

Nova Scotia Civil Procedure Rules *

Table of Contents

Part 1 - Applying these Rules

Rule 1 - Purpose.....	1
Rule 2 - General.....	2

Part 2 - Civil Proceedings

Rule 3 - Kinds of Proceedings.....	4
Rule 4 - Action	5
Rule 5 - Application.....	22
Rule 6 - Choosing Between Action and Application	34
Rule 7 - Judicial Review and Appeal.....	36

Part 3 - Default and Discontinuance

Rule 8 - Default Judgment	50
Rule 9 - Discontinuance.....	54

Part 4 - Alternate Resolution or Determination

Rule 10 - Settlement.....	57
Rule 11 - Reference.....	67
Rule 12 - Question of Law.....	72
Rule 13 - Summary Judgment.....	74

Part 5 - Disclosure and Discovery

Rule 14 - Disclosure and Discovery in General.....	79
Rule 15 - Disclosure of Documents.....	90
Rule 16 - Disclosure of Electronic Information	95
Rule 17 - Disclosure of Other Things.....	103
Rule 18 - Discovery.....	105
Rule 19 - Interrogatories.....	120

* an official consolidation of Rules made on June 6, 2008 and amended to June 24, 2016.

Rule 20 - Admission	124
Rule 21 - Medical Examination and Testing.....	126
Part 6 - Motions	
Rule 22 - General Provisions for Motions.....	130
Rule 23 - Chambers Motion	137
Rule 24 - Appearance Day Motion	144
Rule 25 - Motion by Appointment.....	147
Rule 26 - Conference.....	150
Rule 27 - Motion by Correspondence.....	152
Rule 28 - Emergency Motion	153
Rule 29 - Motion to Presiding Judge.....	155
Rule 30 - Motion to Prothonotary.....	156
Part 7 - Notice and Place of Proceeding	
Rule 31 - Notice.....	158
Rule 32 - Place of Proceeding.....	171
Part 8 - Counsel, Parties, and Claims	
Rule 33 - Counsel.....	173
Rule 34 - Acting on One's Own.....	178
Rule 35 - Parties.....	181
Rule 36 - Representative Party	191
Rule 37 - Consolidation and Separation	202
Part 9 - Pleading, Affidavit, and Brief	
Rule 38 - Pleading	204
Rule 39 - Affidavit.....	209
Rule 40 - Brief.....	214
Part 10 - Temporary Remedies	
Rule 41 - Interlocutory Injunction and Receivership.....	217
Rule 42 - Preservation Order.....	222
Rule 43 - Temporary Recovery Order.....	228
Rule 44 - Attachment.....	235
Rule 45 - Security for Costs.....	243
Rule 46 - Payment into Court.....	245

Part 11 - Trial and Hearing

Rule 47 - Place of Trial or Hearing. 248
Rule 48 - Translation, Interpretation, and Assistance. 250
Rule 49 - Sittings. 252
Rule 50 - Subpoena. 255
Rule 51 - Conduct of Trial 261
Rule 52 - Trial by Jury 269
Rule 53 - Conduct of Hearing. 277
Rule 54 - Supplementary Rules of Evidence. 280
Rule 55 - Expert Opinion. 283
Rule 56 - Commission Evidence. 292

Part 12 - Actions Under \$100,000

Rule 57 - Action for Damages Under \$100,000. 298
Rule 58 - Action for Claim Valued Under \$100,000. 303

Part 13 - Family Proceedings

Rule 59 - Family Division Rules. 305
Rule 60A - Child and Adult Protection 357
Rule 60B - *Involuntary Psychiatric Treatment Act* and *Hospitals Act* Applications. 382
Rule 61 - Adoption 384
Rule 62 - District Family Rules. 388

Part 14 - Appeal and Judicial Review (*Criminal Code*)

Rule 63 - Summary Conviction Appeal 409
Rule 64 - Prerogative Writ. 414
Rule 65 - Application to Reduce Parole Ineligibility 416

Part 15 - Other Kinds of Proceedings

Rule 66 - Account. 423
Rule 67 - Builders' Lien. 426
Rule 68 - Class Proceeding. 428
Rule 69 - Controverted Election. 432
Rule 70 - Assessment of Damages. 436
Rule 71 - Guardianship. 439
Rule 72 - Mortgages. 445
Rule 73 - Receiver 453
Rule 74 - Other Sales by the Court. 459
Rule 75 - Injunction 462
Rule 76 - Interpleader. 464

Part 16 - Costs, Order, and Enforcement

Rule 77 - Costs..... 468
Rule 78 - Order. 482
Rule 79 - Enforcement by Execution Order..... 486
Rule 80 - Other Enforcement Orders..... 501
Rule 81 - Reciprocal Enforcement..... 502

Part 17 - Administration

Rule 82 - Administration of Civil Proceedings. 504
Rule 83 - Amendment. 517
Rule 84 - Court Records. 520
Rule 85 - Access to Court Records. 524
Rule 86 - Judicial Communication Across Borders..... 530
Rule 87 - Communicating with a Judge..... 535
Rule 88 - Abuse of Process. 537
Rule 89 - Contempt. 539

Part 18 - Proceedings in the Court of Appeal

Rule 90 - Civil Appeal 546
Rule 91 - Criminal Appeal 579

Part 19 - Transition

Rule 92 - Transition..... 593

Part 20 - Citation, Interpretation, and Documents

Rule 93 - Citation..... 596
Rule 94 - Interpretation. 598
Rule 95 - Preparation of Documents. 604

Part 21 - Certificates

Part 22 - Forms

Rule 2 - General

Court to which Rules apply

- 2.01 (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.

