

## GENERAL MATTERS

### RULE 1

#### CITATION, APPLICATION AND INTERPRETATION

#### CITATION

##### Short Title

**1.01** (1) These rules may be cited as the Rules of Civil Procedure.

##### Subdivision

(2) In these rules,

- (a) all the provisions identified by the same number to the left of the decimal point comprise a Rule (for example, Rule 1, which consists of Rules 1.01 to 1.06);
- (b) a provision identified by a number with a decimal point is a rule (for example, Rule 1.01); and
- (c) a rule may be subdivided into,
  - (i) subrules (for example, subrule 1.01(2)),
  - (ii) clauses (for example, clause 1.01(2)(c) or 2.02(a)),
  - (iii) subclauses (for example, subclause 1.01(2)(c)(iii) or 7.01(c)(i)), and
  - (iv) paragraphs (for example, 1 of Rule 1.03).

##### Alternative Method of Referring to Rules

(3) In a proceeding in a court, it is sufficient to refer to a rule or subdivision of a rule as "rule" followed by the number of the rule, subrule, clause, or subclause (for example, Rule 1.01, Rule 1.01(2), Rule 1.01(2)(c), or Rule 1.01(2)(c)(iii)).

#### APPLICATION OF RULES

**1.02** (1) These rules, subject to subrule (2), apply to all proceedings in the Supreme Court except that only Rule 74 applies to proceedings in the Small Claims Section of the Trial Division.

##### Transitional Provisions

(2) These rules apply to a proceeding, whenever commenced, unless the Court makes an order under subsection 67(2) of the *Supreme Court Act*, Stats. P.E.I. 1987, Cap. 66.

- (3) Notwithstanding subrule (2), Rule 48.13 (status hearing in actions) applies only to actions in which a statement of defence is filed after these rules come into force.
- (4) Notwithstanding paragraph (2), on the assessment of costs of a proceeding under Rule 58.01, the Prothonotary shall assess and allow,
  - (a) for services rendered and disbursements incurred before these rules come into force, solicitors' fees and disbursements in accordance with the Tariffs in force immediately before these rules come into force; and
  - (b) for services rendered and disbursements incurred after these rules come into force, solicitors' fees and disbursements in accordance with the Tariffs to these rules,unless the court orders otherwise.

### **DEFINITIONS**

- 1.03** (1) In these rules, unless the context requires otherwise,
- (a) "Act" means the *Supreme Court Act*;
  - (b) "action" means a proceeding that is not an application and includes a proceeding commenced by,
    - (i) statement of claim,
    - (ii) notice of action,
    - (iii) counterclaim,
    - (iv) crossclaim,
    - (v) third or subsequent party claim, or
    - (vi) divorce petition or counter petition;
  - (c) "affidavit" includes a statutory declaration and an agreed statement of facts;
  - (d) "appellant" means a person who brings an appeal;
  - (e) "appellate court" means the Appeal Division of the Supreme Court;
  - (f) "applicant" means a person who makes an application;
  - (g) "application" means a proceeding commenced by notice of application as referred to in Rule 38;

- (h) "Court" means the Division in which a proceeding is pending and,
  - (i) In the Appeal Division the court or judge or the judges thereof whether sitting in court or chambers; and
  - (ii) In the Trial Division, the court or a judge thereof whether sitting in court or chambers; and
  - (iii) Where the prothonotary has the power to act means the prothonotary;
- (i) "decision" means the reasons given by the court for its judgment or order;
- (j) "defendant" means a person against whom an action is commenced;
- (k) "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;
- (l) "disability", where used in respect of a person, means that the person is,
  - (i) a minor, or
  - (ii) mentally incompetent or incapable of managing his affairs, whether or not so declared by a court;
- (m) "discovery" means discovery of documents, examination for discovery, inspection of property and medical examination of a party as provided under Rules 30 to 33;
- (m.1) "document" includes data and information in electronic form;
- (m.2) "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, and "electronically" has a corresponding meaning;
- (n) "hearing" means the hearing of an application, motion, reference, appeal, assessment of costs, or a trial;
- (o) "holiday" means,
  - (i) any Saturday or Sunday,
  - (ii) New Year's Day,
  - (iii) Good Friday,
  - (iv) Easter Monday,
  - (v) Victoria Day,

- (vi) Canada Day,
- (vii) Civic Holiday,
- (viii) Labour Day,
- (ix) Thanksgiving Day,
- (x) Remembrance Day,
- (xi) Christmas Day,
- (xii) Boxing Day, and
- (xiii) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and where Christmas Day falls on a Friday, the following Monday is a holiday;

