need to be taken and set a schedule for their completion.

(6) A court officer who files a conciliation report may set a time, date, and place for a conference with a judge for the judge to give directions on the conduct and hearing of the proceeding, and no affidavit need be filed.

(7) A judge or court officer who is satisfied on either of the following may permit an application to proceed without directions:

(a) the case management of the application during the process of conciliation is sufficient to allow the application to proceed directly to a hearing;

(b) the application is of sufficient urgency to waive the requirement.

(8) The deadline in Rule 5.07(3) of Rule 5 - Application, for scheduling the hearing of a motion for directions does not apply to a motion for directions in the Supreme Court (Family Division).

59.38 Conference

(1) A judge or a court officer may arrange a conference with a judge under Rule 26A - Conference.

(2) Rules 5.09(2) and (3) of Rule 5 - Application, and the provisions about directions in Rule 26A - Conference, apply on a motion for directions made at a hearing or in a conference.

(3) A judge may give directions for the conduct of a proceeding and, otherwise, provide case management.

(4) Part 6 - Motions, and in particular Rule 26A - Conference, apply to case management of a proceeding, and the presiding judge may direct a party or counsel to prepare the record of a case management conference.

(5) A judge who gives directions under the provisions of Rule 26A - Conference may do any of the following:

(a) appoint a time, date, and place for a settlement conference if all of the parties agree to participate;

(b) set a time, date, and place for a further conference to organize the hearing of the application;

(c) refer the parties to conciliation or mediation;

(d) order a parenting assessment report under Section 32F of the *Judicature Act* or Section 19 of the *Parenting and Support Act*;

(e) require a party to present direct evidence by calling a witness rather than presenting an affidavit from the witness;

(f) appoint a time, date, and place for the hearing of the application;

(g) do anything that may aid the disposition of the proceeding.

(6) The Associate Chief Justice of the Supreme Court (Family Division) may designate a court officer to conduct conferences, or a particular conference, and authorize the court officer to give directions under the Rule 26A - Conference or make an order under Rule 59.38(5).

(7) A judge who presides at a conference that a party fails to appear may do any of the following:

(a) make an interim or final order, such as an order for custody of a child, time or interaction with a child, parenting arrangements, or child support;

(b) order costs against the party;

(c) order a person who is not a party to disclose information;

(d) dismiss the proceeding or motion, strike a claim, response, or answer, or stay the proceeding;

(e) start contempt proceedings against the party.

(8) A court officer who presides at a conference under a designation by the Associate Chief Justice of the Supreme Court (Family Division) may recommend to a judge that the judge do anything provided in Rule 59.38(7).

59.39 Settlement conference procedure

(1) A judge or a court officer who is satisfied that holding a settlement conference may assist in resolving an issue in the proceeding may appoint a time, date, and place for a settlement conference, at any stage of a proceeding, if all of the parties agree to participate.

(2) A judge who is assigned to conduct a settlement conference may give directions about preparation for, and conduct of, the conference.

(3) A court officer may do either of the following:

(a) give directions on filing requirements to the parties before a settlement conference;

(b) request the judge provide directions on filing requirements and communicate the judge's directions to the parties before the conference.

(4) The parties must file a settlement conference brief containing all of the following, unless a court officer or a judge directs otherwise:

(a) a brief statement of the relevant facts;

(b) a statement of the issues to be resolved;

(c) a summary of the proposals for settlement;

(d) any other information that will assist the judge, including a list of any financial statement, expert report, and parenting assessment report relied on, and summarized in, the statement of facts and summary of proposals.

(5) An applicant or petitioner must file the settlement conference brief at least ten days before the day of the settlement conference and a respondent must file the settlement conference brief at least five days before that day, unless a court officer or judge directs otherwise.

(6) A judge may cancel a settlement conference and may make an order for costs against a party who, after agreeing to participate in a settlement conference, fails to comply with all of the following;

(a) any directions provided under Rules 59.39(2) and (3);

(b) the filing requirements and deadline for the settlement conference brief under Rules 59.39(4) and (5);

(c) the requirement to appear at the settlement conference at the appointed date and time.

(7) Rules 10.05 to 10.10 of Rule 10 - Settlement, concerning formal offers, do not apply to a family proceeding.

(8) Rules 10.11 to 10.15, concerning the conduct of a settlement conference, do not apply to a family proceeding, unless a judge directs otherwise.

59.40 Hearing

(1) The provisions of Rule 5 - Application, and Part 11 - Trial and Hearing, about evidence at, and the conduct of, a hearing apply to the hearing of an application in the Supreme Court (Family Division), unless this Rule 59 provides differently.

(2) The hearing judge may direct that the hearing be conducted on testimony rather than affidavit evidence, or that it be conducted partly on testimony.

(3) An application in chambers proceeds under Rules 5.02 to 5.06 of Rule 5 - Application, except each of the following apply:

(a) a judge or a court officer must appoint a time for the hearing of an application, including any application in chambers, and regardless of the duration of the hearing;

(b) a judge or court officer may extend or shorten a deadline in Rule 5.06;

(c) cross-examination is not permitted at a hearing scheduled for less than a half-hour, unless a judge otherwise orders;

(d) a judge, or court officer, may direct the parties to appear for a conference to organize an application that is to be heard in more than a half-hour.

(4) After an application is scheduled for hearing, no party may initiate or continue a motion or a discovery, unless a judge permits otherwise.

(5) Rule 55 - Expert Opinion applies to a hearing in the Supreme Court (Family Division), except that a judge may make an order for the discovery of an expert.

(6) A child who is under the age of majority may not testify, and a prothonotary or court officer may not issue a subpoena that requires a child to appear at a hearing, unless a judge permits.

(7) A judge who permits a child to be a witness may give directions for the presentation of the evidence, such as directions limiting the duration of the testimony and the types of questions that may be asked.

59.41 Obtaining divorce trial dates

(1) The provisions of Rule 4.13 to 4.21 about a date assignment conference, a trial readiness conference, and trial dates, apply to the hearing in Supreme Court Family Division), unless this Rule 59 provides differently.

(2) A party to a divorce action may request an appointment for a date assignment conference from the court officer after all of the following are done:

(a) the party requesting the appointment files all statements and documents to make disclosure as required by this Rule or the *Guidelines*;

(b) the other party files required statements or documents or the requesting party includes in the request an explanation of why this is not necessary or possible, and all steps taken to obtain the required information;

(c) the parties have prepared for trial sufficiently that there is little risk that the trial will be adjourned to allow further preparation or to permit a party to take a further step in the proceeding.

(3) The request for a date assignment conference must include the party's representation that the things required by Rule 59.41(2) have been done.

(4) A court officer who is satisfied the request is ready for a date assignment conference must notify the parties of the time, date, and place of the conference no more than twenty-five days after the day the request is filed and in the way a party is notified under Rule 59.36.

(5) A court officer who is not satisfied the request is ready for a date assignment conference must notify the parties of what steps need to be taken and set a schedule for their completion.

(6) After a divorce action is scheduled for trial, no party may initiate or continue a motion or a discovery, unless a judge permits otherwise.

(7) This Rule does not limit the power of a judge to appoint a time, date, and place for a trial at a conference or otherwise.

59.42 Divorce trial

(1) A divorce trial may be conducted in accordance with Rule 51 - Conduct of Trial, with each of the following additional provisions:

(a) the trial judge may direct that the trial be conducted on affidavit evidence rather than testimony, or that it be conducted partly on affidavit evidence;

(b) a document purporting to be official proof of a marriage in another jurisdiction proves the marriage, unless the contrary is established;

(c) all claims, including claims outside the *Divorce Act*, are tried together, with the case for the petitioner including the petitioner's evidence on all claims and the case for the respondent including the respondent's evidence on all claims, unless the trial judge directs otherwise;

(d) a statement filed or required by this Rule 59 or the *Guidelines*, and a filed document containing information required to be provided by the *Guidelines*, may be admitted and tendered as an exhibit without further proof, unless a judge orders otherwise.

(e) Rules 59.40(4) to (6) apply to the conduct of a trial.

(2) Each party must, no less than twenty-five days before the day the trial is scheduled to start, review the statements or documents filed by the party in compliance with this Rule 59 or the *Guidelines*, and file an up-to-date statement or document to supersede a statement or document that does not contain the most current information, unless the trial judge orders otherwise.

59.43 Uncontested divorce

(1) An uncontested divorce, and uncontested corollary relief, may be sought in any of the following ways:

(a) by filing a notice of motion in a divorce action that is uncontested;

(b) by filing an application for a divorce by agreement;

(c) by filing a joint application for a divorce.

(2) A judge may grant an uncontested divorce, and uncontested corollary relief, without a hearing, unless a court officer arranges a time, date, and place for a hearing.

(3) A judge may direct that an uncontested divorce be determined by hearing and direct a court officer to set a time, date, and place for the hearing.

(4) The certification of counsel for a petitioner required by section 9 of the *Divorce Act* may be placed after the signature of the party on the document that starts an application for a divorce.

59.44 Uncontested motion for divorce

(1) A petitioner in a divorce action may make a motion for a divorce order and, if corollary relief is claimed in the petition for divorce, a corollary relief order when the respondent becomes disentitled to notice under Rule 31 - Notice, files a demand for notice, withdraws an answer, or consents to the order.

(2) A respondent in a divorce action, who files an answer making a claim for a divorce, may make a motion for a divorce order and, if corollary relief is claimed in the answer, a corollary relief order when the petitioner becomes disentitled to notice under Rule 31 - Notice, or consents to the order.

(3) The motion may be made under Part 6 - Motions, unless this Rule 59 provides or a judges directs otherwise, or it may be made without providing for a hearing.

(4) A motion for a divorce without a hearing must contain everything required in an *ex parte* motion under Rule 23 - Chambers Motion, with each of the following modifications:

(a) the motion must be entitled "Uncontested Motion for Divorce";

(b) it does not state a time, date, or place for the motion to be heard;

(c) it must include a request that the motion be determined without a hearing;

(d) in addition to the affidavits relied on, it must refer to the filed marriage certificate, and any statement or document required by this Rule 59;

(e) it must include details of other parties with or looking for contact time, interaction or parenting time with the child(ren).

(5) The motion for a divorce may be in Form 59.44.

(6) A copy of the motion for a divorce must be delivered immediately to a respondent who files a demand for notice.

(7) A court officer must deliver a motion for a divorce to a judge, and the judge must do one of the following:

(a) determine the motion;

(b) direct the court officer to notify the party making the motion, and the responding party who is entitled to notice, of what further evidence or information the judge requires to determine the motion;

(c) dismiss the motion, or part of it;

(d) give directions for a hearing.

59.45 Application for divorce based on written agreement

(1) A spouse who has all of the following may apply for a divorce order, and any corollary relief order, by filing an application for divorce, unless there is an outstanding divorce proceeding between the parties:

(a) a written agreement covering the dissolution of the marriage by divorce order and the terms for any corollary relief;

(b) the respondent's written and signed designation of an address for delivery of documents;

(c) the respondent's written and signed consent to proceeding by application without an opportunity for a hearing or contest.

(2) An application for divorce based on a written agreement must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Application for Divorce by Agreement", be dated and signed by the applicant, and include all of the following:

(a) notice the applicant applies for a divorce order and, if applicable, a corollary relief order;

(b) a statement that the applicant and the respondent have executed a written agreement that settles all issues between them concerning the divorce and corollary relief;

(c) notice the application is, in accordance with the written agreement, to be referred to a judge without opportunity for a contest or hearing;

(d) notice that the respondent must immediately notify a court officer in writing of any statement in the application with which the respondent disagrees and notice of the deadline in Rule 59.45(6);

(e) a motion that a judge grant a divorce order, and a corollary relief order that is consistent with the written agreement;

(f) a statement that the marriage certificate, or an affidavit if applicable, is filed with the application;

(g) a statement that a copy of the written agreement is attached as an exhibit to the affidavit filed in support of the application;

(h) a statement that the designated address for delivery of documents and consent to the proceeding, written and signed by the respondent, are attached as exhibits to the affidavit filed in support of the application;

(i) a reference to the certificate, statements, documents, and affidavits required under this Rule 59;

(j) a designation of an address for delivery of documents to the applicant;

(k) a statement that the respondent is being notified of the application immediately;

(l) the applicant's declaration as required by sections 7.1 to 7.5 of the *Divorce Act*;

(m) the certificate of counsel for an applicant as required by section 7.7 of the *Divorce Act*;

(n) details of other parties with or looking for contact time, interaction or parenting time with the child(ren).

(3) An application for a divorce by agreement may be in Form 59.45.

(4) A copy of the application must be delivered to the address designated by the respondent in the agreement immediately after the application is filed.

(5) A judge may consider the application ten days after it is filed or after the respondent receives a copy of the filed application and consents in writing to the divorce order and any corollary relief order.

(6) A respondent must immediately notify a court officer of any statement in the application with which the respondent disagrees, and no more than ten days after the application is delivered to the respondent.

(7) A court officer must advise the judge of a notification from the respondent under Rule 59.45(6) and the judge may do one of the following:

(a) determine the application and the notification;

(b) direct the court officer to notify the parties of what further evidence or information the judge requires to determine the application;

(c) dismiss the application, or part of it;

(d) give directions for a hearing.

59.46 Joint application for divorce

(1) Spouses who agree in writing for a divorce and to the terms of any corollary relief, may apply for a divorce order, and a corollary relief order, by filing a joint application for divorce.

(2) A joint application for divorce must contain everything required in an application for a divorce by agreement, with each of the following modifications:

(a) there is no responding party and both parties sign the application as joint applicants;

(b) it must include a statement that the parties apply for relief, instead of the notices required by Rules 59.45(2)(a) and (d);

(c) it must be entitled "Joint Application for Divorce";

(d) each of the parties must designate an address for delivery of documents in the application;

(e) Rules 59.45(2)(h) and (k) do not apply;

(f) each of the parties must sign the declaration required by sections 7.1 to 7.5 of the *Divorce Act*;

(g) the certificate of counsel for the applicants required by section 7.7 of the *Divorce Act*;

(h) it must include details of other parties with or looking for contact time, interaction or parenting time with the child(ren).

(3) A joint application for divorce may be in Form 59.46.

59.47 Information and evidence for uncontested divorce

(1) A motion, application, or joint application for an uncontested divorce must be supported by each of the following:

(a) a marriage certificate proving the marriage that is to be dissolved, or an affidavit proving the marriage and providing sufficient reasons for an order permitting proof by that means;

(b) any statement or document required by this Rule 59 to be filed by the petitioner or applicant;

(c) any financial statement or document required by this Rule 59 to be filed by the respondent or, on a motion for an uncontested divorce in an action in which the respondent fails to file a required statement or document, an affidavit proving that the filing cannot reasonably be compelled;

(d) any information about income required under the *Guidelines*;

(e) an affidavit proving further facts necessary to obtain the divorce and any corollary relief, unless a judge permits the facts to be proved by testimony;

(f) an affidavit proving the respondent has been notified of the proceeding under Rule 31 - Notice, unless the proceeding is started by joint application or the respondent consents to the divorce order and any corollary relief order.

(2) A party who files a notice of motion or an application for a divorce order must provide a court officer with two stamped envelopes with the designated addresses of the party who files the notice or application and two stamped envelopes with the designated address of the respondent, or the ordinary address of a respondent who has not designated an address.

(3) A party is not required to file financial statements in support of a motion for an uncontested divorce if all of the following apply, unless a judge orders otherwise:

(a) there are no children of the marriage;

(b) the parties agree in writing that no corollary relief for spousal support be ordered;

(c) the parties agree in writing on all other corollary relief;

(d) the parties file a waiver of financial statements signed by both of them.

(4) A motion for an uncontested divorce that involves a child of the marriage, and in which a party has not filed a financial statement or document as required by this Rule 59 or the *Guidelines* in relation to the child, may not be referred to a judge until the statement or document is filed, unless a judge orders otherwise.

(5) A party who relies on adultery to establish the ground for divorce in an uncontested divorce must prove the adultery by affidavit or by filing an extract from a discovery transcript certified by a court reporter and a copy of the certificate.

59.48 Divorce order and corollary relief order

(1) A judge who is satisfied that the ground for divorce, and other necessary facts, are proved, may grant a divorce and make a divorce order.

(2) A judge who makes a divorce order may make a corollary relief order.

(3) Unless the judge who grants a divorce directs otherwise, a corollary relief order must be issued immediately after the divorce order.

(4) A Divorce Order may be in Form 59.48A.

(5) A Corollary Relief Order may be in Form 59.48B.

59.49 Divorce certificate

(1) After the period for appealing an order under the *Divorce Act* in Rule 90 - Civil Appeal, a court officer must do all of the following:

(a) determine whether the divorce order has been appealed;

(b) cause a certificate of divorce to be issued and sealed, if there is no appeal;

(c) mail a duplicate original certificate to both parties.

(2) The certificate of divorce must be entitled "Certificate of Divorce", contain the year, registry code, number of the action, and name of the court, provide the names of the parties and the date of the marriage that was the subject of the proceeding, certify the marriage was dissolved by a divorce order, and certify the date the order took effect.

(3) The certificate of divorce may be in Form 59.49.

59.50 Registration of divorce order

An order made in accordance with section 20 of the *Divorce Act* may be registered by filing a certified copy of the order and a written request that the order be registered.

59.51 Preparation of order

A final order is to be prepared as provided in Rule 78 - Order, unless this Rule 59 provides differently or a judge directs otherwise.

59.52 Motion and interim relief

(1) A motion may be made in the Supreme Court (Family Division) as provided in Part 6 - Motions, unless this Rule 59 provides otherwise.

(2) A date, time, and place for the hearing of a motion for interim relief by a judge may be appointed only after a court officer is satisfied that an interim hearing is necessary and that the party making the motion has filed all of the following:

(a) a notice of motion and an affidavit in support of the motion;

(b) all statements, documents, and supporting disclosure, as required by Rules 59.20 to 59.22, that are necessary for the determination of the motion.

(3) A party who makes a motion on notice for any relief, including interim relief, may provide evidence by any of the following means:

(a) evidence as provided in Rule 23.08 of Rule 23 - Chambers Motion;

(b) a parenting statement or financial statement;

(c) a conciliation record filed before the notice of motion.

(4) A motion to be made on notice expires six months after the day the notice of motion is filed, unless notice of the motion is given to the other party in a manner provided in Rule 31 - Notice.

59.53 Emergency application and emergency motion

(1) A party to a proceeding in the Supreme Court (Family Division) may make a motion as provided in Rule 28 - Emergency Motion except that Rules 59.52(2) and 59.53 apply, unless a judge orders otherwise.

(2) A party who seeks the appointment of a time, date, and place for the hearing of a application or motion as an emergency must do all of the following:

(a) file the notice that starts the application, or file the notice of motion;

(b) file an affidavit in support of the application or motion that must contain all relevant facts known to the party, whether or not the facts are adverse to the party;

(c) file the statements, documents, and supporting disclosure required by Rules 59.20 to 59.22 that are necessary to the determination of the application or motion;

(d) provide contact information under Rule 59.15(3) and Rule 82 - Administration of Civil Proceedings;

(e) provide a written statement that includes all of the following information:

(i) all contact information for a party who is to receive notice of the application and any information the applicant has about the availability of that party,

(ii) a summary of any evidence to be presented in addition to the affidavit filed in support of the application or motion,

(iii) the amount of time the hearing is likely to require,

(iv) the party's reasons for saying an emergency exists,

(v) the reasons that justify proceeding without notice, if the party files an *ex parte* notice.

(3) The party must satisfy a court officer on all of the following:

(a) an emergency exists of sufficient gravity to require a speedy hearing;

(b) it is possible for all parties who wish to be heard to be in attendance at the hearing;

(c) the gravity of the emergency outweighs any inconvenience to a party.

(4) A court officer may give directions, or request that a judge give directions, for the emergency hearing, including directions for a shortened notice period and a speedy method of giving notice.

59.54 Litigation guardian

(1) A judge may appoint a person to act as litigation guardian for a child who is under the age of majority, or a party who is not capable of managing their affairs under Rule 36 - Representative Party, if the person consents to act as litigation guardian and certifies that they are not a party, and that they have no interest in the proceeding adverse to the interests of the child or the party.

(2) A person under the age of majority is not required to start or respond to a proceeding by a litigation guardian unless a judge orders otherwise.

59.55 Paternity test

A court officer may make an order for a paternity testing in a proceeding in which the paternity of a child is in issue, including a blood test, genetic test or other test as is considered appropriate by the court under subsection 27(1) of the *Parenting and Support Act*, and a genetic test under section 11B of the *Vital Statistics Act*.

59.56 Support Application by persons residing outside of Canada

(1) A court officer who receives a provisional order from a designated jurisdiction outside of Canada for confirmation under section 19(4) of the *Divorce Act* must cause a notice to appear in court, and copies of the application and other documents received from the court that made the provisional order, to be personally served on the respondent no less than twenty-five days before the day of the hearing, by the same means as a party is notified of a proceeding under Rule 31 - Notice.

(2) The respondent must file all statements, documents, and information required under Rules 59.21 to 59.23 no more than fifteen days after the day the notice to appear in court and the other documents are personally served on the respondent, and a court officer may make a direction to disclose to the respondent under Rule 59.25.

59.57 Interjurisdictional Support Orders

(1) An application for a support order or a variation order under section 18 of the *Divorce Act* is made under the provisions of the *Act* and its regulations, including provisions concerning forms, notices, delivery or service of documents, disclosure from the respondent, evidence, proceedings and orders.

(2) An application for a support order or a provisional order, including a variation order, under the *Interjurisdictional Support Orders Act* is made under the provisions of the *Act* and its regulations, including provisions about forms, notices, delivery or service of documents, disclosure from the respondent, evidence, proceedings, and orders.

59.58 Enforcement of support order

(1) A party who files a document provided by the Director of Maintenance Enforcement confirming either of the following may obtain an execution order or periodic execution order to enforce a support order:

(a) the Director received a written consent signed by the parties stating that they opted out of the enforcement program under subsection 10(1) of the *Maintenance Enforcement Act*, and neither party has given written notice to the Director to opt back into the program, under subsection 10(2) of the *Act*, since the date of receipt of the written consent;

(b) the Director decided not to enforce the order or part of the order under subsection 11(1) of the *Maintenance Enforcement Act* and the party may enforce the order or part of the order under subsection 11(2) of the *Act*.

(2) The Associate Chief Justice of the Supreme Court (Family Division) may designate a court officer to hold hearings and make orders under Section 37 of the *Maintenance Enforcement Act*.

(3) A court officer may not make an order of imprisonment under clauses 37(3)(j) or (k) of the *Maintenance Enforcement Act*.

59.59 Communicating with a judge or a court officer

(1) A person may communicate directly with a judge about a proceeding, by means of correspondence, telephone, or e-mail, only if the judge expressly permits the communication.

(2) Communication about a proceeding must not be made to a court officer by e-mail, unless directed by a judge.

59.60 Publication ban and access to information

(1) A proceeding under this Rule 59 shall be held in public, except that a judge who is satisfied on either of the following may exclude members of the public from all or part of the proceeding:

(a) the presence of the public could cause emotional harm to a child who is a witness or a participant in the hearing, or is the subject of the hearing;

(b) it is in the interest of the proper administration of justice.

(2) A judge may make an order prohibiting the publication of the identity of a child, or the name of a party or witness, or of any other information that would identify the child.

(3) A judge may order that a court file or any part of the file or any document contained in the file be sealed, treated as confidential, and not made available to the public.

(4) A person, other than a party or counsel for a party, who requests access to a court file must give written notice to the parties no less than twenty days before obtaining access.

(5) A party may make a motion for an order sealing all or part of the court file after delivery of written notice of the request for access.

(6) The person requesting access to the court file must be granted access, subject to any terms or conditions the judge specifies, unless a party makes a motion within the required time.

Rule 59A - Judicial Dispute Resolution and Process Management

59A.01 Scope of Rule 59A

This judicial dispute resolution and process management Rule applies to every proceeding in the Supreme Court Family Division including proceedings under Rule 60A, 60B and 61.

59A.02 Object of Rule 59A

The object of this Rule is to:

(a) promote the proportional, just, timely, and cost-effective resolution of disputes;

(b) minimize conflict and promote cooperation between the parties; and

(c) reduce the negative impact that the Court's dispute resolution process(es) may have on the parties and their children.

59A.03 Dispute Resolution Processes

(1) A judge may direct that the issues in dispute are to be resolved at a hearing, a trial, a focused hearing, or other appropriate process.

(2) A focused hearing is a hearing that separates or prioritizes the issues to be heard within a dispute in accordance with Rule 59.65(9).

59A.04(1) Provided they do so on the record or in writing, the parties and a judge may agree that some, or all the issues in dispute may be resolved at:

(a) a judicial settlement conference, which may include a binding or online settlement conference;

(b) an online hearing or process;

(c) an informal hearing;

(d) any other appropriate dispute resolution process.

(2) An informal hearing is an alternative hearing process where the parties:

(a) waive the right of examination and cross-examination of witnesses;

(b) waive the application of the rules of evidence.

(3) The parties to an informal hearing agree that the informal hearing will proceed as follows:

(a) the parties will agree on the record to their consent to proceed by informal hearing and the procedures within that process;

(b) the judge may ask the parties or their lawyer(s) for a summary of the issues to be decided;

(c) the applicant will be allowed to speak to the Court under oath or affirmation concerning the issues in dispute;

(d) the applicant will not be questioned by his or her lawyer, the other party or the other party's lawyer but may be questioned by the judge;

(e) the judge will ask the responding party if there are any other areas about which the responding party wishes to make inquiries of the applicant. The judge will make those inquiries if determined to be relevant and appropriate;

(f) the process referred to in (b), (c), (d) and (e) will be repeated for the other party or parties;

(g) the judge may require the attendance of witnesses other than the parties;

(h) Court ordered expert reports will be entered into evidence as the Court's exhibit. If either party requests, the expert will testify and be subjected to questioning if permitted by the judge;

(i) the parties may offer any documents they wish the judge to consider and must provide a copy of such documents to the other party. The judge will determine what weight, if any to give each document. The judge may order the parties to provide other relevant documents. Letters or other documents by the parties' children that are intended to suggest parenting preferences are permitted with permission of the judge;

(j) upon the conclusion of questioning and entry of documents into evidence, the applicant or applicant's lawyer will be offered the opportunity to make brief submissions and legal argument;

(k) the respondent or the respondent's lawyer will be offered the opportunity to make brief submissions and legal argument and respond briefly to the applicant's submissions and legal argument;

(l) the applicant or applicant's lawyer will be offered the opportunity to respond briefly to any new issues raised by the respondent. The parties or their lawyers will then be offered the opportunity to make a brief legal argument;

(m) upon consideration of the evidence and submissions, the judge may render judgment;

(n) the judge retains jurisdiction to modify these procedures as justice and fundamental fairness require.

(4) Any other appropriate dispute resolution process.

(5) A judge shall direct and instruct the parties with respect to the process and requirements of the chosen dispute resolution process.

59A.05 Judicial Dispute Resolution: Process Management

At every appearance, including a conference under Rule 59.38, a judge may by direction or order:

(a) identify the parties to the dispute and identify the issues in dispute;

(b) assist the parties to identify an appropriate dispute resolution process;

(c) make orders to which all parties consent;

(d) direct a party to attend the Parent Information Program;

(e) provide for an immediate need by making an interim temporary time limited order based upon evidence contained in affidavits and documents filed with the court with or without cross-examination of a party;

(f) require disclosure of documents, financial information or other relevant information within a fixed time and:

(i) name the party who is to receive the disclosure;

(ii) direct whether the disclosure is to be filed with the court.

(g) make a ruling about an evidentiary or procedural matter that does not require a motion hearing;

(h) require a motion to be made within a fixed time;

(i) manage the hearing, trial, or dispute resolution process by:

(i) limiting the use of expert evidence;

(ii) limiting the number of witnesses;

(iii) limiting the number of affidavits;

(iv) limiting the number of paragraphs and pages in affidavits;

(v) specifying the issues to be addressed in affidavits;

(vi) setting page limits for written submissions;

(vii) limiting and apportioning the time available to complete any step in a hearing, trial or dispute resolution process including limiting the time allotted to complete oral evidence, examination, cross-examination and/or submissions;

(viii) specifying the order in which issues are to be examined and the time allotted to each issue;

(ix) separating and prioritizing the time for hearing specific issues within a dispute.

(j) require a party, by a fixed date, to prepare and file calculations showing and rationalizing the amount that party is requesting for the following claims:

(i) child support, ongoing and retroactive;

(ii) spousal support, ongoing and retroactive;

(iii) division of property and/or debt.

(k) give any direction and make any order that is appropriate to promote the proportional, just, fair, timely, and cost-effective resolution of issues in dispute.

Rule 60A - Child and Adult Protection

60A.01 Scope of Rule 60A

(1) This Rule is divided into four parts and it provides procedures for each of the following:

(a) protection of a child, and other purposes, under the *Children and Family Services Act*;

(b) protection of an adult, and other purposes, under the *Adult Protection Act*;

(c) involuntary medical examination under the *Involuntary Psychiatric Treatment Act*;

(d) review under the *Hospitals Act*.

(2) The following kinds of proceedings may be started by filing one of the following notices:

(a) a proceeding under the *Children and Family Services Act*, by filing a notice of application;

(b) a proceeding under the *Adult Protection Act*, by filing a notice of application;

(c) a proceeding under the *Involuntary Psychiatric Treatment Act*, by filing a notice of involuntary psychiatric treatment application;

(d) a judicial review under the *Hospitals Act*, by filing a notice for judicial review.

(3) Procedure on the applications and review is governed by this Rule 60A and the Rules outside this Rule apply, unless those Rules are inconsistent with this Rule or applicable legislation.

(4) An interlocutory step in a proceeding or a motion may be made in accordance with Part 6 - Motions as modified by this Rule.

60A.01A Interpretation of Rule 60A

In this Rule, "representative" means a person appointed as a representative of an agency under the *Children and Family Services Act*.

60A.02 Starting a child protection application

(1) An agency that starts a child protection application under Section 32 of the *Children and Family Services Act* may file a notice of application in court.

(2) An agency that starts a child protection application under this Rule 60A.02 must request a court officer, or a judge, to appoint a time and date for the interim hearing of the application.

(3) The provisions of Rule 31 - Notice about giving notice of a proceeding, including the requirement to deliver a copy of a document that is filed to each other party immediately before or after it is filed, apply to an application under this Rule 60A.02.

(4) A judge may require notice, waive notice, and give directions for effecting notice.

(5) A judge may make an order to designate an address for service to a party who has not designated an address under Rule 31 – Notice and service at this address must be deemed to be service on the individual.

60A.03 Notice of child protection application

(1) A notice of a child protection application must have a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Child Protection Application", be dated and signed, and conform with all of the requirements for a notice of application in court under Rule 5.07, except for each of the following differences:

(a) the description of the order applied for must identify the child by full name, birth date and sex, and must state that the order is to determine whether the child is in need of protective services under the *Children and Family Services Act*;

(b) the grounds for the order must include a reference to the clause in subsection 22(2) of the *Children and Family Services Act* relied on;

(c) instead of including a notice of motion for directions, it must include a notice of the time, date, and place for a hearing, as soon as practicable and no later than five working days after the child has been taken into care or the application is made, whichever is sooner, to grant an interim order that there are reasonable and probable grounds to believe that the child is in need of protective services;

(d) the notice of the time and date must include a statement that the interim hearing is required to be held as soon as practicable and no later than five working days after the child has been taken into care or the application is made, whichever is sooner;

(e) notice that the respondent may file an affidavit;

(f) a notice of motion for directions and affidavit in support are not required;

(g) the statement about proceeding in the absence of the respondent must refer to attendance at the interim hearing, instead of the hearing of the motion for directions;

(h) a statement to the respondent that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services;

(i) a statement as to whether there was a previous child protection proceeding in Nova Scotia relating to this child, and if so:

(i) the number of months the child was the subject of an order for temporary care and custody made under section 42(1)(d) of the *Children and Family Services Act*, or

(ii) a representation that the agency will file a statement about the number of months the child was the subject of an order for temporary care and custody no more than one month after filing the notice of child protection application;

(j) a statement whether the child is, or is entitled to be, an Aboriginal child and, if so, whether the child is, or is entitled to be, a Mi'kmaq child and whether the child's band is known.

(2) The notice of a child protection application may be in Form 60A.03.

(3) The affidavit in support of a child protection application must include evidence of the reasonable and probable grounds relied on by the agency for the claim that the child is in need of protective services.

(4) An agency must, immediately after starting an application, obtain and file a certified extract of the Registration of Birth for each child who is the subject of the application.

60A.04 Place of application

(1) A notice of a child protection application must be filed in the office of the Supreme Court (Family Division) closest to the child's place of ordinary residence, unless a judge directs otherwise or, if the child has no ordinary residence in the province, in any office of the Supreme Court (Family Division).

(2) A child protection application must be heard in a court house in which the Supreme Court (Family Division) sits that is closest to the child's place of ordinary residence, unless a judge directs otherwise.

(3) A judge may direct that the file for a child protection proceeding be transferred from the office of the Supreme Court (Family Division) at one place to the office of the Family Division at another place.

(4) A judge may direct that a child protection proceeding be transferred from the jurisdiction of the Supreme Court (Family Division) to the jurisdiction of the Family Court for the Province of Nova Scotia.

60A.05 Parent or guardian under the age of majority

A parent or guardian who is under the age of majority need not commence or defend a proceeding by a guardian *ad litem*, unless a judge orders otherwise.

60A.06 Guardian *Ad Litem*

(1) The process for appointment and role of the guardian *ad litem* of a child under the *Children and Family Services Act* must be governed by Rule 60A and not Rule 36.

(2) A person may apply to become the guardian *ad litem* by filing a sworn statement of the guardian *ad litem* which may be in Form 60A.06.

(3) The statement of the guardian *ad litem* must be entitled "Statement of the Guardian *Ad Litem*", be sworn or affirmed by the guardian *ad litem*, and must include all of the following:

(a) provide the guardian's consent to be guardian *ad litem* for the child;

(b) confirmation that the guardian *ad litem* has no prior relationship that could interfere with or prevent the guardian *ad litem* from acting for the child;

(c) confirmation that the guardian *ad litem* has retained a lawyer, and the name of the lawyer;

(d) confirmation that the guardian *ad litem* has no interest in the proceeding adverse to that of the child;

(e) an acknowledgment the guardian *ad litem* may be liable for court costs if the guardian *ad litem* abuses the court's processes;

(f) where the child for whom the guardian *ad litem* is proposed is a Mi'kmaq child:

(i) any Mi'kmaq or Aboriginal heritage and community connections of the guardian *ad litem*;

(ii) confirm the guardian *ad litem*'s competence and understanding of the importance of a Mi'kmaq child's connection with the child's First Nation, heritage, spirituality and traditions.

(g) where the child for whom the guardian *ad litem* is proposed is an Aboriginal child:

(i) the Aboriginal heritage of the guardian *ad litem*;

(ii) confirm the guardian *ad litem*'s competence and understanding of the importance of an Aboriginal child's connection with the child's culture, heritage, spirituality and traditions.

(h) where the child for whom the guardian *ad litem* is proposed identifies with a diverse group and/or a recognized community or cultural group:

(i) any connections of the guardian *ad litem* with the child's diverse, community or cultural group;

(ii) confirm the guardian *ad litem*'s competence and understanding of the child's diverse group, community or cultural group, including heritage, spirituality and traditions, and the importance of those to the child.

(4) On a motion a judge may appoint, discharge, or replace a guardian *ad litem* of a child.

(5) The order appointing the guardian *ad litem* must name the child by their guardian *ad litem* as a party and include a reference to Regulation 41 under the *Children and Family Services Act* which specifies the fees and disbursements of the guardian ad litem and lawyer for the guardian ad litem.

(6) The order appointing the guardian *ad litem* may be in Form 60A.06A.

(7) A guardian *ad litem* for a child continues to have authority when the child reaches sixteen years of age unless a judge otherwise orders.

(8) Where a guardian *ad litem* is appointed, discharged, or replaced, the Minister of Community Services must make a motion to amend the heading to reflect the change regarding the guardian *ad litem*.

(9) A guardian *ad litem* must be represented by counsel.

(10) A guardian *ad litem* may make any decision a party could make in a proceeding except the guardian *ad litem* must make decisions and recommendations in the child's interests.

(11) The guardian *ad litem* must file a report:

(a) one week prior to the prehearing conference before the protection hearing;

(b) one week prior to the prehearing conference before the disposition hearing;

(c) one week prior to a review hearing;

(d) as directed by a judge.

(12) The report of the guardian *ad litem* may be in Form 60A.06B.

60A.07 Taking child into care

(1) A representative who takes a child into care under subsection 33(1) of the *Children and Family Services Act* must immediately file a notice of taking into care under this Rule 60A.07.

(2) The notice of taking a child into care must have a heading that refers to the *Children and Family Services Act* and the purpose of the notice, and be entitled in either of the following ways:

(a) in the case where the taking into care is before starting a child protection application, "In the matter of [name of representative], for agency [Minister of Community Services or Mi'kmaw Family and Children's Services], giving notice of taking a child into care under subsection 33(2) of the *Children and Family Services Act* before starting a child protection application";

(b) in the case where the taking into care is after starting a child protection application, "Notice of Taking Into Care".

(3) The notice of taking into care before starting a child protection application must be dated and signed, and contain all of the following:

(a) notice that the representative has taken a child into care, identifying the child, stating that there are reasonable and probable grounds to believe that the child is in need of protective services and that the child's health and safety can only be adequately protected by taking the child into care;

(b) a statement that an interim hearing must be held within the time required under the *Children and Family Services Act* to determine whether there are reasonable and probable grounds to believe the child is in need of protective services;

(c) a statement to the respondent that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services.

(4) A notice of taking a child into care before a child protection application is started must include a statement that the agency will start a child protection application as soon as practicable and no later than five working days after the child was taken into care, and indicate the grounds under subsection 22(2) of the *Children and Family Services Act* that the agency relies on.

(5) A notice of taking into care after a child protection application is started must be dated and signed, and contain all of the following:

(a) notice that the representative has taken a child into care which sufficiently identifies the child; and

(i) a statement that there are reasonable and probable grounds to believe that the child is in need of protective services and that the child's health and safety can only be adequately protected by taking the child into care; or

(ii) a statement that the person in whose care and custody the child was placed has not complied with an order of the court which placed the child in the care of that person subject to the supervision of the agency;

(b) a statement that a hearing must be held within the time required under the *Children and Family Services Act* to determine whether the order should be reviewed and varied.

(6) A notice of taking into care made before a protection application is started may be in Form 60A.07 and a notice of taking into care made after a child protection application is started may be in Form 60A.07A.

60A.08 Conduct of protection hearing

A protection hearing may be conducted in accordance with Rule 25.04 of Rule 25 - Motion by Appointment.

60A.09 Consolidation of proceedings

The court may order that a child protection proceeding be consolidated with another proceeding involving custody or access to a child, including a proceeding under the *Children and Family Services Act*.

60A.10 Interim hearing

(1) At the start of an interim hearing under Section 39 of the *Children and Family Services Act*, the judge may do any of the following:

(a) determine whether a child is a party and entitled to representation in accordance with Section 37 of the *Children and Family Services Act* and give directions on the child's status in the proceeding, representation, presence at hearings, participation, and disclosure and notice;

(b) determine whether a person is the child's parent or guardian;

(c) determine whether a person who is found to be a parent or guardian has had any involvement with the child for an extended period of time;

(d) give directions about notice and disclosure to a parent or guardian who the judge finds has not had any involvement with the child for an extended period of time;

(e) inquire into whether the agency has made disclosure in accordance with subsection 38(1) of the Children and Family Services Act.

(2) A judge who finds that the agency has not made disclosure may order disclosure and discovery under Part 5 - Disclosure and Discovery.

(3) A party at an interim hearing under subsection 39(1) of the Children and Family Services Act may offer an expert opinion without filing a formal expert's report, despite Rule 55 - Expert Opinion, for either of the following purposes:

(a) determining whether there are reasonable and probable grounds to believe that the child is in need of protective services;

(b) whether the application should be dismissed under subsection 39(2) of the *Children and Family Services Act*.

(4) A judge who does either of the following under the *Children and Family Services Act* may act on affidavit evidence or, if permitted by the judge, oral evidence, to determine whether there are reasonable and probable grounds to believe that a child is in need of protective services:

(a) dismisses the application, under subsection 39(2) of the *Children and Family Services Act*;

(b) adjourns the interim hearing and makes an interim order pending completion of the interim hearing, under subsection 39(3) of the Children and Family Services Act.

(5) An interim order granted when adjournment is made under subsection 39(3) of the *Children and Family Services Act* must provide that the order expires on the earlier of one of the following dates:

(a) the date of the completion of the deadline for an interim hearing provided in subsection 39(4) of the *Children and Family Services Act*;

(b) a date set by a judge that is no later than is necessary to complete the interim hearing.

(6) At the start of the interim hearing the judge must also do all of the following:

(a) enquire whether the child is, or is entitled to be, an Aboriginal child and, if so enquire whether the child is, or is entitled to be, a Mi'kmaq child and whether the child's band is known;

(b) determine whether or not notice to the band is necessary and, if so, give directions about notice to the band which may be in Form 60A.10;

(c) determine whether a child is under one year of age and whether the mother or father of the child is not a party to the proceeding, and, if so, do each of the following:

(i) enquire whether notice has been delivered to the non-party mother or father;

(ii) enquire of the parties to the proceeding the whereabouts and identity of a non-party mother or father to whom notice has not been given;

(iii) give directions regarding notice to the non-party mother or father which may be in Form 60A.10A.

(7) A band may provide notice to the court of an intention to have a designate present, to be represented by counsel or to make submissions to the court. Such notice of band's intention may be in Form 60A.10B.

(8) An agency that has taken a child into care after a proceeding is started and seeks an order to vary an interim order must make the motion to vary as soon as possible and file the notice of motion no less than two days before the day of the hearing, unless the other party agrees or the court orders otherwise.

60A.11 Disclosure and discovery

(1) A witness in a proceeding may only be discovered under an order for discovery after the interim hearing is completed.

(2) A child may only be questioned on discovery if the court permits and on the terms the court directs.

(3) A judge may order information that may be emotionally harmful to a child who participates in a proceeding to be kept from the child.

60A.12 Order for mediation

(1) A judge who is satisfied that it is in the interests of the child and that it is desirable for the parties to pursue a consensual resolution of the issues in dispute may order a stay during a mediation under subsection 21(2) of the *Children and Family Services Act*.

(2) The order for mediation must be entitled "Order for Mediation", include the standard heading, and contain all of the following:

(a) a record of the judge's findings that the respondents have been given notice of the child protection proceeding and the parties have appointed a mediator;

(b) a statement of the issues the parties have agreed to mediate;

(c) a provision for the extension of time under subsections 41(1), or 45(1) and 45(2) of the *Children and Family Services Act* by a specified period not exceeding three months;

(d) a statement that the mediator must file a report with the court and deliver a copy of the report to each party, or that the parties have agreed to a closed mediation and the mediator must not report to the court.

(3) An order for mediation may contain a provision prescribing the limitations of what information should be disclosed in the report, such as the terms of an agreement or whether an agreement was not reached, and what information should not be disclosed in the report; or in the alternative, a provision that the report must contain unlimited information and not contain recommendations.

(4) The order for mediation may be in Form 60A.12.

60A.13 Prehearing conference

(1) A prehearing conference under Rule 26A - Conference must be held before a protection hearing and before a disposition hearing unless a judge directs otherwise.