Irregularity or mistake

- 2.02 (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.

General judicial discretions

- 2.03 (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.

Rule 7 - Judicial Review and Appeal

Interpretation in Rule 7

7.01 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.

Scope of Rule 7

7.02 (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.

Processes leading to hearing

- 7.03** (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.

Legislation prevails

- 7.04** 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.

Judicial review application

- 7.05** (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.

Date for motion for directions

- 7.06** (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.

Notification

- 7.07** 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.

Participation by respondent

- 7.08** (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.

Production of record by decision-making authority

- 7.09 (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.

Directions for judicial review

7.10 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 at appearance day;
- (k) appoints the time, date, and place for the hearing of the judicial review.

Order following review

7.11 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.

Notice for *habeas corpus*

- 7.12 (1)** A person under detention may require the court to review the legality of the detention 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 detention 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) the names of, or offices held by, individuals holding the applicant on behalf of the respondent;
 - (c) any reasons given to the applicant for the detention;
 - (d) information about what prevents the applicant from leaving the place of detention;
 - (e) the request for *habeas corpus*;
 - (f) the grounds on which the applicant contends that the detention 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 detention 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 situated, 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 detention 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.

Order for *habeas corpus*

- 7.13 (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 and date and a place 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 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, and place 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.

Directions to determine legality of detention

7.14 A judge giving directions as a result of an order for *habeas corpus* may provide directions necessary for a quick and fair determination of the legality of the applicant’s detention, including any of the following:

- (a) set a date for the court to determine the legality of the detention;
- (b) order a person detaining the applicant to bring the applicant before the court for the hearing;
- (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.

Interim release on *habeas corpus*

7.15 A judge may order bail for an applicant.

Final determination following *habeas corpus*

7.16 A judge may release or remand the applicant on determining whether or not the detention is legal.

Abuse of *habeas corpus*

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

- (a) the detention 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.

Other forms of *habeas corpus*

7.18 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.

Notice of appeal

7.19 (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.

Cross-appeal and contention

7.20 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.

Date for motion for directions

- 7.21 (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.

Notification

- 7.22** 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.

Directions for an appeal

- 7.23** 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.

Appeal Book

- 7.24** 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.

Applicant or appellant to pay expenses of record

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

Consolidation of judicial review or appeal

- 7.26 (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.

Evidence on judicial review or appeal

- 7.27 (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.

Stay pending judicial review or appeal

- 7.28** (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.

Dismissal of dormant review

- 7.29** 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 16 - Costs, Order, and Enforcement

Rule 77 - Costs

Scope of Rule 77

- 77.01 (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.

General discretion (party and party costs)

- 77.02 (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.

Liability for costs

- 77.03 (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.

Relief from liability because of poverty

- 77.04 (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.

Assessment of interlocutory costs

- 77.05** (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.

Assessment of costs under tariff at end of proceeding

- 77.06** (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.

Increasing or decreasing tariff amount

- 77.07** (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.

Lump sum amount instead of tariff

77.08 A judge may award lump sum costs instead of tariff costs.

Amount under a Rule about indemnification

77.09 (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.

Disbursements included in award

- 77.10** (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.

Set-off against party and party costs

- 77.11** A judge who awards party and party costs may order a set-off against another award of costs or any other amount.

Award of costs in other circumstances

- 77.12** (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.

Counsel's fees and disbursements: entitlement and assessment

- 77.13 (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.

Counsel's fees and disbursements: contingency fee agreement

- 77.14 (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* or the *Incompetent Persons Act*, 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).

Charging order

- 77.15 (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.

Taxation of costs

- 77.16 (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.

Appeal of taxation

- 77.17** An appeal of a certificate of taxation may be brought and determined in accordance with Rule 7 - Judicial Review and Appeal.

Reference to adjudicator

77.18 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 (\$2000) 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 an Application heard in Chambers by the Supreme Court of Nova Scotia

For 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 an application heard in Chambers.
- (2) Unless otherwise ordered, the costs assessed following 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 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 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 application.

(such applications might include, but are not limited to, successful applications 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 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	\$1000-\$2000
1 day or more	\$2000 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 \$1000.00 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 application 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	\$1500

2. For all steps in the proceeding subsequent to the application 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	\$1500

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 \$3000
\$25,001 - \$50,000	Not more than \$4000
\$50,001 - \$100,000	Not more than \$5000

Where the proceeding is discontinued or settled and the amount involved exceeds \$100,000.00, costs shall not be more than the total of \$5000.00 plus 2% of the amount in excess of \$100,000.00.