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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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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 Chapter 2 (Nova Scotia Civil Procedure Rules (2009)).

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Highlights

- **Nova Scotia Civil Procedure Rules (2009)—Counsel Parties and Claims—Representative Party - Annotations—**The applicant brought an application for an order enforcing a life interest pursuant to a clause in the will of the deceased, which would allow the applicant to take up residence in the residential property owned by the estate. The applicant's application was dismissed with costs. The issue for determination was the costs of the application. Lump sum costs were awarded to the respondents in the amount of \$32,000. The traditional approach to costs in estate litigation had been replaced by a more modern approach aiming to discourage unnecessary proceedings, and to preserve the estates for the beneficiaries. The question before the court was limited to an interest in the real property of the estate, relegating the applicant to a category of beneficiaries entitled to a specific gift, and not that of a residuary beneficiary, for the purposes of the litigation. The dispute giving rise to the litigation was not the fault of the deceased, nor did it touch upon any interests in the residue. There was no question demanding a response in the public interest, nor was the validity of the will or its provisions in dispute. The dispute was purely an attempt by the applicant to control the administration of the estate rather than a bona fide attempt to advance a legitimate question relating to the estate. The applicant's actions should not be rewarded by an order that the costs be borne by the estate. The personal representatives were undertaking their duties appropriately. It would be patently unfair to have the residuary beneficiaries bear the costs of the litigation, which was unnecessary and prolonged by the applicant's inflexibility. The applicant was aware of the estate's precarious financial position, and knew or ought to have known that she had no reasonable prospect of success. The applicant failed to show that the litigation costs should be passed to the other residuary beneficiaries of the estate against whom allegations were made. The respondents ought to be paid the costs out of applicant's share of the residue with the balance of their legal fees to be paid out of the estate, and the applicant's costs were to be borne by her personally. *Daye v. Daye Estate*, 2024 NSSC 145, 2024 CarswellNS 368 (N.S. S.C.), additional reasons 2023 NSSC 305, 2023 CarswellNS 782, 89 E.T.R. (4th) 301 (N.S. S.C.).
- **Nova Scotia Civil Procedure Rules (2009)—Trial and Hearing—Conduct of Trial - Annotations—**The Nova Scotia Barristers' Society Complaints Investigation Committee imposed a suspension of the applicant's license to practice law and the applicant appealed. The same judge heard the chambers hearing in relation to another appeal by the applicant from a \$20,000 costs order made against him. The applicant alleged that remarks the judge made during the chambers hearing, and aspects of the decision gave rise to a reasonable apprehension of bias against him. The applicant brought a motion for the judge to recuse himself from the appeal. The applicant's motion was dismissed. The applicant failed to establish any grounds for recusal from the appeal. The judge could adjudicate the appeal fairly and impartially in relation to both parties. An informed person, viewing the matter realistically and practically, having thought the matter through, and taking into account the context, would not perceive any basis for finding a reasonable ap-

prehension of bias. *Fraser v. Nova Scotia Barristers' Society*, 2024 NSCA 79, 2024 CarswellNS 711 (N.S. C.A.).