(2) A prehearing conference for a protection hearing may be combined with the protection hearing and a prehearing conference for a disposition hearing may be combined with the disposition hearing.

(3) An agency must file an affidavit providing current relevant evidence no less than ten days before the day of the prehearing conference.

(4) If directed by a judge, a party, upon determining a hearing will be contested, must file a notice of contest within five days or at such other time as directed by the judge. A prehearing conference will be scheduled following the filing of a notice of contest. The notice of contest may be in Form 60A.13.

(5) Where a notice of contest has been filed, a party that intends to rely on expert opinion or a physician's report in a hearing must file a copy of the expert opinion or physician's report no less than ten days before the prehearing conference unless a judge directs otherwise.

(6) Where a notice of contest has been filed, the parties must file a memorandum with the court at least ten days before the prehearing conference, unless the judge directs otherwise. The memorandum must include:

(a) the identity of expert witnesses and the qualification sought for each expert witness;

(b) a list of any business records on which the party intends to rely at the hearing;

(c) a list of witnesses intending to present evidence at the hearing.

60A.13A Court ordered conferencing

(1) The court may refer the parties to conferencing pursuant to section 40(1)(b) of the *Children and Family Services Act*, and the order may be in Form 60A.13A.

(2) The court may refer the parties to conferencing pursuant to section 41(1)(b) of the *Children and Family Services Act*, and the order may be in Form 60A.13B.

(3) An order under section 40(1)(b) or 41(1)(b) of the *Children and Family Services Act* does not affect obligations for production of documents, unless a judge orders otherwise.

(4) If the conference is not held within the time frame prescribed by section 40E of the *Children and Family Services Act*, the agency must make a motion to have the court consider terminating conferencing. The motion may be in Form 60A.13C.

(5) A party who applies to terminate conferencing pursuant to section 40F of the *Children and Family Services Act* must request a court officer, or a judge, to appoint a time and date for a prehearing conference.

(6) On motion pursuant to section 40E or 40F of the *Children and Family Services Act*, the court may terminate conferencing. The order to terminate conferencing may be in Form 60A.13D.

(7) Within five days of terminating conferencing, the agency must file a notice terminating conferencing and notice of hearing in Form 60A.13E.

(8) Within five days of terminating conferencing, the agency must file a statement of time spent in conferencing in Form 60A.13F.

(9) The agency may apply to conclude conferencing and discontinue the proceeding pursuant to section 40G(2) of the *Children and Family Services Act*. When making a motion, the agency must file an agreed statement of facts which includes the following:

(a) a brief statement of the history of the proceeding;

(b) a summary of the assessment, treatments and services provided;

(c) an explanation of why a discontinuation would be in the child's best interests;

(d) the details of any agreement reached regarding custody of and access to the child.

(10) The agreed statement of facts may be in Form 60A.13G.

(11) An application under section 40H of the *Children and Family Services Act* may be made by correspondence to a judge pursuant to Rule 27 - Motion by Correspondence.

60A.14 Production of documents

(1) A judge who is satisfied on all of the following may order a person to deliver a copy of a document to the parties or the court, or to produce the original of a document for inspection by the parties or a judge:

(a) the delivery or inspection is necessary for the fair disposition of the proceeding, or it will reduce costs;

(b) the parties are notified of the motion for delivery or inspection;

(c) the delivery or inspection is not injurious to the public interest

(2) An order to produce under this Rule is subject to the right of the third party to object to producing all or any part of such documents. The third party who objects may apply for dissolution or modification of the order to produce on two days notice to the parties.

60A.15 Protection hearing

(1) A party must file a notice of intention to present the following kinds of evidence before a prehearing conference:

(a) evidence admitted under subsection 96(1) of the *Children and Family Services Act*;

(b) a child's testimony to be received by the court under subsection 96(3) of the *Children and Family Services Act*.

(2) The motion for a protection order is heard by a judge at a protection hearing under Section 40 of the *Children and Family Services Act*.

(3) A protection order is granted under Section 40 of the *Children and Family Services Act*.

60A.16 Disposition hearing

(1) When a judge finds that a child is in need of protective services, the court must schedule a prehearing conference to organize a disposition hearing.

(2) An agency in a proceeding in which the judge finds a child to be in need of protective services must file a notice of motion for a disposition order no later than ten days before the prehearing conference scheduled as a result of a finding that a child is in need of protective services and the agency must file an affidavit providing the current relevant evidence and the agency plan for the child's care with the notice.

(3) The motion for a disposition order is heard by a judge at a disposition hearing under Section 41 of the Children and Family Services Act.

(4) A disposition order is granted under Section 42 of the Children and Family Services Act.

(5) The notice of motion for a disposition order must contain the standard heading, be entitled "Notice of Motion for Disposition Order", be dated and signed, and conform with the requirements for a notice of motion in chambers, except for the following differences:

(a) the notice of the time and date when, and the place where, the motion is to be heard is for the pre-hearing conference or the disposition hearing;

(b) the provision for references is not included;

(c) the statement of the evidence in support of the motion is to include a reference to the agency's plan for the child's care;

(d) a statement to the respondent that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services.

(6) The notice of motion for disposition order may be in Form 60A.16.

60A.17 Agency plan for disposition hearing

(1) The agency's plan for the child's care must contain the standard heading, be entitled "Agency Plan for the Child's Care", be dated and signed, and include all of the following:

(a) a description of the disposition order sought;

(b) a description of services to be provided;

(c) a statement of the criteria the agency will use to determine when its care and custody or supervision is no longer required;

(d) an estimate of the time the agency requires to achieve the agency's intervention.

(2) An agency that proposes to remove the child from the care of a parent or guardian, must include all of the following in the plan:

(a) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian;

(b) a description of the past and present services, including those attempted but failed, refused, or considered but would be inadequate, along with the reasons for any failure, refusal, or inadequacy;

(c) information on possible placements of the child that have been considered and rejected, and the reasons for the rejection;

(d) a statement of the proposed efforts to maintain the child's contact with the parent or guardian.

(3) An agency that proposes the child be placed in temporary care and custody of the agency, must include all of the following in the plan:

(a) a description of the child's needs in reference to the findings of assessments;

(b) a statement of the goals for the temporary care and custody, and objectives to achieve the goals;

(c) a statement of the educational program for the child;

(d) a statement of how the child's parents or guardian will be involved in the care plan;

(e) details of any specialized services to be provided;

(f) the dates for review of the care plan or its revision;

(g) a statement of the anticipated plan at final disposition;

(h) a statement of whether the child has brothers or sisters living in the same family unit and the steps taken to keep them all in the same family unit or to do otherwise;

(i) an explanation of the steps taken to maintain contact with the child's relatives and friends;

(j) an explanation of the steps taken to preserve the child's cultural, racial, and linguistic heritage;

(k) an explanation of the steps taken for the continuity of the child's education and religion.

(4) An agency that proposes the child be placed in permanent care and custody of the agency, must include all of the following in the plan:

(a) a statement of why the circumstances justifying the proposal are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based on the age of the child, set out in subsection 45(1) of the *Children and Family Services Act*;

(b) a description of the arrangements for the child's long-term stable placement;

(c) a statement of the access, if any, proposed for the child and any terms and conditions for access;

(d) an explanation of the placement with a family in relation to preserving the child's own religious faith, culture, race, and language.

(5) The agency's plan for the child's care may be in Form 60A.17.

60A.18 Kinds of disposition orders

The following kinds of disposition orders made after a hearing under subsection 42(1) of the *Children and Family Services Act* must be made in accordance with the following Rules:

(a) an order of dismissal, Rule 60A.19;

(b) a supervision order, Rule 60A.20;

(c) a customary care and supervision order;

(d) an order for temporary care and custody, Rule 60A.21;

(e) an order for permanent care and custody, Rule 60A.22.

60A.19 Order of dismissal

(1) An order of dismissal at the conclusion of a disposition hearing under Section 42 of the *Children and Family Services Act* must contain the standard heading, be entitled "Order of Dismissal", and include both of the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, was in need of protective services in reference to the applicable clause in subsection 22(2) of the *Children and Family Services Act*;

(b) a provision that the proceeding respecting the child is dismissed.

(2) The order of dismissal may be in Form 60A.19.

60A.20 Supervision order

(1) A supervision order must contain the standard heading, be entitled "Supervision Order", and include all of the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, was in need of protective services with a reference to the applicable clause in subsection 22(2) of the *Children and Family Services Act*;

(b) a record that affidavits were filed, evidence was heard;

(c) a record that the child's birth certificate, or other proof of birth, was filed or a statement that the judge found it was not practicable to do so;

(d) a provision that the child is to remain in the care and custody of the parent or guardian or other person, but under the supervision of the agency;

(e) the terms and conditions of supervision, if any;

(f) a provision granting the agency the right to enter the residence of the child;

(g) a statement of the time and date when the supervision order will be reviewed by a judge;

(h) a statement of the maximum time for the proceeding.

(2) The supervision order may be in Form 60A.20.

60A.20A Customary care order

(1) A customary care order must contain the standard heading, be entitled "Customary Care Order", and include all of the following:

(a) a record of the judge's finding that the child, identified by name and date of birth, was in need of protective services with reference to the applicable section in subsection 22(2) of the *Children and Family Servies Act*;

(b) a record that affidavits were filed and evidence was heard;

(c) a record that the child's date of birth was proven by birth certificate, or other proof of birth, or that the judge found it was not practicable to do so;

(d) a statement of the maximum time period for the proceeding;

(e) a declaration of whether the child is, or is entitled to be, an Aboriginal child and, if so, a declaration of whether the child is, or is entitled to be a Mi'kmaq child and the child's band if it is known;

(f) a provision that the child is to remain in the customary care and custody of a person, with the consent of that person, and under the supervision of the agency;

(g) the terms and conditions of supervision, if any;

(h) a provision granting the agency the right to enter the residence of the child;

(i) a statement of the time and date when the customary care order will be reviewed by a judge.

(2) The customary care order may be in Form 60A.20A.

60A.21 Order for temporary care and custody

(1) An order for temporary care and custody must contain the standard heading, be entitled "Order for Temporary Care and Custody", and include all of the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, was in need of protective services with a reference to the applicable clause in subsection 22(2) of the *Children and Family Services Act*;

(b) a record that affidavits were filed, evidence was heard;

(c) a record that the child's birth certificate, or other proof of birth, was filed or a statement that the judge found it was non-practicable to do so;

(d) a record that the judge's finding that less intrusive alternatives, including services to promote the integrity of the family have been attempted and have failed, have been refused by the parent or guardian or would be inadequate to protect the child;

(e) a record that the judge considered whether it was possible to place the child with a relative, neighbour, or other member of the child's community or extended family;

(f) a statement of the maximum time period for the proceeding;

(g) a provision that the child be placed in the temporary care and custody of the agency;

(h) the terms and conditions of temporary care and custody, if any;

(i) a statement of when the child is to be returned to the care and custody of the parent or guardian, if the child is to be returned;

(j) a statement of the time and date when the order for temporary care and custody will be reviewed by the court.

(2) The order for temporary care and custody may be in Form 60A.21.

60A.22 Order for permanent care and custody

(1) An order for permanent care and custody must contain the standard heading, be entitled "Order for Permanent Care and Custody", and include all of the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, was in need of protective services with a reference to the applicable clause in subsection 22(2) of the *Children and Family Services Act*;

(b) a record that affidavits were filed, evidence was heard and the child's birth certificate, or other proof of birth, was filed;

(c) a record of the judge's finding that less intrusive alternatives, including services to promote the integrity of the family have been attempted and have failed, have been refused by the parent or guardian or would be inadequate to protect the child;

(d) a record that the judge considered whether it was possible to place the child with a relative, neighbour or other member of the child's community or extended family;

(e) a record of the judge's finding that the circumstances justifying the order of permanent care and custody are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits under the *Children and Family Services Act* for the child to be returned to the parent or guardian;

(f) a provision that the child be placed in the permanent care and custody of the agency.

(2) The order for permanent care and custody may be in Form 60A.22.

60A.23 Separate order for each child

A judge who determines to make an order of dismissal, or an order for permanent care and custody, in a proceeding involving more than one child must make a separate order for each child who is the subject of the proceeding.

60A.24 Review of order

(1) A party may make a motion for a judge to review an order under Section 46 of the *Children and Family Services Act* by filing a notice of motion in chambers.

(2) An agency must file an affidavit in relation to the motion no less than ten days before the review.

(3) Where the agency seeks a change in placement, access, or services, the agency must file a revised agency plan or a new agency plan for the child's care, providing the latest information, updates, changes and additions to the plan, with the agency's affidavit in support of the motion.

(4) An agency must file an updated agency plan no less than ten days before any scheduled review hearing that is within four months of the deadline for the proceeding, as determined by section 45 of the *Children and Family Services Act*.

(5) A revised agency plan must show the revisions as being underlined or otherwise highlighted.

(6) An agency that takes a child into care after a supervision order is made must make a motion to review the order as soon as practicable but no later than five working days after the child is taken into care or the application is made, whichever is sooner.

(7) A judge who hears a motion to review an order before the expiry of the order may adjourn the review hearing and make a disposition order other than an order for permanent care and custody, within the time limits in subsection 43(4) and 45(1) of the *Children and Family Services Act*.

60A.25 Terminating order for permanent care and custody

(1) An application to terminate an order for permanent care and custody may be started by filing a notice of application in court.

(2) The application must include the following statements:

(a) the party is authorized to make the application under Section 48 of the *Children and Family Services Act*; or

(b) the party has obtained an order granting permission under section 48(6)(c) or (d) of the *Children and Family Services Act*, to make the application.

(c) the party has given sufficient notice to the agency that has care and custody of the child and to all other parties to the proceeding in which the child was placed in permanent care and custody.

(3) A party who is required to obtain permission under section 48(6)(c)or (d) of the *Children and Family Services Act* must obtain an order granting permission before the party files an application to terminate an order for permanent care and custody.

(4) An order made under section 48(8)(c) of the *Children and Family Services Act* that directs supervision by the agency, and adjourns the hearing of an application to terminate an order for permanent care and custody and directs the placement of the child in the care and custody of a parent or guardian, must contain everything required in a supervision order under Rule 60A.20, except for the following differences:

(a) the first paragraph in the order must state that an application was made to terminate the order for permanent care and custody respecting the child, whose name and birth must be stated, instead of recording the judge's findings;

(b) the order must include a provision adjourning the hearing.

(5) An order made under section 48(8)(d) of the *Children and Family Services Act* that directs supervision by the agency, and adjourns the hearing of an application to terminate an order for permanent care and custody and directs the placement of the child in the care and custody of a person other than a parent or guardian, must contain everything required in a supervision order under Rule 60A.20, except for the following differences:

(a) the first paragraph must state that an application was made to terminate the order for permanent care and custody and to place the child in the care of a person other than a parent or guardian, but under the supervision by the agency, instead of recording the judge's findings;

(b) the order must include a provision adjourning the hearing;

(c) the provision required by Rule 60A.20(1)(d) must instead provide that the child is to remain in the care and custody of a person other than a parent or guardian.

(6) An application for one of the following kinds of orders must be heard no more than the following number of days after the day the notice of application is filed:

(a) to terminate an order for permanent care and custody, ninety days;

(b) the permission to apply to terminate an order for permanent care and custody under section 48(6)(c) of the *Children and Family Services Act*, sixty days.

60A.26 Varying or terminating access under order for permanent care and custody

(1) An agency who wishes to have access under an order for permanent care and custody varied or terminated under subsection 48(5) of the *Children and Family Services Act* may do so by notice of application.

(2) The application may be started by filing a notice of application.

(3) The notice of application must state that the application is being made under subsection 48(5) of the *Children and Family Services Act* and is to either vary or terminate access under an order for permanent care and custody.

(4) The application must be heard no more than sixty days after the notice of application is filed.

60A.27 Extension of Permanent Care and Custody

(1) A party who wishes to extend an order for permanent care and custody until the child reaches twenty-one years of age under subsection, 48(1) of the *Children and Family Services Act*, may file a notice of application in chambers.

(2) An agency who applies to extend an order for permanent care and custody must request a court officer, or a judge, to set a date for the hearing of the application and deliver a copy of the notice to the child at least ten days before the day of the hearing.

(3) A child who applies to extend an order for permanent care and custody must request a court officer, or a judge to set a date for the hearing of the application and deliver a copy of the notice to the agency at least ten days before the day of the hearing.

60A.28 Locate and Detain

(1) A person who wishes to obtain an order to locate and detain a child under subsection 29(1) of the *Children and Family Services Act* may file an *ex parte* application in chambers.

(2) A person who wishes to obtain an order to locate and detain a child must do both of the following:

(a) request a court officer, or a judge, to set a date for the hearing of the application;

(b) file an affidavit that establishes the grounds for the order, including evidence demonstrating that the child has withdrawn from the care and control of the child's parent, guardian, or agency without consent and evidence establishing reasonable and probable grounds for believing that the child's health or safety may be at risk.

(3) A judge may direct that an affidavit filed in support of an application by a parent or guardian to locate and detain a child, the order, and any other relevant information, be provided to an agency.

(4) The locate and detain order may be in Form 60A.28.

60A.29 Application for order keeping person away from child

(1) An agency that wishes to start an application for a protective-intervention order under Section 30 of the *Children and Family Services Act* may file a notice of application for a protective-intervention order in court in accordance with this Rule 60A.29.

(2) An agency that wishes to start an application for a protective-intervention order under this Rule 60A.29 must request a court officer, or a judge, to set down the hearing of the application and provide two days notice to the respondent.

(3) The provisions of Rule 31 - Notice about giving notice of an originating document apply to an application under this Rule 60A.29.

(4) The notice of application for a protective-intervention order must have a standard heading written in accordance with Rule 84 - Court Records, be entitled "Notice of Application for Protective-intervention Order", be dated and signed, and conform with all of the requirements for a notice of application in court under Rule 5, except for each of the following differences:

(a) the description of the order applied for must identify the child by full name, birth date and sex, state that the order is to determine whether the person who is the subject of the application should cease to reside with the child, not contact the child or associate with the child, and give details of any terms and conditions sought by the agency;

(b) the grounds for the order must include that the person's contact with the child is causing, or is likely to cause, the child to be in need of protective services;

(5) A motion to vary, terminate, or extend a protective-intervention order must be made by filing a notice of motion, and Rules 60A.29(3) and (4) apply to the motion as if the motion were an original application.

60A.30 Minister's application for authorization to provide treatment

(1) The Minister must start an application under Section 61 of the *Children and Family Services Act*, concerning consent to treatment, by filing a notice of application in chambers.

(2) The application must be supported by the opinions provided by two medical experts.

(3) The notice of application must contain a statement that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services.

60A.31 Application for finding to be entered in Child Abuse Register

(1) An application by the Minister or the agency for a finding of abuse for the purpose of entry in the Child Abuse Register under subsection 63(3) of the *Children and Family Services Act* must be started by filing a notice of application in chambers.

(2) The notice of application must conform with the requirements for a notice of application under Rule 5.03(2), except for the following differences:

(a) the provision entitled "Possible order against you" must state as follows: "The judge may make a finding of abuse for the purpose of entering your name in the Child Abuse Register. The entry will affect your ability to become a foster parent an adoptive parent, or to obtain some kinds of employment, or work as a volunteer caring for or working with children.";

(b) the notice of application must contain a statement that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services.

(3) The person whose name is intended to be entered in the Child Abuse Register must be named as the respondent.

(4) The Minister or an agency that wishes to start an application for a finding of abuse for the purpose of entries in the Child Abuse Register must request a court officer or a judge to appoint a time and date for directions and to set down the hearing of the application.

(5) The provision of Rule 31 - Notice about giving notice of an originating document apply to an application under the Rule 60A.31.

60A.32 Removal of name in Child Abuse Register

(1) An application for removal of a person's name in the Child Abuse Register must be started by filing an application for removal from the register.

(2) The Minister or agency who obtained the finding of abuse must be named as respondent.

(3) The application for removal of name must contain the standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Application for Removal from Child Abuse Register", be dated and signed, and contain all of the following:

(a) a notice of application for removal of name from the Child Abuse Register;

(b) a statement that the person does not pose a risk to children, with reasons;

(c) a request for an order to remove the person's name from the Child Abuse Register;

(d) the address for delivery of documents to the applicant;

(e) a reference to a true copy of the written notice of registration received by the person from the Child Abuse Register, attached as an exhibit to the application.

(4) A person who applies for removal of the person's name from the Child Abuse Register must request a court officer, or a judge, to set a date for the hearing of the application and deliver a copy of the notice to the Minister or agency at least ten days before the day of the hearing.

(5) The application for removal of name may be in Form 60A.32.

60A.33 Access to files and records

Only the following persons may have access to the files and records of the court respecting a proceeding under the *Children and Family Services Act*:

(a) a party, unless the party is a child and the judge at an interim hearing under Rule 60A.10(1)(a), or at any time under Rule 60A.11(3), makes an order to prevent emotional harm to the child;

(b) counsel for a party;

(c) any other person as directed by the judge on the motion of the person, with notice to the parties, unless the court directs otherwise, subject to the judge making an order to prohibit publication of a report of the proceeding or hearing under Section 94 of the *Children and Family Services Act*.

60A.34 Admitting evidence from other proceeding

A party who seeks to have evidence admitted from another proceeding respecting a child, under subsection 96(1) of the *Children and Family Services Act*, must fully describe the evidence in the notice of motion or list the evidence as an attachment to the notice.

60A.35 Settlement Conferences

The provisions in Rule 59 – Supreme Court (Family Division) Rules about settlement conferences apply to child and adult protection proceedings.

Adult Protection

60A.36 Definition

In Rules 60A.35 to 60A.41, "adult protection Rules" means Rules 60A.35 to 60A.41.

60A.37 Scope of adult protection Rules

(1) The adult protection Rules provide for procedures under the *Adult Protection Act*.

(2) An original proceeding under the *Adult Protection Act* is started by filing a notice of application, in accordance with the adult protection Rules.

(3) An interlocutory proceeding under the *Adult Protection Act* is started in accordance with Part 6 - Motions, as modified by the adult protection Rules.

(4) An adult protection application proceeding is governed by the adult protection Rules and the Rules outside Part 12 - Family Proceedings.

60A.38 Starting an adult protection application

(1) The Minister may make an adult protection application by filing a notice of application in accordance with the adult protection Rules.

(2) The person in respect of whom the application is made or some person having custody or control of that person and, where applicable, the person against whom a protective intervention order may be made, must be named as the respondent.

(3) A judge may direct that notice of an adult protection application be given to a relative of, and any other person with an interest in, the person in respect of whom the application is made.

(4) A person who wishes to be appointed to act as litigation guardian for an adult under the *Adult Protection Act* must file a consent to act as litigation guardian and a certificate confirming that they have no interest in the proceeding adverse to the interests of the party.

(5) The provisions of Rule 31 - Notice about giving notice of a proceeding, including the requirement to deliver a copy of a document that is filed to each other party immediately before or after it is filed, apply to an application under the adult protection Rules.

(6) A judge may make an order to designate an address for service to a party who has not designated an address in accordance with Rule 31 - Notice.

60A.39 Notice of adult protection application

(1) A notice of adult protection application must contain the standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Notice of Adult Protection Application", be dated and signed, and conform with the requirements for a notice of application in court under Rule 5.07 except as provided in this Rule 60A.38.

(2) A notice of adult protection application must, in the description of the order applied for, include a claim for a declaration that the respondent for whose benefit the application is brought is an adult in need of protection, and that the respondent is either not competent to decide whether or not to accept the assistance of the Minister or is refusing assistance because of duress.

(3) The description of the order applied for may include a claim for an order authorizing the Minister to provide services to the respondent under clause 9(3)(c) of the *Adult Protection Act* or for a protective intervention order under clause 9(3)(d) of the *Adult Protection Act*.

(4) The statement of grounds for order, in the notice of adult protection application, must include the following in reference to the following orders:

(a) for an order that a person is an adult in need of protection, the reasons why the person is in need of protection and how the person is not mentally competent to decide whether or not to accept the assistance of the Minister or the grounds for finding that the person is refusing assistance because of duress;

(b) for an order authorizing the Minister to provide the person with services, or a protective intervention order, the grounds for a finding that it is in the best interests of the person.

(5) A notice of adult protection application may be in Form 60A.39.

60A.40 Notice of adult protection application (after removal)

(1) A notice of application for an order under subsection 10(2) of the *Adult Protection Act* must conform with the requirements for a notice of adult protection application under Rule 60A.38(1), except for both of the following:

(a) the notice must be entitled "Notice of Adult Protection Application (After Removal)";

(b) the notice must state that the Minister removed the respondent for whose benefit the application is made and include the date the removal took place.

(2) Notice must be given as provided in subsection 10(2) of the *Adult Protection Act*.

(3) A notice of adult protection after removal application may be in Form 60A.40.

(4) The statement of grounds for order, in the notice of adult protection application (after removal), must include the following in reference to the following orders:

(a) for an order that a person is an adult in need of protection, the reasons why the person is in need of protection and how the person is not mentally competent to decide whether or not to accept the assistance of the Minister or the grounds for finding that the person is refusing assistance because of duress;

(b) for an order authorizing the Minister to provide the person with services, or a protective intervention order, the grounds for a finding that it is in the best interests of the person.

60A.41 Place of application

(1) A notice of adult protection application must be filed in the office of the Family Division closest to the adult's place of ordinary residence, unless a judge directs otherwise or, if the adult has no ordinary residence in the province, in any office of the Family Division in which the agency files the notice.

(2) An adult protection application must be heard at the location of the court in the court house in which the Family Division sits that is closest to the adult's place of ordinary residence, unless a judge directs otherwise.

(3) A judge may direct that the file for an adult protection proceeding be transferred from the office of the Family Division at one place to the office of the Family Division at another place.

(4) A judge may direct that an adult protection proceeding be transferred from the jurisdiction of the Family Division to the jurisdiction of the Family Court for the Province of Nova Scotia.

60A.42 Motion to vary, review or terminate order

A motion to vary, review or terminate an order under subsection 9(6) of the *Adult Protection Act* may be made in accordance with Part 6 - Motions, to the extent that Part is consistent with subsection 9(6).

60A.43 Access to files and records

The provisions in Rule 59 - Supreme Court (Family Division) Rules about access to files and records apply, with necessary changes, to adult protection files and records.

60A.44 Issuing a secure-treatment certificate

(1) If a secure-treatment certificate under section 55 of the Children and Family Services Act has been served on a child, a copy of the certificate must be filed by the Minister of Opportunities and Social Development.

(2) If a secure-treatment certificate has been issued and no application is made under Section 56 of the Children and Family Services Act, the Minister of Opportunities and Social Development must file an affidavit explaining the reasons for the issuance of the certificate at least 2 days before the hearing, unless a judge directs otherwise.

60A.45 Notice of a secure-treatment application

(1) A notice of a secure-treatment application must have a standard heading written in accordance with Rule 82 – Administration of Civil Proceedings, be entitled "Notice of Secure-Treatment Application", be dated and signed, and confirm with all the requirements for a notice of application in court under Rule 5.07, except for each of the following differences:

(a) the description of the order applied for must identify the child by full name and birth date and must state that the order requested is for secure-treatment and include a reference to sections 56 and 59 of the *Children and Family Services Act*;

(b) a notice of motion for directions and affidavit in support of such motion are not required;

(c) the notice must include the time, date, and place for a hearing (The hearing is to be held as soon as practicable and no later than five working days after a secure-treatment certificate has been issued or the application is made, whichever is sooner, to grant an order for secure-treatment;

(d) the notice of the time, date, and place must include a statement of the duration of the order sought;

(e) a statement to the respondent that the respondent may participate and the method by which that participation may occur, including that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services; and

(f) the statement about proceeding in the absence of the respondent must refer to attendance at the secure-treatment hearing, and not to the hearing of the motion for directions.

(2) The notice of a secure-treatment application may be in Form 60A.45.

(3) The affidavit in support of a secure-treatment application must include the evidence relied on by the Minister for the claim that:

(a) the child is suffering from an emotional or behavioural disorder; and

(b) it is necessary to confine the child in order to remedy or alleviate the disorder.

60A.46 Method of personal service of a secure-treatment application

(1) Service of notice of a secure-treatment application must be effected at least two days before the hearing, unless service is waived by the presiding judge.

(2) A notice of a secure-treatment application may be served on the child by an employee of the Department of Opportunities and Social Development.

60A.47 Place of application

(1) A notice of secure-treatment application must be heard in the Nova Scotia Supreme Court (Family Division) closest to the secure-treatment facility in which the child is being treated, unless a judge directs otherwise.

60A.48 Notice to parent or guardian

(1) The notice of a secure-treatment application under subsection 56(2A) of the *Children and Family Services Act* to a child's parent or guardian may be in Form 60A.48.

(2) If a notice is not able to be served on a child's parent or guardian, despite reasonable efforts to do so prior to the hearing, the court must proceed with the hearing as required by Section 56 or 57 of the *Children and Family Services Act*, and may make any further directions respecting service, including substituted service under Rule 31.10.

(3) A parent or guardian of a child who is not in the permanent care and custody of an agency may apply to be added as a party to a secure-treatment proceeding and such application may be in Form 60A.48A.

60A.49 Notice to Band

(1) If the child is, or is entitled to be, an Aboriginal child or a Mi'kmaq child, and the child's band is known, notice to the band may be directed by the judge.

(2) Notice to the band may be in Form 60A.49.

60A.50 Appointing a guardian *ad litem* for a child

(1) A person who wishes to be appointed to act as guardian *ad litem* for a child under subsection (2) must file a consent to act as a guardian *ad litem* and a certificate confirming that they have no interest in the proceeding adverse to the interests of the child.

(2) A child over twelve years of age, or a guardian *ad litem* for any such child, need not respond to an application for or apply for a review of a secure-treatment order unless a judge orders otherwise.

(3) A child less than twelve years of age or a child who has been found not to have capacity to act on their own or to instruct counsel, must respond to an application for or apply for a review of a secure-treatment order by a named guardian *ad litem*.

60A.51 Admission of evidence

(1) For the purposes of any hearing regarding a secure-treatment application, the time limits of Rule 55.03(4) – Expert Opinion Deadline for filing report do not apply.

(2) An affidavit used in support of a notice of secure-treatment application or a notice of application for a renewal of a secure-treatment application may contain statements as to the belief of the deponent with the sources and ground of those beliefs.

60A.52 Notice of application for renewal of secure-treatment application

(1) A notice of application for renewal of a secure-treatment order must have a standard heading written in accordance with Rule 82 – Administration of Civil Proceedings, be entitled "Notice of Application for Renewal of Secure-Treatment Order", be dated and signed, and conform with all the requirements for a notice of application in court under Rule 5.07, except for each of the following differences:

(a) the description of the order applied for must identify the child by full name and birth date, and must state that the order requested is for secure-treatment and include a reference to sections 56 and 69 of the *Children and Family Services Act*;

(b) a notice of motion for directions and affidavit in support of such motion are not required;

(c) the notice must include the time, date, and place for a hearing, as soon as practicable and no later than four days after the application has been made pursuant to section 56(4) of the *Children and Family Services Act*;

(d) the notice must include a statement of the duration of the order sought;

(e) a statement to the respondent that the respondent may participate and the method by which that participation may occur, including that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services; and

(f) a statement to the respondent that the hearing may proceed in the absence of the respondent.

(2) The notice of an application for renewal of a secure-treatment order may be in Form 60A.52.

(3) The affidavit in support of an application for renewal of a secure-treatment order must include the evidence relied on by the Minister for the claim that:

(a) The child is suffering from an emotional or behavioural disorder;

(b) It is necessary to confine the child in order to remedy or alleviate the disorder; and

(c) There is an appropriate plan of treatment for the child.

(4) A notice of an application for renewal of a secure-treatment order and supporting affidavit must be filed at least four days before the application is heard.

60A.53 Notice of an application for review of a secure-treatment order

(1) A notice of an application for review of a secure-treatment order must have a standard heading written in accordance with Rule 82 – Administration of Civil Proceedings, be entitled "Notice of Review of Secure-Treatment Order Application", be dated and signed, and conform with all the requirements for a notice of application in court under Rule 5.07, except for each of the following differences:

(a) the description of the order applied for must identify the child by full name, and birth date, and must state that the order requested is for review of the secure-treatment order and include a reference to section 57 of the *Children and Family Services Act*;

(b) a notice of motion for directions and affidavit in support of such motion are not required;

(c) the notice of application for review must include the time, date, and place for a hearing no less than four days after the application has been made pursuant to section 57(2A) of the *Children and Family Services Act*, to review the secure-treatment order;

(d) the notice of application for review must include a statement of the variation being requested to the current order sought;

(e) a statement to the respondent that the respondent may participate and the method by which that participation may occur, including that the respondent may retain and instruct counsel, be represented by counsel at the hearing, and seek legal aid services; and

(f) the statement about proceeding in the absence of the respondent must refer to attendance at the secure-treatment hearing, and not to the hearing of the motion for directions.

(2) The notice of an application for review of a secure-treatment application may be in Form 60A.53.

(3) An affidavit in support of an application for review of a secure-treatment order must be filed with the application.

60A.54 Secure-treatment order

(1) A secure-treatment order at the conclusion of a secure-treatment hearing under Section 56 of the *Children and Family Services Act* must contact the standard heading, be entitled "Secure-Treatment Order", and include the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, is suffering from an emotional or behavioural disorder and that ii is necessary to confine the child in order to remedy or alleviate the disorder;

(b) a provision authorizing the Minister of Opportunities and Social Development to admit the child to a secure-treatment facility and detain the child at a secure-treatment facility for the purpose of diagnostic and treatment services in accordance with the plan of care, and to discharge the child from a secure-treatment facility;

(c) a provision authorizing a peace officer, representative or person designated by the Minister of Opportunities and Social Development in accordance with the regulations to apprehend, detain, and convey the child, to a secure-treatment facility; and

(d) the period of time the order remains in effect.

(2) A renewed secure-treatment order at the conclusion of secure-treatment hearing under Section 57 of the *Children and Family Services Act* must contain the standard heading, be entitled "Secure-Treatment Order", and include the following:

(a) a record of the judge's finding that the child, whose name and date of birth must be stated, is suffering from an emotional or behavioural disorder, that is it necessary to confine the child in order to remedy or alleviate the disorder, and that there is an appropriate plan of treatment for the child;

(b) a provision authorizing the Minister of Opportunities and Social Development to admit the child to a secure-treatment facility and detain the child at a secure-treatment facility for the purpose of diagnostic and treatment services in accordance with the plan of care, and to discharge the child from a secure-treatment facility;

(c) a provision authorizing a peace officer, representative or person designated by the Minister of Opportunities and Social Development in accordance with the regulations to apprehend, detain, and convey the child, to a secure-treatment facility; and

(d) the period of time the order remains in effect.

(3) A secure-treatment order may be in Form 60A.54.

60A.55 Order of dismissal

(1) A dismissal order at the conclusion of an application for a secure-treatment order, a review of a secure-treatment order, or the renewal of a secure-treatment order must contain the standard hearing, be entitled "Dismissal Order", and include a provision dismissing the application.

(2) On an application for a secure-treatment order, the dismissal order must also include a record of the judge's finding that requirements of a s. 55(1) of the *Children and Family Services Act* have been met.

(3) A dismissal order may be in Form 60A.55.

60A.56 Order of termination

(1) A termination order at the conclusion of a secure-treatment hearing under Section 57 of the Children and Family Services Act must contain the standard heading, be entitled "Termination Order", and include a provision terminating the secure-treatment order.

(2) A termination order may be in Form 60A.56.

Rule 60B - *Involuntary Psychiatric Treatment Act* and *Hospitals Act* Applications

60B.01 Application

(1) A person who makes a statement under subsection 13(1) of the *Involuntary Psychiatric Treatment Act* must file the statement.

(2) A judge who is satisfied under subsection 13(2) of the *Involuntary Psychiatric Treatment Act* that the statement is not frivolous, vexatious, or malicious may give directions on any of the following:

(a) filing a notice of application;

(b) permitting the application to be heard *ex parte* if necessary under subsection 13(3) of the *Involuntary Psychiatric Treatment Act*;

(c) giving notice to the person sought to be examined involuntarily;

(d) other necessary parties and giving notice to each;

(e) affidavits to be filed;

(f) the time, date, and place of the hearing;

(g) anything for the just determination of the application.

(3) The judge who gives directions may amend the directions or give additional directions.

(4) The provisions of Rule 5 - Application concerning an application in court apply to an application on notice under this Rule 60B.42, unless the judge who gives directions directs otherwise.

(5) The judge who orders that the allegations are to be determined *ex parte* may treat the statement as an *ex parte* application and hear the application then or at a time, date, and place appointed by the judge.

(6) A judge who finds that the statement may be frivolous, vexatious, or malicious, may give directions to set a time and place to hear the person who made the statement and determine whether the application may proceed.

(7) The same judge who gives directions, permits the application to be heard *ex parte*, or determines that the statement is not frivolous, vexatious, or malicious must hear the application, unless the judge directs otherwise.

Review under the *Hospitals Act*

60B.02 Review under the *Hospitals Act*

A judicial review under Section 54D or subsection 71(2A) of the *Hospitals Act* about the giving or refusal of consent by a substitute decision maker, or under subsections 58(1) and (2) of that *Act* about a declaration of capacity or competency, may be started by filing a notice for judicial review and may be obtained and conducted in accordance with Rule 7 - Judicial Review and Appeal.

Rule 61 - Adoption

61.01 Scope of Rule 61

A person may bring a proceeding for adoption under the *Children and Family Services Act* in accordance with this Rule.

61.02 Application for adoption with consents

(1) A person who wishes to apply for an adoption order, who obtains all necessary consents, and who believes the proceeding will be uncontested may start the proceeding by filing an application for adoption with consents.

(2) The application for adoption with consents must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Application for Adoption with Consents", be dated and signed by the applicant, and include all of the following:

(a) a statement making the application to a judge in chambers and, if sought, a change of name under the *Children and Family Services Act*;

(b) the grounds for the application;

(c) a statement that that applicant has obtained or is obtaining all necessary consents;

(d) a reference to each affidavit relied on by the applicant;

(e) the time, date, and place in chambers when and where the application will be heard or a space in which court staff may fill in the time and date;

(f) a designation of an address for delivery of documents to the applicant.

(3) The grounds for adoption must include all of the following:

(a) the name, address, age, and occupation of each applicant;

(b) the circumstances under which the person to be adopted came to be placed with, or otherwise came to live with, the applicant;

(c) the length of time the person has lived with the applicant;

(d) information about others who live with the applicant and the person to be adopted;

(e) information about the applicant's ability and means to care for the person;

(f) for the adoption of a person under sixteen, the day on which the applicant filed a notice of proposed adoption with the Minister of Community Services and the day on which the applicant received any acknowledgement from the Minister;

(g) an expression of the applicant's desire to become the person's parent.

(4) An application in which a lawyer's address is given as the designated address must be signed by the lawyer as counsel of record.

(5) An application for adoption with consents may be in Form 61.02.

61.03 When contest arises despite consents

A judge may convert an application for adoption with consents to a proceeding under Rule 5 - Application, and the judge may give directions for the further conduct of the proceeding.

61.04 Application for adoption without consent

(1) A person who wishes to apply for an adoption, but who does not obtain all necessary consents or who believes there will be a dispute, may start the proceeding under Rule 5 - Application.

(2) The requirements for the grounds in an application for adoption with consents applies to the grounds in a notice of application filed under Rule 5 for an adoption order.

61.05 Evidence in support

(1) An application for adoption, whether with or without consents, must be supported by all of the following evidence:

(a) the applicant's affirmation of the grounds stated in the application for adoption or the notice of application;

(b) identification of each person who falls within the meaning, in the *Children and Family Services Act*, of "parent" of the person to be adopted;

(c) consents that conform with the requirements of the *Children and Family Services Act*, or an adoption agreement with the Minister of Community Services, proven to have been signed by each of the persons identified as a parent, or evidence upon which a judge may dispense with a consent;

(d) proof that each consent is given freely and with understanding of its effects, including the effect of permanently depriving the person of parental rights;

(e) regarding a mother who signs a consent or an adoption agreement, proof that she is the mother including reference to her child's full name, place and date of birth, and birth registration number or an explanation of why there is no registration number;

(f) a long form birth certificate issued by the government of Nova Scotia for the person to be adopted, similar evidence issued by a government in another jurisdiction, or evidence providing similar details and an explanation of why an official record is not available;

(g) for the adoption of a person under sixteen information about whether the person is, or is entitled to be, a Mi'kmaq child within the meaning of the *Children and Family Services Act*;

(h) for the adoption of a person under sixteen, a copy of the notice of proposed adoption, evidence that it was sent to the Minister of Community Services, including the day it was sent, and a copy of any acknowledgement received from the Minister;

(i) for the adoption of a person who has been placed in the permanent care and custody of an agency or of the Minister of Community Services, a certified copy of the permanent care and custody order.

(2) A consent that does not clearly identify the person to be adopted or that identifies the person in a way that is inconsistent with a birth certificate, must be supported by evidence that explains the lack of clarity, or the inconsistency, and satisfies a judge that the person is one and the same.

(3) The application must also be supported by evidence that all required notices have been given, which evidence may be provided by an affidavit of counsel.

(4) In an application in court, the judge who gives directions may give directions for proof required by this Rule 61 and, in any other application, the proof must be by affidavit or, on the following subjects, by statutory declaration exhibited to an affidavit of the applicant or of the applicant's counsel:

(a) who are the "parents", within the meaning of the *Children and Family Services Act*, of the person to be adopted;

(b) who executed a consent and whether the person did so freely and with understanding;

(c) proof of motherhood;

(d) the identity of a person to be adopted who is identified unclearly or inconsistently in other evidence.

(5) A consent may be in Form 61.05A.

(6) A mother's statutory declaration may be in Form 61.05B.

61.06 Privacy

(1) The requirement of the *Children and Family Services Act* that an adoption hearing be held *in camera* may be fulfilled by holding it separate from other applications or motions, by conducting it so that the person to be adopted is identified only by registration number, or by conducting it in another way that a judge finds to provide the privacy required by the *Act*.

(2) Rule 84 - Court Records and Rule 85 - Access to Court Records apply to an adoption proceeding only to the extent that they are consistent with the provisions of the *Children and Family Services Act* about records of adoption proceedings.

61.07 Adoption Order

(1) An adoption order may record the findings that support the order, provide that the application is granted, order a change of name if it is requested, and make a declaration of the status of the adopted person as the child of the applicant.

(2) An adoption order may be in Form 61.07.

Rule 62 - District Family Rules (*Repealed*)

Part 14 - Appeal and Judicial Review (Criminal Code)

Rule 63 - Summary Conviction Appeal

63.01 Definition

In this Rule,

"decision" means any of the following determinations:

(i) a conviction or a finding of guilt,

(ii) a dismissal of, or order staying a proceeding on, an information,

(iii) a sentence,

(iv) a verdict of unfit to stand trial or not criminally responsible on account of mental disorder,

(v) any other order or determination that is made on summary conviction and for which an appeal is available to the Supreme Court of Nova Scotia;

" 'judge' in the phrase 'judge who made the decision under appeal' " includes an adjudicator, justice of the peace, or any other decision-maker from whose summary conviction decision an appeal is available to the Supreme Court of Nova Scotia.

63.02 Scope of Rule 63

(1) This Rule applies to a summary conviction appeal under Part XXVII of the *Criminal Code*, which includes an appeal of a decision in both a federal summary conviction proceeding and, by operation of the *Summary Proceedings Act* (Nova Scotia), a provincial summary conviction proceeding.

