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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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

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Highlights

- **Nova Scotia Civil Procedure Rules (2009)—Civil Proceedings—Rule 7—Judicial Review and Appeal—Annotations—**The plaintiffs argue that the case management should stay this action until the Court of Appeal issues its ruling, on the issue of bias, in the somewhat related MacIntosh action. The underlying claims in this proceeding and the MacIntosh action were separate and distinct. There has been no suggestion that the MacIntosh action should be joined with this proceeding for trial or case management. The commonality of the cases were essentially related to the involvement of the plaintiffs, and the fact that the same case management judge was appointed in each. There was no order made in this proceeding that the plaintiff sought to stay pending the appeal. Accordingly, the plaintiffs asserted that the stay process contemplated by Rule 7.29 invoking the tripartite test for an injunction did not apply. Rather, they argue that the stay should be ordered in “the interests of justice” pending the outcome of the appeal in the MacIntosh action. The plaintiffs’ ongoing appeal alleging bias in the somewhat related proceeding, which had distinct claims, but same case management judge, did not justify a stay of their action against the defendants pending determination of the appeal: *DLF Law Practice Incorporated v. McDonald et al.*, 2024 NSSC 315, 2024 CarswellNS 849 (N.S. S.C.).
- **Nova Scotia Civil Procedure Rules (2009)—Temporary Remedies—Rule 45—Security for Costs—Annotations—**The defendants were owners of a property. The owners entered into an agreement with the plaintiff contractor in May 2022 to build a new home on their property. There were issues with the project, including numerous missed deadlines. In November 2022, the owners directed the contractor to discontinue work on the project. The project was completed by other parties. The contractor filed a claim for lien on the property in January 2023, and commenced an action. The owners claimed that the contractor breached their agreement by not remediating work deficiencies. The owners counterclaimed, and were granted default judgment with the damages to be assessed. The owners claimed that the contractor was registered in Nova Scotia as an extra-provincial corporation, otherwise registered in Prince Edward Island (PEI). The contractor’s status in the PEI’s business/corporate registry was “inactive due to nonpayment”. A Web search indicated that the business was closed. The owners brought a motion for an order that the contractor be required to post security for costs. The owners’ motion was granted. The contractor appeared to owe taxes to the Canada Revenue Agency. The contractor’s status on the Nova Scotia Registry of Joint Stock Companies was listed as “revoked”. The Web domain on the contractor’s invoice was no longer registered. Moreover, the registered agent for the contractor in Nova Scotia could not be located. Having defended the contractor’s claims, and there being a rebuttable presumption that there would be undue difficulty recovering a cost award against the contractor not due solely to its impecuniosity, and it appearing unfair in the circumstances that the owners be required to incur unrecoverable costs defending the contractor’s claims, it was appropriate that an order for security of costs be granted before the matter proceeded further. The contractor was ordered to post security for costs in the amount of \$28,750: *Krisko Construction Inc. v. Harper*, 2024 NSSC 299, 2024 CaswellNS 816 (N.S. S.C.).

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