- (o.1) "information technology" means the information technology capable of being accessed on through the Quicklaw electronic filing web site;
- (p) "judgment" means a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party;
- (q) "judgment creditor" includes a party entitled to a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment creditor;
- (r) "judgment debtor" includes a party required to make a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment debtor;
- (s) "mentally incompetent person" means a person, not an infant, who is incapable from infirmity of mind of managing his own affairs;
- (t) "motion" means a motion in a proceeding or an intended proceeding as referred to in Rule 37;
- (u) "moving party " means a person who makes a motion;
- (v) "order" includes a judgment or decree;

- (w) "originating process" means a document, the issuing of which commences a proceeding under these rules, and includes,
- (i) a statement of claim,
  - (ii) a notice of action,
  - (iii) a petition,
  - (iv) a notice of application,
  - (v) a counterclaim against a person who is not already a party to the main action,
  - (vi) a third or subsequent party claim, and
  - (vii) a counterpetition against a person who is not already a party to the main action,

but does not include a counterclaim or counterpetition that is only against persons who are parties to the main action, a crossclaim, or a notice of motion;

- (w.1) "partial indemnity costs" mean costs awarded in accordance with Part I of Tariff A, and "on a partial indemnity basis" has a corresponding meaning;
- (w.2) "person" includes a party to a proceeding;
- (x) "plaintiff" means a person who commences an action;
  - (y) "proceeding" means an action or application;
  - (z) "Public Trustee" means the Public Trustee as defined in the Public Trustee Act, R.S.P.E.I. 1988, Cap. P-32-2;
  - (aa) "referee" means the person to whom a reference in a proceeding is directed;
  - (bb) "registrar" means the Registrar of the Supreme Court and a deputy registrar;
  - (cc) "respondent" means a person against whom an application is made or an appeal or a divorce action is brought, as the circumstances require;
  - (dd) "responding party" means a person against whom a motion is made; and
  - (ee) "statute" includes a statute passed by the Parliament of Canada;
  - (ff) "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.

## **INTERPRETATION**

### **General Principle**

- 1.04** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

### **Matters Not Provided For**

- (2) Where matters are not provided for in these rules, the practise shall be determined by analogy to them.

### **Party Acting in Person**

- (3) Where a party to a proceeding is not represented by a solicitor but acts in person in accordance with subrule 15.01(c), anything these rules require or permit a solicitor to do shall be done by the party.

### **Party and Party Costs**

- (4) If a statute, regulation or other document refers to part and party costs, these rules apply as if the reference were to partial costs.

### **Solicitor and Client Costs**

- (5) If a statute, regulation or other document refers to solicitor and client costs, these rules apply as if the reference were to substantial indemnity costs.

## **ORDERS ON TERMS**

- 1.05** When making an order under these rules the court may impose such terms and give such directions as are just.

## **FORMS**

- 1.06** The forms prescribed in the Appendix of Forms shall be used where applicable and with such variations as the circumstances require.

## **TELEPHONE AND VIDEO CONFERENCES WHERE AVAILABLE**

- 1.07** (1) If facilities for a telephone or video conference are available at the court or are provided by a party, all or part of any of the following proceedings or steps in a proceeding may be heard or conducted by telephone or video conference as permitted by subrules (2) to (5):
- (a) a motion (Rule 37);
  - (b) an application (Rule 38);
  - (c) a status hearing (Rule 48.13);

- (d) at trial, the oral evidence of a witness;
- (e) a pre-trial conference;
- (f) such other conferences as may be directed by the court or as agreed to by the parties.

### **Consent**

- (2) If the parties consent to a telephone or video conference and if the presiding judge permits it, one of the parties shall make the necessary arrangements.

### **Order, No Consent**

- (3) If the parties do not consent, the court on motion may make an order directing a telephone or video conference on such terms as are just.
- (4) The judge presiding at a proceeding or step in a proceeding may set aside or vary an order made under subrule (3).

### **Factors to Consider**

- (5) In deciding whether to permit or to direct a telephone or video conference, the court shall consider,
  - (a) the general principle that evidence and argument should be presented orally in open court;
  - (b) the importance of the evidence to the determination of the issues in the case;
  - (c) the effect of the telephone or video conference on the court's ability to make findings, including determination about the credibility of witnesses;
  - (d) the importance in the circumstances of the case of observing the demeanour of a witness;
  - (e) whether a party, witness or solicitor for a party is unable to attend because of infirmity, illness or any other reason;
  - (f) the balance of convenience between the party wishing the telephone or video conference and the party or parties opposing; and
  - (g) any other relevant matter.

### **Arrangements for Conference**

- (6) Where the court permits or directs a telephone or video conference, the court may direct a party to make the necessary arrangements and to give notice of these arrangements to the other parties and to the court.

***Rule 1.04(1)***

*Kurylk v. Gallagher* (1995), 129 Nfld. & P.E.I.R. 306 (P.E.I.S.C.A.D.)

Rule 1.04(1) was considered in the context of the interpretation of Rule 31. The Court applied the Rule and directed a liberal construction of Rule 31 so as to meet the objectives of full disclosure of facts and issues prior to trial.