(2) This Rule is made under subsections 482(1) and (3) of the *Criminal Code*.

(3) This Rule includes directions, as referred to in subsection 815(1) of the *Criminal Code*, on the manner in which and the period within which notice of an appeal is given.

(4) A person who appeals a decision in a summary conviction proceeding may bring the appeal in accordance with this Rule.

63.03 Other Rules apply

(1) All Rules outside this Rule apply to the extent that they provide procedures that are suitable to a summary conviction appeal, and are not inconsistent with the provisions of the *Criminal Code* or this Rule.

(2) In particular, Rule 91 - Criminal Appeal, made by the judges of the Nova Scotia Court of Appeal applies, including the Rules providing for a prisoner appeal, cross-appeal, transcript, and appeal book, subject to each of the following modifications or exceptions:

(a) Rule 91 must be read as if a reference to the registrar were a reference to the prothonotary;

(b) the copy of the decision under appeal required in the appeal book must be a written decision issued by the trial judge, a written version of an oral decision signed by the trial judge, or a transcript of the decision certified by the trial judge to be accurate;

(c) no provision in Rule 91 about leave to appeal applies;

(d) no provision in Rule 91 that is inconsistent with this Rule 63 applies.

63.04 Heading

(1) A document filed under this Rule 63 must contain a standard heading in Form 63.04.

(2) The year to be stated in the heading must be the year in which the appeal is started, the court number must be left blank for assignment by the prothonotary, and the charge number and person number must be obtained from the Provincial Court of Nova Scotia.

63.05 How and when appeal started

(1) A person may start an appeal of a decision in a summary conviction proceeding by filing a notice of appeal within one of the following periods:

(a) not more than twenty-five days after the day on which the appellant is sentenced, if the appeal is from a conviction, finding of guilt, sentence, or both a conviction or finding of guilt and a sentence;

(b) not more than twenty-five days after the day on which the decision is made, if the appeal is from a decision that is not a conviction, finding of guilt, or sentence.

(2) Subsection 815(2) of the *Criminal Code* provides for extension of the period within which notice of an appeal is given.

(3) The notice of appeal must be filed at the office of the prothonotary responsible for scheduling sittings of the Supreme Court of Nova Scotia in the municipality where the proceeding under appeal was heard, unless the prothonotary or a judge permits otherwise.

(4) The notice must contain a standard heading written in accordance with Rule 63.04, be entitled "Notice of Summary Conviction Appeal", be dated and signed, and include all of the following:

(a) a notice that the appellant is appealing from a decision, including the names of the court appealed from and judge who made the decision, and the date and place of the decision;

(b) a notice of the time, date, and place when and where the appellant will make a motion for directions and to set the time, date and place for the hearing of the appeal;

(c) a statement of the charge and the decision;

(d) a concise statement of the grounds of appeal;

(e) a description of the result that the appellant seeks on the appeal;

(f) an indication of whether the appellant will make a motion for an interim order and, if so, what interim relief the motion will seek and when it will be made;

(g) an acknowledgement of the appellant's obligation to provide a transcript under subsection 821(3) of the *Criminal Code*, and information about when the appellant is to deliver a transcript to the court and the respondent;

(h) an undertaking to immediately deliver a copy of the notice to the office of the judge who made the decision under appeal and to obtain, for inclusion in the appeal book, a written copy of the decision under appeal issued by the trial judge, signed by the trial judge, or certified by the trial judge to be accurate;

(i) a designation of an address for delivery of documents to each appellant.

(5) The appellant must provide to the prothonotary further information by which the appellant may be contacted, such as a telephone number, e-mail address, or fax number.

(6) The notice of summary conviction appeal may be in Form 63.05.

63.06 Date, place and notice of motion

(1) The date for the motion in the notice of summary conviction appeal may not be more than twenty-five days after the day on which the notice is filed.

(2) The motion must be heard at the courthouse in which the notice is filed, unless the prothonotary or a judge permits the appellant to make the motion at another place or in another way provided for in Part 6 - Motions.

(3) Notice must be given to a respondent who is not the Crown in accordance with the provisions for giving notice of a proceeding to a party in Rule 31 - Notice.

(4) Notice must be given to the Crown by delivering a copy of the notice of summary conviction appeal to the office of the person who represented the Crown in the proceeding under appeal.

(5) A copy of the notice of appeal must be delivered immediately to the office of the judge who made the decision under appeal.

63.07 Respondent's information

A respondent who wishes to participate in an appeal must file a designation of address for delivery under Rule 31 - Notice, and provide to the prothonotary further information by which the respondent may be contacted, such as a telephone number, e-mail address, or fax number.

63.08 Date and directions for appeal

A judge hearing a motion for directions and to set a time, date, and place for hearing an appeal may do any of the following:

(a) set the time, date, and place if the judge is satisfied that the respondent was notified, that a copy of the notice of appeal was delivered to the office of the judge who made the decision under appeal, that a transcript was prepared or will be filed when required, and that the judge who made the decision under appeal approved, or will be given the opportunity to approve, any transcript of a decision or ruling;

(b) designate the respondent's address for delivery, if the respondent has failed to do so;

(c) set dates for filing the appeal book, the appellant's brief, the respondent's brief and any appellant's reply brief;

(d) give other directions.

63.09 Dismissal for failure to file or deliver

A judge may dismiss the appeal of an appellant who fails to file within a directed time, or to immediately deliver to the respondent, an appeal book, brief, or other directed document.

63.10 Conduct of appeal

The appeal is conducted in accordance with section 822 of the *Criminal Code*.

63.11 Informing Trial Judge About Decision

(1) The prothonotary shall cause a copy of the entry made about the oral disposition of an appeal to be delivered immediately to the office of the judge who made the decision under appeal.

(2) A judge who releases written reasons for disposition of an appeal, or signs a transcript of reasons given orally, shall cause a copy of the decision to be delivered to the office of the judge who made the decision under appeal at the same time as it is delivered to the parties.

Rule 64 - Prerogative Writ

64.01 Scope of Rule 64

(1) This Rule is made under subsections 482(1) and (3) of the *Criminal Code*.

(2) A person may apply for a prerogative writ in relation to a criminal proceeding, or imprisonment, in accordance with this Rule.

64.02 Writ is granted by order

A judge may grant an order having the effect of *mandamus*, *certiorari*, prohibition, or *habeas corpus* in relation to a criminal proceeding, or imprisonment.

64.03 *Mandamus*, *certiorari*, and prohibition

(1) A person who wishes to obtain an order having the effect of *mandamus*, *certiorari*, or prohibition may start the proceeding by filing a notice for judicial review in the form prescribed by Rule 7 - Judicial Review and Appeal.

(2) The notice must be filed no more than twenty-five days after the day of the decision under review, another action under review, or an alleged failure to act, unless a longer period is allowed by a judge under Rule 2.03(1)(c) of Rule 2 - General.

(3) Rules 7.05, 7.06, and 7.08 to 7.10 of Rule 7 - Judicial Review and Appeal apply to a judicial review for *mandamus*, *certiorari*, or prohibition to the extent that they are consistent with the *Criminal Code* and this Rule.

(4) Notice must be given to the Crown as a respondent by delivering a copy of the notice for judicial review to the office of the person who represents the Crown in the proceeding under review.

(5) Notice must be given to a respondent who is not the Crown in accordance with the provisions for giving notice of a proceeding to a party in Rule 31 - Notice.

64.04 *Habeas corpus*

(1) A person under imprisonment, or other criminal detention, may obtain a review of the legality of the detention by filing a notice for *habeas corpus* in the form prescribed by Rule 7 - Judicial Review and Appeal.

(2) Rules 7.12 to 7.17 of Rule 7 - Judicial Review and Appeal apply to an application for *habeas corpus* brought in relation to a criminal proceeding or imprisonment, to the extent that they are consistent with the *Criminal Code*.

64.05 Other Rules apply

All Rules outside this Rule apply to the extent that they provide procedures suitable to *mandamus*, *certiorari*, prohibition, or *habeas corpus* in connection with a criminal proceeding or imprisonment and are consistent with the provisions of the *Criminal Code* and this Rule.

Rule 65 - Application to Reduce Parole Ineligibility

65.01 Scope of Rule 65

(1) This Rule is made under subsection 745.64(1) of the *Criminal Code*.

(2) A prisoner who is entitled under the *Criminal Code* to apply for a reduction in years of imprisonment without eligibility for parole, may make the application in accordance with this Rule.

65.02 Other Rules apply

All Rules outside this Rule apply to the extent that they provide procedures suitable to an application for reduction of parole ineligibility and are not inconsistent with the *Criminal Code* or this Rule.

65.03 Heading

(1) A document filed under this Rule must contain a standard heading in Form 65.03.

(2) The year to be stated in the heading must be the year in which the application for a reduction is filed, and the registry number must be left blank for assignment by the prothonotary.

65.04 Starting application

(1) A person may start an application under section 745.6 of the *Criminal Code* by filing an application with the prothonotary at Halifax for reduction of parole ineligibility.

(2) The application must name the Attorney General of Nova Scotia as the respondent, contain a standard heading written in accordance with Rule 65.03, be entitled "Application for Reduction of Parole Ineligibility", be dated and signed, and include all of the following:

(a) the applicant's full name and date of birth;

(b) a notice to the Chief Justice that the applicant applies for a reduction of parole ineligibility;

(c) a description of the offence and the sentence that are the subjects of the application, including the place of the trial or guilty plea, the date of conviction, and the date of sentencing, and the period of parole ineligibility;

(d) the name and place of each institution in which the person has been detained since the time the applicant was charged with the offence that is the subject of the application and the date of the applicant's entry into each of those institutions;

(e) information about any sentence, in addition to the sentence that is the subject of the application, that the applicant is serving including the date and place of the imposition of the sentence and details of the offence for which the sentence was imposed;

(f) the reduction the applicant seeks;

(g) a concise statement of the grounds relied on in support of the application;

(h) an address for delivery.

(3) The application for reduction of parole ineligibility may be in Form 65.04.

65.05 Affidavit

(1) The applicant must file with the prothonotary at Halifax an affidavit entitled "Affidavit Supporting Application", in which the applicant swears or affirms that the facts stated in the application are true to the best of the applicant's personal knowledge, or information and belief.

(2) The affidavit may be in Form 65.05.

65.06 Notice

(1) The person who files an application for a reduction in parole ineligibility must immediately notify the following persons of the application:

(a) the respondent, the Attorney General of Nova Scotia;

(b) the Solicitor General of Canada;

(c) the person in charge of the penitentiary or other institution in which the person making the application is held.

(2) The notice must be given by one of the following methods:

(a) delivery of a certified copy of the application for reduction of parole ineligibility, and a copy of the affidavit, to the respondent and the Solicitor General by registered mail to the offices of each in Halifax and to the person in charge of the penitentiary or other institution by registered mail to the address of the penitentiary or other institution;

(b) making delivery, or otherwise providing notice, in accordance with the provisions of Rule 31 - Notice, for giving notice of a proceeding to a party.

(3) The applicant must file an affidavit proving notice not more than five days after the day the application is filed.

65.07 Review for compliance with s.745.6 of *Code*

(1) The Chief Justice, after receipt of the application and before it is determined whether there is a reasonable prospect that the application will succeed, may conduct a preliminary review of the application.

(2) The Chief Justice, after completing a preliminary review, may dismiss the application in either of the following circumstances:

(a) the applicant is not permitted under subsection 745.6(2) of the *Criminal Code* to make the application, because the applicant has been convicted of more than one murder;

(b) the applicant does not meet all of the conditions for entitlement to make the application in subsection 745.6(1) of the *Criminal Code*.

65.08 Review for reasonable prospect of success

The Chief Justice, or a judge designated by the Chief Justice under subsection 745.61(1), who determines whether there is a reasonable prospect of success in accordance with section 745.61 must notify the parties of the determination.

65.09 Order after review

(1) An application that does not comply with section 745.6 or does not have a reasonable prospect of success may be dismissed by order, and the order may include terms for a new application in accordance with subsection 745.61(3).

(2) An application that is not dismissed under sections 745.6 or 745.61 may be continued by order of the Chief Justice designating a presiding judge in accordance with subsection 745.61(5).

65.10 Place of hearing, motion, and proceeding

(1) A jury must be empanelled at the place where the conviction was entered, unless the presiding judge directs otherwise.

(2) The presiding judge may give directions about the place at which motions may be made.

(3) The court record must be maintained at the office of the prothonotary in charge at the place where the jury is to be empanelled and, if that is not Halifax, the prothonotary at Halifax must deliver the records to the prothonotary in charge.

65.11 Notice and attendance of applicant

(1) Notice of the time, date, and place for selection of a jury and hearing of the application must be given by the prothonotary in writing.

(2) The written notice may be delivered to the following parties, at the following addresses:

(a) the Attorney General, at the Halifax office of the Public Prosecution Service or an address designated in writing by the Director of Public Prosecutions;

(b) the Solicitor General, at the Halifax office or an address designated in writing by counsel for the Solicitor General;

(c) the applicant, at the address of the officer in charge of the institution where the applicant is detained, an address designated by counsel for the applicant in a notice or other document referred to in Rule 33.02(1), of Rule 33 - Counsel, or, if counsel requires, both addresses.

(3) The presiding judge may make an order under Rule 50.06, of Rule 50 - Subpoena, to secure the attendance of the applicant at a pre-hearing conference, the hearing of a motion on the application, or the selection of a jury and hearing of the application.

65.12 Parole eligibility report

(1) The presiding judge may order the Solicitor General to provide a new parole eligibility report for use on the hearing of the application before a jury.

(2) The order may provide that the report is to be prepared by a person who the Solicitor General is satisfied has the necessary knowledge and skill.

(3) The report must contain summaries of all of the following kinds of information about the applicant:

(a) social and family background;

(b) classification and discipline evaluations;

(c) regular reports on conduct;

(d) psychological or psychiatric assessments;

(e) other relevant information about character, conduct, and parole eligibility.

(4) The report must be delivered to the prothonotary, and the prothonotary must deliver copies to the parties.

(5) The presiding judge must set a time, date, and place to hear objections to the admissibility of parts of the report.

(6) The person who prepares the report must be available for cross-examination when the objection is heard, unless the presiding judge orders otherwise.

(7) The presiding judge must decide whether an objected part is to be excluded from the hearing before the jury.

(8) The judge may order that a person who is a source of information stated in a parole eligibility report be present for cross-examination at the hearing before the jury.

65.13 Pre-hearing conference

(1) The presiding judge must set a time, date, and place for a conference to prepare for the hearing of the application.

(2) The judge may delay setting a time, date, and place until after a parole eligibility report is delivered and an objection to the report is determined.

(3) The judge may give directions on any of the following subjects:

(a) obtaining compliance with these Rules;

(b) means of presenting evidence;

(c) disclosure by each party;

(d) the time, date, and place when and where the jury is to be empanelled and the hearing is to start.

65.14 Empanelling jury

A jury may be empanelled as a jury is empanelled for an indictment under Part XX of the *Criminal Code* and the *Juries Act* (Nova Scotia), with the applicant and the Attorney General having the number of peremptory challenges they would

have on a trial of an indictment for the offence for which the applicant was sentenced.

65.15 Documents without sponsor

Each of the following documents may be admitted on proof, or admission, that the document is authentic:

(a) the parts of a parole eligibility report not excluded;

(b) a transcript of parts, or all, of the trial of the indictment or sentencing hearing that led to the sentence about which the application is made;

(c) a victim's statement entered at the sentencing hearing or submitted for the application in accordance with section 745.63.

65.16 Order of presentation

(1) The order of presentations at the hearing must be as follows, unless the presiding judge directs otherwise:

(a) the applicant opens the applicant's case with a brief speech;

(b) the applicant calls witnesses and closes the applicant's case without a speech;

(c) the Attorney General opens the case for the Attorney General with a brief speech, if the Attorney General chooses to present evidence;

(d) the Attorney General calls witnesses and closes the Attorney General's case;

(e) the parties tender the exhibits proved by each;

(f) the Attorney General speaks to the jury first, unless the Attorney General does not call a witness;

(g) the applicant speaks second, or first if the Attorney General does not call a witness.

(2) The presiding judge may give directions for the conduct of the hearing, and the directions prevail over directions given under Rule 65.13(3).

Part 15 - Other Kinds of Proceedings

Rule 66 - Account

66.01 Scope of Rule 66

A party may obtain an order for an accounting, in accordance with this Rule.

66.02 Final order for accounting

(1) A party who claims an accounting, or makes a claim necessarily involving the taking of accounts, may make a motion for the accounting.

(2) The party must satisfy a judge that the party is entitled to the accounting under Rule 8 - Default Judgment, under Rule 13 - Summary Judgment, or on the trial of an action or the hearing of an application.

66.03 Accounting before or after judgment

(1) A judge who is satisfied on both of the following may order an accounting before or during the trial of an action or the hearing of an application:

(a) the accounting is necessary for the adjudication of a claim;

(b) it is just to order the accounting although claims are not finally adjudicated.

(2) A judge who is satisfied that taking accounts is necessary to give effect to a final order, such as an order for a money judgment, may order an accounting.

66.04 Content of order

(1) An order for an accounting must direct an account to be taken and may provide for an inquiry to be made into an account.

(2) The order must require the following parties to prepare and file the following kinds of statements:

(a) the party required to account, a detailed statement of receipts and disbursements and an accurate statement of assets and liabilities relevant to the accounting;

(b) the other party, a statement of acknowledgements and disputes including the party's reasons for disputing a receipt or disbursement.

(3) The order may include terms or directions on any of the following subjects:

(a) a deadline for the party required to account to file financial statements;

(b) a deadline for the other party to file a statement of acknowledgements and disputes;

(c) disclosure of documents, such as books of account, receipts, and vouchers relevant to the disputed accounts;

(d) discovery by the other party of the party required to account on the disputed accounts;

(e) joining a person under Rule 35 - Parties, or appointing a person to represent an unascertained person under Rule 36 - Representative Party;

(f) appointing a referee to take the account and inquire into disputed accounts, in accordance with Rule 11 - Reference;

(g) appointing a time, date, and place for the account to be taken and inquiry to be conducted, if it is to proceed before a judge rather than a referee;

(h) anything the judge considers reasonable or necessary.

66.05 Order settling accounts

The judge who takes the accounts, or finally determines the issues after a referee files a report, must settle the accounts including all just allowances, and the judge may also do any of the following:

(a) allow or disallow part or all of the fees or disbursements claimed by the party required to account;

(b) order costs;

(c) determine who is entitled to the balance and order payment to that person;

(d) give directions for payment of money or delivery of other property that the party required to account continues to hold;

(e) give directions for the trial or hearing of the remaining issues in the proceeding.

Rule 67 - Builders' Lien

67.01 Scope of Rule 67

(1) This Rule provides procedures, in addition to the procedures provided under the *Builders' Lien Act*, for an action started to enforce a builder's lien.

(2) This Rule also allows a person who starts an action for enforcement of a lien under the *Builders' Lien Act* to claim alternatively for a judgment obtainable under Rule 8 - Default Judgment.

(3) A builder may obtain a default judgment instead of remedies under the *Builders' Lien Act*, in accordance with this Rule.

67.02 Other Rules apply

(1) These Rules, except a Rule that is inconsistent with a provision of the *Builders' Lien Act*, apply to an action started by filing a statement of claim under the *Builders' Lien Act*.

(2) In a proceeding to enforce a builder's lien, the statement of claim is the originating document referred to in Rule 82.14(2), of Rule 82 - Administration of Civil Proceedings.

67.03 Builders' alternative claim for judgment

(1) A builder who starts an action to enforce a builders' lien, and claims that a defendant is personally liable to pay the amount secured by the lien, may file a notice of alternative claim in debt.

(2) The notice of alternative claim in debt must conform with the requirements for a notice of action under Rule 4 - Action, except for the following differences:

(a) it must include the same court number as is assigned to the builders' lien statement of claim by which the action is started;

(b) it must be entitled "Notice of Alternative Claim";

(c) it must state that an action has been started by filing the *Builders' Lien Act* statement of claim, that an alternate claim is made for a money judgment for the entire amount due to the builder, and that it is made by filing the notice;

(d) there is no need for a statement of whether the claim is under $150,000;

(e) the prothonotary need not certify the date of filing on the original notice.

(3) A notice of alternative claim may be in Form 67.03.

67.04 Notice

Notice of the alternative claim must be given to the defendant in accordance with the provisions for giving notice of a proceeding to a party, in Rule 31 - Notice, as if the notice of alternative claim were an originating document.

67.05 Default judgment

(1) A builder may make a motion for judgment alternative to a claim to enforce a builders' lien by filing a notice of withdrawal, under Rule 9 - Discontinuance, withdrawing the claim to enforce the lien and by complying with Rule 8 - Default Judgment.

(2) Subject to Rule 67.05(1), Rule 8 - Default Judgment applies to an alternative claim as if the notice of alternative claim were a notice of action for debt under Rule 4 - Action.

Rule 68 - Class Proceeding

68.01 Scope of Rule 68

(1) This Rule provides for all of the following:

(a) procedures that augment those in the *Class Proceedings Act*;

(b) a simplified representative proceeding for circumstances in which the expense or complexity of a class proceeding is not warranted because all members of a class are identified as members of an organization;

(c) enforcement in Nova Scotia of an award in a class proceeding, or similar proceeding, made by a court in another jurisdiction.

(2) The Rules outside this Rule apply to a class proceeding to the extent they are consistent with this Rule and the *Class Proceedings Act*.

68.02 Statement that proceeding is under *Act*

The statement required by subsection 4(2) of the *Class Proceedings Act*, that a class proceeding is brought under the *Act*, may be provided in the statement of claim included in a notice of action or in the grounds in a notice of application.

68.03 National and Provincial Registration

(1) A party who starts a class proceeding, and a defendant or respondent who makes a motion for a certification order in a proceeding not started as a class proceeding, must deliver to the Canadian Bar Association and to the Executive Office of the Nova Scotia Judiciary registration documents and copies of the notice of action, notice of application, or notice of motion.

(2) The registration document to be delivered to the Canadian Bar Association must be a completed National Class Action Database registration form as provided by the Association, and the registration document to be provided to the executive office must be completed in the form provided by the office on the Nova Scotia courts' website.

(3) The registration documents and the copy of the notice must be delivered no more than ten days after the day the proceeding is started, or the day the notice of motion is filed.

(4) The registration documents and the copy of the notice must be delivered electronically to the address respectively provided by the Canadian Bar Association and the Executive Office of the Nova Scotia Judiciary.

(5) This Rule 68.03 ceases to have effect with respect to the registration with the National Class Action Database when the Canadian Bar Association ceases to provide a national database for class proceedings.

68.04 Amendment of pleading

A statement of claim, or a statement of grounds, in a class proceeding may not be amended under either Rule 38 - Pleading or Rule 83 - Amendments, after a certification order is granted, unless a judge permits the amendment.

68.05 Counterclaim, crossclaim, and third party claim

A defendant in a class proceeding may not counterclaim, crossclaim, or make a third party claim, unless the representative party agrees or a judge permits.

68.06 Discovery

(1) A party to a class proceeding may not obtain a subpoena under Rule 18 - Discovery, to compel a person to attend a discovery before the certification hearing, unless the discovery examination is allowed under Section 21 of the *Class Proceedings Act*.

(2) A party who wishes to obtain a discovery subpoena to examine a witness at a discovery allowed by subsection 21(1) of the *Class Proceedings Act* must include, with the representations required by Rule 18 - Discovery, both of the following:

(a) a representation that the witness is a party or provided an affidavit on the motion for certification, or that the party has permission of a judge under subsection 21(1) of the *Act*;

(b) an undertaking to confine the questioning to subjects relevant to certification.

(3) Evidence given by a member of a class, or an officer or employee on behalf of a corporate member of a class, at a discovery may be used for any purpose by an adverse party.

68.07 Settlement involving child or person unable to manage affairs

(1) A judge may appoint a lawyer to represent the interests of members of a class or subclass who are children, who cannot manage their own affairs, or who are unascertainable on a motion to approve a settlement of a class proceeding, or a settlement of issues common to a subclass.

(2) The judge may provide for payment of the lawyer by a party or out of the proceeds of a settlement.

68.08 Simple representative proceeding

(1) A judge who is satisfied on all of the following may appoint a member of an organization to start a proceeding as plaintiff or applicant on behalf of all members of the organization:

(a) the organization is not incorporated and cannot otherwise assert a right in court;

(b) the members of the organization are identified;

(c) all members agree with the appointment, or the appointment is in the interest of the members as a whole;

(d) members have been given sufficient notice of the application for the appointment;

(e) the claim to be made is not appropriate to the expense or complexity of procedures under the *Class Proceedings Act*;

(f) it would not be in the interests of justice to require members to proceed individually.

(2) A party, an interested person who is not a party, the prothonotary, or a judge on the judge's own motion, may make a motion to appoint a representative in an action or application that meets the criteria in Rule 68.08(1) but was started without an appointment.

(3) An order made in a representative proceeding binds all members who are given notice of the application, or of the motion, for the appointment of a representative.

68.09 Communication and cooperation with other court

A class proceeding may be coordinated with a similar proceeding for collective redress in another jurisdiction under Rule 86 - Judicial Communications Across Borders.

68.10 Recognition of class proceeding before another court

(1) A party to a proceeding for collective redress, such as a class action, in another jurisdiction may start a proceeding under Rule 5 - Application, for an order making a declaration about the effect that may be given in Nova Scotia to a remedy or finding in the proceeding for collective redress.

(2) A judge may make a declaration on any of the following subjects about a proceeding for collective redress before another court:

(a) whether relief claimed or granted in the proceeding is enforceable in Nova Scotia;

(b) whether a finding that is essential to the determination of the proceeding is, or will be, binding on a respondent in the Nova Scotia application;

(c) whether a respondent in the Nova Scotia application is, or will be, precluded by law from seeking in a Nova Scotia proceeding a finding contradictory to an essential finding made in the proceeding before the other court.

(3) The declaration only binds persons who are named as parties in the Nova Scotia application, unless legislation provides otherwise.

(4) A respondent to the Nova Scotia application may be notified of the application in accordance with Rule 35 - Parties, or in a manner directed by a judge.

(5) A party who obtains a declaration about a proceeding for collective redress may apply for a similar declaration against a person not bound by the first declaration.

(6) A judge who cannot determine an issue on an application for a declaration until after a step is taken in the proceeding for collective redress may adjourn the hearing of the application.

Rule 69 - Controverted Election

69.01 Scope of Rule 69

(1) This Rule is made under Section 66 of the *Controverted Elections Act*.

(2) The Rules outside this Rule apply to a proceeding under the *Controverted Elections Act*, except the *Act* and this Rule prevail over a Rule that is inconsistent with the *Act* or this Rule.

(3) A person who is permitted by the *Controverted Elections Act* to contest a return or complain of an unlawful act of a candidate may start a proceeding under that *Act* and have it determined, in accordance with this Rule.

69.02 Election petition

(1) An election petition must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Election Petition", and include all of the following:

(a) a statement indicating the date of the election, the electoral district, and the petitioner's status as a candidate or a person who had a right to vote in the election;

(b) a statement indicating which of the claims referred to in Section 5 of the *Controverted Elections Act* is made by the petitioner and providing the return date under the election writ, or the date of an alleged corrupt practice;

(c) a concise statement of the grounds for the claim, including, as applicable, a list of votes to which the petitioner objects in a claim that a different candidate be returned, a list of objections pertaining to a claim of an undue return, and the particulars of the persons involved and time, date, and place of an alleged corrupt practice;

(d) the petitioner's request for relief, such as that a person be declared duly returned, the election be declared void, or a return be enforced;

(e) a notice of the time, date, and place when and where the petitioner will make a motion to a judge for the appointment of a trial date and to give other directions;

(f) a notice that the judge may proceed in the absence of the respondent, if the respondent or counsel does not attend the hearing of the motion;

(g) a notice that the respondent is required to file a designation of address for delivery in accordance with Rule 31.18, of Rule 31 - Notice;

(h) if there is only one petitioner, the address for delivery of documents to the petitioner, and if there is more than one petitioner, one address for all petitioners or a separate address for each petitioner.

(2) Counsel who represents a petitioner may sign the election petition in addition to the signature of the petitioner.

(3) The election petition may be in Form 69.02.

69.03 Notice to respondent

The petitioner must cause each respondent to be notified of the proceeding, in accordance with Rule 31 - Notice, no less than ten days before the date the motion is to be heard.

69.04 Petition as application

(1) The provisions of Rule 5 - Application, apply to a proceeding under the *Controverted Elections Act* as if the election petition were a notice of application in court, unless a judge orders otherwise.

(2) The trial of an election petition must be conducted in the same manner as the hearing of an application in court, unless a judge orders otherwise.

69.05 Directions and date for hearing

(1) A judge who hears a motion provided for in an election petition may do anything a judge may do under Rule 5.09, of Rule 5 - Application, except the provisions about a notice of application or notice of contest do not apply and the date for the hearing must be on or before the deadline in subsection 28(1) of the *Controverted Elections Act*.

(2) The judge may also ascertain whether the particulars of the petitioner's claim are complete and, if they are not complete, order the petitioner to file a statement of particulars and set a deadline for the filing.

(3) The judge may adjourn the hearing of the motion to give further directions or to appoint a time, date, and place for the trial.

(4) The prothonotary must, within the time required by subsection 27(3) of the *Controverted Elections Act*, cause a notice of the time, date, and place of the hearing to be delivered to the address for delivery of each party who is entitled to notice, to the returning officer, and to any other person as directed by the judge.

69.06 Election document as evidence

(1) A Returning Officer or Chief Electoral Officer who has control of an election document for an election to which a petition relates must deliver the document to the prothonotary no less than ten days before the day the petition is to be heard.

(2) A judge who is satisfied that a copy of an election document is sufficient for trial may order that the Returning Officer or Chief Electoral Officer keep custody of the original and give a copy certified by the officer to the prothonotary no less than ten days before the day the petition is to be heard.

(3) The prothonotary must, when delivering the certificate referred to in Section 79 of the *Controverted Elections Act*, do as follows with an original election document:

(a) return to the Chief Electoral Officer all original documents delivered by that officer to the prothonotary, whether or not the document has been marked as an exhibit, to be held under Section 173 of the *Elections Act*;

(b) return to the Returning Officer a poll book, whether or not it has been marked as an exhibit, to be dealt with in accordance with Sections 169 and 173 of the *Elections Act*;

(c) return an original document delivered by the Chief Electoral Officer or the Returning Officer that has not been marked as an exhibit.

69.07 Substitute parties

(1) A person who wishes to be substituted for a deceased petitioner under Section 62 of the *Controverted Elections Act* may make a motion in accordance with Rule 23 - Chambers Motion, or by such other manner of making a motion, under Part 6 - Motions, as a judge permits.

(2) A person may be joined as a respondent or an intervenor in accordance with Rule 35 - Parties, as if the petition were a notice of action.

(3) In a proceeding to which Section 63 of the *Controverted Elections Act* applies, a judge may give directions on each of the following:

(a) how the returning officer is to give notice to potential respondents;

(b) the content of the notice;

(c) the time for an eligible person to make a motion to be joined as a respondent.

Rule 70 - Assessment of Damages

70.01 Scope of Rule 70

(1) A prothonotary makes an assessment of damages under Rule 8 - Default Judgment, and a judge or jury makes an assessment under this Rule.

(2) A party who does not obtain an assessment by the prothonotary may obtain an assessment of damages due to the party, or make a motion for an interim payment of damages, in accordance with this Rule.

70.02 When assessment made

(1) A judge or jury who tries a claim for damages, and a judge who hears an application in which damages are claimed, must assess the damages, unless the assessment is to be made separately under Rule 37 - Consolidation and Separation.

(2) A party who is entitled to an assessment of damages under Rule 8 - Default Judgment, or to an order made under Rule 13 - Summary Judgment, may make a motion for a judge to assess the damages or for an assessment of damages by reference and report under Rule 11 - Reference.

(3) Rules applicable to an assessment of damages apply to an assessment of the value of moveables or other things.

70.03 Obtaining date for assessment

(1) A party to a defended action or a contested application may have damages assessed at the trial or hearing.

(2) A party who is entitled to have damages assessed in any other circumstances may request that the prothonotary appoint a time, date, and place for the assessment.

(3) A prothonotary who receives a request for an appointment to assess damages may do either of the following:

(a) appoint a time, date, and place for the assessment to be heard as a motion;

(b) refer the request to a judge.

(4) A judge may provide for an assessment of damages in any of the following ways:

(a) appointing a time, date, and place for the assessment to be heard as a motion;

(b) directing that the assessment proceed as an application and providing for a motion for further directions under Rule 5.09, of Rule 5 - Application;

(c) directing that the assessment proceed to trial and providing further directions or ordering that Rules 4.13 to 4.17, of Rule 4 - Action, apply.

70.04 Assessment heard as motion

(1) A party who receives an appointment for the assessment of damages on motion must, unless a judge directs otherwise, file a notice of motion to be heard at the appointed time, date, and place.

(2) A copy of the notice of motion must be delivered to the other party, unless either of the following apply:

(a) the proceeding is started by notice of action for debt, the claim is only for a debt and interest as permitted by Rule 4.03, of Rule 4 - Action, and the other party is disentitled to notice;

(b) the pleadings are clearly within the provisions about liquidated claims in Rules 8.06(a) or (b), of Rule 8 - Default Judgment, and the other party is disentitled to notice.

(3) A notice of motion for an assessment of damages may be delivered by registered mail to the last known address of the party against whom damages are claimed, unless the party designated an address for delivery or a judge orders otherwise.

(4) The notice must be delivered no less than ten days before the day of the assessment, unless a judge orders otherwise.

70.05 Damages assessed to date of assessment

Damages for a continuing cause of action are assessed to the date of assessment.

70.06 Discount rates

(1) Subject to the *Insurance Act*, the discount rate to be used in calculating the difference between estimated investment and price inflation rates for capitalizing the value of future pecuniary damages, other than damages for loss of business income, is two and one-half percent per annum.

(2) A party may prove a discount rate to be used in calculating the difference between estimated investment and price inflation rates for calculating the value of damages for future loss of business income.

70.07 Prejudgment interest on liquidated claims

The rate and calculation to be used for prejudgment interest on a liquidated claim is five percent a year calculated simply, unless a party satisfies a judge that the rate or calculation should be otherwise.

70.08 Interim payment

(1) A party who claims damages may make a motion for an interim payment when the other party admits liability or the party who makes the motion is entitled to have the damages assessed in accordance with Rule 8 - Default Judgment, or in accordance with an order made under Rule 13 - Summary Judgment.

(2) The order for an interim payment must grant judgment in the interim amount with the balance to be assessed.

(3) The order for an interim payment must provide for a reasonable contribution towards damages that the person making the claim is likely to recover, less any deduction to which the other party is likely to be entitled.

(4) The party who makes a motion for an interim payment must file the party's undertaking to repay the difference if the interim payment is greater than the amount allowed on assessment.

70.09 Periodic payments

(1) A party who seeks periodic payment of damages under Section 35B of the *Judicature Act* may make a motion in the proceeding in which the damages are claimed for assessment of the amount and setting the dates the payments are due.

(2) An order for periodic payment of money may be enforced by periodic execution under Rules 79.18 and 79.19, of Rule 79 - Enforcement by Execution Order.

Rule 71 - Guardianship

71.01 Scope of Rule 71

(1) 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.

(2) A person becomes a litigation guardian in accordance with Rule 36 - Representative Party, and is not appointed under this Rule.

(3) A trustee appointed under Rule 36.14, of Rule 36 - Representative Party, may also be appointed guardian in accordance with this Rule.

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

71.02 Application

A person who seeks the appointment of a guardian under the *Guardianship Act* may file a notice of application in chambers under Rule 5 - Application.

71.03 Notice to person who is subject of application

(1) A child must be notified of an application under the *Guardianship Act*, in accordance with Rule 31 - Notice.

(2) A child who is twelve years of age or older must be informed about each step in the proceeding, unless a judge directs otherwise.

71.04 Notice to other persons

(1) A copy of a notice of application to appoint a guardian for a child must be delivered to each of the following persons, unless a judge directs otherwise:

(a) each parent of the child other than the applicant or, if the child has no parent who is not an applicant, the child's next of kin other than the applicant;

(b) a person, other than the applicant, who has custody of the child under an agreement or order.

(2) A judge may direct that another person be notified of an application to appoint a guardian.

(3) The parent of a child, and a person who has custody of a child, for whom a guardian is sought to be appointed must be notified of the proceeding in accordance with Rule 31 - Notice.

(4) Despite Rule 31 - Notice, each other person who must be notified of an application to appoint a guardian may, unless a judge directs otherwise, be notified by delivery, by mail or hand, of a certified copy of the notice of application to the person's last known address.

71.05 Affidavits

(1) The applicant must file an applicant's affidavit, an affidavit proving notice, and a draft order no less than ten days before the day the application is to be heard.

(2) Affidavit evidence in support of an application for the appointment of a guardian of a child must include all of the following, unless a judge directs otherwise:

(a) proof of the child's date of birth by birth certificate, or by other means if a birth certificate cannot be obtained;

(b) if the child is over twelve years of age but less than sixteen, the child's position on the proposed appointment;

(c) if the child is sixteen years of age or more, whether the child consents to the proposed appointment and, if not, the reasons for going against the child's wishes.

(3) An applicant may make an *ex parte* motion for an order giving a medical practitioner permission to include relevant confidential information in an affidavit.

71.06 Order appointing guardian

The order appointing a guardian must provide for all of the following:

(a) the appointment of the guardian;

(b) the filing of a bond, unless the guardian is the Public Trustee, in compliance with the *Guardianship Act*;

(c) the amount of the bond, calculated at one and a quarter times the value of the property to be administered by the guardian, excluding real property;

(d) a requirement for the bond to be filed no later than thirty days after the date of the order, or such other time the applicant seeks to be set by the judge who hears the application;

(e) a requirement that the guardian file an inventory of all property of the person who is the subject of the order and a deadline for doing so;

(f) a requirement for the guardian to account as directed by a judge;

(g) a requirement for the guardian to account to the child, and file the accounts, by a deadline after the child's nineteenth birthday;

(h) a requirement that the guardian produce a copy of the inventory or accounting to an interested person who demands the production;

(i) termination of the guardianship of a child on the child's nineteenth birthday;

(j) the powers and other obligations of the guardian.

71.07 Bond

(1) The bond may be executed by a recognized surety company, or the applicant.

(2) An applicant's bond must be supported by two sureties and affidavits of justification showing that the sureties have assets, worth at least the amount of the bond, available for realization on a judgment.

71.08 Inventory

The inventory must include a concise description of each item of property, a concise description of the basis on which it was valued, the valuation amount, and a total.

71.09 Motion or application for disposition of property

A guardian may make a motion for an order for the sale, mortgage, lease, or other disposition of property in the proceeding in which the guardian is appointed.

71.10 Disposition of proceeds

(1) A judge who grants an order for disposition of property, such as a license to sell real property, of a child may provide for payment of the proceeds in any of the following ways:

(a) to pay the expenses of the motion or application, and of the sale, to a maximum amount approved in the order or an amount to be approved by a judge;

(b) to cover an expense paid, or to be incurred, in the interest of the child;

(c) to pay the balance into a trust.

(2) An order for disposition of property that provides for a payment into trust must also provide the terms of the trust and include all of the following kinds of terms:

(a) appointment of the guardian, or some other fit person, as trustee;

(b) payment of the trustee's fees and expenses;

(c) payments for the benefit of the child, including a specific description of the kinds of payments that may be made;

(d) safe investment of trust funds, or provisions for the safekeeping of other property;

(e) variation of the trust on motion of an interested person;

(f) termination of the trust and distribution to a child who turns nineteen;

(g) extension to the trust of the accounting requirements in the order appointing the guardian;

(h) the filing of a further bond, if the bond filed as a result of the order appointing the guardian is inadequate or a person other than the guardian is appointed trustee.

(3) The person who makes the motion for disposal of property must obtain approval of the payment of the expenses of the motion or application, and the sale, in either of the following ways:

(a) approval of a maximum amount for the expenses of the sale except counsel's fees and disbursements and a separate maximum amount for counsel's fees and disbursements;

(b) if no maximum amount is approved or it is exceeded, approval of the actual payments by a judge after the sale.

71.11 Report on disposal

A party who obtains an order for disposition of property must file a report on the sale no more than twenty-five days after the day it is completed.

71.12 Approval of contract to be made by child

(1) A child, or a person who has custody of a child, may make an application, under Rule 5 - Application, for an order approving a contract to be made by the child.

(2) A child who applies for approval of a contract must join as respondents the other party to the proposed contract, and, unless the person is the child's litigation guardian, each person who has custody of the child.

(3) A person who has custody of a child, and applies for approval of a contract, must join as respondents the other party to the proposed contract, the child, and any other person who has custody of the child.

71.13 Supplement to *Adult Capacity and Decision-making Act* Procedures

(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.

Rule 72 - Mortgages

72.01 Scope of Rule 72

(1) This Rule establishes procedures for the remedies of foreclosure, sale, and possession by auction or by private sale, simple foreclosure, redemption, and other remedies in relation to mortgages.

(2) For the purposes of regulating remedies under paragraph 46(b) of the *Judicature Act*, this Rule provides for the calculation of a deficiency judgment in a proceeding for foreclosure, sale, and possession, including charges that may be added to principal and interest and those that must be excluded.

(3) In this Rule 72, "simple foreclosure" and "order for simple foreclosure" mean both of the initial order for foreclosure and the final order for foreclosure provided in this Rule.

72.02 Claiming foreclosure, sale, and possession

A mortgagee may claim foreclosure, sale, and possession or simple foreclosure by filing a notice of action or application.

72.03 Parties

(1) The owner of the equity of redemption, including a trustee in bankruptcy or a person to whom the mortgagor conveys the equity, must be a defendant or respondent.

(2) An executor of a deceased's owner's estate or an administrator of the deceased's estate must be a defendant or respondent, or the mortgagee must make a motion for the appointment of a representative of the estate under Rule 36 - Representative Party.

(3) A subsequent encumbrancer may become bound by an order for foreclosure, sale, and possession, or for simple foreclosure, under Rule 35.12, of Rule 35 - Parties.

(4) A mortgagee may exclude from the claim a subsequent encumbrancer to whom the mortgagee has subordinated its interest, such as a subordination made to enhance the value of the mortgaged property by preserving a mutual right of way or a valuable tenancy.

(5) The mortgagee who subordinates its interest may not join the encumbrancer as a party and the encumbrancer's interest is not foreclosed by the sale.

(6) The mortgagee may not name in the heading, or claim costs or a deficiency judgment against, a subsequent encumbrancer who is joined only for the purpose of foreclosing interests in the equity, unless a judge permits otherwise.

72.04 Consent of first mortgagee

(1) A subsequent mortgagee who makes a motion for an order of foreclosure, sale, and possession, or for simple foreclosure, must file the written consent of the prior mortgagee, unless a judge permits otherwise.

(2) A judge may not order a sale subject to a prior mortgage unless the prior mortgagee provides a statement that satisfies the judge as to the amount owing on the prior mortgage and states the terms on which the prior mortgagee will forebear enforcing its mortgage, such as any of the following:

(a) the entire mortgage debt comes due on the closing of a sale under an order for foreclosure, sale, and possession;

(b) the entire debt comes due on a sale to a third party at arms-length from the foreclosing mortgagee;

(c) an ultimate purchaser, who is approved by the prior mortgagee, may assume the debt owing on the prior mortgage at the rate, and in the manner, provided in the prior mortgage.

