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NOVA SCOTIA ANNOTATED RULES OF PRACTICE

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This publication provides a range of materials that will assist a busy Nova Scotia litigator: Annotated *Judicature Act*, Annotated *Rules of Practice (2009)*, Forms, Tariffs, Annotated Related Legislation, Issues in Focus, Rule Cross References Table, Time Limitation Table, Practice Memoranda and Additional Reference Material. It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.

What's New in this Update

This release updates to Appendix B (Related Legislation).

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Highlights

- **Appendix B—Related Legislation—Court Jurisdiction and Proceedings Transfer Act—D. Part III—Effective Date—Annotations—** The plaintiff was a company incorporated in the United States. The plaintiff alleged the defendant TT advised and represented that he could find investors for the plaintiff and its projects, and that he was the owner and operator of the defendant A Inc. A Inc. held itself out as being incorporated in Florida, but had an office in Bedford, Nova Scotia. TT represented that he had both the experience and the connections to assist the plaintiff with raising capital to purchase an apartment complex in Texas. The plaintiff entered into an agreement with A Inc., which required a deposit of \$50,000 USD before commencing work. The plaintiff pleaded that it provided the requested deposit, but A Inc. failed to perform its obligations under the agreement. The plaintiff claimed against A Inc for breach of contract and negligent misrepresentation. The plaintiff claimed against TT for negligent and/or fraudulent misrepresentation. The agreement contained a forum selection clause. The plaintiff alleged that A Inc. had an office in Nova Scotia, and TT resided in Nova Scotia. The defendants brought a motion seeking an order dismissing the action against them for want of jurisdiction. Their motion was granted. The Supreme Court of Nova Scotia had territorial jurisdiction over the proceeding. Section 4(d) of the *Court Jurisdiction and Proceedings Transfer Act*, S.N.S. 2003, c. 2 (2nd Sess.), provided that the court had territorial competence in a proceeding that was brought against a person where the person was ordinarily resident in the province at the time the proceeding was commenced. It was clear that the court had territorial jurisdiction over claims against TT who admitted he was ordinarily resident in Nova Scotia. Pursuant to s. 8(d) of the Act, a corporation was ordinarily resident in the province where its central management was exercised in the province. TT was the directing mind of A Inc., and the only reasonable conclusion, based on the defendants' own evidence, was that A Inc.'s central management was exercised in Nova Scotia. However, the court declined jurisdiction based on the forum selection clause. The language of the forum selection clause was unusual, as it merely stated that the agreement shall be governed by Illinois law with Illinois jurisdiction, but it was sufficient to capture the plaintiff's claims against A Inc. for breach of contract. There was no evidence that the clause was unenforceable under the contractual doctrines. The plaintiff failed in its burden of showing a strong cause that the case was exceptional, and the forum selection clause should not be enforced. Although the negligent and fraudulent misrepresentation claims did not fall within the scope of the forum selection clause, the Supreme Court of Nova Scotia declined to exercise its jurisdiction over them on the basis that Illinois was the more convenient forum. It was clear that it would be more inconvenient and costly for the parties to litigate the contract claims in Illinois, and the tort claims separately in Nova Scotia. The plaintiff's tort claims could not succeed unless it first established there was a breach of contract. A single proceeding in Illinois would avoid conflicting decisions. Declining jurisdiction over the tort claims would do more to promote a fair and efficient working of the Canadian legal system than adjudicating the tort claims in Nova Scotia.

All claims were stayed: *Pentacap LLC v. ACI Capital Partners Inc.*, , 2024 NSSC 5, 2024 CarswellNS 11, [2024] N.S.J. No. 5 (N.S. S.C.).

- **Appendix B—Related Legislation—Limitation of Actions Act—F. Transitional Provisions, Consequential Amendments and Effective Date—Annotations—** The plaintiff and his wife, who died on June 27, 2011, became clients of Scotia in or about September, 2001. Their investment advisor at the time was DC, who joined Scotia in July, 2001 and worked continuously at Scotia until taking a medical leave on October 14, 2014. He never returned to work. The plaintiff and his wife had been investment clients of DC’s for many years prior to DC joining Scotia. The plaintiff alleged that trading on their relationship and given his trust of DC, that in July, 2008, DC convinced the plaintiff to lend him a substantial amount of money for treatment of an alleged life-threatening illness. A total of \$1,050,000 was advanced by the plaintiff in instalments from July 2008 to January 2009. This loan was only partially repaid by DC. DC went on medical leave in mid-October, 2014. He never returned to work. By an amended Notice of Action and amended Statement of Claim filed on October 3, 2019, the plaintiff sought damages from Scotia for breach of contract, negligence and breach of fiduciary duty arising out of alleged wrongdoing by its investment advisor, DC, in his dealings with the plaintiff. By its defence filed on January 21, 2020, Scotia denied all allegations as did DC in his defence filed on February 10, 2020. DC died on May 6, 2021 and on November 1, 2021, the plaintiff filed a notice of discontinuance with respect to the claims against DC. Scotia brought a motion for summary judgment on evidence, seeking an order dismissing the plaintiff’s claim as statute barred pursuant to the Limitation of Actions Act, S.N.S. 2014 c. 35 (LAA). The applicable limitation period expired long before the plaintiff commenced the original proceeding on August 19, 2019. Scotia submitted that all claims after October 14, 2016, two years after DC left Scotia, were statute-barred. Scotia’s motion was dismissed. Given the role which the plaintiff played in his dealings with Scotia, the plaintiff’s own evidence was central to the allegation in the proceeding and to the limitations issue on the motion. The plaintiff relied on DC/Scotia for advice. The plaintiff stated that he trusted DC to provide advice that met industry standards, but that his trust was misplaced. As the plaintiff having accumulated more than enough to meet his lifetime needs and those of his disabled children, DC allegedly failed to counsel the plaintiff to dial it back, and set aside money in more conservative investments. The secondary issue was Scotia’s liability for the \$1,050,000 loan. As was made clear in *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, the limitation clock did not start based upon mere suspicion or speculation of liability; there must be “a plausible inference of liability”. The evidence led on this motion convinced the court that it would be a “live issue” as to whether there was a plausible inference of liability to trigger the plaintiff making a claim or even retaining an expert any sooner than he did. There were genuine issues of material fact (solely or mixed with a question of law) as to when the claims were discovered or ought to have been discovered. There was the issue of the plaintiff not receiving any expert advice that he had a claim against Scotia until 2018: *Thompson v. Scotia Capital Inc.*, 2023 NSSC 409, 2023 CarswellNS 1081 (N.S. S.C.).

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