(3) A judge who is satisfied that the amount of the debt owing on the prior mortgage has been proved may grant an order for foreclosure, sale, and possession that allows for payment of the prior mortgage debt out of the proceeds of sale in priority to the debt under foreclosure.

(4) A judge may grant an order for foreclosure, sale, and possession, or for simple foreclosure, that recognizes that the sale, or foreclosure, is subject to the prior mortgage.

72.05 Evidence for order

(1) A motion or an application for an order for foreclosure, sale, and possession, or simple foreclosure, must be supported by affidavits providing all of the following evidence:

(a) proof that the defendant or respondent has been notified in accordance with Rule 31 - Notice;

(b) proof of the mortgage instrument;

(c) a certificate of a lawyer abstracting the registered and recorded instruments affecting title to the mortgaged property starting with a warranty deed into the mortgagor or, if the conveyance to the mortgagor is not by warranty deed, the most recent deed or other conveyance to a predecessor in title of the mortgagor;

(d) the evidence of the mortgagee, or an agent of the mortgagee, including that the grounds stated in the statement of claim or notice of application are true;

(e) a statement of account and the evidence of the mortgagee, or agent of the mortgagee, that the statement is true;

(f) a summary of the statement of account that accurately states the total of the charges and credits on the statement and shows a total that reconciles with the amount claimed.

(2) The statement of account must establish, and show the calculation of, the amount of the mortgage debt, and it must include details of all payments made since the most recent of the following dates:

(a) the date of the mortgage;

(b) the date of the last renewal or assumption agreement;

(c) the date of an agreement, or acknowledgement, signed by the mortgagor and any surety, settling, or acknowledging, the balance of the mortgage debt.

(3) Notice of the proceeding must be given as provided by Rule 31 - Notice.

72.06 Contested application for foreclosure, sale, and possession

A judge may do any of the following on an application for an order for foreclosure, sale, and possession that a respondent contests by filing a notice of contest:

(a) determine the issues in contest;

(b) direct the application proceed as an application in court, set a time and date for the application to be heard, and give directions;

(c) set a time and date for a motion under Rule 5.09, of Rule 5 - Application;

(d) make an order converting the application to an action.

72.07 Order for foreclosure, sale, and possession

(1) A judge who hears a motion on default of defence or an application for an order for foreclosure, sale, and possession that is uncontested, or a motion for the order after issues in contest have been determined, may grant the order on such terms as are just.

(2) The judge must settle the amount of the mortgage debt by taking the accounts or referring the taking of accounts to a referee.

(3) The judge who refers the taking of accounts because of the applicant's failure to provide a reliable statement of account, or a reliable summary, may order the applicant to pay the cost of the reference and not charge it to the mortgage debt.

(4) The order for foreclosure, sale, and possession must provide for each of the following:

(a) the amount settled;

(b) foreclosure of the equity of redemption on sale;

(c) notice to each subsequent encumbrancer in accordance with Rule 35.12, of Rule 35 - Parties and notice of the sale to each defendant or respondent;

(d) terms for the advertisement of the sale, unless the sale is by agreement approved under Rule 72.08(2);

(e) an approved description of the mortgaged property for insertion in the advertisement;

(f) instructions for carrying out the sale;

(g) execution by the sheriff, the sheriff's nominee, or another person appointed by the court of a deed to the purchaser;

(h) payment of the proceeds of the sale to cover the expenses of the sale, with the balance paid to the applicant and any surplus to the prothonotary.

(5) The order may provide for a default deficiency judgment under Rules 72.11 to 72.13.

(6) An order for foreclosure, sale, and possession does not preclude any of the following:

(a) further accounts;

(b) an award of costs, including the amount or a referral for taxation;

(c) redemption before the equity of redemption is foreclosed by the sale;

(d) further remedies, such as a deficiency judgment.

72.08 Sale

(1) An order for foreclosure, sale, and possession must provide for sale by public auction, unless a judge is satisfied on all of the following:

(a) a person has made an offer to the mortgagee to purchase the property;

(b) the offer is subject to the mortgagee obtaining an order that approves the sale and provides that the sale forecloses the equity of redemption in the mortgaged property;

(c) the statement of claim or notice of application claims an order for sale of the mortgaged property by approved private sale and the notice and affidavit provide sufficient information by which a defendant or a respondent is able to assess whether to defend or contest the proceeding on the ground that sale should be by public auction;

(d) each subsequent encumbrancer is a defendant or respondent or the offer provides for termination of the agreement if a subsequent encumbrancer who is notified in accordance with Rule 35.12, of Rule 35 - Parties, successfully defends or contests the sale.

(2) A judge may approve the acceptance of an offer referred to in this Rule 72.08 and grant an order for foreclosure, sale, and possession based on the agreement.

(3) The sheriff, the sheriff's nominee, or another person appointed by a judge to conduct a sale by public auction or to complete a sale by approved agreement must do so in accordance with the terms of the order, the court's instructions or directions, and the advertisement of a sale by auction or the terms of an approved agreement.

(4) A mortgagee who acts on its own must retain a lawyer to supervise conduct or completion of a sale, and to assist the sheriff, nominee, or other person conducting or completing the sale.

(5) The sheriff, nominee, or person appointed by a judge must sign and file a report of the sale.

72.09 Possession

A judge may grant an order further to an order for foreclosure, sale, and possession providing for the purchaser to be put in possession, such as an order for the removal of a person who does not leave the property in compliance with the order for foreclosure, sale, and possession.

72.10 Order confirming sale

(1) The mortgagee or a purchaser may make a motion to the prothonotary for an order confirming a sale made by public auction.

(2) The person who makes a motion for an order confirming sale must satisfy the prothonotary that the order for foreclosure, sale, and possession, the court's instructions, and the terms of the advertisement of sale have been complied with.

(3) A motion for an order confirming a sale made by approved agreement may be made to a judge.

72.11 Deficiency judgment

(1) A statement of claim or notice of application for foreclosure, sale, and possession may include a claim against a person who is liable for the amount, if any, by which the mortgage debt exceeds the amount realized from the sale.

(2) A mortgagee who claims a deficiency judgment may have default judgment for the deficiency against the party claimed to be liable for the mortgage debt, unless the party claimed against files a notice of defence or contest, or attends at the hearing of the application for an order for foreclosure, sale, and possession and obtains permission to contest the claim.

(3) The effective date of the default judgment is fifteen days after the applicable of the following dates:

(a) the date of a sale by public auction, if the mortgagee purchases the property;

(b) the day the balance of the purchase price is paid to the sheriff or other person conducting a sale by public auction, if a person other than the mortgagee purchases the property;

(c) the date of closing, if the sale is by approved agreement.

(4) The amount of the default judgment must be assessed by a judge.

(5) Interest is calculated in accordance with the mortgage until the effective date of judgment and in accordance with the *Interest on Judgments Act* afterwards.

(6) Reasonable expenses authorized by the mortgage and incurred before the effective date may be allowed, but not expenses incurred after the effective date except for either of the following kinds of expenses:

(a) direct expenses of a sale to a third party, such as a real estate agent's commission;

(b) expenses deducted on an accounting for income that results in a net credit against the mortgage debt, such as expenses of renting out mortgaged property that are deducted from gross rent to produce a credit to the mortgage debt.

(7) The judgment extinguishes six months after its effective date, unless a notice of motion for an assessment of the amount of the deficiency is filed.

72.12 Motion for assessment of deficiency

(1) A mortgagee who seeks an assessment of a deficiency must file a notice of motion to assess the amount of the deficiency before one of the following deadlines:

(a) six months after the effective date of the default judgment, if the sale is by public auction;

(b) ten days after the day of the closing of a sale by approved agreement.

(2) A mortgagee who makes a motion for a deficiency judgment against a party who has not designated an address for delivery must, unless a judge orders otherwise, give notice of the motion to the party in the same way a party is notified of a proceeding under Rule 31 - Notice, as if the notice of motion were an originating document.

(3) The notice must be delivered no less than ten days before the day the motion is to be heard, unless a judge orders otherwise.

72.13 Calculation of deficiency

(1) A judge must calculate the deficiency by ascertaining the amount of the mortgage debt and ascertaining the applicable of the following credits, and subtracting the credits from the debt:

(a) the amount realized from the secured property, if it has been sold to an arms-length purchaser;

(b) the value of the secured property, if it is in the control of the plaintiff.

(2) The amount of the mortgage debt may be ascertained by including the following amounts, but no other amounts even if they are authorized by the mortgage instrument:

(a) outstanding principal;

(b) mortgage interest to the effective date of the default judgment;

(c) interest under the *Interest on Judgments Act* after the effective date;

(d) reasonable expenses authorized by the mortgage instrument and incurred before the effective date.

(3) The amount of the mortgage debt must not include either of the following:

(a) expenses for protecting the property before the effective date that are not evidenced by an invoice or receipt for materials or work issued by the person who actually supplied the materials or did the work;

(b) expenses for protecting the property after the effective date.

(4) The amount realized from the security, or the value of the secured property, must be ascertained in the applicable of the following circumstances:

(a) the balance of the sale price paid to the mortgagee, if the property is sold by public auction or approved agreement to a person other than the mortgagee;

(b) the amount reasonably realized on resale, if the property is sold by public auction to the mortgagee or its agent, it is resold by the mortgagee, and the resale price received by the mortgagee is both reasonable and greater than the bid;

(c) the amount bid by, or on behalf of, the mortgagee, if the property is sold by public auction to the mortgagee and the resale price or the value of the property is less than the bid;

(d) the value of the property, in all other circumstances.

(5) A mortgagee who claims that an expenditure is a reasonable charge authorized by the mortgage instrument must demonstrate the claim by evidence specifically set out in an affidavit of the mortgagee, or its agent, showing all of the following:

(a) the term in the instrument authorizing the expenditure to be made and charged to the mortgage debt;

(b) the necessity of the expenditure for preserving or otherwise protecting the mortgaged property;

(c) the reasonableness of the amount of the expenditure both in its fairness for the work done or materials supplied, and its value for protecting the property.

72.14 Surplus

(1) A mortgagee who is paid in full out of the proceeds of sale under an order for foreclosure, sale, and possession must, if there is a balance remaining, notify subsequent encumbrancers or other parties of the amount of the surplus fund.

(2) A subsequent encumbrancer or other party must be notified of the surplus funds in either of the following ways, unless there is a designated address for delivery or a judge orders otherwise:

(a) by sending the notice by registered mail to the last known address of the encumbrancer or party;

(b) in the same way as a party is notified of a proceeding made under Rule 31 - Notice, as if the notice were an originating document.

(3) A subsequent encumbrancer or other party may make a motion for payment of the surplus fund.

(4) A judge may take accounts, make inquiries, tax costs, and order distribution of the surplus.

72.15 Simple foreclosure

A judge may grant an initial order for foreclosure that sets the terms under which foreclosure occurs, including provisions for the hearing of a motion for a final order, and a judge may grant the final order giving effect to the foreclosure.

72.16 Initial foreclosure order

(1) A judge who is satisfied on each of the following may grant an initial foreclosure order:

(a) the mortgage instrument and the mortgage debt have been proved;

(b) title to the mortgaged property has been adequately proved, such that the judge is reasonably sure that all interests in the property, and any title defects, are known;

(c) necessary parties have been joined;

(d) the defendant has been notified in accordance with Rule 31 - Notice, or as directed by the judge, and any party other than the defendant who should be notified has been adequately notified;

(e) no defendant has defended the proceeding or a defence has been determined in favour of the plaintiff;

(f) the amount proposed to be settled as due under the mortgage is no greater than the claim of which the defendant is notified.

(2) The amount of the mortgage debt may be settled for simple foreclosure by a judge or by referring the taking of accounts to a referee.

(3) A judge who refers the taking of accounts because of a failure to provide a reliable statement of account, or a reliable summary, may order the moving party to pay the cost of the reference and not to charge it to the mortgage debt.

(4) The initial order for foreclosure must provide each of the following, unless the judge who grants the order directs otherwise:

(a) particulars of the mortgage including the parties, date of execution, registration details, and liability secured;

(b) a declaration that the mortgagor is in default of the term for payment or of some other term that justifies foreclosure;

(c) settlement of the amount due on the mortgage as proved by the plaintiff, but not greater than the amount claimed in pleadings of which the defendant has notice;

(d) a time, date, and place for hearing a motion for a final order for foreclosure, and a declaration that the equity of redemption in the mortgaged property will be foreclosed when a final order for foreclosure is issued;

(e) delivery of a notice of motion for a final foreclosure order to the defendant, and of a notice to subsequent encumbrancer to each subsequent encumbrancer, and of a notice as prescribed by the judge to such other person as the judge may direct;

(f) an abbreviated description of the mortgaged property to be attached to the notices;

(g) a requirement that the plaintiff record documents showing the mortgage debt is satisfied when the property is redeemed, or the plaintiff ceases to hold title in its own right or through an assignee who holds title pending sale.

72.17 Final foreclosure order

(1) A judge who is satisfied on each of the following may grant a final foreclosure order:

(a) notice of the motion was delivered to the defendant as required by the initial order for foreclosure;

(b) a required notice to subsequent encumbrancer, and any other notice required by the initial order for foreclosure, have been delivered in the required manner;

(c) no defendant, and no subsequent encumbrancer, has defended the proceeding or any defence has been determined in favour of the plaintiff.

(2) The final order for foreclosure must provide each of the following, unless the judge who grants the order directs otherwise:

(a) a declaration that the interest and equity of redemption of the defendant and of all persons claiming through the defendant, or the mortgagor if the mortgagor is not a defendant, in property described in the order are forever barred and foreclosed;

(b) a declaration that no prior interest, title defect, or cloud on title has been made apparent to the court or a declaration describing a prior interest, title defect, or cloud and stating that there are no others that have been made apparent;

(c) an order for possession of the foreclosed property;

(d) approval of a description suitable for an instrument by which the plaintiff, or its assign, may convey the foreclosed property;

(e) a requirement that the plaintiff record the order in the parcel registry or under the *Registry Act*;

(f) a requirement that the plaintiff report to the court when it complies with its obligation to record documents showing the mortgage debt is satisfied immediately after the plaintiff, or its assignee, ceases to hold title to the foreclosed property.

72.18 Redemption

(1) A mortgagor or the other person entitled to redeem mortgaged property may claim a redemption order by starting an action or application, or by making the claim in an action or application brought to foreclose the equity.

(2) A judge who determines a claim for redemption may take accounts, make inquiries, tax costs, settle the amount of the mortgage debt, order conveyances, and direct a party to take any necessary step to give effect to a conveyance.

Rule 73 - Receiver

73.01 Scope of Rule 73

(1) This Rule provides for receivership as a final remedy, such as an order appointing a receiver to liquidate mortgaged property or to sell a business as a going concern.

(2) An interlocutory or interim receivership may be obtained under Rule 41 - Interlocutory Injunction and Receivership.

(3) A receivership may be ordered and conducted, in accordance with this Rule.

73.02 Motion for appointment of receiver

(1) A party who obtains a judgment for an amount of money may make a motion for the appointment of a receiver to enforce the judgment.

(2) A party who claims for the appointment of a receiver may make a motion for an order appointing a receiver in either of the following circumstances:

(a) the party is entitled to the order under Rule 8 - Default Judgment, or Rule 13 - Summary Judgment;

(b) a judge determines, after the trial of the action or hearing of the application in which the claim is made, that the appointment should be made.

73.03 Prior and subsequent encumbrancers

(1) A person who starts a receivership proceeding to enforce a security must, as soon as possible after the proceeding is started, deliver both of the following to a prior registered or recorded security holder:

(a) a copy of the notice by which the proceeding is started;

(b) a statement providing details of the prior security instrument.

(2) A holder of security with priority over the interest sought to be enforced through receivership need not be joined as a party, unless it is sought to charge expenses of the receivership in priority to the interest of the prior security holder.

(3) Rule 35.12, of Rule 35 - Parties, provides a method by which a subsequent encumbrancer may become bound by a receivership order.

73.04 Powers of receiver

An order appointing a receiver, or a subsequent order, may give the receiver any power necessary to efficiently and fairly conduct the receivership, including power to do any of the following:

(a) take control of the property that is the subject of the receivership;

(b) manage the property and, if also appointed manager of a corporation in receivership, carry on its business;

(c) do anything a sheriff may do under an execution order as provided for in Rule 79 - Enforcement by Execution Order;

(d) protect the property or business, pay the expenses of protection, and recover the expenses from the property in priority to all other interests;

(e) sell the property, or the going concern, in receivership in accordance with the directions of a judge;

(f) recover expenses of the receivership from the property in receivership as a whole, or from parts of the property as allocated by order;

(g) pay the receiver's interim account as provided for in Rule 73.09;

(h) make a motion for directions or guidance from a judge.

73.05 Injunction

(1) A judge may, in the order appointing the receiver or a subsequent order, provide an injunction against a party, a person who is not a party, or unnamed persons, to protect the property in receivership, including documents and electronic information of a party in receivership, and to require delivery of the property to the receiver.

(2) A person to whom all of the following apply may require a rehearing under Rule 22.06, of Rule 22 - General Provisions for Motions:

(a) the person is affected by an injunction in aid of a receivership;

(b) the person was not given notice, or sufficient notice, of the motion for the injunction;

(c) the person is a party entitled to notice under Rule 31 - Notice, or the person is not a named party.

73.06 Duties of a receiver

In addition to the duties prescribed by Section 78 of the *Companies Act*, Section 65 of the *Personal Property Security Act*, the order appointing a receiver, or a subsequent order, the receiver has a duty to do each of the following:

(a) retain a lawyer;

(b) report to the court at times prescribed by the order and, in any case, at the conclusion of the receivership;

(c) include in the final report an account of all receipts and disbursements.

73.07 Security

A judge who appoints a receiver must require the receiver to file security in an amount and on terms set by the judge, unless the party who makes the motion satisfies the judge of either of the following:

(a) the receiver is a member of the Canadian Association of Insolvency and Restructuring Professionals and carries professional liability insurance;

(b) a party has filed an undertaking to pay for damages that may be caused by the receiver and the terms of the undertaking and the capacity of the party to pay the damages are clearly sufficient.

73.08 Motion for directions and other assistance

(1) A receiver, or a person who has an interest that may be affected by a receivership, may make a motion for a judge to direct or give guidance to the receiver.

(2) In addition to a motion for directions or guidance, a receiver may make a motion for any of the following:

(a) production of a document, electronic information, or other thing by a party or a person who is not a party;

(b) examination of a witness conducted as provided in Rule 18 - Discovery, or as otherwise provided in the order;

(c) interpleader under Rule 76 - Interpleader;

(d) an order under Rule 42 - Preservation Order, as if the receiver were a party;

(e) any other order that aids the receivership.

73.09 Payment of fees and disbursements

(1) A receiver's final account for fees and disbursements may not be paid from the proceeds of the receivership until the account is approved by a judge.

(2) The interim account of a receiver who files the following documents may be paid from the proceeds of the receivership, unless the proceeds are required for the administration of the receivership:

(a) a copy of the interim account;

(b) an undertaking to repay any amount not approved by a judge.

73.10 Replacing receiver

A judge may remove a receiver and appoint a replacement.

73.11 Passing accounts and discharge

(1) A receiver who completes the tasks for which the receivership order was granted must make a motion for an order passing the receiver's accounts, approving fees and expenses not yet approved, and discharging the receiver.

(2) A judge who hears a motion for a discharge may do any of the following:

(a) pass the accounts or order repayment of an expense not approved;

(b) approve the receiver's fees and disbursements and allow payment of them or, if advances exceed the amount approved, order repayment;

(c) discharge the receiver wholly, or on conditions.

(3) A judge who is satisfied that a receiver delays in bringing a receivership to conclusion or in making a motion to pass accounts, set remuneration, and be discharged may do any of the following:

(a) replace the receiver;

(b) refuse some or all remuneration;

(c) order the receiver to pay expenses caused by the delay.

73.12 Receivership jointly with another court

(1) A judge who is satisfied on all of the following may order that a receivership in Nova Scotia be directed by a judge in consultation with a judge of a court in another jurisdiction that has power to appoint a receiver:

(a) both courts have appointed, or are about to appoint, the same person to be receiver;

(b) the subject of the receivership is substantially connected to both jurisdictions;

(c) the other court has accepted, or is likely to accept, the consultation.

(2) Rule 86 - Judicial Communication Across Borders, provides for a receivership directed in consultation with a judge in another jurisdiction.

73.13 Auxiliary receivership

(1) A judge may, in a proceeding started under Rule 5 - Application, appoint as an auxiliary receiver a person, or an agent of a person, who is appointed as receiver by a court outside Nova Scotia, if the judge is satisfied on both of the following:

(a) the order of the other court is final, rather than interim or interlocutory;

(b) the Nova Scotia order will aid the order of the other court.

(2) An order appointing an auxiliary receiver must provide for the receivership of assets in Nova Scotia and require approval by the Supreme Court of Nova Scotia of the sale of property in Nova Scotia.

(3) The order may otherwise leave control of the receivership with the other court, including control of any of the following:

(a) marketing the property in receivership;

(b) passing accounts;

(c) fixing or approving remuneration;

(d) discharging the receiver.

(4) The auxiliary receiver must report to the court at a time prescribed by the order and at the conclusion of the auxiliary receivership.

73.14 Auxiliary interlocutory receivership

A person who seeks the appointment of a receiver auxiliary to an interlocutory or interim receivership in another jurisdiction may start a proceeding under Rule 5 - Application, and make a motion under Rule 41 - Interlocutory Injunction and Receivership.

Rule 74 - Other Sales by the Court

74.01 Scope of Rule 74

(1) This Rule provides for sale of property as a final remedy and for setting terms for the conduct of a sale by interlocutory order under Rule 42.09, of Rule 42 - Preservation Order.

(2) A party may seek an order for sale or other disposition of property, in accordance with this Rule.

74.02 Order for sale or possession

(1) In a proceeding relating to property, a judge may order that the property, or part of it, be sold, mortgaged, exchanged, or partitioned.

(2) A judge who makes an order for the sale, mortgage, exchange, or partition of property may order a party to deliver possession of the property or rents and profits of the property to a purchaser, mortgagee, or other person.

74.03 Conveying interest of party

(1) A judge may order a party who has an interest in property ordered to be sold to execute and deliver an instrument transferring the interest.

(2) A judge may order that an interest of a party in property ordered to be sold is transferred as if the party had executed and delivered an instrument, and the interest transfers as the order provides.

74.04 Method of sale

(1) A judge who orders a sale may order that the sale be conducted by whatever method the judge is satisfied is likely to produce the greatest proceeds.

(2) The following are examples of methods of sale that may be considered:

(a) marketing by a qualified person with power to conclude an agreement subject to approval by a judge;

(b) marketing by a qualified person with power to conclude an agreement without further approval;

(c) public auction conducted by the sheriff or another qualified person;

(d) tender conducted by the sheriff or another qualified person.

74.05 Other terms for conduct of sale

A judge who orders a sale must appoint the person to conduct the sale and give necessary directions to that person, which may include directions on any of the following subjects:

(a) marketing the property, such as advertising or a real estate listing;

(b) entering into, and closing, a proposed agreement without marketing;

(c) paying the person conducting the sale;

(d) authorizing, or requiring, the person to retain a lawyer;

(e) fixing a reserve or minimum bid, or a list price;

(f) establishing terms required in an agreement, terms for tender, or terms binding on a party who bids at an auction.

74.06 Expenses of sale

(1) A judge who orders a sale must provide terms for payment of the expenses of the sale, including remuneration of the person conducting the sale.

(2) A judge may order that some or all of the costs of the proceeding are included in the expenses of the sale, including, if necessary, a valuation and a title opinion.

(3) The judge may order that the expenses form a charge on the property and the proceeds of sale in priority to the interest of a party.

74.07 Variation

(1) A judge may vary a term under which property is offered for sale, change instructions for the conduct of a sale, or substitute a method of sale before an agreement for sale of the property is made.

(2) After an agreement for sale is made, a judge may vary a term or condition of the agreement with the consent of the purchaser.

74.08 Report

The person having conduct of a sale must file a report on the sale as soon as possible after the sale is concluded.

74.09 Approval and discharge

The person who conducts a sale must make a motion for an order approving the conduct of the sale and discharging the person from duties under the order for sale, unless the order for the sale provides or a judge permits otherwise.

74.10 Duty to disclose defects

A person who seeks an order for sale of property and who knows of a defect in title to the property, or any other defect that may not be apparent to a purchaser, must do both of the following:

(a) disclose the defect to the judge who hears the motion for the order;

(b) take reasonable steps to ensure that a potential purchaser is made aware of the defect.

74.11 No assurances of title

(1) A sale by the court is without assurances to the purchaser, except for an express assurance in the conveyancing instrument given by the person who sells on behalf of the court.

(2) A person who determines whether to purchase property being sold by the court must rely on the person's own inquiries about the property, and the following are examples of measures the person may need to take:

(a) a lawyer's investigation and opinion on title, or restrictions on land use;

(b) a surveyor's investigation and opinion on boundary locations;

(c) a thorough physical inspection by the potential purchaser or an expert;

(d) an engineer's, builder's or mechanic's inspection and opinion on compliance with environmental requirements or standards;

(e) a builder's or mechanic's inspection and opinion on structural or mechanical defects.

Rule 75 - Injunction

75.01 Scope of Rule 75

(1) This Rule provides for an injunction as a final remedy, such as a permanent injunction or a temporary injunction that extends beyond the conclusion of the proceeding.

(2) An interlocutory or interim injunction may be obtained in accordance with Rule 41 - Interlocutory Injunction and Receivership.

(3) A party may obtain a final order for an injunction, in accordance with this Rule.

75.02 Motion for injunction

(1) A party who claims an injunction as a final remedy may make a motion for the injunction in either of the following circumstances:

(a) the party is entitled to judgment under Rule 8 - Default Judgment, or Rule 13 - Summary Judgment;

(b) a judge determines, after the trial of the action or hearing of the application in which the claim is made, that an injunction should be issued.

(2) A party who obtains a judgment and finds that an injunction is required to give effect to the judgment may make a motion for the injunction.

75.03 Injunction is discretionary

A judge who is satisfied it is just to do so, may grant a motion for an injunction.

75.04 Terms and conditions

(1) A judge may grant an injunction on terms and conditions.

(2) A judge may amend the terms and conditions of an injunction in any of the following situations:

(a) an error requires correction under Rule 78.08, of Rule 78 - Order;

(b) circumstances have changed, and the terms or conditions must be amended to give effect to the intent of the injunction;

(c) the injunction is unenforceable, unless the amendment is made.

75.05 Termination

A judge may terminate an injunction that cannot be, or can no longer be, enforced.

75.06 Injunction in aid of another court

(1) A judge who is satisfied on all of the following may, in a proceeding started under Rule 5 - Application, grant an injunction to aid the order of a court of another jurisdiction for an injunction or a remedy similar to an injunction:

(a) the order of the other court is made on a basis upon which a similar order may be made in Nova Scotia, or it is otherwise just to enforce the order;

(b) the injunction will aid the enforcement or effectiveness of the order of the other court;

(c) the order of the other court is final, rather than interim or interlocutory.

(2) An order made by a superior court of another province or a territory of Canada is presumed to be made on a basis upon which a similar order may be made in Nova Scotia, unless the contrary is established.

(3) A person who seeks an injunction in aid of an interlocutory or interim injunction, or similar remedy, issued in another jurisdiction may start a proceeding under Rule 5 - Application, and make a motion under Rule 41 - Interlocutory Injunction and Receivership.

Rule 76A - Quieting Titles

76A.01 Scope of Rule 76A

(1) This Rule adapts procedures under the Quieting Titles Act to the Nova Scotia Civil Procedure Rules.

(2) This Rule permits a claim for a certificate of title under the *Quieting Titles Act* to be started by notice of action or by notice of application in court.

(3) To the extent this Rule 76A modifies procedures provided in the *Quieting Titles Act*, the Rule is made for the purposes of Section 49 of the *Judicature Act*.

76A.02 Interpretation

(1) The following words or phrases in the *Quieting Titles Act* include the following words or phrases in these Rules:

Act	***Rules***
action	application in court
apply for	move for
counterclaimant	defendant who counterclaims or crossclaims in an action and respondent who files a notice of claim in an application
defence	notice of defence in an action and notice of contest in an application
defendant	respondent
give notice of trial	request a date assignment conference
originating notice	notice of action or notice of application in court
plaintiff	applicant
trial	hearing

(2) The requirement in the *Act* that a party who starts a proceeding for a certificate of title must apply for directions is fulfilled by moving for directions in one of the following ways:

(a) in an action, making a motion for directions under Rule 23 - Chambers Motion, Rule 25 - Motion by Appointment, or Rule 26A - Conference;

(b) in an application, following the provisions of Rule 5 - Application for a motion for directions.

(3) The motion for directions in an action must be scheduled as with motions requiring a half-day or less but more than a half-hour, unless a judge orders otherwise.

76A.03 Directions

(1) Rules 5.13 and 5.14 of Rule 5 - Application applies to a motion for directions in an action, and the powers mentioned in that Rule apply to the extent they are consistent with Section 9 of the *Act*.

(2) A judge who makes a reference under Section 9 of the *Act* may adjourn the hearing of the motion for directions until after the referee reports.

Rule 76 - Interpleader

76.01 Scope of Rule 76

(1) This Rule provides a remedy for a person who must deliver possession of property, or pay a debt or distribute a fund, but who receives conflicting claims to the property, debt, or fund.

(2) A person may obtain interpleader relief, in accordance with this Rule.

76.02 Who may obtain interpleader

(1) A person may make a motion for an interpleader order if all of the following apply:

(a) the person has control of personal or real property or is obligated to pay money, such as to satisfy a debt or distribute a fund;

(b) the person is not beneficially entitled to the property or the money;

(c) conflicting claims are made, or are reasonably expected to be made, to the property or to payment of the money.

(2) A sheriff, receiver, or other person acting under an order may make a motion for an interpleader order if a claim is made that a thing or money obtained by the sheriff, receiver, or other person is to be delivered or paid differently than provided in the order, such as with a claim to priority over the interest enforced by the order.

76.03 How interpleader is obtained

(1) Each of the following persons may seek an interpleader order, in one of the following ways:

(a) a person who controls property or is obligated to pay money at issue in a proceeding, by making a motion in the proceeding;

(b) a person who controls property or is obligated to pay money not at issue in a proceeding, by starting a proceeding under Rule 5 - Application;

(c) a sheriff, receiver, or other person acting under an order, by making a motion in the proceeding in which the order was granted.

(2) The affidavit in support of the application or motion must include evidence on all of the following subjects:

(a) the circumstances under which the thing came into the person's control, or the payment came to be due;

(b) the claims made, or the claims that may be made, and the circumstances that make such a claim reasonable;

(c) details of any other possible interests.

(3) All claimants and, unless a judge directs otherwise, all persons with possible interests must be made respondents on the application or be notified of the motion in accordance with Rule 31 - Notice.

76.04 Interpleader order

(1) A judge who determines an application or motion for an interpleader order may order that the person who makes the application or motion deliver the property at issue to a person appointed by the judge or make the payment at issue into court or to a person appointed by a judge.

(2) The judge may order that the person is discharged from liability for the property, or the obligation to make the payment, when the person makes the delivery or payment provided for in the interpleader order.

(3) An interpleader order may include further provisions for any of the following:

(a) sale of property that is the subject of the order;

(b) a lien against the property or fund that secures reimbursement of the expenses of the application or motion to the person who obtains the order;

(c) permission for a person who is obliged to pay money, and who obtains the interpleader order, to deduct the expenses of the application or motion from the payment;

(d) an award of costs to the party who obtains the order;

(e) payment of the expenses of the application or motion out of money paid or realized in accordance with the order;

(f) the addition of a claimant, or other interested person, as a party.

(4) A judge may order that a party is barred from starting a proceeding against the person who makes the application or motion and all persons claiming under that person.

76.05 Determination of claims

(1) The judge who grants an interpleader order in circumstances in which all of the following apply may determine the claims to the property, or to payment of money:

(a) the claims are appropriately determined by hearing rather than trial;

(b) all interested persons are parties;

(c) the judge is satisfied each party has sufficient notice of the hearing.

(2) A judge who does not determine the claims when hearing the interpleader may order that the claims are to be determined by trial or by the hearing of an application in court, and the judge may order any of the following:

(a) addition of a necessary party;

(b) removal of the party who obtains the interpleader order;

(c) removal of, or terms for participation in the interpleader by, a sheriff, receiver, or other person who obtains interpleader when acting under an order;

(d) appointment of a party to have conduct of the interpleader;

(e) conditions under which a party who does not defend or contest the proceeding, or fails to designate an address for delivery, is disentitled to further notice;

(f) a statement of the issues to be determined on the hearing or trial;

(g) continuation of the proceeding as an action or application, or conversion from one to the other.

(3) A judge who orders claims be determined by trial may do any of the following:

(a) unless the directions about the issues to be determined make it unnecessary, require the parties to file pleadings or specify the documents already filed that stand as the statement of claim of the party having conduct of the proceeding or the statements of defence of other parties;

(b) set deadlines for filing pleadings, disclosing documents and electronic information, completing discoveries, and any other procedure necessary before a date assignment conference;

(c) despite Rules 4.13(1) and (2), of Rule 4 - Action, permit a party to request a date assignment conference at a time, or under conditions, the judge prescribes.

(4) A judge who orders claims be determined by hearing of an application in court may do anything a judge may do on a motion for directions under Rule 5.09(2), of Rule 5 - Application, or do all of the following:

(a) unless the directions about the issues to be determined make it unnecessary, specify the documents that stand as a notice of application and a notice of contest or direct the party having carriage of the proceeding to file, without starting another proceeding, a notice of application in court and the other parties to file a notice of contest;

(b) set deadlines for filing the notices;

(c) set a time, date, and place for further directions under Rule 5.09, of Rule 5 - Application.

76.06 Default judgment

(1) A party to an interpleader who is notified in accordance with an order and fails to file a notice or pleading, or to designate an address for delivery, required by an order is taken to have admitted the claim against the party.

(2) A party may make a motion to a judge for a default judgment against the party who fails to file a notice or pleading, or to designate an address, required by an order.

(3) A judge may set aside the default judgment.

Part 16 - Costs, Order, and Enforcement

Rule 77 - Costs

77.01 Scope of Rule 77

(1) The court deals with each of the following kinds of costs:

(a) party and party costs, by which one party compensates another party for part of the compensated party's expenses of litigation;

(b) solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation;

(c) fees and disbursements counsel charges to a client for representing the client in a proceeding.

(2) Costs may be ordered, the amount of costs may be assessed, and counsel's fees and disbursements may be charged, in accordance with this Rule.

77.02 General discretion (party and party costs)

(1) A presiding judge may, at any time, make any order about costs as the judge is satisfied will do justice between the parties.

(2) Nothing in these Rules limits the general discretion of a judge to make any order about costs, except costs that are awarded after acceptance of a formal offer to settle under Rule 10.05, of Rule 10 - Settlement.

77.03 Liability for costs

(1) A judge may order that parties bear their own costs, one party pay costs to another, two or more parties jointly pay costs, a party pay costs out of a fund or an estate, or that liability for party and party costs is fixed in any other way.

(2) A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law.

(3) Costs of a proceeding follow the result, unless a judge orders or a Rule provides otherwise.

(4) A judge who awards party and party costs of a motion that does not result in the final determination of the proceeding may order payment in any of the following ways:

(a) in the cause, in which case the party who succeeds in the proceeding receives the costs of the motion at the end of the proceeding;

(b) to a party in the cause, in which case the party receives the costs of the motion at the end of the proceeding if the party succeeds;

(c) to a party in any event of the cause and to be paid immediately or at the end of the proceeding, in which case the party receives the costs of the motion regardless of success in the proceeding and the judge directs when the costs are payable;

(d) any other way the judge sees fit.

(5) A judge may order that costs awarded to a party represented by counsel with Nova Scotia Legal Aid or Dalhousie Legal Aid be paid directly to the Nova Scotia Legal Aid Commission or Dalhousie Legal Aid Service.

77.04 Relief from liability because of poverty

(1) A party who cannot afford to pay costs and for whom the risk of an award of costs is a serious impediment to making, defending, or contesting a claim may make a motion for an order that the party is to pay no costs in the proceeding in which the claim is made.

(2) A motion for an order against paying costs must be made as soon as possible after either of the following occurs:

(a) the party is notified of a proceeding the party wishes to defend or contest;

(b) a claim made by the party is defended or contested.

(3) An order against paying costs may be varied when the circumstances of the party change.

(4) An order against paying costs does not apply to costs under Rule 88 - Abuse of Process, Rule 89 - Contempt, or Rule 90 - Civil Appeal.

77.05 Assessment of interlocutory costs

(1) The provisions of Tariff C apply to a motion, unless the judge hearing the motion orders otherwise.

(2) A judge may assess costs, and provide for payment of costs, when a motion is withdrawn or abandoned.

77.06 Assessment of costs under tariff at end of proceeding

(1) Party and party costs of a proceeding must, unless a judge orders otherwise, be fixed by the judge in accordance with tariffs of costs and fees determined under the *Costs and Fees Act*, a copy of which is reproduced at the end of this Rule 77.

(2) Party and party costs of an application in court must, unless the judge who hears the application orders otherwise, be assessed by the judge in accordance with Tariff A as if the hearing were a trial.

(3) Party and party costs of a motion or application in chambers, a proceeding for judicial review, or an appeal to the Supreme Court of Nova Scotia must, unless the presiding judge orders otherwise, be assessed in accordance with Tariff C.

77.07 Increasing or decreasing tariff amount

(1) A judge who fixes costs may add an amount to, or subtract an amount from, tariff costs.

(2) The following are examples of factors that may be relevant on a request that tariff costs be increased or decreased after the trial of an action, or hearing of an application:

(a) the amount claimed in relation to the amount recovered;

(b) a written offer of settlement, whether made formally under Rule 10 - Settlement or otherwise, that is not accepted;

(c) an offer of contribution;

(d) a payment into court;

(e) conduct of a party affecting the speed or expense of the proceeding;

(f) a step in the proceeding that is taken improperly, abusively, through excessive caution, by neglect or mistake, or unnecessarily;

(g) a step in the proceeding a party was required to take because the other party unreasonably withheld consent;

(h) a failure to admit something that should have been admitted.

(3) Despite Rule 77.07(2)(b), an offer for settlement made at a conference under Rule 10 - Settlement or during mediation must not be referred to in evidence or submissions about costs.

77.08 Lump sum amount instead of tariff

A judge may award lump sum costs instead of tariff costs.

77.09 Amount under a Rule about indemnification

(1) This Rule 77.09 applies to an indemnification under any of the following Rules, or a similar Rule:

(a) Rules 4.18(4) and 4.21(d), (e), or (f), of Rule 4 - Action;

(b) Rules 5.11(3) and 5.15(c), of Rule 5 - Application;

(c) Rules 10.12(4) and (5), of Rule 10 - Settlement;

(d) Rule 18.19(3), of Rule 18 - Discovery;

(e) Rule 19.08(2), of Rule 19 - Interrogatories;

(f) Rule 20.06, of Rule 20 - Admission;

(g) Rules 23.09(8) and 23.12(3), of Rule 23 - Chambers Motion;

(h) Rule 39.04(5), of Rule 39 - Affidavit;

(i) Rule 50.14(4), of Rule 50 - Subpoena;

(j) Rules 51.02(3) and 51.03(2), of Rule 51 - Conduct of Trial;

(k) Rule 55.13(5), of Rule 55 - Expert Opinion;

(l) Rule 88.02(d), of Rule 88 - Abuse of Process.

(2) A judge may order indemnification for all of the following amounts under a Rule to which this Rule 77.09 applies:

(a) a substantial contribution towards the cost of necessary services of counsel, or a fair payment for the work of a person who acts on their own;

(b) necessary and reasonable out of pocket expenses or disbursements;

(c) fair compensation for a harm or loss referred to in the applicable Rule.

(3) The indemnification is payable when the order is made, unless the order provides otherwise.

77.10 Disbursements included in award

(1) An award of party and party costs includes necessary and reasonable disbursements pertaining to the subject of the award.

(2) A provision in an award for an apportionment of costs applies to disbursements, unless a judge orders otherwise.

77.11 Set-off against party and party costs

A judge who awards party and party costs may order a set-off against another award of costs or any other amount.

77.12 Award of costs in other circumstances

(1) A judge may award, assess, and provide for payment of costs for any act or omission of a person in relation to a proceeding or an order.

(2) A judge who determines that expenses are caused by the improper or negligent conduct of counsel may order any of the following:

(a) counsel not recover fees from the client;

(b) counsel reimburse the client for costs the client is ordered to pay to another party as a result of counsel's conduct;

(c) counsel personally pay costs.

77.13 Counsel's fees and disbursements: entitlement and assessment

(1) Counsel is entitled to reasonable compensation for services performed, and recovery of disbursements necessarily and reasonably made, for a client who is involved in a proceeding.

(2) The reasonableness of counsel's compensation must be assessed in light of all the relevant circumstances, and the following are examples of subjects and circumstances that may be relevant on the assessment:

(a) counsel's efforts to secure speed and avoid expense for the client;

(b) the nature, importance, and urgency of the case;

(c) the circumstances of the person who is to pay counsel, or of the fund out of which counsel is to be paid;

(d) the general conduct and expense of the proceeding;

(e) the skill, labour, and responsibility involved;

(f) counsel's terms of retention, including an authorized contingency agreement, terms for payment by hourly rate, and terms for value billing.

77.14 Counsel's fees and disbursements: contingency fee agreement

(1) A client may make an agreement with a lawyer under which payment for all or part of the lawyer's services or disbursements in a proceeding is conditional on success.

(2) A contingency fee agreement may provide for payment of a reasonable amount to compensate for services and the risk taken by the lawyer, and the amount may be based on a gross sum, a percentage of the amount recovered, or any other reasonable means of calculation.

(3) A litigation guardian, a guardian under the *Guardianship Act*, a statutory representative, the representative of an estate, or a power of attorney may enter into a contingency fee agreement on behalf of a represented party or estate and a payment due under the agreement may, with approval of a judge, be made out of proceeds of a claim advanced for the represented party or estate.

(4) A contingency fee agreement must be in writing, be dated and signed by each person who makes the agreement, and contain all of the following:

(a) the names and addresses of the lawyer and each client bound by the agreement;

(b) a concise description of the client's claim;

(c) a condition prescribing the contingency upon which services or disbursements are to be paid;

(d) a term providing for any part of the services or disbursements the client is required to pay regardless of the contingency, or providing that there are no such services or disbursements;

(e) a term providing the amount to be paid on the contingency expressed either as a gross sum or by a stated formula;

(f) the responsibilities of the parties if the solicitor and client relationship terminates before the claim is settled or determined;

(g) a statement that the client has the right to have the agreement and any payment due under it reviewed for the reasonableness and necessity of the charges by an adjudicator under the *Small Claims Court Act* or a judge.

(5) A lawyer must do all of the following after a contingency agreement is signed and dated by the parties:

(a) immediately deliver a copy to each client;

(b) place the original in a sealed envelope;

(c) after the envelope is sealed, keep it so that it can be produced on order of an adjudicator under the *Small Claims Court Act* or a judge.

(6) A lawyer may seek payment under a contingency agreement only if the agreement conforms with Rule 77.14(4) and the lawyer complies with Rule 77.14(5).

77.15 Charging order

(1) Counsel who represents a party in a proceeding in which the party claims an order for the payment or recovery of money or a remedy involving real or personal property may make a motion for an order securing counsel's reasonable and necessary fees and disbursements against the party's right to the money or the party's interest in property.

(2) An order securing counsel's fees and disbursements may attach an obligation to pay the money or provide for a lien on the property.

77.16 Taxation of costs

(1) A judge who awards costs may fix the amount or order that the amount, or a part of the amount, be fixed by taxation before an adjudicator under the *Small Claims Court Act*.

(2) A judge may order that the amount of fees and disbursements owing by a party to the party's counsel be fixed by taxation before an adjudicator.

(3) An adjudicator who fixes the amount of fees and disbursements owing to counsel may disallow fees for a service, or disallow a disbursement, that is unnecessary or otherwise unreasonable.

(4) The adjudicator may allow fees for a service, or allow a disbursement, that is rendered, or incurred, on the client's specific instruction even if the service, or disbursement, is otherwise unreasonable.

(5) A certificate of taxation is final and conclusive of the amounts certified on it against a person who was notified of the taxation, except for each of the following:

(a) the certificate may contain terms upon which the amount is to be calculated;

(b) the order may contain terms limiting the taxation or providing conditions for payment of some or all of the taxed amount;

(c) the certificate may be varied on appeal.

77.17 Appeal of taxation

An appeal of a certificate of taxation may be brought and determined in accordance with Rule 7 - Judicial Review and Appeal.

77.18 Reference to adjudicator

A question about costs may be referred to an adjudicator under the *Small Claims Court Act*, in accordance with Rule 11 - Reference.

TARIFFS OF COSTS AND FEES DETERMINED BY THE COSTS AND FEES COMMITTEE TO BE USED IN DETERMINING PARTY AND PARTY COSTS

In these Tariffs unless otherwise prescribed, the "amount involved" shall be

(a) where the main issue is a monetary claim which is allowed in whole or in part, an amount determined having regard to

(i) the amount allowed,

(ii) the complexity of the proceeding, and

(iii) the importance of the issues;

(b) where the main issue is a monetary claim which is dismissed, an amount determined having regard to

(i) the amount of damages provisionally assessed by the court, if any,

(ii) the amount claimed, if any,

(iii) the complexity of the proceeding, and

(iv) the importance of the issues;

(c) where there is a substantial non-monetary issue involved and whether or not the proceeding is contested, an amount determined having regard to

(i) the complexity of the proceeding, and

(ii) the importance of the issues;

(d) an amount agreed upon by the parties.

TARIFF A

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on a Decision or Order in a Proceeding

In applying this Schedule the "length of trial" is to be fixed by a Trial Judge.

The length of trial is an additional factor to be included in calculating costs under this Tariff and therefore two thousand dollars ($2,000) shall be added to the amount calculated under this tariff for each day of trial as determined by the trial judge

Amount Involved	**Scale 1 (-25%)**	**Scale 2 (Basic)**	**Scale 3 (+25%)**
Less than $25,000	$ 3,000	$ 4,000	$ 5,000
$25,000-$40,000	4,688	6,250	7,813
$40,001-$65,000	5,138	7,250	9,063
$65,001-$90,000	7,313	9,750	12,188
$90,001-$125,000	9,188	12,250	15,313
$125,001-$200,000	12,563	16,750	20,938
$200,001-$300,000	17,063	22,750	28,438
$300,001-$500,000	26,063	34,750	43,438
$500,001-$750,000	37,313	49,750	63,188
$750,001-$1,000,000	48,563	64,750	80,938
more than $1,000,000	The Basic Scale is derived by multiplying the "amount involved" by 6.5%.		

TARIFF B

Tariff of Party and Party costs allowed on an Appeal to the Nova Scotia Court of Appeal

On an appeal, the costs allowed shall be 40% of the costs awarded at trial excluding the "length of trial" component unless a different amount is set by the Nova Scotia Court of Appeal.

TARIFF C

Tariff of Costs payable following a Motion or an Application heard in Chambers by the Supreme Court of Nova Scotia

For motions and applications heard in Chambers the following guidelines shall apply:

(1) Based on this Tariff C costs shall be assessed by the Judge presiding in Chambers at the time an order is made following a motion or an application heard in Chambers.

(2) Unless otherwise ordered, the costs assessed following a motion or an application shall be in the cause and either added to or subtracted from the costs calculated under Tariff A.

(3) In the exercise of discretion to award costs following a motion or an application, a Judge presiding in Chambers, notwithstanding this Tariff C, may award costs that are just and appropriate in the circumstances of the application.

(4) When an order following a motion or an application in Chambers is determinative of the entire matter at issue in the proceeding, the Judge presiding in Chambers may multiply the maximum amounts in the range of costs set out in this Tariff C by 2, 3 or 4 times, depending on the following factors:

(a) the complexity of the matter,

(b) the importance of the matter to the parties,

(c) the amount of effort involved in preparing for and conducting the motion or application.

(such motions and applications might include, but are not limited to, successful motions for Summary Judgment, judicial review of an inferior tribunal, statutory appeals and applications for some of the prerogative writs such as *certiorari* or a permanent injunction.)

Length of Hearing of a Motion or Application	**Range of Costs**
Less than 1 hour	$250 - $500
More than 1 hour but less than ½ day	$750 - $1,000
More than ½ day but less than 1 day	$1,000 - $2,000
1 day or more	$2,000 per full day

TARIFF D

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs on the Signing of Default Judgment

Amount Involved	Costs
Where the "amount involved"	
Is less than $15,000	$200.00
exceeds $15,000 but not $25,000	$300.00
exceeds $25,000 but not $50,000	$375.00
exceeds $50,000 but not $75,000	$450.00
exceeds $75,000 but not $100,000	$600.00
exceeds $100,000	$600.00 plus $1.00 for each increase of $1,000.00 in amount involved

When an execution order is issued, an additional $25.00 may be allowed for the order.

TARIFF E

Tariff of Fees for Solicitor's Services Allowable to a Party Entitled to Costs in an Uncontested Proceeding for Foreclosure, or Foreclosure and Sale

1. For all steps in the proceeding up to and including the motion for an order for foreclosure or foreclosure and sale the allowable fees shall be determined in accordance with one of the following scales:

Scale 1	Scale 2 (Basic)	Scale 3
$300	$900	$1,500

2. For all steps in the proceeding subsequent to the motion for an order for foreclosure or foreclosure and sale, the allowable fees shall be determined in accordance with one of the following scales:

Scale 1	Scale 2 (Basic)	Scale 3
$650	$850	$1,500

3. Notwithstanding anything contained in this Tariff E there shall be, in addition to the allowable fees otherwise provided by this Tariff E, an allowable fee for all steps taken in obtaining a deficiency judgment in a proceeding for foreclosure or foreclosure and sale and that allowable fee shall be determined in accordance with one of the following scales:

Scale 1	**Scale 2 (Basic)**	**Scale 3**
$300	$500	$700

TARIFF F

Tariff of fees allowed for Solicitor's Services Allowable to a Party Entitled to Costs in a Proceeding which is Discontinued or Settled

Costs on settlement are always a matter of negotiation between the parties.

This Tariff F is to be applied if the costs cannot be settled and must be assessed by a taxing officer.

The "amount involved" for purposes of this Tariff F is the amount of a settlement without including disbursements.

When determining costs in a proceeding, which is settled or discontinued, a taxing officer may assess the amount involved and the costs based on the following

Amount Involved	**Amount of Costs**
Up to $25,000	Not more than $3,000
$25,001 - $50,000	Not more than $4,000
$50,001 - $100,000	Not more than $5,000

Where the proceeding is discontinued or settled and the amount involved exceeds $100,000.00, costs shall not be more than the total of $5,000.00 plus 2% of the amount in excess of $100,000.00.

Rule 78 - Order

78.01 Scope of Rule 78

(1) The court acts on motion, by order made in writing or orally.

(2) Directions and rulings are orders.

(3) An order may be granted and enforced, in accordance with this Rule.

78.02 Order by judge

A judge may grant any order in the jurisdiction of the court, including an order that, by these Rules or legislation, the prothonotary may grant.

78.03 Orders made in writing or orally

(1) An order must be in writing, except directions and a ruling may be given orally and other kinds of orders may be given orally if the order is to be enforced before a written order can be made.

(2) A court reporter must make a record of an order made orally in open court.

(3) A judge who makes an order orally other than in open court must make a record of the order.

(4) A direction in a record certified by a court reporter or a judge may be enforced in the same manner as a written order issued by the court.

(5) A judge who makes an order orally may provide that the order is to be replaced by a written order and give directions for the drafting of the replacement order.

78.04 Finalizing operative terms of order

(1) A judge who decides to grant a draft order filed by a party may approve the draft and cause the order to be issued.

(2) A judge who makes a decision without having a draft order at hand, or a decision that is inconsistent with a draft order, may settle the order or give directions for settlement of it.

(3) In the absence of directions, the following procedures apply to drafting and settling an order:

(a) the successful party must prepare a draft order with a place for each party to consent to the form of the order and submit the draft to each other party no more than ten days after the day the judge's decision is communicated to the successful party;

(b) the party to whom a draft order is submitted must, no more than five days after the day the draft is delivered, either object to the draft by delivering to the successful party a concise statement of the objection and an alternate draft order, or sign in the place provided for consent to form;

(c) a party who fails to object to, or sign, the draft order in the required time is taken to consent to the form;

(d) the successful party must deliver a draft order consented to form, or a draft order with a copy of the statement of an unresolved objection, to the judge no more than twenty days after the day the judge's decision is communicated to the party;

(e) the judge may settle the terms of the order or direct that a dispute be resolved by motion under Rule 25 - Motion by Appointment, Rule 26A - Conference, or Rule 27 - Motion by Correspondence;

(f) the judge who resolves a dispute about the form of order may direct that a final draft be delivered to the judge without a consent.

(4) A judge who presides at a settlement conference at which the parties reach agreement may direct a party to prepare an order that conforms with the agreement and, if the judge does not settle the terms of the order at the conference, Rule 78.04(3) applies as if the directed party were the successful party and the agreement were the decision.

(5) A judge, other than the judge who makes the decision, may settle the form of an order and approve a draft order, if the judge who makes the decision is unable to approve the order or gives permission for another judge to do so.

78.05 Form of written order

(1) A draft order must, unless a judge or the prothonotary who grants the order allows otherwise, contain the standard heading of the proceeding, be entitled as provided in Rule 78.05(2), and include all of the following:

(a) the title of the prothonotary, the title and name of the judge who approves the order, or the title and a blank for the judge's name;

(b) the operative part of the order divided into numbered paragraphs;

(c) a place for the prothonotary to date and sign the order when it is issued.

(2) An order may be entitled "Order" or it may be entitled more specifically to distinguish it from other orders in the proceeding, such as "Order for Production", "Order for Interlocutory Injunction", "Order or Summary Judgment", "Order After Trial Without a Jury", "Order After Trial With a Jury", "Order After Hearing of Application".

(3) An order may include, in a paragraph after the title and before the operative part, a concise narrative explaining the proceedings that led to the order.

(4) Each paragraph in the operative part of the order may be written as a separate order or introductory words, such as "the following is ordered", may be used.

(5) The order may be in Form 78.05.

(6) In an emergency, a judge may approve a written order in any form.

78.06 Approving and issuing written order

(1) A judge may approve a draft order by initialling it, or by any other means the judge finds to be convenient.

(2) A prothonotary may issue a draft order approved by a judge or an order made by the prothonotary by dating, signing, and sealing the order.

(3) In an emergency, a judge may issue an order by dating and signing it and printing the judge's name under the signature, and the judge may certify a copy.

(4) A judge who issues an order must immediately deliver it to the prothonotary.

78.07 When and how order becomes effective

(1) A written order is in effect when it is issued and an order made orally is in effect from the time it is spoken, unless the order provides otherwise.

(2) An order may provide that it is otherwise effective at one of the following times:

(a) on a date, or starting on a date, in the past as if the order had been granted on that day, if retroactivity does not deprive a person of a substantive right and does justice between the parties;

(b) on a specific date in the future;

(c) on the happening of an event or the fulfillment of a condition described in the order.

(3) An order that is varied on appeal is in effect as varied from the time the order the Court of Appeal is issued, or such other time as that order provides.

78.08 Errors and extensions of time

(1) A judge may do any of the following, although a final order has been issued:

(a) correct a clerical mistake, or an error resulting from an accidental mistake or omission, in an order;

(b) amend an order to provide for something that should have been, but was not, adjudicated on;

(c) extend the time for doing something required to be done by an order that provides a deadline;

(d) set a deadline for complying with an order that does not set a deadline.

(2) A motion to amend an order must be brought before the judge who granted the order, unless a judge directs otherwise.

78.09 Proof order is satisfied or performed

A prothonotary or a judge may grant an order declaring that an order providing for payment or recovery of money has been satisfied or that another kind of order has been performed.

Rule 79 - Enforcement by Execution Order

79.01 Definitions

In this Rule,

"judgment" means an order, or a part of an order, providing for payment or recovery of money including costs;

"sheriff" includes a person who is not a sheriff but is designated in an execution order granted by a judge to carry out the order.

79.02 Scope of Rule 79

This Rule provides for each of the following:

(a) an execution order to enforce an order for the payment or recovery of money;

(b) a periodic execution order to enforce an order for regular payments of money in the future;

(c) discovery of the judgment debtor and others in aid of recovery under an execution order or periodic execution order.

79.03 Judgment binding land

(1) A person who obtains a judgment and wishes to bind land under the *Land Registration Act* may deliver to the prothonotary a draft document that is entitled "Judgment Certified for Recording Under the *Land Registration Act*" and that conforms with Section 67 of the *Act*.

(2) A prothonotary or judge who is satisfied that a judgment debt is paid in full or otherwise extinguished may provide a release of judgment under Section 66 of the *Act*.

79.04 Judgment binding moveable

A person who obtains a judgment and wishes to bind a moveable under the *Creditors' Relief Act* and the *Personal Property Security Act* may deliver to the prothonotary a draft document that is entitled "Notice of Judgment" and that conforms with Section 2A of the *Creditors' Relief Act*.

79.05 Execution order

(1) A judgment creditor may obtain an execution order by delivering to the office of the prothonotary a draft execution order that conforms with this Rule, or a variation permitted by a judge, no more than five years after the date of the judgment.

(2) A judge may permit a person to make a motion to the prothonotary for an initial execution order more than five years after the date of the judgment.

(3) A prothonotary may require a person who obtains permission, and then delays making the motion for the execution order, to seek fresh permission.

(4) A motion for permission may be made *ex parte*.

79.06 Exceptions

(1) A prothonotary may not issue an execution order in any of the following circumstances, unless a judge permits:

(a) the judgment debtor is deceased;

(b) enforcement of the judgment is stayed by an order, or by operation of law;

(c) the judgment debtor makes an assignment in bankruptcy, a receiving order is made against the judgment debtor, or the judgment debtor otherwise becomes bankrupt, and there is no order declaring that the judgment debt is not stayed or discharged;

(d) the order for payment, or recovery, of money is subject to the fulfilment of a condition that the judgment debtor says has not been fulfilled;

(e) a change in parties, or the status of a party, causes the judgment creditor to cease to be entitled to enforcement or the judgment debtor to cease to be liable.

(2) A judgment debtor may request the prothonotary rescind an execution order that was issued in one of the circumstances referred to in Rule 79.06(1) without the permission of a judge.

(3) A prothonotary may refer a motion for an execution order to a judge.

79.07 Parties

An execution order may be issued against any judgment debtor, whether or not an execution order is sought against another judgment debtor liable for the same amount or judgment is sought against another party claimed to be liable for the same amount.

79.08 Attachment of debt or other obligation

(1) A person to whom an execution order is delivered and who is, or will become, obligated to pay a debt or other liquidable liability to the judgment debtor must make the payment to the sheriff up to the amount of the execution order.

(2) An execution order does not attach to a debt or other liability owed to the judgment debtor as a trustee for another person.

(3) Unless a judge orders otherwise, fifteen percent of a judgment debtor's gross wages are payable to the sheriff under an execution order, the rest of the judgment debtor's wages are exempt from the execution, and nothing is payable that reduces the judgment debtor's net wages, after deduction of amounts required by law to be deducted, below the applicable of the following minimums:

(a) $450 a week for a judgment debtor who supports a dependant, as defined in the *Income Tax Act* (Canada);

(b) $330 a week for any other judgment debtor.

(4) An employer may not pay exempt wages to the sheriff under an execution order.

(5) A deposit-taking corporation must not pay to the sheriff any part of a balance owing to a judgment debtor that, to the knowledge of a person in charge of the account, came from either of the following sources at any time, and the deposit-taking corporation remains liable to the judgment debtor for an amount paid in violation of this Rule:

(a) a portion of wages that are exempt under Rule 79.08(3);

(b) income, such as income assistance or a Canada Pension Plan payment, that is exempt from execution under legislation.

(6) The sheriff may make a calculation of the amount to be paid under Rule 79.08(3), and the deposit-taking corporation may rely on the calculation.

(7) A payment made in compliance with an execution order discharges the payor's liability to the judgment debtor to the extent of the payment, and a payment made to a judgment debtor contrary to an execution order, terms agreed to by the sheriff, or terms ordered by a judge does not discharge the liability.

79.09 Judgment debtor's joint account

(1) A judgment debtor who is a joint account holder, or to whom money is otherwise owed jointly with another person, is presumed to be entitled to an equal share of the joint account, or other joint obligation, unless an interested person proves otherwise.

(2) The equal share must be calculated by dividing the amount of the joint account, or other joint obligation, by the number of joint account holders or joint obligees.

(3) A deposit-taking corporation to whom an execution order is delivered must not honour a demand, other than the execution order itself, on a joint account of which the judgment debtor is one of the joint account holders until the interest of the judgment debtor is established in accordance with this Rule 79.09.

(4) A person may make a motion for an order estimating the maximum interest of a judgment debtor in a joint account and permitting some or all demands to be honoured against the balance.

(5) The deposit-taking corporation must prepare a written notice of an execution against a joint account, cause the notice to be delivered to the address of the joint account holder showing on the corporation's records, provide a copy to the sheriff and the judgment creditor, and advise the sheriff and the judgment creditor when the notice is delivered to all account holders.

(6) The notice of execution against a joint account may be delivered in the way statements or notices about the account are delivered and, if the notice is mailed, it is taken to be delivered five days after the day it is delivered to Canada Post.

(7) The deposit-taking corporation must pay the equal share to the sheriff, unless an interested person files a notice of motion for an order determining the judgment debtor's interest no more than ten days after the day the notice of execution against the joint account is delivered to all account holders.

79.10 Content of notice to joint account holder

(1) A notice given by a deposit-taking corporation to a joint account holder must contain the standard heading, be entitled "Notice of Execution Against Joint Account", be dated and signed on behalf of the corporation, be addressed to the judgment creditor and each joint account holder, have a copy of the execution order attached, and include all of the following:

(a) a reference to the name and address of each joint account holder, the account number, and the balance;

(b) a notice that a copy of the attached execution order was delivered to the corporation;

(c) a statement that the judgment debtor is presumed to be entitled to an equal share of the account, unless an interested person proves otherwise;

(d) a statement that the presumed share will be paid from the account to the sheriff unless, no more than ten days after the day the notice is delivered, the person to whom it is delivered files and delivers to the corporation, the judgment creditor, the sheriff, and the other joint account holders, a notice of motion and supporting affidavit for an order determining the judgment debtor's interest, or lack of interest, in the account;

(e) a statement that the corporation will refuse a withdrawal from, and will not honour a demand on, the account until the equal share is made, a judge permits withdrawals and deposits, or, the judgment debtor's interest is determined by order;

(f) a designation of an address for delivery of documents to the deposit-taking corporation;

(g) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(2) The notice of execution against joint account may be in Form 79.10.

79.11 Enforcement against partner or partnership

(1) A judgment against a partner named individually under Rule 35.14 of Rule 35 - Parties may not be enforced against the partnership assets, unless a judge determines the extent of the judgment debtor's interest in the assets of the partnership and permits enforcement to that extent.

(2) A judgment against a partnership named by firm name may not be enforced against non-partnership assets of a member of the partnership, unless a judge who is satisfied on all of the following grants an order for enforcement against the assets of the member:

(a) the person against whose assets judgment is sought to be enforced is, or was, a member of the partnership;

(b) the member, or former member, is personally liable on the claim made against the partnership for which judgment is recovered;

(c) the judgment creditor delivered a written notice to the member, or former member, describing the claim and stating that a judgment on the claim may be enforced against members of the partnership individually;

(d) the judgment creditor delivered the notice of possible claim against members to the member, or former member, within a reasonable time.

(3) An order for enforcement granted by a judge against a partnership or a member may be substantially in the form of an execution order under this Rule 79, or a receivership order under Rule 73 - Receiver.

79.12 Content of execution order (amount)

(1) An execution order must provide that the order is for recovery of the judgment amount and other charges showing on an attached statement of amount for execution.

(2) A statement of amount for execution must be divided into the following three parts:

(a) Part 1 - Judgment Amount;

(b) Part 2 - Total Due to Creditor;

(c) Part 3 - Further Charges and Credits.

(3) Part 1 - Judgment Amount must contain each of the following subtitles and show the following amounts:

(a) judgment debt - the total amount allowed by the order for payment or recovery of money including costs and pre-judgment interest;

(b) credits - all credits due to the judgment debtor including a payment made, recovery from money paid into court, or an amount realized on security;

(c) judgment amount - the total of the judgment debt less credits.

(4) Part 2 - Total Due to Creditor must contain each of the following subtitles and show the following amounts:

(a) registration expenses - the amount paid for recording and registering judgments under the *Land Registration Act*, the *Creditors' Relief Act*, and the *Personal Property Security Act* plus disbursements expended for these purposes;

(b) judgment interest - the amount of interest allowed by the *Interest on Judgments Act* from the date of the order for payment or recovery of money to the date of the execution order, or "nil" if the dates are the same;

(c) judgment amount - taken from Part 1;

(d) total due to creditor - totalling the expenses, interest, and judgment amount.

(5) Part 3 - Further Charges and Credits must contain each of the following subtitles, with the amount left blank for insertion of the following amounts by the sheriff:

(a) sheriff's fees and expenses - fees due to the sheriff calculated by reference to Schedule "B" of the *Costs and Fees Act* and regulations under that *Act* and all expenses incurred by the sheriff, or on behalf of the sheriff, to carry out the order;

(b) further judgment interest - calculated from the date of the execution order to the date of return or satisfaction;

(c) further credits - the total of all credits due to the judgment debtor after the date of the execution order;

(d) balance - to be calculated to the date of the return or, if the order is satisfied, stated as "nil".

(6) The execution order may not be enforced for an amount greater than the amounts stated in the statement or superseding statement.

79.13 Content of execution order (sale of land)

An execution order may authorize the sheriff to take possession of land to be sold in accordance with the *Sale of Land Under Execution Act*.

79.14 Content of execution order (liquidation of other property)

(1) An execution order may authorize the sheriff to seize, otherwise take control of, and accept as a receiver property in which the judgment debtor has an interest including all of the following, but not including property that is exempt from execution:

(a) a moveable;

(b) currency;

(c) a share, bond, debenture, or other security;

(d) a legacy;

(e) a debt, rent, wages, or other demand due or accruing due at any time.

(2) The order may authorize the sheriff to seize the property, or otherwise take control of it, from the judgment debtor or any other person, and to come on land, open a building, take control of a moveable, and break a lock or other barrier to effect the seizure.

(3) The order may authorize the sheriff to cause a copy of the execution order to be delivered to a person who has control of a moveable the sheriff cannot conveniently seize, or to a person who is or may become liable to make a payment to the judgment debtor, and provide that the moveable is taken to be seized and the debt to be attached when the copy is delivered.

(4) The order may provide that the person who receives a copy of the order is released from liability to make a payment to, or hold a moveable on behalf of, the judgment debtor when any of the following occurs:

(a) the person makes the payment to the sheriff;

(b) the sheriff seizes the moveable, or sells the moveable without a seizure;

(c) the person complies with terms for payment, seizure, or sale agreed to by the sheriff or set by further order.

(5) The order must specifically exclude exempted wages from the amount to be paid from the judgment debtor's wages.

(6) The order may authorize the sheriff to pay all reasonable expenses incurred to carry out the order.

(7) The order may provide that the sheriff need not seize property before the sheriff receives an advance from, or agrees to terms with, the judgment creditor for the expenses of seizure, storage, protection, and sale.

79.15 Content of execution order (injunctions)

An execution order may require a judgment debtor and any person who has control of property in which the judgment debtor has an interest or who is or becomes obligated to pay a debt or other liquidable demand to the judgment debtor to do any of the following:

(a) refrain from giving up control of the property or pay the debt or other demand except as permitted by the sheriff, the execution order, or another order;

(b) provide the sheriff with access to property and not to obstruct seizure;

(c) pay a debt or other demand to the sheriff, unless the sheriff directs or the order provides otherwise;

(d) comply with a direction by the sheriff to liquidate a liquidable share, bond, debenture, or other security;

(e) pay wages, or wages on deposit, to the sheriff in accordance with Rule 79.08;

(f) pay funds in a joint account in accordance with Rule 79.09.

(g) refrain from terminating the employment of, demoting, reducing the wages of, or otherwise penalizing the judgment debtor by reason of the execution order;

(h) fully answer any question asked by the sheriff about the property, debt, or other demand.

79.16 Content of execution order (duties of sheriff and directions)

(1) In addition to the duties under the *Creditor's Relief Act*, an execution order may require the sheriff to do any of the following:

(a) cause a copy of the execution order to be delivered to a person from whom property is seized, personally if the person is present when the seizure is made or, otherwise, by registered mail to the person's last known address;

(b) cause a copy of the execution order to be delivered personally to a person who may be, or become, liable to pay a debt or other liquidable obligation to the judgment debtor;

(c) immediately following a seizure, prepare an inventory of the property seized and include an estimate of the value of each item;

(d) sell the property by public auction, or by another method authorized by a further order;

(e) cause the sale of the seized property to be advertised;

(f) seize no more property than the sheriff estimates is sufficient to fully satisfy the amount of the execution order and any other execution order against the same judgment debtor;

(g) pay money, or deliver property, not required to satisfy an execution to the judgment debtor, unless it is appropriate to make a motion under Rule 46 - Payment into Court or Rule 76 - Interpleader.

(2) An execution order may authorize the sheriff to make a motion to a judge for directions.

(3) A sheriff who seeks directions may be represented by counsel or act on the sheriff's own behalf.

79.17 Form of execution order

(1) An execution order must conform with this Rule 79, contain one of the following headings, state the name and last known address of the judgment debtor, be issued by the prothonotary, and have a statement of amount for execution attached:

(a) the standard heading in the proceeding in which the judgment was issued;

(b) the heading in the notice of application, or *ex parte* application, for registration under the *Reciprocal Enforcement of Judgments Act*, for an execution order to enforce a judgment registered in that manner;

(c) the heading in the *ex parte* application or notice of application for any other execution order to enforce the order of another court or tribunal, followed by the style used by the other court or tribunal.

(2) The execution order may be in Form 79.17A, and the statement of amount for execution may be in Form 79.17B.

79.18 Periodic execution order

(1) A party who obtains an order for periodic payment of money may make a motion to the prothonotary for a periodic execution order enforceable against money to be paid at regular intervals to the judgment debtor.

(2) A periodic execution order may be issued in addition to an execution order.

(3) A person to whom a periodic execution order is delivered and who is, or becomes, obligated to pay money at regular intervals to the judgment debtor must pay the money to the sheriff except for exempt amounts.

(4) A periodic execution order does not apply to a payment made to the judgment debtor as a trustee for another person.

(5) Wages in the amounts referred to in Rule 79.08 are exempted from execution under a periodic execution order, unless the order is certified to be for family maintenance or support.

(6) A periodic execution order for payment of family maintenance or support that is in arrears may include an additional twenty-five percent to be applied against the arrears.

(7) A sheriff who receives more than enough to cover the amount of a periodic execution order, sheriff's fees and expenses, and any balance owing on an execution order, may pay the excess to the judgment debtor.

79.19 Content of periodic execution order

(1) A periodic execution order must contain one of the standard headings required for an execution order, be entitled “Periodic Execution Order”, be issued by the prothonotary, and include all of the following:

(a) a statement showing the name and address of the judgment debtor;

(b) statements showing the amount ordered to be paid periodically, when the amount comes due, and the termination event or date if there is one;

(c) a certificate of whether the order is for family maintenance or support;

(d) if the order is also for the payment of arrears of family maintenance or support, a statement of the amount in arrears;

(e) an injunction requiring a person to whom a copy of the order is delivered and who is or becomes periodically obligated to the judgment debtor to pay, out of the periodic obligation, the amount required by the order;

(f) a requirement to pay the certified amount of the periodic payment or, if the order is certified to include arrears of family maintenance or support, the periodic payment plus, until the arrears are paid, another twenty-five percent;

(g) a statement of the amount of wages exempt from execution;

(h) a notice that failure to comply may be punished under Rule 89 - Contempt and that payment to the judgment debtor in contravention of the periodic execution order does not discharge the liability;

(i) a statement of when the order expires.

(2) The periodic execution order may be in Form 79.19.

79.20 Return of execution order

(1) A sheriff who has no information on a source for recovery, or further recovery, under an execution order may return the order to the judgment creditor with a report of any recovery realized under the order.

(2) The judgment creditor may deliver the returned order to the prothonotary, with any report by the sheriff, and request a superseding execution order.

79.21 Duplicate and superseding execution orders

(1) A prothonotary may issue duplicate execution orders for delivery to more than one sheriff.

(2) A prothonotary may issue a superseding execution order with a new statement of amount for execution to correct an error, or to bring the amount up-to-date when an execution order is returned by the sheriff.

(3) A superseding execution order may be in the same form as an execution order, except it must be entitled “Execution Order Superseding Order Dated [date]”.

79.22 Stay and expiry of execution order

(1) A judge may stay enforcement of an execution order or a periodic execution order, conditionally or unconditionally, and on any terms the judge sees fit.

(2) A judgment debtor who relies on an asset, such as invested funds, for regular support of the judgment debtor or the debtor’s dependants may make a motion to stay enforcement against such part of the asset, or such part of income paid periodically from the asset, as is needed for the regular support of the judgment debtor or the debtor’s dependants.

(3) A judge who stays enforcement against an asset relied on for regular support may consider limiting the stay to the amount by which wages are exempt from execution.

(4) An execution order and a superseding execution order expire five years after the date the order is issued, unless a judge extends the period. A judge may extend an existing or an expired execution order if it is in the interests of justice to do so. A motion to extend may be made *ex parte*, unless a judge directs otherwise.

(5) A periodic execution order expires when the periodic obligation ends.

(6) A property interest obtained by operation of an execution order or a superseding execution order is not affected by the expiry of the order.

79.23 Discovery of debtor in aid of execution

(1) A judgment creditor who provides the representations required by Rule 79.23(2) may request that the prothonotary issue a discovery subpoena in aid of execution addressed to any of the following persons:

(a) a judgment debtor who is an individual;

(b) a person who holds office in, manages all or part of the business of, or is a director of a corporate judgment debtor;

(c) if a corporate judgment debtor ceases to have any officer, manager, or director, each person who last held office in, managed, or was a director of the corporation.

(2) A judgment creditor who makes a motion for a discovery subpoena in aid of execution must attach to the draft subpoena both of the following representations:

(a) that the person to whom the subpoena is addressed is the judgment debtor, that the person is an officer, manager, or director of the judgment debtor, or that there is no officer, manager, or director and the person is a former officer, manager, or director.

(b) that the discovery is necessary for determining whether there are assets available for execution, to locate assets for execution, or to identify a debt or other liquidable obligation for attachment and execution.

(3) The subpoena must contain the standard heading, be entitled "Discovery Subpoena in Aid of Execution", be issued by the prothonotary, and include all of the following:

(a) the name of the witness and of the community in which the witness resides;

(b) a description of the judgment including the names of the judgment creditor and debtor, the date of the judgment, and the amount;

(c) requirements that the judgment debtor answer questions properly asked and bring, or provide access to, described documents, electronic information, or other things;

(d) the time, date, and place of the discovery;

(e) a warning that failure to obey the subpoena may be punished as contempt of court.

(4) The subpoena may be in Form 79.23A, and the representation for a subpoena to a judgment debtor may be in Form 79.23B.

(5) A judge may set aside a discovery subpoena in aid of execution.

79.24 Discovery of others

A judge who is satisfied on both of the following may order discovery in aid of execution of a person who is not a judgment debtor:

(a) the person likely has information that will aid enforcement of an execution order;

(b) the person will not provide the information, or will not fully or reliably provide the information, in an interview.

79.25 Delivery of subpoena and witness fees

(1) A discovery subpoena in aid of execution, or an order for discovery in aid of execution, must be delivered to the witness personally.

(2) Fees and travel expenses in the same amount required by the *Costs and Fees Act* to be paid to a witness for attending a civil trial or hearing must be delivered to a witness who is not a judgment debtor, or a present or former officer, manager, or director of a corporate judgment debtor.

(3) The subpoena, or the order and payment, must be delivered no less than ten days before the day of the discovery or the witness is not obliged to attend the discovery.

79.26 Conduct of discovery in aid of execution

(1) Rules 18.13(1) and (2), 18.14, 18.15, 18.16(3) to (5), 18.17, 18.22, and 18.23, of Rule 18 - Discovery, apply to a discovery in aid of execution, unless a judge orders otherwise.

(2) A judge may give directions for the conduct of a discovery in aid of execution, and may award costs of the discovery.

Rule 80 - Other Enforcement Orders

80.01 Scope of Rule 80

This Rule provides for enforcement of orders other than by execution order or periodic execution order.

80.02 Enforcement

(1) An interlocutory or final order may be enforced by further order, including an order for any of the following:

(a) seizure and protection of property;

(b) putting a party in possession of property such as an order that provides for delivery of property to a party or that requires a sheriff, receiver, or other person to remove a person from land;

(c) authorizing a person to do an act required to be done by a party under the order, such as executing a conveyance, making a direction for transfer of a licence, or authorizing access to premises, documents, or electronic information;

(d) receivership or an injunction;

(e) an order under Rule 88 - Contempt.

(2) An enforcement order that authorizes a person to do an act required to be done by a party may provide that the party is bound by the action of the authorized person.

80.03 Discovery and production to aid enforcement

(1) A judge who is satisfied that a person is likely to have knowledge that will assist enforcement of an order may order discovery of the person in aid of enforcement.

(2) A judge who is satisfied a person is likely to be in control of a document, electronic information, or other thing that is a subject of an order or is a likely source of information that will assist enforcement may order discovery of the person in aid of enforcement or production of the document, electronic information, or other thing.

Rule 81 - Reciprocal Enforcement

81.01 Scope of Rule 81

(1) This Rule is made under, and provides procedures complementary to those in, the *Reciprocal Enforcement of Judgments Act*.

(2) This Rule does not affect enforcement, outside of the *Act*, of an order made by a court in another province or one of the territories, or of a non-penal order made by a foreign judicial authority.

(3) These Rules apply to an application for registration, and for enforcement of a registered judgment, unless a Rule is inconsistent with a provision in the *Act* or this Rule.

81.02 Application for registration

A person who obtains a judgment in a reciprocating state and wishes to apply for registration of the judgment under the *Reciprocal Enforcement of Judgments Act* may start the application in one of the following ways:

(a) for an *ex parte* registration under subsection 3(2) of the *Act*, by filing an *ex parte* application as provided for in Rule 5 - Application;

(b) for registration on notice under the *Act*, by filing a notice of application as provided for in Rule 5 - Application.

81.03 Notice after *ex parte* registration

(1) The notice of registration required by the *Reciprocal Enforcement of Judgments Act* to be served after *ex parte* registration may be served in the same manner as notice of a proceeding is given under Rule 31 - Notice.

(2) The notice of registration must contain the standard heading, be entitled "Notice of *Ex Parte* Registration", be addressed to the judgment debtor, be dated and signed, and include all of the following:

(a) a statement that a judgment obtained against the judgment debtor in the reciprocating state is registered in Nova Scotia and may be enforced as a judgment of the court;

(b) details of the judgment;

(c) details of the order for registration;

(d) a statement of the judgment debtor's right to make a motion to set aside the registration, the grounds in subsection 3(5) of the *Reciprocal Enforcement of Judgments Act*, and the time provided in the *Act* within which the motion must be made;

(e) the address designated by the judgment creditor in the *ex parte* application;

(f) a statement that a document delivered to the designated address is considered received by the judgment creditor on delivery.

(g) an acknowledgement of the effect of delivery to the designated address and a statement that further contact information is available from the prothonotary.

(3) The notice of registration may be in Form 81.03.

81.04 Motion to set aside

A judgment debtor who wishes to set aside an *ex parte* registration may make a motion in the proceeding started by the judgment creditor.

81.05 Enforcement

(1) A judgment creditor who registers a judgment may make a motion for an order to enforce the judgment under Rule 78 - Order, or Rule 79 - Enforcement by Execution Order.

(2) An execution order to enforce a judgment registered by *ex parte* order must allow for the notice period required by clause 6(a) of the *Reciprocal Enforcement of Judgments Act*.

Part 17 - Administration

Rule 82 - Administration of Civil Proceedings

82.01 Scope of Rule 82

This Rule provides generally for administration of civil proceedings in the Supreme Court of Nova Scotia, to the extent that provision is not made by another Rule.

82.02 Responsibility of Chief Justice

(1) The Chief Justice has responsibility for the administration of civil proceedings in the Supreme Court of Nova Scotia, except as provided in these Rules or by general order of the court.

(2) The Chief Justice may delegate responsibility to an Associate Chief Justice or another judge, including delegating to a resident judge the power to give directions to a prothonotary in the district for which the judge is appointed.

82.03 Responsibilities of prothonotary

(1) The prothonotary has responsibility to do all of the following:

(a) first, to follow a direction of the Chief Justice and comply with an order imposing a responsibility on the prothonotary;

(b) second, and subject to the first responsibility, to act in accordance with, and enforce, these Rules;

(c) third, and subject to the first and second responsibilities, to manage the administration of civil proceedings in the place for which the prothonotary is appointed.

(2) The prothonotary may fulfill a responsibility by making requests of, and working with, the court administrator and other public officials who fulfill government responsibilities to provide necessary services, resources, and other assistance to the court.

82.04 Delegation by prothonotary

(1) The prothonotary may delegate a power or assign a duty to a deputy prothonotary, except for each of the following:

(a) making a motion to a judge for a dismissal under Rule 4 - Action, Rule 5 - Application, or Rule 7 - Judicial Review and Appeal, or for a change of place under Rule 32 - Place of Proceedings;

(b) the hearing and determination of a motion made on notice under Rule 30 - Motion to Prothonotary;

(c) making an order under Rule 43 - Temporary Recovery Order or Rule 44 - Attachment;

(d) issuing a letter of request under Rule 56 - Commission Evidence and Testimony by Video Conference;

(e) granting an order confirming sale under Rule 72 - Mortgages;

(f) making a report to the Chief Justice or the court as a whole;

(g) accepting, or refusing to accept, a document for filing as provided in Rule 82.05;

(h) acting as official referee under Section 53 of the *Judicature Act*;

(i) complying with an order that requires or permits the prothonotary to do something and does not permit delegation.

(2) The prothonotary for Halifax may delegate to a scheduler designated by the Chief Justice a power to appoint a time, date, or place for conduct of a trial, hearing, or other business by a judge.

(3) The prothonotary who has a duty to appoint a time, date, or place for conduct of business by a judge outside Halifax may assign the duty to a scheduler designated by the Chief Justice or by a judge resident in the judicial district that includes the place for which the prothonotary is appointed.

(4) The prothonotary may delegate or assign to a court reporter a power or duty involving the conduct of the trial or hearing of a proceeding, hearing of a motion, or any other business of the court conducted on record.

(5) The prothonotary who is, or expects to be, absent for vacation or for another reason may designate a prothonotary appointed for another place to act as the prothonotary.

82.05 Filing documents

(1) The prothonotary must accept for filing a document that is authorized by a Rule to be filed, and that conforms with a Rule about its content.

(2) The prothonotary may accept for filing a document that does not conform with a Rule about the content of the document and must do so when both of the following are brought to the attention of the prothonotary:

(a) the document is intended to start a proceeding or make a crossclaim, counterclaim, or third party claim in an action;

(b) the person seeking to file the document may lose a substantive right, such as a claim to which the *Limitation of Actions Act* may apply, unless the document is filed.

(3) A prothonotary who accepts for filing a document that does not conform with a Rule about the content of the document may accept the document conditionally, provide the conditions in writing to the person who files the document, and return the document if a condition is not fulfilled.

(4) The prothonotary may only file a document that is authorized to be filed by these Rules, and each of the following is an example of a document that is not authorized by these Rules to be filed:

(a) a formal offer under Rule 10 - Settlement;

(b) an affidavit for disclosure, or documents disclosed, under Rule 15 - Disclosure of Documents or Rule 16 - Disclosure of Electronic Information;

(c) documents disclosed under an order for production;

(d) interrogatories or a response under Rule 19 - Interrogatories;

(e) a request or response under Rule 20 - Admission;

(f) a contingency fee agreement under Rule 77 - Costs;

(g) a notice of intended action required by legislation to be delivered, but not to be filed.

(5) The absence of authority to file a document does not imply that it cannot be exhibited to an affidavit or admitted as evidence.

82.06 Format of document

(1) A document authorized to be filed, or required to be delivered to a party, under these Rules must, in addition to conforming with a Rule about the content of the document, conform with each of the following:

(a) the document must be printed, or if it is permitted to be filed electronically it must be capable of being reproduced, on eight and a half by eleven inch paper;

(b) the document must have margins, spaces, upper and lower case, size and style of print or font, numbered pages, and a general organization that makes it readily readable;

(c) no backer is to be attached.

(2) The prothonotary may refuse to file a document that does not conform with the format requirements.

(3) A discovery transcript must contain the standard heading, be entitled "Transcript of the Discovery Examination of" including the witness' name, and conform with the requirements for a document to be filed and each of the following further requirements:

(a) a page of transcribed testimony must be titled with the name of the witness and indicate as part of the title whether the witness is being examined directly, by cross-examination, or by redirect examination;

(b) each question must be preceded by the letter "Q", and each answer by "A";

(c) a transcript of something other than testimony must be titled submission, ruling, direction, instruction, discussion, or other business;

(d) the title must appear at the top of each page of a printed transcript, or at similar convenient places in a transcript that is produced and permitted to be filed electronically;

(e) each page or question must be numbered;

(f) a printed transcript must be conveniently bound, and have a cover and a blank back.

(4) A transcript of evidence to be introduced at trial, such as a transcript of evidence given on commission, must conform with the requirements for a discovery transcript except for the title.

(5) A copy of a document to be delivered to a party must be as readable as the filed version of the document.

82.07 Restrict personal information

(1) A person must not file a document that contains more personal information about another person than is necessary to accomplish the purpose of the document.

(2) A document that identifies an individual may refer to the person's name and the name of the community in which the person resides or does business rather than an address.

82.08 Provide personal information for contact

(1) A person who files a document for the first time in a proceeding must provide information to the prothonotary by which the prothonotary or a party may contact either the person or counsel who represents the person.

(2) The contact information must include a mailing address, which may be the designated address, and any other means by which the person or counsel is regularly contacted by others, such as a telephone number, an e-mail address, and a fax number.

(3) The party or counsel must advise the prothonotary of a change in the contact information.

(4) Contact information is accessible only as provided in Rule 85.09, of Rule 85 - Access to Court Records.

82.09 Headings

(1) A party who establishes the heading for a proceeding must put the year the proceeding is commenced in the upper left corner and, in the upper right corner, the registry code under Rule 32 - Place of Proceeding, followed by the abbreviation "No.", followed by a blank for the prothonotary to assign a proceeding number.

(2) The headings for each of the following originating documents must conform with the following forms:

Originating Document	**Rule**	**Form**
Notice of Action	4.02	82.09A
Notice of Action for Debt	4.03	82.09A
Ex Parte Application	5.02	82.09B
Notice of Application in Chambers	5.03	82.09C
Notice of Application in Court	5.07	82.09C
Notice for Judicial Review	7.05	82.09C
Notice for *Habeas Corpus*	7.12	82.09C
Notice of Appeal	7.19	82.09D
Notice of Summary Conviction Appeal	63.05	63.04
Application for Reduction of Parole Ineligibility	65.04	65.03
Election Petition	69.02	82.09E
Notice of Child Protection Application	60A.03	82.09G
Application for Removal from Child Abuse Register	60A.32	82.09H
Notice of Adult Protection Application	60A.39	82.09I
Notice of Adult Protection Application (After Removal)	60A.40	82.09I
Application for Adoption with Consents	61.02	82.09J
Notice of Application	59.07	82.09K
Petition for Divorce	59.09	82.09L
Notice of Variation Application	59.12	82.09K
Application for Divorce by Agreement	59.45	82.09M

Joint Application for Divorce	59.46	82.09N
Petition for Divorce	62.09	82.09O
Application for Divorce by Agreement	62.14	82.09P
Joint Application for Divorce	62.15	82.09Q.

(3) A party who files one of the following documents must vary the heading established by the party who files the originating document in the following ways:

(a) a notice of claim against third party, by composing the heading to conform with Form 82.09F;

(b) a notice of claim against a further party, by naming and giving the title of fourth or further parties and otherwise conforming with Form 82.09F;

(c) the statement of a litigation guardian who is not named when the proceeding is started, by including the name and title of the litigation guardian after the words “by her” or “by his”;

(d) an amended notice that adds or deletes a party, by adding or deleting the name of the party.

(4) All further documents for filing must contain the standard heading established under Rule 82.09(2), varied under Rule 82.09(3), or permitted under Rule 83 - Amendment.

(5) A party who applies for relief under the *Companies' Creditors Arrangement Act* may style the heading as "Application by , Applicant, for relief under the *Companies' Creditors Arrangement Act*".

(6) The year at the upper left of the standard heading is the commencement year, and it is not to be changed in subsequent years.

(7) The title of a party, such as “Plaintiff” or “Defendant”, is not to be changed for a counterclaim or crossclaim, or to denote who is making a motion.

(8) A judge may prescribe or vary the heading to be used in a proceeding.

(9) A prothonotary who is satisfied that a party represented as a child by a litigation guardian is no longer a child may order that the heading is varied to remove the reference to the litigation guardian.

(10) A prothonotary who is satisfied on each of the following may, without notice, order that the heading of a proceeding is varied to remove the name of a party:

(a) all claims against the party are dismissed or discontinued;

(b) the party is making no claim in the proceeding;

(c) the proceeding continues against others.

(11) A prothonotary who removes the name of a party from the heading must notify the parties of the variation.

82.10 Order returning document

A judge may order a document that does not conform with a Rule be returned to the party who prepared the document, unless the document is part of a record on which the prothonotary or a judge made a decision.

82.11 Fax filing

(1) A document may be delivered by fax to the office of the prothonotary for filing.

(2) The faxed document must be accompanied by a cover page that includes all of the following information:

(a) the name, address, and telephone number of the person sending the document;

(b) the date it is sent;

(c) the names of the parties and the registry number;

(d) the total number of the pages being faxed, including the cover;

(e) the name and telephone number of a person to contact about a transmission problem;

(f) an undertaking to immediately pay a fee that must be paid for filing a document.

(3) The prothonotary may accept a faxed document for filing that is complete and readable.

(4) The prothonotary may accept the faxed document when it is received during the court's business hours or on the next business day after the document is received outside business hours.

(5) The prothonotary may make the filing of a faxed document conditional on the payment of a required fee, and return the document if the fee remains unpaid for ten days after the day of the conditional filing.

(6) A faxed document that is returned, because the fee is unpaid, is taken to have never been filed.

(7) A prothonotary who rejects a faxed document on the ground that it does not conform with a Rule about content or format may return the document by mail, but the prothonotary must notify the sender by fax that the document is being returned.

(8) A person who files an affidavit by fax must replace the affidavit with the original, and the prothonotary or a judge may direct that another kind of document be replaced by the original.

82.12 Electronic filing

(1) The prothonotary may not accept an electronic filing unless the court issues a general order approving a system for electronic filing that is securely in the control of the court.

(2) A judge may authorize delivery in electronic form of a document that is to be delivered to the judge.

82.13 Filing written decision and publication

(1) A judge who signs a reserved decision must deliver it to the prothonotary after staff in the judge's office have had an opportunity to notify the parties of the decision.

(2) A judge who signs a written version of a decision given orally must immediately deliver it to the prothonotary.

(3) The judge who signs a decision may provide a summary for the assistance of publishers and the media.

82.14 Document starting proceeding

(1) The prothonotary at Halifax must organize, and keep control of, a system for assigning a proceeding number that uniquely identifies each proceeding started in Nova Scotia.

(2) When a proceeding is started, the prothonotary to whose office the originating document is delivered must register the proceeding by assigning a proceeding number to it, putting the number after the registry code, impressing the seal of the court on the document, certifying the date of filing on the original, filing the original, and making the entries in the civil proceedings list required by Rule 84 - Court Records.

(3) Numbers assigned for registration of divorces must be included in the registry number after the letters that make up the registry code and before the proceeding number, and the assigned numbers are as follows:

1201	Halifax
1202	Amherst
1203	Bridgewater
1204	Kentville
1205	Pictou
1206	Sydney
1207	Truro
1208	Yarmouth
1209	Annapolis Royal
1210	Antigonish
1213	Digby
1217	Port Hawkesbury.

(4) The party who starts a proceeding must provide, and the prothonotary must certify, one copy of the originating document for each person entitled to notice of the proceeding.

82.15 Filing miscellaneous document

A document permitted to be filed by a Rule or legislation, but which is not interlocutory and does not start a proceeding, must contain a heading or have a heading attached as a cover, and the heading must include all of the following:

(a) the year of the filing;

(b) a registry number, as if the document starts a proceeding;

(c) a reference to the Rule or legislation that permits it to be filed without a proceeding having been started;

(d) a title indicating the purpose of the document;

(e) the name of the person who files the document and of persons whose rights may be affected as a result of the filing.

82.16 Money in court

(1) Money that is to be paid into court must be paid to the prothonotary.

(2) The prothonotary must deposit the money in an interest-bearing account, unless a judge orders otherwise.

(3) A judge may order that the prothonotary deposit the money for a term.

(4) The prothonotary must report to the court and notify the parties when the money is paid to the Minister of Finance under Section 5 of the *Payment into Court Act*.

82.17 Duty of party when proceeding no longer required

A party who settles all issues in a proceeding or becomes aware that a proceeding cannot continue, such as a proceeding that is stayed by operation of the *Bankruptcy and Insolvency Act*, must notify the prothonotary and state whether the party intends to seek an order disposing of the proceeding, file a notice of discontinuance, take some other step, or take no further step in the proceeding.

82.18 Dismissal for want of prosecution

A judge may dismiss a proceeding that is not brought to trial or hearing in a reasonable time.

82.19 Judge designated to complete work of another

(1) The Chief Justice may designate a judge to complete the work of a judge who presides at a trial or hearing and ceases to be able to complete the trial or hearing or to render a decision following a completed trial or hearing.

(2) The designated judge may do any of the following:

(a) rely on the record and complete the trial or hearing;

(b) rely on the record of a completed trial or hearing, give a decision, and grant an order;

(c) require additional evidence or submissions before completing the trial or hearing, giving a decision, or granting an order;

(d) give directions necessary for completion of the trial or hearing.

82.20 Orders by prothonotary without judge's approval

(1) In addition to an order authorized to be made by a prothonotary under a Rule outside this Rule 82.20 or legislation, the prothonotary may make any of the following kinds of orders without the approval of a judge:

(a) a subpoena;

(b) an *ex parte* order confirming a sale under an order for foreclosure, sale, and possession;

(c) an order releasing a judgment, or the binding effect of a judgment, that has been satisfied.

(2) The prothonotary may, with the written consent of each party entitled to notice, make an order that does any of the following:

(a) permits a court document to be amended;

(b) appoints a commissioner to take evidence or authorizes a letter requesting assistance with compelling a witness to attend before the commissioner;

(c) releases an exhibit;

(d) confirms an order made orally that has been recorded and logged in court records;

(e) dismisses a proceeding, unless a party is represented by a guardian;

(f) extends or shortens the time for doing something under a Rule or, otherwise, excuses strict compliance with a Rule.

82.21 Issuing order approved by judge or made by prothonotary

(1) The prothonotary may issue an order by signing the order, sealing it with the seal of the court, and filing it.

(2) The prothonotary may provide a duplicate that is also signed and sealed, or provide a certified copy, to a person who delivers a copy for duplication or certification.

82.22 Varying order or re-opening proceeding

(1) A party to a proceeding concluded by final order may make a motion to vary the order only in one of the following circumstances:

(a) an error is to be corrected, or time extended, under Rule 78 - Order;

(b) legislation permits the order to be varied;

(c) the text of the order would have it apply in circumstances in which it is not intended to apply.

(2) A party may make a motion for permission to present further evidence before a final order and after one of the following events:

(a) the party closes the party's case at trial;

(b) the party chooses to present no evidence at trial;

(c) a jury begins deliberation or a judge reserves decision.

(3) A party may make a motion to re-open the trial or hearing of a proceeding concluded by final order only in the limited circumstances in which the re-opening is permitted by law.

Rule 83 - Amendment

83.01 Scope of Rule 83

(1) This Rule allows a party to amend certain documents the party files.

(2) This Rule requires a party who wishes to amend a court document to obtain permission from the other parties or a judge, except documents may be amended without permission early in an action.

(3) A party may amend a court document filed by the party, in accordance with this Rule.

83.02 Amendment of notice in an action

(1) A party to an action may amend the notice by which the action is started, a notice of defence, counterclaim, or crossclaim, or a third-party notice.

(2) The amendment must be made no later than ten days after the day when all parties claimed against have filed a notice of defence or a demand of notice, unless the other parties agree or a judge permits otherwise.

(3) A pleading respecting an undefended claim in an action may be amended at any time, but the party claimed against is entitled to receive notice of the amended pleading in the manner provided in Rule 31 - Notice for notice of an originating document.

83.03 Amendment of notice in other kind of proceeding

A party to a proceeding other than an action may amend the notice by which the proceeding is started, or a notice of contest, participation, or contention, with the agreement of the parties affected by the amendment or with permission of a judge.

83.04 Amendment to add or remove party

(1) A notice that starts a proceeding, or a third-party notice, may be amended to add a party, except in the circumstances described in Rule 83.04(2).

(2) A judge must set aside an amendment, or part of an amendment, that makes a claim against a new party and to which all of the following apply:

(a) a legislated limitation period, or extended limitation period, applicable to the claim has expired;

(b) the expiry precludes the claim;

(c) the person protected by the limitation period is entitled to enforce it.

(3) A notice may be amended to remove a party from a proceeding, but the removed party may make a motion for costs or other relief.

83.05 Amendment of notice of motion

An amendment to a notice of motion may be made anytime before the notice is delivered to a party, when agreed by each party affected by the amendment, or when permitted by a judge.

83.06 Response to amended document

(1) A party to an action who files a document in response to a document that is later amended may amend the response document no more than ten days after the day the responding party is notified of the amendment in accordance with Rule 31 - Notice.

(2) In any other proceeding, a response document may be filed as the parties agree or a judge permits.

83.07 Correcting other court documents

(1) An affidavit is corrected by filing an affidavit explaining and correcting the error before the deadline for filing the uncorrected affidavit, or when the parties agree or a judge permits.

(2) An order is corrected under Rule 78 - Order.

(3) Another court document may be corrected by filing an amended document with the agreement of each party affected by the amendment or the permission of a judge.

83.08 Form of amended document

(1) An amended document must be prepared in a way that shows all changes to the document, such as by underlining new text and noting where text has been removed or by appending a marked version of the document to a clean version.

(2) The title of an amended document must be followed by “Amended:” and the date of the amendment.

(3) An amendment may be made to a statement of claim or defence that forms part of a notice by a document containing the standard heading and the amended statement of claim or statement of defence.

(4) An amended statement of claim or defence becomes part of the notice to which it relates, although it is not attached.

83.09 Date of amendment

A document is amended on the day the amended document is filed, unless an order provides otherwise.

83.10 Party disentitled to notice

All of the following apply to a party who is disentitled to notice and against whom an amendment causes a new or greater claim to be made:

(a) the party must be included in an agreement of the parties allowing for the amendment;

(b) the party must be given reasonable notice of a motion for permission of a judge to make the amendment;

(c) the party must be notified of the amendment in a way provided in Rule 31 - Notice, for parties entitled to notice of an interlocutory step in a proceeding.

83.11 Amendment by judge

(1) A judge may give permission to amend a court document at any time.

(2) An amendment cannot be made that has the effect of joining a person as a party who cannot be joined under Rule 35 - Parties, including Rule 35.08(5) about the expiry of a limitation period.

(3) A judge who is satisfied on both of the following may permit an amendment after the expiry of a limitation period, or extended limitation period, applicable to a cause of action:

(a) the material facts supporting the cause are pleaded;

(b) the amendment merely identifies, or better describes, the cause.

83.12 Amendment by Court of Appeal

The Court of Appeal may amend a court document, or correct an order of the court, to the same extent as a judge may do so.

Rule 84 - Court Records

84.01 Scope of Rule 84

This Rule provides for maintenance and control of court documents, records of proceedings, and recordings of trials and hearings.

84.02 Civil proceedings index

(1) The prothonotaries must maintain a single index of information on all civil proceedings.

(2) When a proceeding is started, the prothonotary must enter in the civil proceedings index the following information:

(a) the registry number, which is made up of the registry code in Rule 32 - Place of Proceeding, followed by the divorce registration number in a divorce application, followed by the proceeding number;

(b) the name of each party, and the party's title in the proceeding, and the name of counsel, if any, who represents the party;

(c) the title of the originating document;

(d) the date the proceeding is started.

(3) The information must be entered in the civil proceedings index and maintained in a way that allows court staff, counsel, the parties, and members of the public to be able to readily find entries about the proceeding.

(4) The prothonotary must enter, under the index entry for a proceeding, each of the following:

(a) information about a document that is subsequently filed in the proceeding, including the name of the person on whose behalf a document is filed, the title of the document, and the date it is filed;

(b) the scheduled and actual time, date, and place of each motion heard by a judge in the proceeding, except motions made orally during the trial of an action or hearing of a proceeding and motions made to the judge without a court reporter being present;

(c) the scheduled and actual time, date, and place of a trial or hearing, the days reserved for the trial or hearing, and the actual days of trial or hearing;

(d) the outcome of a motion, trial, or hearing;

(e) the expiry of an action as declared by the prothonotary;

(f) information about a document filed by the court in the proceeding, such as a decision or a notice of prothonotary's motion, including the title of the document and the date it is filed;

(g) information about an instrument issued by the court in the proceeding, such as an order or a release of judgment, including the title of the instrument and the date it is issued.

84.03 Recording

(1) The prothonotary must ensure that court reporters and equipment are available to make an audio-recording of each of the following, or immediately make a report to the Chief Justice when the situation is otherwise:

(a) the trial of an action;

(b) the hearing of a proceeding;

(c) the hearing of a motion;

(d) a conference held on record;

(e) any other business of the court conducted on record.

(2) A court reporter must, unless the presiding judge permits otherwise, log the time and subject of each of the following:

(a) the commencement, adjournment, resumption, and finish;

(b) a decision, ruling, or direction;

(c) a motion made orally or an objection;

(d) a discussion between counsel, or a party who acts on their own behalf, and the judge;

(e) opening of a party's case, closing the case, and rebuttal;

(f) swearing or affirming of a witness, direct examination, cross-examination, re-direct examination, examination by the judge, further examination, and excusing of the witness;

(g) entry of an exhibit;

(h) submissions.

(3) The time and subject of each of the following must be logged additionally during a trial with a jury:

(a) opening of jury selection and the judge's instructions to the jury panel;

(b) hearing a request to be excused from the panel, including the name and panel number of the person making the request;

(c) calling the proceeding to be tried;

(d) jury selection, including the calling of a panel member, a peremptory challenge, the conduct of a challenge for cause, and the selection of a juror;

(e) adjournment or discharge of the jury panel;

(f) the oath or affirmation of jurors;

(g) roll calls or statements by the judge or court reporter that all jurors are present;

(h) excluding the jury for a motion or objection, and the return of the jury;

(i) instructions to the jury, an order for sequestration, and retirement of the jury for deliberations;

(j) a discussion about a jury question, return of the jury, and the instruction;

(k) a verdict or answers by the jury;

(l) discharge of the jury.

84.04 Exhibits

(1) The prothonotary must keep control of an exhibit, except a presiding judge may temporarily take custody of an exhibit after notifying the prothonotary.

(2) The prothonotary may, unless a judge orders otherwise, return an exhibit to a party on whose motion the exhibit was entered, or who filed an affidavit to which the exhibit was attached, no sooner than six months after the day that one of the following occurs:

(a) expiry, without an appeal having been started, of the time for appeal to the Nova Scotia Court of Appeal from the order that finally determines all issues in the proceeding;

(b) expiry, without an application having been made for leave to appeal, of the time for making an application to the Supreme Court of Canada after the appeal of an order in the proceeding to the Nova Scotia Court of Appeal;

(c) dismissal by the Supreme Court of Canada of an application for leave to appeal;

(d) final determination by the Supreme Court of Canada.

(3) A judge who is satisfied that an exhibit cannot be returned to a party may order that the exhibit be destroyed or otherwise disposed of by, or under the supervision of, the prothonotary.

(4) A judge may order that an exhibit be turned over to a person temporarily or permanently.

84.05 Control by the court of documents offsite

(1) The prothonotary may make arrangements with the Province of Nova Scotia for the civil proceedings index, an audio recording, or a log to be maintained electronically in a computer owned and operated by the province.

(2) Arrangements for computer services by the province must be such that access to the information is exclusively through the prothonotary as provided in Rule 85 - Access to Court Records, which restriction extends to an employee of the province who is not a prothonotary or a member of court staff authorized by the prothonotary.

(3) The prothonotary must report to the court annually about arrangements for computer services by the province and compliance with Rule 85.

Rule 85 - Access to Court Records

85.01 Scope of Rule 85

(1) This Rule recognizes the need for the court's records to be open to the public, and provides exceptionally for a record to be kept confidential.

(2) The provisions for confidentiality in Part 13 - Family Proceedings, which are to protect a child, prevail over this Rule.

(3) Court records must be made accessible to the public, directly and through the media, in accordance with this Rule.

(4) A court record may be made the subject of an order for confidentiality, in accordance with this Rule.

85.02 Access to court record of proceeding

(1) A person who wishes to find a document, recording, or exhibit in a proceeding may require the prothonotary to provide information about the proceeding from the civil proceedings index or give the person access to the index so the person can find the information.

(2) A person who provides all of the following may require that the prothonotary permit the person to have access to court records of, and evidence in, a proceeding:

(a) the registry number of the proceeding or sufficient information so the prothonotary can find the document, exhibit, or recording;

(b) a fee or charge provided for by law;

(c) an undertaking under Rule 85.03, if a copy of an audio-recording is required and a judge does not except the person from the requirement for an undertaking.

(3) The access a person may require under Rule 85.02(2) is satisfied by provision of whichever of the following the person requests:

(a) inspection of a document or exhibit, or photographing an exhibit, under conditions that protect the integrity of the evidence;

(b) delivery of a copy of a document, an audio-recording of a proceeding, or an exhibit capable of being copied by the prothonotary.

(4) The prothonotary must refuse to comply with a requirement to provide access to court records or evidence that results in a breach of a confidentiality order or in a serious risk to the integrity of a record or evidence.

(5) The prothonotary must defer complying with a requirement for access to court records or evidence when a judge or court reporter has custody of a required document or exhibit temporarily for use in connection with the proceeding.

(6) A request for access to court records or evidence temporarily in the control of a judge or a court reporter may be made to the judge in accordance with Rule 87 - Communicating With a Judge.

85.03 Broadcasting audio recording

(1) The prothonotary must require a person who demands a recording to undertake not to broadcast or distribute all or part of the recording, unless a judge orders otherwise.

(2) A judge who hears a motion to except a person from giving an undertaking not to broadcast or distribute a recording must consider all relevant factors, including whether the open court principle is fully served by the person's ability to listen to and quote from the recording and, if the open court principle is not fully served by the ability to quote from the record, each of the following:

(a) whether the broadcast or distribution may affect the conduct of, or the determination of an issue in, an ongoing proceeding;

(b) the effect of the broadcast or distribution on the person whose voice is sought to be broadcast, or a recording of whose voice is sought to be distributed;

(c) if the recording sought by the person who makes the motion includes testimony, it is presumed unless the contrary is established that frequent broadcast of testimony may have an adverse effect on the willingness of a truthful witness to come forward and on the way in which a person testifies.

85.04 Order for confidentiality and interim order

(1) A judge may order that a court record be kept confidential only if the judge is satisfied that it is in accordance with law to do so, including the freedom of the press and other media under section 2 of the *Canadian Charter of Rights and Freedoms* and the open courts principle.

(2) An order that provides for any of the following is an example of an order for confidentiality:

(a) sealing a court document or an exhibit in a proceeding;

(b) requiring the prothonotary to block access to a recording of all or part of a proceeding;

(c) banning publication of part or all of a proceeding;

(d) permitting a party, or a person who is referred to in a court document but is not a party, to be identified by a pseudonym, including in a heading.

(3) A judge who is satisfied that it is in accordance with law to make an order excluding the public from a courtroom, under Section 37 of the *Judicature Act*, may make an order for confidentiality to aid the purpose of the exclusion.

(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.

85.05 Notice for confidentiality order and for interim order

(1) In addition to giving notice to the other parties as required by these Rules, a party who makes a motion for an order for confidentiality, or to exclude the public from a courtroom, must give reasonable notice to representatives of media, unless a judge orders otherwise.

(2) The notice to media representatives may be given by using the service provided by all courts in Nova Scotia for giving notice to the media through the internet.

(3) A judge who excepts a party from having to give notice to media representatives must file a report of the decision with the prothonotary at Halifax.

(4) The prothonotary at Halifax must do both of the following with judges' reports of a decision to except notice to media representatives:

(a) make the reports available for inspection and provide a copy on demand, unless the report itself is sealed;

(b) respond to a person who asks about the number of reports that are sealed in a calendar year.

(5) A motion for an interim order for confidentiality may be made *ex parte*, unless a judge directs otherwise.

85.06 Privileged documents

(1) Nothing in these Rules diminishes the power of a judge who must determine a claim that a document is privileged, or otherwise subject to a confidentiality protected by law, to keep the document confidential until the determination is made.

(2) A judge who must determine a claim that a document is privileged, or otherwise subject to a confidentiality protected by law, may do any of the following without the document being marked as an exhibit, made part of the public court record, disclosed to the party who contests the claim, or made available to the public:

(a) personally take control of the document;

(b) give directions to the prothonotary or any other member of court staff for storing the document, keeping it separate from court records, and doing with it only as the judge further directs;

(c) read, view, or listen to the document for the purpose of making the determination.

(3) A document taken control of and kept confidential by a judge is not part of the public court record and need not be made the subject of a confidentiality order.

(4) A judge who takes control of a document and determines that it or part of it is not privileged, and that it is not otherwise subject to a confidentiality protected by law, must do both of the following:

(a) maintain control of the document long enough for the party who claims privilege to make a motion for a confidentiality order pending appeal;

(b) place the document or the part on the court record, unless a confidentiality order is in effect pending appeal.

(5) A judge who takes control of a document and determines that it or part of it is privileged must make a sealed record for review by the Court of Appeal.

(6) The sealed record must include everything determined to be privileged, and everything else delivered to the judge for the determination must be placed on the record.

(7) The party who claims privilege may make a motion for the sealed record to be delivered to the party in the time referred to in Rule 84.04, of Rule 84 - Court Records.

85.07 *Freedom of Information and Protection of Privacy Act*

(1) A judge who gives directions, under Rule 7 - Judicial Review and Appeal, for an appeal under the *Freedom of Information and Protection of Privacy Act* may include directions about delivery to the judge assigned to hear the appeal of a sealed package containing the documents claimed to be subject to a confidentiality protected by the *Act*.

(2) A prothonotary who, before a motion for directions is heard, receives documents claimed to be subject to a confidentiality protected by the *Freedom of Information and Protection of Privacy Act* must seal the documents and keep them confidential until a judge gives directions for their delivery.

85.08 Access to court records in general

(1) A judge, a judge's assistant, the prothonotary, a deputy prothonotary, and a member of court staff authorized in writing by the prothonotary may have direct access to all court documents, unless the access is prevented by an order for confidentiality.

(2) No other person may have direct access to court records, unless the access is under an agreement approved by the court.

(3) An agreement permitting direct access for an analysis of court records, or of the business of the court, must contain terms about each of the following:

(a) the purpose of the analysis;

(b) diligence in making an accurate analysis;

(c) the intended distribution of the analysis or of a report on it;

(d) provision of the analysis or a report on the analysis to the Chief Justice before other persons receive it;

(e) the date direct access terminates.

85.09 Personal information

(1) The prothonotary may keep separate from the civil proceedings list a record of personal information given to the prothonotary for making contact with counsel, a party, or a person who is not a party.

(2) The prothonotary may give the personal information to a party who wishes to contact the counsel, party, or other person, unless the prothonotary is satisfied that providing the information may compromise the security of a person.

(3) The prothonotary is not required to give the personal information or access to the record of it to a person who is not a party or court staff.

Rule 86 - Judicial Communication Across Borders

86.01 Scope of Rule 86

This Rule allows both of the following:

(a) communications between the Supreme Court of Nova Scotia and a court in another jurisdiction to assist either or both courts with the just determination of a claim or enforcement of a remedy;

(b) coordination and harmonization of a proceeding with a proceeding before a court in another jurisdiction, if the other court agrees and the two proceedings are, despite formal differences, related by common issues or parties.

86.02 Motion for joint communications or hearings

(1) A party may make a motion that a judge request a court in another jurisdiction to engage in communications, hold a joint conference in related proceedings, or hold a joint hearing in related proceedings.

(2) A judge may convene a conference with the parties, under Rule 26A - Conference, to consider requesting or responding to a request for communications, holding a joint conference in related proceedings, or holding a joint hearing with a court in another jurisdiction in related proceedings.

86.03 Organizing communications, or joint conferences or hearings

(1) A judge may authorize the prothonotary, or a member of the judge's staff, to do any of the following:

(a) respond to a request from an authorized representative of a court in another jurisdiction for communications with the Supreme Court of Nova Scotia;

(b) make a request to a representative of a court in another jurisdiction for communications;

(c) provide copies of court documents to the other court;

(d) organize a conference of a judge of the court with a judge, or other judicial official, of the other court;

(e) give notice of a joint conference to parties in either jurisdiction, in the manner required of a party under Rule 31 - Notice, or as directed by the judge;

(f) organize, and give notice of, a joint hearing in related proceedings;

(g) do anything else to assist with communication or coordination by the courts;

(2) A judge may direct a party, or an officer of the court such as a receiver or a referee, to do any of the following:

(a) cooperate with the prothonotary, or a member of the judge's staff, to organize communications between the courts;

(b) provide technical services for a joint conference, or a joint hearing;

(c) provide copies of court documents to the other court;

(d) file documents with the other court;

(e) assist a party before the other court, or the court itself, in obtaining evidence;

(f) give notice, make disclosure, or provide copies of court documents to a person who is a party before the other court;

(g) do anything else to assist with communication or coordination by the courts.

(3) A judge may communicate directly with a judge, other judicial official, or a representative of the other court to organize communications between the courts.

(4) A judge who makes a direct communication under Rule 86.03(3) must either include the parties in the communication or report to the parties afterward.

86.04 Joint conference

(1) A judge may appoint a time and date for the judge to be available for a conference held jointly with a judge or other judicial official of another court.

(2) A conference that is organized to assist the just determination of a claim or the enforcement of a remedy in a proceeding before the Supreme Court of Nova Scotia or to coordinate or harmonize related proceedings must include the parties to the Nova Scotia proceeding, except a party who chooses not to participate, who has become disentitled to notice, or who a judge determines must be excluded.

(3) The joint conference may be held by teleconference.

(4) The provisions of Rule 26A - Conference about what a judge may do at a conference, and recording the conference, apply to a joint conference.

86.05 Joint hearing

(1) A judge may appoint a time, date, and place for the judge and the parties to a Nova Scotia proceeding to be available for a hearing conducted jointly with a judge or other judicial official of another court and the parties to a proceeding in the other jurisdiction.

(2) A joint hearing may be held by teleconference, with the judge in Nova Scotia sitting in a courtroom and with a court reporter recording and logging the hearing.

(3) A joint hearing may be held by joint sitting, but if the joint sitting is in the other jurisdiction the hearing must be accessible by the public in Nova Scotia.

(4) A joint hearing conducted with a judge of the Supreme Court of Nova Scotia sitting in another jurisdiction is taken to be accessible by the public in Nova Scotia, if all of the following apply:

(a) the hearing is transmitted to a courtroom in Nova Scotia, as with a teleconference;

(b) the courtroom is open to the public;

(c) the joint hearing is recorded and logged in the same way as any hearing in a courtroom.

86.06 Conduct of joint hearing by teleconference

(1) A judge may set the terms for the conduct of a joint hearing by teleconference in consultation with the judge or other judicial official in the other jurisdiction.

(2) The consultation may be by conference.

(3) The terms may be set by approving an order of the other court stating the terms, or making an order that sets the terms subject to the approval of the other court.

(4) The terms must cover each of the following subjects:

(a) simultaneous transmission of the proceedings to each court;

(b) transmission of such quality that a witness is as good as present in the other courtroom, if credibility is in issue;

(c) simultaneous introduction of duplicate exhibits or a system for transmitting images of exhibits in one courtroom to the other;

(d) simultaneous delivery or filing of court documents, such as a brief or an affidavit;

(e) who is to pay for transmission services that are not provided by the court;

(f) joint rulings on issues of evidence or procedure, and exclusion from consideration by the judge of the Supreme Court of Nova Scotia of evidence ruled to be inadmissible in Nova Scotia but ruled to be admissible by the judge in the other jurisdiction;

(g) whether submissions by a person who is a party in one jurisdiction, and not the other, are to be made during the joint hearing or separate from it;

(h) communications between the judges, or the judge and a judicial official, to coordinate the joint hearing, to resolve procedural or administrative issues, or to provide coordinated orders;

(i) any circumstances in which the judges, or the judge and the judicial official, may communicate without notice to, or participation by, the parties.

86.07 Translation and interpretation

A judge who makes an order under this Rule 86 for communications, a conference, or a hearing that involves uses of a language not understood by the judge, counsel, or a party may make an order on terms similar to those permitted by Rule 48 - Translation, Interpretation, and Assistance.

86.08 Foreign law

(1) A judge who participates in a joint hearing may accept the guidance of the other judge, or the judicial official, about the laws of and practices in the other jurisdiction, unless a party successfully objects.

(2) The provisions of Rule 54 - Supplementary Rules of Evidence about proof of the law of another province or a territory, and proof of the law of a foreign state, apply on a joint hearing.

86.09 Temporary standing

(1) A judge may permit a person who is not a party to a Nova Scotia proceeding but who is a party to a proceeding in another jurisdiction, or an officer of the other court such as a receiver or referee, to be heard by the judge on a specified issue.

(2) A person does not submit to the jurisdiction of the court only by appearing, with permission, to be heard on a specified issue.

86.10 Lifting stay of proceeding

A judge may except from a stay of proceedings a related proceeding in another jurisdiction that is the subject of mutual communication, a joint conference, or a joint hearing.

86.11 Variation and withdrawal

A judge may vary a direction, withdraw a direction, or withdraw an approval after giving reasonable notice to the court in the other jurisdiction.

Rule 87 - Communicating With a Judge

87.01 Scope of Rule 87

A person may communicate with a judge about a proceeding, in accordance with this Rule.

87.02 Communicating in writing

(1) A party may deliver correspondence for a judge to accompany a court document that must be delivered to the judge, to provide information requested by the judge, or to comply with a Rule or order requiring that something be delivered to a judge rather than filed.

(2) A party to a proceeding may deliver correspondence to a case management judge appointed under Rule 26A.02, of Rule 26A - Conference.

(3) Otherwise, a person may only deliver correspondence about a proceeding to a judge with the judge's permission.

(4) Delivery of correspondence includes delivering a copy of correspondence addressed to anyone other than the judge for whom the copy is delivered.

87.03 Other means of communicating

A person may communicate directly with a judge about a proceeding by means other than correspondence, such as by telephone or e-mail, only if the judge expressly permits the communication.

87.04 Obtaining permission

A party who needs to communicate out-of-court with a judge about a proceeding, other than by filing or delivering a court document, may request permission when the judge is in open court or holds a conference, or by directing the request to the prothonotary or the judge's assistant.

87.05 Emergencies outside business hours

(1) A party may request a judge who presides at a pretrial or prehearing conference to provide a means for contacting the judge outside business hours to report a settlement or deal with an emergency in relation to the trial or hearing.

(2) A person who does not have permission to contact a judge but who must make a motion outside business hours under Rule 28 - Emergency Motion, may obtain the permission in one of the following ways:

(a) if the motion is to be heard by a judge at the Law Courts in Halifax, or by a judge of the Family Division, request the commissionaire at the Law Courts to cause a message to be relayed to a judge;

(b) if the motion is to be heard by a judge outside Halifax, and not in the Family Division, contact the person designated by the court to relay a message to a judge in an emergency.

87.06 Unilateral communications

(1) A party who delivers correspondence to a judge must immediately deliver a copy to each other party entitled to notice of the communication under Rule 31.14, of Rule 31 - Notice.

(2) A person who has a judge's permission to communicate with the judge by means other than correspondence must make best efforts to include each party entitled to notice in the communication and, otherwise, must report on the communication to each of those other parties as soon as possible afterward.

Rule 88 - Abuse of Process

88.01 Scope of Rule 88

(1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court's processes.

(2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.

(3) This Rule provides procedure for controlling abuse.

88.02 Remedies for abuse

(1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:

(a) an order for dismissal or judgment;

(b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;

(c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;

(d) an order to indemnify each other party for losses resulting from the abuse;

(e) an order striking or amending a pleading;

(f) an order expunging an affidavit or other court document or requiring it to be sealed;

(g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;

(h) any other injunction that tends to prevent further abuse.

(2) A person who wishes to make a motion under section 45B of the *Judicature Act* may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is no such outstanding proceeding.

88.03 Unsustainable pleading

(1) It is not an abuse of process to make a claim, or raise a defence or ground of contest, that may on the pleadings alone be unsustainable, and such a claim, defence, or ground may be challenged under Rule 13 - Summary Judgment.

(2) A party or the prothonotary may make a motion to strike a pleading on the basis that it amounts to an abuse of process.

88.04 Motion by prothonotary

A prothonotary's motion to dismiss a proceeding on the basis of abuse may be made by appearance motion.

88.05 Separation of allegation that proceeding is abusive

(1) A judge may order that a defence or ground of contest alleging that a claim is an abuse of process be separated from the other issues raised in a proceeding and be tried or heard before the rest of the proceeding is determined.

(2) A judge who is required to decide whether to separate a defence or ground of contest alleging abuse of process must consider all relevant factors, including each of the following:

(a) whether facts to be found by the judge who determines the allegation of an abuse of process will also be in issue when the rest of the proceeding is determined;

(b) if some facts will remain in issue, whether the benefit of avoiding a risk of contradictory findings of fact outweighs the disadvantage of continuing a proceeding, and conducting a trial or hearing in a proceeding, under an allegation that the proceeding itself is an abuse of the court's process.

(3) A judge who orders separation of a defence or ground of contest based on abuse of process may give directions for the determination of the defence or ground and, in an action, the directions may include that the determination continue under Rule 5 - Application.

Rule 89 - Contempt

89.01 Scope of Rule 89

(1) This Rule provides procedures for starting and conducting a contempt citation, motion, or application.

(2) Rules outside this Rule apply to contempt processes, including the contempt hearing, with both of the following exceptions:

(a) a judge's direction for the conduct of the process prevails over another Rule;

(b) a Rule that cannot be adapted to the requirements of the *Canadian Charter of Rights and Freedoms* for a criminal or penal proceeding has no application to the contempt process.

89.02 Contempt and order for payment of money

A contempt order may not be granted to punish a failure to pay money, unless the failure is in violation of either of the following kinds of orders:

(a) an order for family maintenance or support;

(b) an order for recovery of money that expressly provides that a failure to turn over, or pay, funds may be punished as contempt.

89.03 Citation by judge

(1) A judge may start a contempt process by citing a person who is before the judge.

(2) A judge may order a person to appear before the judge for the purpose of being cited for contempt or, if the judge is satisfied the person will not obey the order, order the sheriff to bring the person before the judge.

(3) A citation for contempt must be given orally in open court by the judge who starts a contempt process.

(4) The judge must notify the person alleged to be in contempt of the time, date, and place of the contempt hearing, provide a precise description of the conduct alleged to be contemptuous, and advise the person of all of the following:

(a) the person is presumed innocent unless the contrary is proved beyond a reasonable doubt, is not required to give evidence, and is entitled to rely on the presumption of innocence whether or not the person gives evidence;

(b) the judge will preside at the hearing and determine whether the person is guilty of contempt, unless the judge decides that another judge should do so;

(c) if contempt in the face of the court is alleged and the judge is to determine the contempt proceeding, the judge's knowledge of what took place is part of the evidence;

(d) the person has the right to retain and instruct counsel and to be represented by counsel at the hearing;

(e) a person who cannot afford counsel may apply to Nova Scotia Legal Aid, and court staff will provide contact information;

(f) the person may choose to present no evidence, to present evidence by filing an affidavit before the hearing, or to present evidence after all of the evidence against the person is heard and cross-examination is complete;

(g) the person is required to attend the hearing and failure to attend may result in arrest.

(5) The judge may request the person's promise to attend at the appointed time, date, and place, or order the person to do so.

(6) The judge may provide particulars of the alleged contemptuous conduct in writing after the citation.

89.04 Motion or application by person other than judge

(1) A party, the prothonotary, a person appointed by the court to perform an act on behalf of the court, the Attorney General of Nova Scotia, or another interested person may do either of the following:

(a) make a motion for a contempt order in a proceeding to which the conduct alleged to be contemptuous relates;

(b) start an application for a contempt order, if the conduct alleged to be contemptuous does not relate to a proceeding.

(2) A judge may require parties to a contempt proceeding to attend at a prehearing conference.

(3) A judge who presides at a prehearing conference in a contempt proceeding may give directions for the conduct of the proceeding and the contempt hearing.

(4) A judge who is satisfied that a contempt proceeding started by notice of motion or application is not in the interests of any party, or is not in the public interest, may stay the proceeding.

89.05 Notice of motion for contempt order

(1) A person who wishes to make a motion for a contempt order may file a notice under Rule 23 - Chambers Motion, in the proceeding to which the alleged contemptuous conduct relates.

(2) A notice of motion for a contempt order must contain the standard heading of the proceeding, be entitled "Notice of Motion for Contempt Order", be addressed to the person sought to be held in contempt, and include all of the following:

(a) a statement that the person making the motion moves for an order holding the person in contempt and punishing the person for the contempt, including the full name of both persons;

(b) the time, date, and place at which the motion will be heard;

(c) the same information a judge provides for a citation about the presumption of innocence, right to counsel, and participation in the hearing;

(d) a reference to each affidavit relied on by the party, identified by the name of the affiant and either the date it was sworn or a brief description of the contents;

(e) a statement that the person has the right to require an affiant to be present at the hearing for cross-examination;

(f) a statement that the person may present evidence by filing an affidavit or calling a witness at the hearing.

(3) The notice of motion for a contempt order may be in Form 89.05.

(4) A person who files a notice of motion for a contempt order must give notice of the motion to the person sought to be held in contempt in accordance with provisions for giving notice of a proceeding to a party in Rule 31 - Notice, as if the notice of motion were an originating document.

(5) The notice of motion must be delivered in sufficient time that the applicable deadlines in Rule 23.11, of Rule 23 - Chambers Motion, can be met.

89.06 Notice of application for contempt order

A person who wishes to apply for a contempt order may file a notice that conforms with Rule 5 - Application and contains all of the applicable information a judge must provide on a citation.

89.07 Time for hearing, notice, and filing

(1) A judge, a member of the judge's staff, or the prothonotary who appoints a time for a contempt hearing must select the earliest available date that is consistent with all of the following:

(a) the need to swiftly respond to a contempt in the face of the court, if that is alleged;

(b) the need to respond without undue delay to contempt that is not in the face of the court;

(c) the right to a speedy hearing;

(d) the degree of complexity of the contempt process;

(e) a reasonable time for the person alleged to be in contempt to retain and instruct counsel, and for the person or counsel to prepare for the hearing.

(2) The person alleged to be in contempt must be notified of the motion or application as soon as possible.

89.08 Compelling attendance for motion or application

(1) A judge may order a person against whom a contempt order is sought, or an officer, director, or manager of a corporation against whom the order is sought, to attend at the time, date, and place appointed for the contempt hearing.

(2) A person who is ordered to attend a contempt hearing must be given notice of the order by personal service.

89.09 Disclosure and silence

A person against whom a contempt proceeding is started is entitled to the same disclosure, and to exercise the same right to remain silent, as a person against whom an information is laid under the *Criminal Code*.

89.10 Discovery

No person may examine a witness on discovery about any subject relevant to an outstanding citation, motion, or application for a contempt order, unless a judge permits.

89.11 Arrest, detention, and release

(1) A judge may issue a warrant for the arrest of a person against whom a contempt order is sought in either of the following circumstances:

(a) the person is notified of an order requiring the person to attend the contempt hearing, is present when such an order is made orally, or agrees on record to attend the hearing, but fails to attend at the time, date, and place appointed for the hearing;

(b) it is likely that the person will be found to be in contempt, that the person will repeat contemptuous behaviour, and that a party will suffer serious loss as a result of the repetition.

(2) An arrest warrant for a contempt hearing must contain the standard heading, be entitled "Arrest Warrant for Contempt Hearing", be addressed to the sheriff for the municipality in which the person resides, and include all of the following:

(a) the judge's findings by which the warrant is authorized;

(b) a direction that the sheriff arrest the person and bring the person before a judge on the day of the arrest;

(c) a direction to the sheriff to inform the person promptly of the reasons for the arrest, the purpose of the arrest and detention, and the person's right to retain and instruct counsel without delay;

(d) a direction to assist the person to seek, or communicate with, counsel if assistance is required.

(3) The arrest warrant for a contempt hearing may be in Form 89.11.

(4) The sheriff is not obligated to execute the warrant, unless a judge is available on the day of the arrest and at a time when the person can be brought before the judge.

(5) A judge before whom an arrested person is brought may do any of the following:

(a) release the person on the person's promise to attend a contempt hearing, or to refrain from contemptuous behaviour and abide by conditions of the person's release;

(b) obtain the person's promise, but continue the detention until the promise is made as a bond secured against property, secured against money paid to the prothonotary, or guaranteed by sureties approved by the judge in an amount set by the judge;

(c) remand the person to a lock-up facility until the time and date of a bail hearing or the contempt hearing.

(6) A person who is arrested and detained for a contempt hearing is entitled to bail on the same principles as a person who is detained for the trial of a summary conviction offence under the *Criminal Code*.

89.12 Conduct of hearing

(1) A contempt hearing may be conducted in accordance with the directions of the presiding judge and in accordance with the Rules outside this Rule 89 that are applicable under Rule 89.01(2).

(2) The judge may give directions that adapt those of the Rules that must be adapted to conform with the provisions of the *Canadian Charter of Rights and Freedoms* applicable to criminal or penal proceedings rather than civil proceedings.

89.13 Penalties for contempt

(1) A contempt order must record a finding of guilt on each allegation of contempt for which guilt is found and it may impose a conditional or absolute discharge, a penalty similar to a remedy for an abuse of process, or any other lawful penalty including any of the following:

(a) an order that the person must abide by stated penal terms, such as for house arrest, community service, or reparations;

(b) a suspended penalty, such as imprisonment, sequestration, or a fine suspended during performance of stated conditions;

(c) a fine payable, immediately or on terms, to a person named in the order;

(d) sequestration of some or all of the person's assets;

(e) imprisonment for less than five years, if the person is an individual.

(2) A contempt order may provide that a penalty ceases to be in effect when the person in contempt causes contemptuous behavior to cease, or when the person otherwise purges the contempt.

(3) A contempt order may provide for, or a judge may make a further order for, the arrest and imprisonment of an individual, or sequestration of the assets of a corporation, for failure to abide by penal terms, fulfill conditions of a suspended penalty, or comply with terms for payment of a fine.

89.14 Discharge and variation of contempt order

A judge may discharge or vary a contempt order.

Part 18 - Proceedings in the Court of Appeal

Rule 90 - Civil Appeal

90.01 Definitions

(1) In this Rule, unless the context requires otherwise,

"appeal" means an appeal to the Court of Appeal;

"appeal as to costs only" means an appeal in which costs is the only issue;

"appellant" means a person who brings an appeal and includes a person who makes an application for leave to appeal or for a reference;

"Chief Justice" means the Chief Justice of Nova Scotia;

"child protection appeal" means an appeal under Section 49 of the *Children and Family Services Act*;

"Court of Appeal" means the Nova Scotia Court of Appeal;

"court appealed from" means a court, judge, or tribunal from which an appeal is available to the Court of Appeal;

"file" means to file with the registrar;

"general appeal" means an appeal other than a tribunal appeal, child protection appeal, interlocutory appeal, and costs only appeal;

"interlocutory appeal" means an appeal of an interlocutory order;

"interlocutory order" in reference to an order under appeal, includes an interim order;

"judgment" means the formal disposition of an appeal by the Court of Appeal and includes an order for judgment, and, when referring to a judgment appealed from,

means the judgment, verdict, order, finding, direction, determination or award of the court appealed from;

"registrar" means the registrar of the Court of Appeal, and includes a deputy registrar;

"respondent" means a person against whom the appellant brings an appeal, and any other person other than an intervenor who is authorized by the Court of Appeal or a judge to be a party to the appeal;

"tribunal" means any person or body, from whom an appeal lies to the Court of Appeal, including any board, commission, committee, municipal authority, Minister, public official, or other public or governmental agency or authority such as the Governor in Council, but only includes a court, judge or magistrate that reserves, refers or states a matter to the Court of Appeal;

"tribunal appeal" means an appeal from a decision or order of a tribunal.

90.02 Scope of Rule 90

(1) The *Civil Procedure Rules* that are not inconsistent with this Rule apply to proceedings in the Court of Appeal with necessary modifications as directed by the Court of Appeal or a judge of the Court of Appeal.

(2) A person may do any of the following, in accordance with this Rule:

(a) bring or respond to an appeal before the Court of Appeal;

(b) bring or respond to an application for an order for leave to appeal;

(c) make an application to have a reference, stated case or similar proceeding presented to the Court of Appeal.

90.03 Sittings of the court

(1) The Court of Appeal must sit at Halifax, and it may sit elsewhere, as the Chief Justice directs.

(2) The terms of sittings of the Court of Appeal are from and to the following days, inclusive of those days, unless the Chief Justice directs otherwise:

(a) the second Tuesday of January to the third Friday of February;

(b) the second Tuesday of March to the third Friday of April;

(c) the second Tuesday of May to the third Friday of June;

(d) the second Tuesday of September to the third Friday of October;

(e) the second Tuesday of November to the second Friday of December.

(3) Each appeal must be heard and determined by a panel of three or more judges of the Court of Appeal.

(4) The Chief Justice, and in the absence of the Chief Justice the next senior judge on the panel other than a supernumerary judge, must preside at a sitting of the Court of Appeal.

90.04 Starting an appeal

A person may bring an appeal by filing a notice of appeal with the registrar, in accordance with this Rule 90.

90.05 Notices of appeal

(1) An appeal must be started by filing a notice of appeal (general) in the form prescribed in Rule 90.06, except each of the following kinds of proceedings must be started by filing one of the following special notices:

(a) a tribunal appeal, by notice of appeal (tribunal) under Rule 90.07;

(b) an appeal under Section 49 of the *Children and Family Services Act*, by notice of appeal (child protection) under Rule 90.08;

(c) an application for leave to appeal and appeal of an interlocutory order, by notice of appeal (interlocutory order) under Rule 90.09;

(d) an application for leave to appeal and appeal as to costs only, by notice of appeal (costs only) under Rule 90.10.

(2) Despite the requirements to start an appeal by a prescribed notice, an appeal may be started by filing a notice as prescribed in the legislation, if the legislation prescribes another kind of notice or other method.

(3) A notice of appeal and an application for leave to appeal must be filed by the deadlines in Rule 90.13.

90.06 Notice of appeal (general)

(1) A notice of appeal (general) must have the standard heading as shown in Form 90.06, be entitled "Notice of Appeal (General)", be dated and signed by each appellant or their counsel, and include all of the following:

(a) a notice that the appellant appeals a judgment, including the name of the court appealed from, the date of the order or decision, the effect of the order or decision, and in the case of an appeal from a court order, the court number and name of judge;

(b) a statement of whether the whole or a part of the order or judgment under appeal is being appealed from, and if it is a part, a statement describing the part;

(c) a concise statement of all grounds of appeal, a citation of the statutory authority for the appeal, and a concise description of the order to be sought at the conclusion of the appeal;

(d) a statement that the appellant will, no later than eighty days after the day the notice of appeal is filed, make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions;

(e) if there is only one appellant, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for delivery to all or separate addresses for each;

(f) the names and addresses of the persons to whom a copy of the notice of appeal is to be delivered.

(2) The notice of appeal (general) may be in Form 90.06.

90.07 Notice of appeal (tribunal)

(1) A provision in legislation prescribing the procedures to be followed for a tribunal appeal, including a provision prescribing how and when the appeal must be brought, and to whom the notice of appeal must be delivered, prevails over any inconsistent provision of this Rule 90, other than Rules made pursuant to s. 50 of the *Judicature Act*.

(2) An application for leave to appeal pursuant to the *Workers' Compensation Act* must be made in Form 90.07A and if leave to appeal is granted a notice of appeal (tribunal) in accordance with this Rule must be filed.

(3) A notice of appeal (tribunal) must be entitled "Notice of Appeal (Tribunal)", be dated and signed by each appellant or their counsel, include everything required for a notice of appeal (general), add as respondents the Attorney General of Nova Scotia and the tribunal as required by Rule 90.16(6), and it must include a notice to the respondent that the respondent may only participate in the appeal as a respondent if the respondent files a notice of intention to participate in the tribunal appeal no more than ten days after the notice of appeal is delivered to the respondent;

(4) The notice of appeal (tribunal) may be in Form 90.07B.

90.08 Notice of appeal (child protection)

(1) A notice of appeal (child protection) must have the standard heading as shown on Form 90.08, be entitled "Notice of Appeal (Child Protection)", be dated and signed by each appellant or their counsel, and include everything required in a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include the time and date when the appellant will make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties.

(2) An appellant in a child protection appeal must make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.

(3) The motion must be made no later than ten days following the filing of the notice of appeal, failing which the appeal shall be deemed dismissed unless a judge orders otherwise.

(4) The notice of appeal (child protection) may be in Form 90.08.

90.09 Notice of appeal (interlocutory)

(1) A notice of appeal (interlocutory) must have the standard heading as shown on Form 90.09, be entitled "Notice of Application for Leave to Appeal and Notice of Appeal (Interlocutory)", be dated and signed by each appellant or their counsel, and include everything required for a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include:

(a) the time, and date when the appellant will make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties;

(b) a notice that the judge of the Court of Appeal and the Court of Appeal may proceed in the absence of the respondent, and the Court of Appeal may determine the appeal, if the respondent, or their counsel, does not attend the motion for directions.

(c) an application for leave to appeal.

(2) An appellant in an interlocutory appeal, within the deadlines in Rule 90.25(2), must make a motion to a judge of the Court of Appeal to set the time and date for the leave application and the appeal to be heard, and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.

(3) The notice of application for leave to appeal and notice of appeal (interlocutory) may be in Form 90.09/90.10.

(4) An appeal from an interim or costs order made under the *Divorce Act* requires leave to appeal and must be filed as a notice of application for leave to appeal and notice of appeal (interlocutory) in accordance with Rules 90.09 or 90.10, although the deadline to start the appeal is governed by the *Divorce Act* as set out in Rule 90.13(3).

90.10 Notice of appeal (costs only)

(1) A notice of appeal (costs only) must have the standard heading as shown on Form 90.10, be entitled "Notice of Application for Leave to Appeal and Notice of Appeal (Costs Only)", be dated and signed by each appellant or their counsel, and include everything required for a notice of appeal (general), except instead of including a statement that the appellant will make a motion for directions at a future date, it must include the additional statements required for notice of appeal (interlocutory) as set out in Rule 90.09(1).

(2) An appellant in a costs appeal, within the time limit stated in Rule 90.25(2), must make a motion to a judge of the Court of Appeal to set the time and date for the leave application and the appeal to be heard, and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.

(3) The notice of application for leave to appeal and notice of appeal (costs only) may be in Form 90.09/90.10.

90.11 Ground and decision

(1) An appellant may not rely on any ground of appeal not specified in the notice, unless the Court of Appeal or a judge of the Court of Appeal permits otherwise.

(2) A copy of the decision and order must be filed with the notice of appeal, if the decision or order is in writing.

90.12 Leave to appeal

(1) An application for leave to appeal must be made to a judge of the Court of Appeal, unless legislation requires the application to be made to the Court of Appeal.

(2) The judge who hears the application for leave may refer the application to the Court.

(3) A party who makes an application for an order for leave to appeal may include the notice of application in the notice of appeal.

90.13 Deadline for starting appeal

(1) An appeal under legislation that provides a deadline for starting the appeal must be started no later than the time provided in the legislation and the calculation of the days shall be according to Rule 90.13(2).

(2) For the purposes of section 49 of the *Judicature Act*, Rules 94.02(1) to (4) apply to the calculation of a period of days provided in a provincial statute for starting an appeal, or applying for permission to appeal, and the period is not calculated as provided in the *Interpretation Act* or in any other statute.

(3) An appeal, or application for leave to appeal, from one of the following kinds of orders, or from the decision upon which it is based, must be started no more than the number of days in the following table after the date of the order, unless legislation provides, or a judge of the Court of Appeal permits, otherwise:

Kind of Order	***Number of Days After***
under *Divorce Act*, including an interim or costs order	30 days, within the meaning of *Divorce Act*
under *Workers' Compensation Act*	30 days, within the meaning of Rule 94
interlocutory or costs only order of judge or court	10 days, within the meaning of Rule 94
other order of judge or court	25 days, within the meaning of Rule 94

order of tribunal	25 days, within the meaning of Rule 94

(4) An appeal from a decision of a court or tribunal that has not issued an order must be started no more than the number of days stated for the applicable proceeding listed in the above table, after the day the decision is made, unless legislation provides, or a judge of the Court of Appeal permits otherwise.

90.14 Delivery of Notice of Appeal

The appellant must deliver the notice of appeal or notice of application for leave to appeal to each respondent by the deadline in Rule 90.13(3).

90.15 Appeal from decision

A person may appeal from a decision for which no order is issued, and the person must file the order before the appeal is set down for hearing unless the decision is of a tribunal that does not issue an order.

90.16 Parties

(1) An appellant must join as a respondent each other party to the proceedings under appeal and who is not an appellant.

(2) A person who applies to be joined as a respondent in an appeal must include in the affidavit in support of the motion a statement of the person's interest in the appeal and a summary of the position the person will take on the appeal.

(3) The appellant must join as a respondent, the Attorney General of Nova Scotia or the Minister of Community Services, on whom a notice of appeal is required to be served under this Rule 90.

(4) A judge of the Court of Appeal in a tribunal appeal may direct the appellant to notify a person of the appeal by delivering a certified copy of the notice of appeal to the person.

(5) An appellant must deliver a copy of the notice of appeal to the court appealed from, for the information of the judge who made the decision.

(6) An appellant on a tribunal appeal must join as respondents the Attorney General of Nova Scotia and the tribunal appealed from.

(7) An appellant in a tribunal appeal who is uncertain as to whether a further person needs to be joined as a party or is uncertain as to the form of notice may seek clarification from a judge of the Court of Appeal at the hearing of the appellant's motion for directions.

(8) A judge of the Court of Appeal may order that a person be joined as a respondent.

90.17 Notification

(1) An appellant may deliver a copy of the notice of appeal and any other document in one of the following ways:

(a) as agreed with the respondent;

(b) by faxing or hand delivering a certified copy of the document to the respondent's counsel;

(c) in accordance with the provisions of Rules 31.02 to 31.10 for notifying a party of an action or application.

(2) A party who makes a motion in an appeal must notify the other parties of the motion by delivering a copy of a notice of motion to the other parties.

(3) A party who files a document in an appeal must deliver a copy of the document to each other party immediately before or immediately after it is filed.

(4) An appellant may notify a person who is not a party to an appeal by delivering a certified copy of the notice of appeal to the person referred in accordance with Rule 31.03(1).

(5) A party or the registrar may make a motion to a judge of the Court of Appeal for directions as to how the party must notify a person who is not a party to the appeal.

(6) A copy of a notice of appeal (child protection) must be delivered to the Minister of Community Services by the deadline for starting the appeal in accordance with Rule 90.13(2).

90.18 Constitutional and other questions of public importance

(1) If a constitutional question or other question of public importance is raised by an appeal, the following applies:

(a) a party may, or on direction of the Court of Appeal, a judge of the Court of Appeal or the registrar, a party must, give notice of the question to the Attorney General of Canada or to the Attorney General of Nova Scotia, by delivering the notice to the Attorney General;

(b) the Attorney General of Canada, the Attorney General of Nova Scotia, or the Attorney General of any other Province of Canada, may make a motion under Rule 90.16 to be added as a respondent or an intervenor in an appeal by filing a notice of motion (intervention on question).

(2) A notice to the Attorney General is given, for notice to the Attorney General of Canada, in accordance with Rule 31.03(1)(k), and, for notice to the Attorney General of Nova Scotia, in accordance with Rule 31.03(1)(j) by delivering both of the following:

(a) a copy of the notice of appeal;

(b) a document describing the question.

(3) A notice of motion (intervention on question) must be filed no more than fifteen days after the day the notice of appeal is delivered to the Attorney General.

90.19 Intervention

(1) A person may intervene in an appeal with leave of a judge of the Court of Appeal.

(2) A judge of the Court of Appeal may make an order granting leave to intervene on terms and conditions the judge sets.

(3) A person who wishes to intervene in an appeal may make a motion to a judge of the Court of Appeal for leave to intervene by filing a notice of motion for leave.

(4) The notice of motion for leave to intervene must be filed either before the motion for date and directions or, with leave of a judge, thereafter.

(5) A motion for leave must concisely describe all of the following:

(a) the intervenor;

(b) the intervenor's interest in the appeal;

(c) the intervenor's position to be taken on the appeal;

(d) the submissions to be advanced by the intervenor, their relevancy to the appeal, and the reasons for believing that the submissions will be useful to the Court of Appeal and will be different from those of the parties.

(6) An intervenor's factum must not exceed twenty-five pages, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal.

(7) An intervenor is bound by the content of the appeal books and may not add to them, unless a judge of the Court of Appeal directs otherwise.

(8) An intervenor may present oral argument only if permitted by the Court of Appeal or a judge of the Court of Appeal.

90.20 Participation in tribunal appeal

(1) A respondent in a tribunal appeal may only participate in the appeal if the respondent files a notice of intention to participate in a tribunal appeal.

(2) A notice must include a statement of intention to participate in the appeal and be filed no more than ten days after the day the notice of appeal is delivered to the respondent.

(3) The notice to participate in a tribunal appeal must begin with the standard heading, be entitled "Notice to Participate in Tribunal Appeal", be dated and signed by each respondent or their counsel, and include the address for service of documents on the respondent.

90.21 Cross-appeal

(1) A respondent who seeks an order setting aside or varying the judgment under appeal must cross-appeal.

(2) The respondent may cross-appeal by filing a notice of cross-appeal.

(3) The respondent must file the notice of cross-appeal no more than ten days after the day the notice of appeal is delivered to the respondent.

(4) A notice of cross-appeal must have the standard heading, be entitled "Notice of Cross-appeal", be dated and signed by the respondent who cross-appeals or their counsel, and otherwise include everything required for a notice of appeal (general) under Rule 90.06, modified as required.

(5) A respondent may not rely on any ground of appeal not specified in the notice of cross-appeal, unless the Court of Appeal or a judge of the Court of Appeal permits.

(6) After filing a cross-appeal, the respondent may make a motion to a judge of the Court of Appeal respecting directions, notification, and setting down dates for hearing the cross-appeal and a judge may make such order as the judge considers just.

90.22 Respondent's notice of contention

(1) A respondent who does not cross-appeal and wishes to contend that the judgment under appeal should be affirmed for reasons different than those expressed in the decision or the judgment under appeal must file a notice of contention.

(2) The respondent must file the notice of contention no more than ten days after the day the notice of appeal is delivered to the respondent.

(3) A notice of contention must be entitled "Notice of Contention", have the standard heading, be dated and signed by each respondent who wishes to contend on the appeal, and include a concise and complete summary of the alternative grounds put forward by the respondent for upholding the decision under appeal.

(4) A failure of a respondent who contends for affirmation for different reasons to file a notice of contention does not diminish the power of the Court of Appeal, but it may be grounds for an adjournment and an order for costs.

90.23 Reference

An application made by an Attorney General or other person to make a reference under the *Constitutional Questions Act* or other statute must be made by notice of motion under these Rules and in accordance with the provisions of this Rule 90 respecting directions, notification, and setting down dates for hearing the reference, and a judge of the Court of Appeal hearing the motion may make such order as the judge considers just.

90.24 Stated Case

(1) A court, tribunal, commission, or other party allowed by legislation wishing to refer a question of law to the Court of Appeal for an opinion, must state a case in writing setting forth the question or questions of law to be answered and file it with the Court of Appeal.

(2) After filing a stated case, the referring court, tribunal or party, or any party to the proceeding may make a motion to a judge of the Court of Appeal respecting directions, notification, and setting down dates for hearing the stated case and the judge may make such order as the judge considers just.

90.25 Motion for date and directions

(1) An appellant must make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and to provide directions for the appeal, including as to the appeal book and factums to be filed by the parties, and the judge may make such order as the judge considers just.

(2) The motion to set the time and date and for directions must be scheduled by the appellant and heard no more than the number of days in the following table after filing the kind of notice of appeal stated in the table:

Kind of Notice	*Number of Days as defined in Rule 94*
notice of appeal (general)	80
notice of appeal (tribunal)	25
notice of appeal (child protection)	10
notice of appeal (interlocutory)	15
notice of appeal (costs only)	15

(3) The notice of motion to set a time and date for the hearing and for directions in an interlocutory, costs only, or child protection appeal must be included in the notice of appeal.

90.26 Certificate of Readiness

(1) Except as provided in Rule 90.26(4), an appellant must file a certificate of readiness in Form 90.26 in support of the motion for directions no less than four days before the day the motion is to be heard.

(2) By the certificate of readiness, the appellant or the appellant's counsel must certify all of the following:

(a) the court appealed from has issued a formal order;

(b) the appellant has a paper copy of the written decision under appeal,

(c) the appellant has ordered copies of the audio recordings from the appropriate court;

(d) the appellant has ordered the transcription of the audio recordings from a certified court reporter;

(e) the appellant has been informed by the certified court reporter that the transcription will be completed by a specified date;

(f) the appellant will be able to file the appeal book by a specified date;

(g) the appellant has sent a copy of the notice of appeal to the judge or, in a tribunal appeal, to the tribunal, from whose decision the appeal is taken.

(3) If no written decision is filed with the registrar, the appellant or the appellant's counsel must undertake to send a copy of the transcribed oral decision to the judge or tribunal appealed from as soon as it is received from the court reporter.

(4) An appellant who is unable to comply with Rule 90.26(1) must file an affidavit in support of the motion for directions, explaining the omission.

90.27 Motion by respondent for directions

(1) A respondent in an appeal may make a motion to a judge of the Court of Appeal to set the time and date for the appeal to be heard and for directions for the appeal, including as to the appeal book and factums to be filed by the parties.

(2) A notice of motion for a date and directions must be filed no less than four days before the day of the hearing.

90.28 Registrar's request for documents

(1) The registrar on the filing of a notice of appeal, other than an appeal as to costs only or a tribunal appeal, must as soon as possible request the prothonotary or clerk of the court appealed from to transmit to the registrar the pleadings, documentary exhibits, and other papers in the proceeding being appealed and a list of any exhibits that are not documents.

(2) A judge of the Court of Appeal may direct a tribunal to deliver to the registrar a transcript, exhibit, or other document for use on the appeal.

(3) The prothonotary, clerk of the court, or tribunal who receives a request from the registrar or a direction of a judge of the Court of Appeal must comply with the request or the direction as soon as practicable.

90.29 Obtaining transcript

(1) An appellant who appeals from a decision or order of a court or judge must request a copy of the audio recording of the proceeding from the prothonotary or clerk of the court appealed from, and pay the prescribed fee to the prothonotary or clerk.

(2) The prothonotary or clerk, on receipt of the prescribed fee from the appellant, must provide the appellant with an audio recording of the entire hearing of the proceedings, including evidence, the oral submissions and all oral rulings and decisions.

(3) An appellant who appeals from a decision or order of a tribunal must request a copy of the entire record of the proceedings before the tribunal and pay the prescribed fee for the copy to the tribunal.

(4) The tribunal or other person or body that holds the record must, on receipt of the request and the prescribed fee from the appellant, provide the appellant with a copy of the entire record of the proceedings, including all rulings and decisions.

(5) The appellant must cause a transcript of the proceeding to be prepared by a certified court reporter, unless legislation provides otherwise or a judge permits otherwise.

(6) A party may request that a transcript of the proceedings be prepared by a transcriptionist outside of Nova Scotia. Upon being satisfied that the proposed transcriptionist holds a certification in a Canadian jurisdiction equivalent to a certified court transcriber or court reporter, the Registrar may grant permission for their preparation of the transcript.

90.30 Appeal book

(1) An appellant must do both of the following unless a judge of the Court of Appeal permits otherwise:

(a) file five copies of the appeal book for the use of the Court of Appeal;

(b) deliver a copy of the appeal book to each respondent.

(2) An appeal book must be in the format required by Rule 90.30(3) and consist of the following two parts, containing all of the following in each part, unless a judge of the Court of Appeal directs otherwise:

(a) Part 1 - Pleadings and Related Documents:

(i) a table of contents describing each document,

(ii) a copy of the notice of appeal and any notice of cross-appeal or respondent's notice of contention,

(iii) a copy of the order or decision appealed from,

(iv) a copy of the pleadings, including any particulars,

(v) a reference sheet containing the heading and file number of the proceeding under appeal, the name of the judge, and the dates of the hearing and of the decision in the court appealed from;

(b) Part 2 - Evidence and Related Materials:

(i) an index of witnesses describing each witness, including the name of the witness, the party who called the witness, and the page reference in the appeal book where the direct examination, cross-examination, or re-direct examination begins,

(ii) a list of all exhibits,

(iii) a copy of the transcript of everything said in the course of the proceedings under appeal, including all of the following:

(a) a headline on each page stating the name of the witness and whether it is direct examination, cross-examination, or redirect examination;

(b) unless the individual lines of transcript are numbered, the questions must be numbered consecutively, and each question to be preceded by the letter "Q" and each answer by the letter "A";

(c) a copy of any written submissions and the transcript of submissions made,

(iv) a copy of each document or electronic information admitted into evidence, indexed and numbered as at the trial, including a statement of facts, affidavit, written admission, or discovery transcript, if it is not reproduced in the transcript of evidence,

(v) a statement of facts agreed to by the parties instead of any part or all of the transcript, document, electronic information required by Rules (iii), (iv),

(vi) a copy of any charge to the jury, certified by the trial judge to be accurate.

(3) An appeal book referred to in Rule 90.30(2) must be in a format that conforms with all of the following:

(a) be printed double-spaced on letter-size paper with printing on both sides of the paper and page numbering in the upper right corner of odd-numbered pages and the upper left corner of even-numbered pages;

(b) be bound with a plastic coil binder, divided into a separate volume for each Part, unless Part 2 is not lengthy;

(c) use a typing font of no less than twelve point, and be left-side justified, so as to be consistent with the format in these Rules;

(d) for the transcript,

(i) have margins for each page of transcript that are two inches on the bottom of the page and one inch on the top and sides of the page, and

(ii) use a typing font of no less than twelve point;

(e) have a cover that is grey and has marked on it the short title of the appeal, and each volume have marked on it its number and the number of each Part, and if a Part contains more than one volume, have each volume repeat the table of contents and show on its cover the page numbers contained in it;

(f) All pages of the appeal book must be numbered consecutively starting at page 1. However, if the transcript is bound in a separate volume, the pages of the transcript may have separate page numbering starting at page 1. If there is more than one transcript, each transcript must be either in a separate volume or separated by tabs within one volume.

(4) Parties to an appeal may make an agreement to avoid the expense or delay of reproducing material unnecessary for the appeal by abridging all or part of the transcript of evidence or of any other material otherwise required to be included in the appeal book, or substituting an agreed statement of facts instead of a transcript or exhibit.

(5) A party may make a motion to a judge of the Court of Appeal for an order abridging a requirement for the form or content of the appeal book.

(6) An appellant must file an electronic copy of the transcript in a format satisfactory to the registrar, in addition to filing paper copies, unless the registrar or a judge of the Court of Appeal orders otherwise.

(7) An appeal book may not be filed by fax.

90.31 Appeal book - appeal as to costs only

An appeal book in an appeal as to costs only must be in the format required by Rule 90.30(3) and consist of all of the following, unless a judge of the Court of Appeal directs otherwise:

(a) a table of contents describing each document;

(b) a copy of the notice of appeal;

(c) a copy of the order and decision appealed from;

(d) a copy of the pleadings, including any particulars;

(e) any offers to settle, exhibits and evidence relevant to the appeal;

(f) a reference sheet containing the heading and file number of the matter appealed, the name of the judge, and the date of the hearing and of the decision in the court below;

(g) a transcript of submissions made.

90.32 Factum

(1) An appellant must do both of the following no more than ten days after the day the appeal book is delivered, or when a judge of the Court of Appeal directs:

(a) file five copies of a factum for the use of the Court of Appeal;

(b) deliver a copy of the factum to each respondent.

(2) A respondent must do both of the following no more than ten days after the day the appellant's factum is delivered, or when a judge of the Court of Appeal directs:

(a) file five copies of a factum for the use of the Court of Appeal;

(b) deliver a copy of the factum to each other party.

(3) A factum must be in the format required in Rule 90.32(4) and consist of all of the following parts and appendices:

(a) Part 1 - Concise Overview of the Appeal;

(b) Part 2 - Concise Statement of Facts;

(c) Part 3 - List of Issues;

(d) Part 4 - Standard of Review for each Issue;

(e) Part 5 - Argument (containing a summary of the submissions on each issue);

(f) Part 6 - Order or Relief Sought (including any order as to costs);

(g) Appendix A - List of Citations referred to in Part 5;

(h) Appendix B - Statutes and Regulations (include the text of relevant statutory provisions).

(4) A factum referred to in Rule 90.32(3) must be in a format that conforms with all of the following:

(a) be printed in no less than a twelve point font, double-spaced on letter size paper with printing on one side of the paper only with the typed pages to the left;

(b) include a table of contents for the Parts and Appendices;

(c) have each page numbered consecutively, after the table of contents;

(d) have each paragraph numbered consecutively;

(e) if an authority cited in the factum is reproduced in the book of authorities, refer to the authority by its tab number or letter used in the book of authorities;

(f) for the appellant's factum, have a cover that is coloured buff or yellow, and for the respondent's factum, including a cross-appellant's factum, have a cover that is coloured green or blue;

(g) not exceed forty pages in length, excluding the appendices, unless a judge of the Court of Appeal permits otherwise.

(5) A respondent who cross-appeals or files a notice of contention on a matter not conveniently covered by the respondent's factum must file and deliver with their factum a second factum, and the appellant who wishes to submit a factum in response must file and deliver their factum no later than five days after the day the respondent's factum is delivered.

(6) Every party to an appeal must, unless the registrar or a judge of the Court of Appeal orders otherwise, file an electronic copy of the factum in a format satisfactory to the registrar, in addition to filing a paper copy.

(7) A factum may not be filed by fax.

90.33 Book of authorities

(1) A party to an appeal who wishes to rely on authorities in argument, such as a judicial decision or a scholarly article, must file five copies of a book of authorities at the same time that the party files a factum, unless the parties have agreed to file a joint book of authorities.

(2) Parties must make best efforts to agree on, prepare, and file a joint book of authorities. Five copies of a joint book of authorities must be filed at the same time that the respondent's factum is filed.

(3) An intervenor who files a book of authorities must not duplicate anything included in the appellant's or respondent's book of authorities.

(4) A book of authorities must have all of the following:

(a) a cover that contains the title "Book of Authorities";

(b) a secure binding;

(c) a table of contents identifying each authority;

(d) a copy of each authority cited in the party's factum in alphabetical order and marked with a tab numbered or lettered consecutively;

(e) numbered pages only if the authority does not clearly provide its own page numbering;

(f) excerpts of authorities to be relied on indicated by page or paragraph references, and highlighted by underlining the relevant passage or marking the passage in the margin of the text.

(5) The entire table of contents must be included in each volume if the authorities are contained in more than one volume.

90.34 Motions

(1) A party may make either of the following kinds of motions:

(a) a motion to the Court of Appeal, in accordance with Rule 90.36;

(b) a motion to a judge of the Court of Appeal, in accordance with Rule 90.37.

(2) A notice of motion to the Court of Appeal and a notice of motion to a judge of the Court of Appeal must include all of the following:

(a) a concise statement of the grounds for the motion;

(b) a reference to the Rule or statute under which the motion is brought;

(c) a statement describing the proposed order;

(d) the time and date when, and the place where, the motion is to be heard;

(e) a reference to each affidavit relied on by the party making the motion, identified by the name of the affiant and either the date it was sworn or affirmed to or a brief description of its contents;

(f) a statement that the other party may file an affidavit or a brief, and attend the hearing of the motion;

(g) a warning that an order may be made if the other party does not attend.

(3) A reference in this Rule 90 to a motion to the Court of Appeal means a motion under Rule 90.36, unless the Rule making the reference provides otherwise.

(4) A reference in this Rule 90 to a motion to a judge of the Court of Appeal means a motion under Section 90.37, unless the Rule making the reference provides otherwise.

(5) A person who wishes to make a motion must make the motion on notice, unless they satisfy the Court of Appeal or a judge of the Court of Appeal that it is properly made *ex parte*.

(6) The *Civil Procedure Rules* governing motions in the Supreme Court of Nova Scotia, that are not inconsistent with Rule 90, apply to motions in the Court of Appeal, as are required for the orderly conduct of the motion.

90.35 Motion by correspondence

(1) A party may make a motion to a judge by delivering correspondence in any of the following circumstances:

(a) the party seeks an adjournment or dismissal of an *ex parte* motion made by the party;

(b) with the consent of the other parties, the party seeks an adjournment or dismissal of a motion made on notice;

(c) the party moves for a consent order;

(d) if the respondent consents to the motion being made by correspondence;

(e) a judge permits a motion to be made by correspondence to that judge.

(2) A party who wishes to have a motion decided on the basis of correspondence other than in the circumstances provided for in Rule 90.35(1) must make a request in the notice of motion.

(3) A respondent who receives a notice of motion that requests that the motion be decided on the basis of written correspondence must do either of the following:

(a) if the respondent does not object to disposition of the motion in writing, respond in writing to the notice of motion;

(b) if the respondent objects to disposition of the motion in writing, indicate in their brief the reasons why the motion should not be disposed of in writing.

(4) A moving party who receives the respondent's response in writing may file written representations in reply no later than four days after the day the respondent's response in writing is delivered.

(5) A judge of the Court of Appeal may give directions for the disposition of a motion in writing, dispose of the motion on the basis of the written submission, or fix a time and date for an oral hearing of the motion.

(6) The Registrar may, upon a motion or request made in writing by a party, extend a deadline for filing that was previously ordered or directed by a judge provided that:

(a) all other parties entitled to notice consent to the extension, and

(b) the extended deadline does not fall within 30 calendar days of the appeal hearing.

90.36 Motion to the Court of Appeal

(1) A motion may be made to the Court of Appeal, in accordance with this Rule 90.36.

(2) A motion may be made to the Court of Appeal in any appeal or other matter in which a motion may be made to the Court of Appeal by notice, application, motion, petition, or otherwise under this Rule 90.36, another Rule in these Rules, any other Rules, the *Supreme Court Act* (Canada), or other legislation.

(3) A person who intends to make a motion to the Court of Appeal must first make a motion for a date and directions to a judge in accordance with Rule 90.25. At the hearing of the motion for date and directions, the judge may, respecting the motion to the Court, assign dates for the filing of affidavits, written submissions, providing confirmation of whether cross-examination on affidavits will be sought and such further direction as may be required.

90.37 Motion to a judge of the Court of Appeal

(1) A motion to a judge of the Court of Appeal may be made or responded to, in accordance with this Rule 90.37.

(2) A judge of the Court of Appeal has and may exercise any power necessary to deal with a motion made to the judge under this Rule 90.37 or any other Rule, or other legislation.

(3) A motion to a judge of the Court of Appeal, whether required to be made by notice, application, motion, petition, or otherwise, must be made by filing a notice of motion.

(4) A brief of the points of argument, including a list of authorities relied on must be filed with the notice of motion.

(5) A notice of motion to a judge of the Court of Appeal, with draft order, any affidavit, memorandum, and other supporting material, must be filed and delivered no later than four days before the date of the hearing of the motion, or such other time required by the Rule or legislation authorizing the motion.

(6) A party opposing a motion may file and deliver any affidavit or brief no less than two days before the date of the hearing of the motion, unless a judge otherwise orders.

(6.1) A party who intends to cross-examine an affiant must, no later than one clear day before the hearing, notify in writing each other party and the Registrar of their intent to do so.

(7) A motion must be heard by a chambers judge of the Court of Appeal designated from time to time by the Chief Justice.

(8) Uncontested motions and motions for dates and directions may be made by telephone conference by making prior arrangements with the Deputy Registrar of the Court of Appeal.

(9) Contested motions may be heard by telephone with leave of the Chambers judge.

(10) A motion must be heard in chambers at the Law Courts at Halifax every Thursday at ten o'clock in the morning, unless a judge of the Court of Appeal otherwise permits.

(11) A motion may be made *ex parte* in one of the following circumstances:

(a) legislation or a Rule permits the motion to be made *ex parte*;

(b) the other party waives notice in writing or consents to the proposed order;

(c) the judge authorizes the motion to be made *ex parte*;

(12) A judge of the Court of Appeal hearing a motion, in addition to any other powers, may order any of the following:

(a) a notice of motion be delivered to a person as the judge directs and a hearing be adjourned to permit the delivery;

(b) delivery of notice on a person be dispensed with;

(c) a motion be adjourned, continued, or dismissed if a person who ought to have received delivery did not receive delivery;

(d) the motion be referred to the Court of Appeal for hearing and disposition;

(e) a particular requirement of a form be dispensed with;

(f) counsel be appointed to represent a party to an appeal under the *Children and Family Services Act*, where the Court of Appeal is authorized to do so;

(g) a person detaining a party to bring the party before the Court of Appeal for the hearing of a motion or of the appeal or for any other business the person has with the Court of Appeal;

(h) that any time prescribed by this Rule 90 be extended or abridged before or after the expiration thereof.

(13) The hearing of a motion under Rule 90.36 or 90.37 is conducted in accordance with the procedures and rules of evidence set out in Part 6 - Motions.

(14) A judge of the Court of Appeal may order costs of a motion be paid by a party to another party.

(15) A judge of the Court of Appeal, on motion, may make an order to do any of the following, until the Court of Appeal provides a further order:

(a) allow the use of pseudonyms in the pleadings;

(b) impose a publication ban;

(c) require a sealing of a court file;

(d) require a hearing to be *in camera*.

90.38 Review of order of judge

(1) In this Rule 90.38,

(a) a reference to the "Chief Justice" includes a judge designated by the Chief Justice for the purpose of this Rule;

(b) "party" includes an intervenor under Rule 90.19.

(2) An order of a judge of the Court of Appeal in chambers is a final order of the Court of Appeal, subject only to review under this Rule 90.38.

(3) An order of a judge in chambers that disposes of an appeal may be reviewed by a panel of the Court of Appeal, with leave of the Chief Justice.

(4) A party who requests leave to review an order of a judge must file a notice of motion by correspondence for leave to review with the Chief Justice and deliver the notice to the other parties to the appeal, no more than seven days after the date of the order to be reviewed.

(5) A party who opposes a motion for leave to review must file with the Chief Justice, and deliver to the other parties, a reply no more than seven days after the date of the filing of the motion for leave to review.

(6) The Chief Justice may do any of the following on a motion for leave to review:

(a) dismiss the motion for leave to review;

(b) set the motion down for hearing;

(c) grant leave to review the order of the judge in chambers if the Chief Justice is satisfied that the judge acted without authority under the rules, or the order is inconsistent with an earlier decision of a judge in chambers or the Court of Appeal, or that a hearing by a panel is necessary to prevent an injustice.

(7) The Chief Justice need not give reasons for the determination of a motion under this Rule.

(8) If leave is granted, the Chief Justice must set a time and date for the hearing of the review before a panel of the Court of Appeal and give directions for the filing of factums and other material.

(9) A judge may not sit as a member of the panel of the Court of Appeal hearing an appeal from the judge's order.

(10) An order granting leave to review under this Rule 90.38 is a final order of the Court of Appeal and is not subject to further review.

90.39 Amending notice of appeal

(1) A party may amend a notice of appeal, notice of cross-appeal, or notice of contention no more than fifteen days after the day the notice is filed.

(2) A judge of the Court of Appeal may permit a party to amend a document filed at any time.

(3) An amended document must be filed and served immediately after it is amended.

90.40 Setting aside or dismissing an appeal summarily

(1) A judge of the Court of Appeal may set aside a notice of appeal if it fails to disclose any ground for an appeal.

(2) A judge of the Court of Appeal on motion of a party to an appeal may dismiss an appeal if the appeal is not conducted in compliance with this Rule 90 for any reason, such as, failing to comply with Rules respecting any of the following:

(a) the form of the notice of appeal,

(b) notifying a person of the appeal,

(c) making a motion for directions,

(d) setting the appeal down for a hearing,

(e) filing the certificate of readiness.

(3) On a motion for which seven days notice has been given to the appellant, a judge of the Court of Appeal may dismiss an appeal if it is demonstrated that no appeal lies to the Court of Appeal.

(4) A judge of the Court of Appeal hearing a motion to set aside a notice of appeal or dismiss an appeal may give directions on the appeal, order costs, or require the defaulting party to indemnify each other party for the expenses caused by the default.

90.41 Stay of execution

(1) The filing of a notice of appeal shall not operate as a stay of execution or enforcement of the judgment appealed from.

(2) A judge of the Court of Appeal on motion of a party to an appeal may:

(a) grant an interim stay on such terms as may be just, until the completion of the hearing of the motion for a stay;

(b) upon completion of the hearing of a motion for a stay, order stayed the execution and enforcement of any judgment appealed from or grant such other relief against such a judgment or order, on such terms as may be just, pending the disposition of the appeal.

(2A) If a date and time for the appeal hearing has not yet been set, a party making a motion for stay of execution pending appeal must also make a motion for date and directions in accordance with Rule 90.25, to be heard at the same time as the motion for stay of execution pending appeal, unless a judge orders otherwise.

(3) Interest for such time as execution may be delayed by an appeal shall be allowed on the judgment in accordance with the *Interest on Judgments Act* from the filing of the notice of appeal, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal, and the interest shall be added to the judgment on execution without an order for that purpose.

(4) This Rule 90.41 does not prevent the staying of execution or proceedings by the court appealed from, as authorized by a Rule or legislation.

(5) An appellant who obtains a stay under this Rule 90.41 may obtain a certificate from the registrar stating that a stay of execution and enforcement has been granted and deliver the certificate to the sheriff.

(6) A sheriff who receives a certificate must cease enforcement of the order under appeal.

(7) An appellant who delivers a certificate to a sheriff who ceases enforcement must pay the outstanding sheriff's fees and the payment may be allowed as part of the costs of the appeal.

(8) A stay of execution and enforcement stays other processes to enforce the order appealed from, other than the taxation of costs in the proceeding and the recording of the judgement in the Registry of Deeds, unless ordered otherwise by the Court of Appeal or a judge of the Court of Appeal.

90.42 Security for costs

(1) A judge of the Court of Appeal may, on motion of a party to an appeal, at any time order security for the costs of the appeal to be given as the judge considers just.

(2) A judge of the Court of Appeal may, on motion of a party to an appeal, dismiss or allow the appeal if an appellant or a respondent fails to give security for costs when ordered.

90.43 Appellant failing to perfect appeal

(1) In this Rule 90.43 a "perfected appeal" means one in which the appellant has complied with the Rules as to each of the following:

(a) the form and service of the notice of appeal;

(b) applying for a date and directions in conformity with Rule 90.25;

(c) filing the certificate of readiness in conformity with Rule 90.26;

(d) the ordering of copies of the transcript of evidence, in compliance with Rule 90.29;

(e) filing and delivery of the appeal book and of the appellant's factum.

(2) A respondent in an appeal not perfected by an appellant may make a motion to a judge to set down the appeal for hearing or, if five days notice is given to the respondent, to dismiss the appeal.

(3) In an appeal not perfected before 80 days from the date of the filing of the notice of appeal, or before any other time ordered by a judge, the registrar must make a motion to a judge for an order to dismiss the appeal on five days notice to the parties.

(4) A judge, on motion of a party or the registrar, may direct perfection of an appeal, set the appeal down for hearing, or, on five days notice to the parties, dismiss the appeal.

90.44 Quashing or dismissing appeal

(1) A party to an appeal may make a motion to the Court of Appeal at any time before or at the hearing of the appeal for an order setting aside the notice of appeal or dismissing the appeal on either of the two following grounds:

(a) the appeal is frivolous, vexatious, or without merit;

(b) the appellant has unduly delayed perfection of the appeal.

(2) A party who makes a motion for an order setting aside the notice of appeal or dismissing the appeal must, no later than fifteen days after the day the notice of motion is filed, make a motion to a judge in chambers for directions on the motion for an order to set aside or dismiss, including setting a date to hear the motion and as to the record and written submissions to be filed by the parties.

90.45 Management of appeal

(1) The Chief Justice may appoint a judge of the Court of Appeal, or a panel of judges of the Court of Appeal, to assist in the management of an appeal.

(2) A party may request the appointment of an appeal management judge, or panel of judges, by filing a request with the registrar.

(3) An appeal management judge, or panel of judges, may give directions that are consistent with this Rule 90 and determine motions.

(4) Directions may be given and motions may be heard in conference, by correspondence, in chambers, by teleconference, or otherwise, as the appeal management judge, or panel of judges, decides.

(5) The following are examples of subjects that may be dealt with in judicial management of an appeal:

(a) setting tasks and deadlines to complete all steps to the hearing of the appeal;

(b) settling the order of argument;

(c) limiting the time allocated to each party for argument;

(d) settling the issues to be argued and determined;

(e) scheduling motions before the hearing of the appeal.

(6) Directions may be varied on motion.

(7) An appeal management judge may direct that the conference be recorded by the Court of Appeal.

(8) An appeal management judge or a panel may make an order after a conference that does any of the following:

(a) records the subjects discussed, and agreements made, at the conference;

(b) records directions given at the conference, or gives further directions;

(c) gives effect to a ruling on an issue relating to the appeal book or a factum, or procedure for an upcoming hearing submitted to the judge at the conference with the consent of the parties.

(9) An appeal management judge who determines relief must do so by order if a party seeks relief from compliance with these Rules, and an order is required.

90.46 Discontinuing appeal

(1) A party may discontinue an appeal or cross-appeal by filing a notice of discontinuance.

(2) On filing the notice of discontinuance, the appeal or cross-appeal is at an end and the other party is entitled to costs of the appeal or cross-appeal, unless a judge orders otherwise.

90.47 Giving evidence to the Court of Appeal

(1) The Court of Appeal, on the motion of a party, may on special grounds authorize evidence to be given to the Court of Appeal on the hearing of an appeal on any question as it directs.

(2) The evidence may be given through oral examination before the Court of Appeal or by affidavit or deposition, or as the Court of Appeal directs.

(3) The Court of Appeal on an appeal may on special grounds inspect or view any place, property or thing.

90.48 Powers of the Court of Appeal

(1) Without restricting the generality of the jurisdiction, powers and authority conferred on the Court of Appeal by the *Judicature Act* or any other legislation the Court of Appeal may do all of the following:

(a) amend, set aside, or discharge a judgment appealed from;

(b) draw inferences of fact and give any judgment, allow any amendment, or make any order that might have been made by the court appealed from or that the appeal may require;

(c) make such order as to costs of the trial, hearing, or appeal as the Court of Appeal considers is in the interest of justice;

(d) direct a new trial by jury or otherwise, on terms the Court of Appeal considers is in the interest of justice, and for that purpose order that the judgment appealed from be set aside;

(e) make any order or give any judgment that the Court of Appeal considers necessary.

(2) The Court of Appeal may set aside all or part of a judgment appealed from, although only part is under appeal, and it may grant an order in favour of a person who does not request the relief.

(3) On or after hearing an application for leave to appeal in which the Court of Appeal decides to grant leave and the merits of the appeal have been fully argued, the Court of Appeal may decide the appeal without further argument.

90.49 Delivery of judgment by Court of Appeal

(1) The Court of Appeal may deliver judgment disposing of an appeal in open court when the hearing concludes and give reasons then or later.

(2) A judgment of the Court of Appeal in open court must be pronounced by the Chief Justice or other judge at the hearing.

(3) The Court of Appeal, on reserving judgment on an appeal, must later file written reasons for judgment after all the presiding judges have, subject to Section 36 of the *Judicature Act*, written or concurred in reasons for judgment.

(4) A judgment of the Court of Appeal with written reasons is taken to have been made on the date of filing the judgment.

(5) If the Court of Appeal is equally divided in a judgment with written reasons, the appeal must be dismissed.

(6) The registrar must, without charge, deliver a copy of the reasons given in writing or given orally and later reduced to writing to each party, the court appealed from, libraries and other persons as the Chief Justice authorizes in the particular case or

generally, and to other persons on payment of a charge that may be set from time to time.

90.50 Formal order of Court of Appeal

(1) When the Court of Appeal delivers judgment, the registrar must immediately do both of the following:

(a) with the approval of the judge presiding on the appeal, settle, sign, and enter a formal order of judgment that shows the date on which the judgment was delivered, and provides for the disposition of the appeal as directed by the Court of Appeal;

(b) deliver a copy of the order to each party and the court appealed from.

(2) The judge of the Court of Appeal who approves the formal order of judgment, or another judge on motion of a party, may amend the formal order to correct any errors or omissions, or otherwise better express its intent, or may refer the formal order to the Court of Appeal for amendment as the Court of Appeal considers appropriate.

(3) An amended order must show the date of amendment but is effective from its original date unless a judge of the Court of Appeal orders otherwise.

(4) The registrar must sign and enter the amended order and deliver a copy of it to each party and to the court appealed from.

(5) When the judgment appealed from is reversed and the judgment ordered on appeal provides for payment of money, it must bear interest from the day the judgment is reversed.

90.50A Certified copy of Order

(1) The Registrar may provide a certified copy, in electronic format, of an order issued by a judge or the court.

(2) A party may request the Registrar to provide a paper copy of an order.

90.51 Costs in tribunal appeal

No costs may be ordered paid by or to a party in a tribunal appeal unless the Court of Appeal orders otherwise.

90.52 Disposition of files after appeal

After an appeal, the registrar must do both of the following:

(a) preserve the appeal book, factums, other appeal documents and orders;

(b) unless the Court of Appeal or a judge of the Court of Appeal orders otherwise, return to the court appealed from all files and exhibits after the time has expired for appeal or application for leave to appeal to the Supreme Court of Canada unless the matter is appealed to that court in which case the registrar must comply with the Rules of that court.

90.53 Entry by prothonotary of certified order

(1) When an order of the Court of Appeal has been certified by the registrar to the prothonotary or clerk with whom the order appealed from was entered, the prothonotary or clerk must cause it to be filed, and all subsequent proceedings may be taken as if the certified order had been granted by the court appealed from.

(2) When an order of the Supreme Court of Canada has been certified by the registrar of that Court to the prothonotary or clerk with whom the order initially appealed from was entered, the prothonotary or clerk must cause it to be filed, and all subsequent proceedings may be taken as if the certified order had been granted by the court initially appealed from.

Rule 91 - Criminal Appeal

91.01 Definitions

(1) In this Rule,

"appeal" means an appeal under Part XXI of the *Code*, section 839 of the *Code*, or legislation that incorporates provisions of the *Code* for procedure on an appeal and includes an application for leave to appeal and an appeal contingent on leave being granted;

"appellant" means a person who brings an appeal;

"Attorney-General" has the same meaning as in the *Code*, except it includes the Director of Public Prosecutions, His Majesty the King as represented in an appeal, and counsel on behalf of the Attorney-General, the Director of Public Prosecutions, or His Majesty the King;

"Chief Justice" means the Chief Justice of Nova Scotia;

"*Code*" means the *Criminal Code*;

"Court of Appeal" means the Nova Scotia Court of Appeal;

"judgment" means a conviction, finding of guilt, acquittal, order staying a proceeding, sentence, verdict of unfit to stand trial, verdict of not criminally responsible on account of mental disorder, a decision or order of a summary conviction appeal court, and includes any other decision or order from which an appeal is available to the Court of Appeal;

"prisoner appeal" means an appeal by a person who is in prison when the appeal is started and who is not represented by counsel, and the appeal ceases to be a prisoner appeal when the person is released or retains counsel;

"prothonotary" means a person appointed by the Minister of Justice of the Province of Nova Scotia as a prothonotary of the Supreme Court of Nova Scotia;

"registrar" means the person appointed by the Minister of Justice of the Province of Nova Scotia as the registrar of the Nova Scotia Court of Appeal, and includes a deputy, assistant or associate registrar;

"sentence appeal" means an appeal in which the appellant only appeals a sentence.

(2) the interpretation and definition sections of the *Code* shall apply to this Rule.

91.02 Scope of Rule 91

(1) This Rule is made under subsections 482(1) and (3) of the *Code*.

(2) The *Civil Procedure Rules* as a whole and in particular Rule 90 apply to this Rule with any necessary modifications and when not inconsistent with this Rule.

(3) The procedures in Rule 90 for motions made to a judge of the Court of Appeal and to the Court of Appeal apply to motions made under this Rule.

91.03 Effect of noncompliance with Rules

Noncompliance with this Rule 91 shall not render any proceeding void, but the proceeding may be amended or may be set aside as an irregularity or otherwise dealt with as may be just.

91.04 Extension of time

(1) Any time prescribed by this Rule may be extended or abridged by a judge of the Court of Appeal or the Court of Appeal before or after the time has expired.

(2) A person who seeks an extension or abridgment of a time period in the *Code* or this Rule may make a motion to a judge of the Court of Appeal or the Court of Appeal under a provision in the *Code*, such as subsection 678(2), under Rule 2 - General, or under subsection (1) of this Rule.

91.05 Starting an appeal

(1) A person may start an appeal by filing a notice of appeal with the registrar.

(2) The notice of appeal must be entitled “Notice of Appeal”, be dated and signed, and include all of the following:

(a) a notice that the appellant appeals from a judgment, including the kind of the judgment, the names of the judge and court appealed from, and the date of the judgment;

(b) an application for leave to appeal referred to in Rule 91.08, if leave is required;

(c) the names of counsel who represented the parties before the court appealed from or a statement that a party was not represented;

(d) a description of the offence that was charged and the section reference for the offence;

(e) details of the plea that was entered and any sentence that was imposed;

(f) a reference to the statutory authority for the appeal, a concise statement of the grounds for appeal, and a concise description of the order to be sought at the conclusion of the appeal;

(g) a statement of whether a party is in prison and, if so, the place of imprisonment;

(h) if there is only one appellant, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for delivery to all or separate addresses for each;

(i) an acknowledgement that documents delivered to the designated address are considered received by the appellant, and a statement that further contact information is available from the registrar.

(3) The notice of appeal may be in Form 91.05(A) or where the appellant is not represented by a solicitor may be in Form 91.05(B).

(4) The senior official of every penal institution must supply to any prisoner in his custody, upon request, a copy of the notice of appeal in Form 91.05(B) for the prisoner's use.

91.06 Contact Information

A party to an appeal must designate an address for delivery and provide to the registrar the further contact information referred to in Rule 82.08, of Rule 82 - Administration of Civil Proceedings.

91.07 Prisoner Appeal

Where a prisoner appeal is commenced and the appellant subsequently retains a solicitor, the solicitor shall immediately notify the registrar and the respondent of the retainer and thereafter all relevant Rules relating to appeals through solicitors apply to the appeal.

91.08 Applying for leave to appeal

A person who wishes to bring an appeal for which leave of the Court of Appeal is required may file a notice of appeal and include the application in it.

91.09 Deadline for starting appeal

(1) For the purposes of section 678 and 839 of the *Code*, a person may start an appeal of a judgment by filing a notice of appeal no more than twenty-five days after one of the following:

(a) the day the appellant is sentenced, if the appeal is from a conviction, finding of guilt, or sentence, or both a conviction or finding of guilt and a sentence;

(b) the day a judgment is made, if the appeal is from an acquittal or other judgment that is not a conviction, finding of guilt, or sentence.

(2) The period is calculated under Rule 94.02, of Rule 94 - Interpretation, and it is subject to being extended under section 678 of the *Code* or Rule 91.04.

91.10 Filing and delivery of notice of appeal

(1) An appellant, other than an appellant in a prisoner appeal, must do each of the following:

(a) provide the registrar with two copies of the notice of appeal when the original is filed;

(b) cause a copy of the notice of appeal to be delivered to each respondent before the deadline in Rule 91.09(1), by personal service or by another method of giving notice permitted by a judge;

(c) provide the registrar with proof of service of the notice of appeal;

(d) send a copy of the notice of appeal to the judge from whose judgment the appeal is brought.

(2) A prisoner who wishes to start a prisoner appeal must, by the deadline in Rule 91.09(1), deliver the original of the notice of appeal, two copies for the registrar, and one copy for each respondent to the senior official of the institution in which the appellant is imprisoned.

(3) A senior official to whom a notice of appeal in a prisoner appeal is delivered must certify the date of delivery on the notice, cause the notice and two copies to be delivered to the registrar, and cause the other copy to be delivered to the respondent.

(4) The registrar must send a copy of a prisoner's notice of appeal to the judge from whose judgment the appeal is brought.

91.11 Cross-appeal

(1) A respondent may cross-appeal by filing a notice of cross-appeal.

(2) The notice of cross-appeal must be entitled "Notice of Cross-Appeal", be dated and signed, and include all of the following:

(a) the same file number as the notice of appeal and a heading with the names of the cross-appellant and cross-respondent;

(b) a notice that the respondent cross-appeals from a judgment, including the nature of the judgment, the names of the judge and court appealed from, and the date of the judgment;

(c) an application for leave to cross-appeal referred to in Rule 91.08, if leave is required;

(d) a reference to the statutory authority for the cross-appeal, a concise statement of the grounds of cross-appeal, and a concise description of the order to be sought at the conclusion of the appeal;

(e) if there is only one respondent who cross-appeals, an address for delivery of documents to the appellant and, if there is more than one appellant, a designation of a single address for all or separate addresses for each;

(f) an acknowledgment that documents delivered to the designated addresses are considered received by the respondent, and a statement that further contact information is available from the registrar.

(3) A notice of cross-appeal must be filed and delivered no more than twenty-five days after the day a copy of the notice of appeal is delivered to the respondent who wishes to cross-appeal.

(4) Unless inconsistent with this Rule 91.11, Rules 91.05(2), 91.08, 91.09(2), and 91.10 apply to a cross-appeal as if "appeal" read "cross-appeal" and "appellant" read "respondent who cross-appeals".

91.12 Setting time for appeal hearing and deadlines for filing documents

(1) An appellant, or in a prisoner appeal the Attorney General, must make a motion to a judge of the Court of Appeal to appoint a time and date for the appeal to be heard and to provide directions for the appeal, including when the transcript, appeal book, and factums are to be filed.

(2) The motion to appoint a time and date and provide directions must be scheduled by the appellant or Attorney General to be heard no more than eighty days after the day the notice of appeal is filed.

(3) A judge of the Court of Appeal may on his or her own motion set a time for the hearing of any appeal, whether perfected or not, and if the appeal has not been perfected may direct what appeal book or factums or other material shall be filed.

91.13 Certificate of Readiness

An appellant, or in a prisoner appeal the Attorney General, must file a certificate of readiness that complies with Rule 90.26 in support of the motion for directions under Rule 91.12(1) no less than four days before the motion is to be heard.

91.14 Obtaining a transcript

(1) An appellant, or in the case of a prisoner appeal the Attorney General, must request a copy of the audio recording of the proceeding from the prothonotary or clerk of the court appealed from, and pay the prescribed fee to the prothonotary or clerk.

(2) The prothonotary or clerk, on receipt of the prescribed fee from the appellant, or the Attorney General must provide the appellant or the Attorney General with an audio recording of the entire hearing of the proceedings, including evidence, the oral submissions, the jury charge, and all oral rulings and decisions.

(3) The appellant, or in the case of a prisoner appeal the Attorney General, must cause a transcript of the proceeding to be prepared by a certified court reporter in compliance with s. 682(4) of the *Code*.

91.15 Appeal book

(1) An appeal book must be in the same format as an appeal book under Rule 90.30(3).

(2) The appeal book must, except for the modifications in Rule 91.15(3) applicable to a sentence appeal, contain each of the following, unless the parties agree or a judge orders otherwise:

(a) Part 1 - Documents:

(i) a table of contents referring to each document and the page number at which it begins,

(ii) a copy of the notice of appeal and of any notice of cross-appeal,

(iii) a copy of the information, indictment, or other document by which the proceeding under appeal was started,

(iv) a copy of the decision under appeal,

(v) a copy of the order or other instrument giving effect to the determination under appeal,

(vi) a reference sheet containing the heading of the proceeding under appeal, the court or registry number, the name of the judge who made the judgment, the date of the trial or hearing, and the date of the judgment;

(b) Part 2 - Evidence and Related Materials:

(i) an index of witnesses describing each witness, including the name of the witness, the party who called the witness, and the page reference in the appeal book where the direct examination, cross-examination, or re-direct examination begins,

(ii) a list of all exhibits,

(iii) a copy of the transcript of everything said in the course of the proceedings under appeal, including all of the following:

(a) a headline on each page stating the name of the witness and whether it is direct examination, cross-examination, or redirect examination;

(b) unless the individual lines of transcript are numbered, the questions must be numbered consecutively, and each question to be preceded by the letter "Q" and each answer by the letter "A";

(c) a copy of any written submissions and the transcript of submissions made.

(iv) a copy of each documentary exhibit or electronic information admitted into evidence, indexed and numbered as at the trial, including any statement of facts, affidavits and written admissions,

(v) a copy of an agreement to limit the contents of the transcript or appeal book,

(vi) a copy of an agreed statement of facts in substitution for omitted parts of a transcript or appeal book,

(vii) a copy of any charge to the jury, certified by the trial judge to be accurate.

(3) Rule 91.15(2) applies on a sentence appeal with both of the following modifications:

(a) the appeal book need not include exhibits entered at a trial but must include exhibits entered at the sentencing;

(b) the appeal book need not include the transcript of the evidence of the trial if only the sentence is appealed;

(c) the appeal book must include:

(i) a presentence report that was before the sentencing judge,

(ii) a statement of the accused's criminal record that was before the sentencing judge if the accused has a record,

(iii) and a copy of each order related to the sentence, such as a discharge, probation order, order for a conditional sentence, or warrant of committal.

(4) An appellant, other than an appellant in a prisoner appeal, must file five copies of an appeal book and deliver a copy to the respondent, in accordance with the directions given by a judge of the Court of Appeal under Rule 91.12.

(5) In a prisoner appeal, the Attorney General must file five copies of an appeal book, in accordance with the directions given by a judge of the Court of Appeal under Rule 91.12, that conforms with one of the following and deliver a copy to the institution where the appellant is imprisoned:

(a) Rule 91.15(2), in an appeal that is not only from sentence;

(b) Rule 91.15(2) as modified by Rule 91.15(3), in an appeal only from sentence.

(6) When a document in a prisoner appeal is delivered to the institution in which the appellant is imprisoned, the senior official of the institution must immediately deliver it to the appellant.

(7) An appellant, or in the case of a prisoner appeal the Attorney General, must file an electronic copy of the transcript in a format satisfactory to the registrar, in addition to filing paper copies, unless the registrar or a judge of the Court of Appeal orders otherwise.

(8) An appeal book may not be filed by fax.

91.16 Abbreviating transcript or appeal book

(1) The parties may agree to omit from a transcript or appeal book anything the parties consider unnecessary to an appeal.

(2) The parties may agree to a statement of facts so as to make a transcript, part of a transcript, or part of an appeal book unnecessary.

(3) An agreement and an agreed statement of facts must be in writing and be filed.

(4) A judge may order that a party need not file a transcript or may omit anything from a transcript or appeal book.

91.17 Appeal with written submissions only

(1) A party may choose to make all submissions in writing and not attend a hearing of the appeal.

(2) A party who chooses to make submissions in writing only must state the intention to do so either in the notice of appeal or by a written notice to the other party and the court before the deadlines for filing factums set by a judge of the Court of Appeal.

(3) A party who chooses to make all submissions in writing must file a factum that complies with Rule 91.18.

(4) A judge of the Court of Appeal may direct when the factum is to be filed.

91.18 Factum

(1) The parties must file five copies of a factum and deliver a copy to the other party by one of the following deadlines, unless a judge of the Court of Appeal permits otherwise:

(a) for the appellant's factum, no more than ten days after the day the transcript and appeal book are filed;

(b) for the respondent's factum, no more than ten days after a copy of the appellant's factum is delivered to the respondent.

(2) A factum must be in the same format, and have the same content, as is required in a factum under Rule 90.32.

(3) A judge of the court of appeal, may excuse a party who is not represented by counsel from compliance with this Rule 91.18.

(4) A factum may not be filed by fax.

91.19 Book of authorities

(1) A party to an appeal who wishes to rely on authorities in argument, such as a judicial decision or a scholarly article, must file five copies of a book of authorities at the same time that the party files a factum, unless the parties have agreed to file a joint book of authorities.

(2) Parties must make best efforts to agree on, prepare, and file a joint book of authorities. Five copies of a joint book of authorities must be filed at the same time that the respondent's factum is filed.

(3) The book of authorities must be in the same format and have the same content as is required under Rule 90.33.

91.20 Dismissing appeal summarily

(1) A judge of the Court of Appeal may dismiss an appeal of a judgment from which no appeal lies to the Court.

(2) A judge of the Court of Appeal may dismiss an appeal in which the appellant fails to comply with this Rule 91, such as failing to comply with a Rule, or directions given under a Rule, on any of the following subjects:

(a) ordering a transcript;

(b) the form and service of the notice of appeal;

(c) filing and delivering a transcript, appeal book, and appellant's factum.

(3) A judge of the Court of Appeal may give directions for the completion of a prisoner appeal in which the Attorney General fails to comply with this Rule.

(4) A judge of the Court of Appeal hearing a motion to dismiss an appeal summarily, or to give directions as a result of a failure of the Attorney General, may, in addition to determining the motion, give directions on the appeal generally, order costs, where otherwise permitted by law, or require the defaulting party to indemnify another party for the expenses caused by the default.

91.21 Management of appeal

(1) The Chief Justice may appoint a judge of the Court of Appeal, or a panel of judges of the Court of Appeal, to assist in the management of an appeal.

(2) A party may request the appointment of an appeal management judge, or panel of judges, by filing a request with the registrar.

(3) An appeal management judge, or panel of judges, may give directions that are consistent with this Rule 91 and determine motions.

(4) Directions may be given and motions may be heard in conference, by correspondence, in chambers, by teleconference, or otherwise, as the appeal management judge, or panel of judges, decides.

(5) The following are examples of subjects that may be dealt with in judicial management of an appeal:

(a) setting tasks and deadlines to complete all steps to the hearing of the appeal;

(b) settling the order of argument;

(c) limiting the time allocated to each party for argument;

(d) settling the issues to be argued and determined;

(e) scheduling motions before the hearing of the appeal.

(6) Directions may be varied on motion.

(7) An appeal management judge may direct that the conference be recorded by the Court of Appeal.

(8) An appeal management judge or a panel may make an order after a conference that does any of the following:

(a) records the subjects discussed, and agreements made, at the conference;

(b) records directions given at the conference, or gives further directions;

(c) gives effect to a ruling on an issue relating to the appeal book or a factum, or procedure for an upcoming hearing submitted to the judge at the conference with the consent of the parties.

(9) An appeal management judge who determines relief must do so by order if a party seeks relief from compliance with these Rules, and an order is required.

91.22 Deciding appeal after granting leave

The Court of Appeal may, after determining to grant leave to appeal, do either of the following:

(a) give directions for the hearing of the appeal;

(b) decide the appeal without further argument, if the merits have been fully argued.

91.23 Abandonment of appeal

(1) An appellant may abandon an appeal by filing a notice of abandonment.

(2) A notice of abandonment must be entitled "Notice of Abandonment", be dated and signed, and include a notice that the appellant abandons the appeal.

(3) The signature of an appellant who personally signs a notice of abandonment must be verified by affidavit, by the signature of counsel as subscribing witness, or by the signature, as subscribing witness, of an officer of the institution in which the appellant is imprisoned.

(4) The notice of abandonment may be in Form 91.23.

(5) A notice of abandonment must be filed and delivered in the same way as a notice of appeal under Rule 91.10.

(6) A notice of abandonment has the same effect as an order dismissing an appeal, unless a judge who is satisfied that it is in the interest of justice to do so permits the appellant to withdraw the abandonment.

(7) A respondent may make a motion for an order dismissing an abandoned appeal.

91.24 Release pending appeal

(1) An appellant who appeals against sentence only, is in custody, and wishes to be released pending appeal must make a motion to a judge of the Court of Appeal for leave to appeal, which motion may be heard together with a motion for an order for release under section 679 of the *Code* and be determined before or at the same time as the motion for release is determined.

(2) An appellant who makes a motion for release from custody pending appeal under section 679 of the *Code* must provide evidence of all of the following, by affidavit or agreed statement of facts filed with the notice of motion:

(a) details of the conviction;

(b) details of any ground of appeal the appellant omitted from the notice of appeal and wishes to argue;

(c) the appellant's age, status as a single person or partner or spouse, places of residence in the three years before the conviction, employment before conviction, prospects for employment if released, including the place of prospective employment if released, and any criminal record;

(d) the unnecessary hardship of being detained in custody, if the appeal is of sentence only;

(e) the amount of money or the value of other security the appellant proposes, if the appellant proposes release on a recognizance with sureties;

(f) the names of sureties and the amount for which each is to be liable, if sureties are proposed and arrangements have been made with them.

(3) An appellant who makes a motion under this Rule must, unless directed otherwise by a judge, file with the notice of motion:

(a) the decision of the sentencing judge,

(b) the submissions made at the sentencing hearing,

(c) a copy of any presentence report,

(d) a copy of the appellant's criminal record if any, and

(e) a proposed form of order for release pending appeal.

(4) The Attorney General who opposes release must provide evidence by affidavit or agreed statement of facts on any fact alleged by the Attorney General and not established by the affidavit or agreed statement of facts of the party seeking release, or by cross-examination.

(5) A party may cross-examine a witness who swears or affirms an affidavit filed by the other party.

91.25 Exhibits

(1) A judge, clerk, or prothonotary of a court that makes a judgment must retain custody of the exhibits admitted, and other materials that were before the court, in the proceeding that led to the judgment for no less than 25 days after the later of either of the following:

(a) the day the deadline for filing a notice of appeal under Rule 91.09(1) expires;

(b) the day the deadline extended under Rule 91.09(2) expires.

(2) An Attorney General who receives or files a notice of appeal must give notice of the appeal to the judge, clerk, or prothonotary who has custody of the exhibits and other materials.

(3) The judge, clerk, or prothonotary who is notified must continue to retain custody of exhibits and other materials until one of the following happens:

(a) a judge of the Court of Appeal or the registrar directs that the exhibits and other materials be delivered to the registrar or another person;

(b) the appeal is finally determined.

(4) The judge, clerk, prothonotary, or registrar must, unless the judge or a judge of the Court of Appeal orders otherwise, return the exhibits or other materials to the party who produced them or the party's counsel when the periods provided in Rules 91.25(1) or (3) expire.

(5) This Rule 91.23 does not apply to the custody of exhibits or other materials that is provided for in the *Code* or other legislation, such as the *Controlled Drugs and Substances Act*.

Part 19 - Transition

Rule 92 - Transition

92.01 Effective date of these Rules and definition

(1) These Rules take effect on June 30, 2010 for a family proceeding and on January 1, 2009 for all other proceedings, except as provided in this Rule 92.

(2) In this Rule, "family proceeding" means a proceeding started under Part 13 - Family Proceedings.

92.02 Application to outstanding proceedings

(1) Unless this Rule provides or a judge orders otherwise these Rules apply to all steps taken after the following dates in the following kinds of proceedings:

(a) June 30, 2010 in a family proceeding started before that day;

(b) January 1, 2009 in an action started before that day.

(2) The *Nova Scotia Civil Procedure Rules* (1972) apply to all other proceedings started before January 1, 2009 unless a judge orders otherwise.

92.03 Document and step in action preserved

On a motion, in a trial or hearing, and in connection with any other step taken after June 30, 2010, in a family proceeding started before that day, or after January 1, 2009, in an action started before that day, both of the following apply:

(a) each notice, pleading, affidavit, order, and other document filed in the action under the *Nova Scotia Civil Procedure Rules* (1972) must be treated, as nearly as possible, as if it conformed with these Rules;

(b) each step taken in the family proceeding, or action, and completed before June 29, 2010, in the family proceeding, or January 1, 2009, in the action, must be treated, as nearly as possible, as a step taken under these Rules.

92.04 Outstanding interlocutory steps

Each of the following steps that is outstanding in a family proceeding on June 30, 2010, or in an action on January 1, 2009, must be completed under the *Nova Scotia Civil Procedure Rules* (1972), unless the parties agree or a judge orders otherwise:

(a) answers to a demand for particulars delivered before the date;

(b) an interlocutory or interim application;

(c) the disclosure of documents and electronic information in an action in which a party has served a list of documents before the date;

(d) an examination for discovery agreed to, or for which a notice of examination is issued, before the date;

(e) answers to interrogatories delivered before the date;

(f) a reference made before the date;

(g) the assignment of trial dates, delivery of an expert's report, and discovery in a divorce proceeding in which a party files a request for trial date and certificate of readiness before the date, and in an action in which a party files a notice of trial before the date;

(h) default judgment, including for foreclosure, sale, and possession, on a claim made in an action started before that date;

(i) all steps in an undefended or uncontested divorce proceeding.

92.05 Notice in an outstanding action

(1) The *Nova Scotia Civil Procedure Rules* (1972), rather than Rule 31 - Notice, apply to both of the following in a family proceeding started before June 30, 2010, or an action started before January 1, 2009:

(a) giving notice of the action to a person after the date;

(b) a motion for a default judgment made after the date.

(2) An address for service given before June 30, 2010 in a family proceeding, or January 1, 2009 in any other proceeding, is treated as a designated address under these Rules.

(3) A party to a family proceeding started before June 30, 2010, or an action started before January 1, 2009, who has not stated an address for service, or who has ceased to be assured of receiving a document delivered to the address for service, must designate an address for delivery.

92.06 Actions under $150,000

Rule 57 - Action for Damages Under $150,000 does not apply to an action started before January 1, 2009, but a motion may be made under Rule 58 - Action for Claim Valued Under $150,000.

92.07 Registry number on headings

The prothonotary at Halifax may direct that the registry number in the heading of each proceeding be changed to show the new registry codes in Rule 32 - Place of Proceeding.

92.08 Directions to apply present or former Rules

(1) A judge who presides at a trial or hearing of a family proceeding started before June 30, 2010 may direct which of these Rules and which of the Rules in the *Nova Scotia Civil Procedure Rules* (1972) apply to the trial or hearing.

(2) A judge who is satisfied that the application of this Rule 92 to a family proceeding started before June 30, 2010, or any other proceeding started before January 1, 2009, causes one party to gain an unfair advantage over another party may order either of the following:

(a) these Rules apply to the proceeding, or a part of the proceeding, despite Rules 92.02(2), 92.04, and 92.05(1);

(b) the *Nova Scotia Civil Procedure Rules* (1972) apply to the proceeding, or a part of the proceeding, despite Rule 92.02(1).

92.09 Unified Family Court “New Area”

In the following Rules “new area” means a part of Nova Scotia in which family law jurisdiction is, as of January 1, 2020, exercised by the Supreme Court other than the Supreme Court (Family Division) and by the Family Court for the Province of Nova Scotia and for which a Family Division judge is subsequently assigned to sit regularly.

92.10 Unified Family Court: Continuance of Proceeding

(1) A proceeding in a new area started in the Family Court, or a family proceeding started in the area in the Supreme Court, continues as a proceeding in the Family Division when a Family Division judge is assigned.

(2) A Family Division judge may give directions for an additional pleading, further disclosure, or filing an affidavit or other document for a continued proceeding.

92.11 Unified Family Court: Applicable Rules

(1) The *Civil Procedure Rules*, except Rule 62 - District Family Rules, apply in a new area.

(2) Until a majority of the judges of the court make a Rule to the contrary, a party or another person may follow the *Family Court Rules* or Rule 62 in a proceeding in a new area, unless a Family Division judge directs that Rule 59 - Supreme Court (Family Division) Rules, Rule 59A - Judicial Dispute Resolution, Rule 60A - Child and Adult Protection, Rule 61 - Adoption, or the *Family Division Practice Memorandum* applies exclusively to the proceeding.

Part 20 - Citation, Interpretation, and Documents

Rule 93 - Citation

93.01 Citation and meaning of references

(1) These Rules may be cited as the *Nova Scotia Civil Procedure Rules*.

(2) The phrase "these Rules" refers to all Rules in the *Nova Scotia Civil Procedure Rules*, including Rules made under the *Judicature Act*, the *Divorce Act*, the *Controverted Elections Act*, and the *Criminal Code*.

(3) These Rules refer to a Rule, or a subdivision of a Rule, as "Rule" followed by the number of the Rule or the subdivision of the Rule, such as Rule 4, Rule 4.04, Rule 4.04(4), Rule 4.04(4)(b), or Rule 4.04(4)(b)(i).

(4) A reference to a provision in these Rules that has been subdivided includes the subdivided provisions, such as in the following examples:

(a) a reference to Rule 4 includes Rules 4.01 to 4.22;

(b) a reference to Rule 4.01(2) includes Rules 4.01(2)(a) to (c).

(5) A Rule may be cited in the same way it is referenced in these Rules, or with the phrase "*Nova Scotia Civil Procedure Rule*" instead of "Rule".

(6) These Rules use the phrase "this Rule" without a numerical reference to mean the whole of the Rule in which the phrase is used including the subdivisions, such that "this Rule" means Rule 93 in this Rule.

93.02 Citation of former Rules

The *Civil Procedure Rules* made by the judges of the Supreme Court on December 2, 1971, as amended, may be cited as those Rules provide, except "*Civil Procedure Rules*" must be replaced with "*Nova Scotia Civil Procedure Rules* (1972)".

Rule 94 - Interpretation

94.01 General

(1) These Rules must be interpreted in accordance with the principles for interpretation of legislation.

(2) The *Interpretation Act* (Nova Scotia) applies to these Rules, except where a contrary intention appears and except in a Rule that is within the definition of "regulation" in subsection 2(1) of the *Interpretation Act* (Canada).

94.02 Time

(1) A period of days in a Rule does not include any of the following:

(a) the day the period begins;

(b) a Saturday and Sunday in the period;

(c) a weekday the office of the prothonotary at Halifax is closed during the period;

(d) the day on which a thing is required, or first permitted, to be done.

(2) A document delivered on a Saturday, a Sunday, or a weekday that the office of the prothonotary is closed is considered to be delivered on the next weekday when the office of the prothonotary is open.

(3) A document delivered after four-thirty on an afternoon is considered to be delivered on the next weekday when the office of the prothonotary is open.

(4) A day is the period between midnight and the instant before midnight marking the beginning of the next day.

(5) For the purposes of Section 49 of the *Judicature Act*, Rules 94.02(1) to (4) apply to the calculation of a period of days provided in a provincial statute for starting an appeal, or applying for permission to appeal, and the period is not calculated as provided in the *Interpretation Act* or in any other statute.

(6) For the purpose of Section 3 of the *Time Definition Act*, a year is the 365 days from midnight of a day on the Gregorian calendar to the instant before midnight marking the beginning of the same numbered day, in the same month, in the following year, except the period is 366 days for a year that includes the twenty-ninth day of February.

94.03 Extension of time in appeal

(1) A person who wishes to obtain an extension of a period referred to in Section 50 of the *Judicature Act* may make a motion in an appeal or in reference to an intended appeal.

(2) A judge may determine the motion by exercising a discretion similar to that recognized by Rule 2.03, of Rule 2 - General.

94.04 Sessions and sittings referred to in legislation

(1) The court is in session each year and all year long.

(2) A person who is permitted or required by legislation to do something at a future session or sitting of the court, such as the next sitting of the court at a specified place, may make a motion to a judge for directions and to appoint a time, date, and place for a hearing.

94.05 Application referred to in legislation

A person who is permitted or required by legislation to apply to the court or a judge may start the application by filing one of the following notices:

(a) an *ex parte* application, notice of application in chambers, notice of application in court, or notice for judicial review, if the permission or requirement is for an application that is not connected to an existing proceeding;

(b) a notice of motion, if the permission or requirement is for an interlocutory step in a proceeding.

94.06 Judicial discretion when party permitted to make a motion

A Rule that permits a party to make a motion for an order gives a judge a discretion to grant the order or provide other relief that is in the judge's discretion.

94.07 Interlocutory notice and party disentitled to notice

A Rule that provides for notice to another party or delivery of a document to another party does not require notice or delivery to a party who has become disentitled to notice, unless the Rule expressly provides otherwise.

94.08 Rules applicable to non-party

A reference in these Rules to a person includes a party and a non-party.

94.09 Withholding information solely to impeach

(1) Despite a Rule that requires a party to disclose a document, to answer a question on discovery or by interrogatory, or to otherwise provide information to another party or the court, the party may, for the sole purpose of impeaching a witness, opt to withhold making the disclosure, answering the question, or otherwise providing the information.

(2) All of the following apply to a party who chooses to withhold a document, not answer a question, or withhold other information for the sole purpose of impeaching a witness:

(a) the party cannot use the witness who is subject to impeachment as an affiant on a motion, or seek to call the witness to give direct evidence on a motion;

(b) the party cannot call the witness who is subject to impeachment as a witness for the party at a trial or hearing, unless the presiding judge permits otherwise;

(c) the party may only offer the withheld document or make use of the withheld information to impeach credibility, and it cannot be used by the withholding party to prove any fact in issue other than credibility;

(d) the party must immediately disclose the document or immediately provide the answer or the information, when the party decides not to use it or becomes aware the witness is not to be called.

94.10 Definitions

In these Rules, unless the context requires a different meaning:

"Chief Justice" means the Chief Justice of the Supreme Court of Nova Scotia in a Rule that applies to the court and the Chief Justice of Nova Scotia in a Rule that applies to the Court of Appeal;

"child" where it is used in a family context, refers to a person in relation to parents and, where it is used in any other context, means a person who is under the age of majority;

"claim" includes a cause of action and the remedy sought;

"close of pleadings" means the time provided in Rule 38.11, of Rule 38 - Pleading;

"control" includes possession and custody;

"corporation" and "corporate party" mean an entity recognized by law to be a person other than an individual and includes a partnership, a government, and a representative party who represents a government or other public body;

"counsel" means counsel of record or a lawyer who substitutes for counsel of record;

"court" means the Supreme Court of Nova Scotia and includes all of the following:

(i) a judge of the Supreme Court of Nova Scotia, whether the judge is in court or chambers, and whether the judge is appointed generally or to the Family Division,

(ii) prothonotary, and a court officer in the Family Division, who exercises a judicial power under legislation or these Rules,

(iii) a court officer to whom the prothonotary delegates a judicial power;

"Court of Appeal" means the Nova Scotia Court of Appeal;

"court transcriber" has the same meaning as in the *Certification of Transcripts Regulations*;

"deposit-taking corporation" means a bank, credit union, or another corporation that is, or is eligible to become, a member institution under the *Canada Deposit Insurance Corporation Act*;

"document" in a Rule outside Part 5 - Discovery and Disclosure, has the same meaning as in Part 5, except it includes electronic information;

"electronic information" in a Rule outside Part 5 - Discovery and Disclosure, has the same meaning as in Part 5;

"Family Division" means the Supreme Court of Nova Scotia (Family Division);

"family maintenance or support" means a payment required to be made for the maintenance or support of a child, spouse, former spouse, or parent by an order under the *Divorce Act*, the *Maintenance and Custody Act*, or similar legislation;

"file", where it is used as a verb, means to deliver a document for filing to the prothonotary or to a person designated to accept documents for filing at an office of the Family Division;

“finish date” means the date fixed under Rule 4.16(6)(c), of Rule 4 - Action;

“individual” means a natural person;

“judge”, where the word is used in connection with the Court of Appeal, means a judge of the Court of Appeal and, where it is used otherwise, means a judge of the court including a judge appointed to the Family Division;

“judgment creditor” means a party in whose favour an order for payment of money is made, a person to whom the party assigns rights under the order, and a person appointed to administer or manage the estate or affairs of the party;

“judgment debtor” means a party against whom an order for payment of money is made;

“legislation” has the same meaning as “enactment” in the *Interpretation Act*;

“medical practitioner” has the same meaning as in the *Medical Act* as regards a person registered under that legislation and includes a person registered under similar legislation in another jurisdiction;

“moveable” means property that is neither real nor chose in action;

“officer” includes a manager of a corporation, a manager of a business, a director, and a person who holds a public office;

“order for payment of money” includes an order for the payment of costs;

“proceeding” means the entire process by which a claim is started in, and determined by, the court, such as an action, application, judicial review, or appeal;

“prothonotary” means a person appointed by the Minister of Justice for the Province of Nova Scotia as a prothonotary of the court;

“receiver” includes a receiver and manager;

“registrar” means a person appointed by the Minister of Justice for the Province of Nova Scotia as registrar of the Court of Appeal;

“registry number” means the registry code inserted under Rule 32.02, of Rule 32 - Place of Proceeding, followed by the number assigned for registration of divorces if a divorce judgment is claimed, followed by the proceeding number assigned under Rule 82.14, of Rule 82 - Administration of Civil Proceedings;

"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;

"step in a proceeding" means an act in a proceeding required or authorized by a Rule or order, such as filing a document, conducting a discovery, or obtaining execution;

"subsequent encumbrancer" means a person who has an interest sought to be foreclosed in a proceeding but who is not the owner of the equity of redemption or part of it, such as a subsequent mortgagee, judgment holder, tenant, or grantee of a right-of-way;

"teleconference" means an audio or an audio-visual conference held by telephone, over the internet, or by other means of telecommunication;

"wages" includes salaries, commissions, gratuities, and other compensation for labour or services.

94.11 Interpretation of court documents

(1) A period of days or years in an order, or in another instrument in which the court specifies a period of days or years, is calculated in the same manner as the calculation under Rule 94.02, unless the order or other instrument provides otherwise.

(2) The meaning of "person" in Rule 94.08 and the definitions in Rule 94.10 apply to a document prepared under these Rule, unless the document must be read otherwise.

Rule 95 - Preparation of Documents

95.01 Scope of Rule 95

This Rule provides for signature of documents by a party, and it provides for completion of the Forms referred to in these Rules.

95.02 Signing documents

(1) A document to be filed by a party, and a document to be delivered under a Rule by a party without filing it, must be dated and signed by or on behalf of the party, except an affidavit of a party, including a response to interrogatories, must be signed by the witness, and dated and signed by the person administering the oath or affirmation.

(2) Counsel must date and sign a document on behalf of the party counsel represents, unless legislation, a Rule, or an order requires that a party sign personally, as in the following examples:

(a) a document that is sworn or affirmed by an individual party, or an officer, employee, or designated manager of a corporate party;

(b) a litigation guardian's statement;

(c) an undertaking required for a temporary remedy;

(d) a bond;

(e) an application for reduction of parole ineligibility;

(f) an election petition.

(3) An individual party who acts on their own and the appointed agent of a corporate party who acts on its own must, unless a judge permits otherwise, sign a document personally, except an agent may sign a notice for *habeas corpus*.

(4) A person who is not a party and who executes a bond or signs a report must sign personally, unless a judge permits otherwise.

(5) A person who is not a party but wishes to make a motion in a proceeding may sign by counsel or personally.

95.03 Forms, except Forms of headings, may be varied

As provided in each Rule that prescribes a Form of a document, the document must conform with the requirements of the Rule but may otherwise vary from the Forms, except that a Form prescribing a heading is mandatory.

95.04 Forms

(1) The Forms referred to in these Rules are provided in Part 22 - Forms.

(2) Brackets are used in Part 22 to indicate that guidance is being provided on how to complete a blank part of the Form.

(3) Italicized words in brackets are used to indicate suggested wording.