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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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

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## Highlights

- **Chapter 2—Nova Scotia Civil Procedure Rules (2009)—Civil Proceedings—Rule 7—Judicial Review and Appeal—Annotations—** The respondent was found in contempt of various provisions of the corollary relief order following two-day hearing. The parties made submissions regarding costs. The petitioner’s costs were \$29,734. The petitioner did not prove all his allegations of the respondent’s contempt. The penalty imposed on the respondent was closer to the petitioner’s position than the respondent’s. The respondent was ordered to pay the petitioner costs of \$22,500, inclusive of disbursements. The petitioner sought an order to set-off the costs against his obligation to pay child support. The court declined to order set-off. The petitioner’s costs were not incurred in connection with the support claim, but in connection with his contempt claim where he was successful. Although the court declined to order the set-off, the parties could consent to the arrangement if they wished: *Smith-Spurrell v. Smith*, 2023 NSSC 291, 2023 CarswellNS 773, [2023] N.S.J. 378 (N.S. S.C.).
- **Appendix B—Related Legislation—Annotations—** The complainant and the accused drove to a hotel after meeting at a nightclub and restaurant following an evening of drinking. The complainant described a non-consensual sexual encounter in the bathroom of the hotel room, after which she left the hotel on foot to go to a friend’s house. The complainant testified that the accused eventually arrived in his vehicle and offered her ride, which she accepted. However, he stopped the vehicle in a location where he sexually assaulted her a second time. The trial judge found that complainant was a credible witness, but that there were concerns about her reliability in relation to the first encounter, given her evidence about her consumption of alcohol and its effect on her powers of recall. The trial judge found that the complainant’s recall was better for events that occurred later in the evening. The accused was acquitted of one count of sexual assault, and convicted of the other count of sexual assault. The trial judge rejected the accused’s evidence as to how he acquired a bite mark on his arm from the complainant. The accused appealed from the conviction for sexual assault. His appeal was dismissed. The trial judge addressed directly how the complainant’s reliability concerning the events earlier in the evening had been impacted by alcohol, and how the passage of time caused her level of intoxication to wane. The trial judge was entitled to draw from the evidence the commonsense inferences he did, which then properly helped to inform his conclusions. As the evidence was not same for each count because the complainant’s level of intoxication was not a static condition, her reliability differed in relation to each count. The evidence of the bite mark, which was corroborative of the complainant’s version of the events in the vehicle, was evidence that went only to the second count, and the judge rejected the accused’s evidence on this point. The trial judge was satisfied that the distinction in the complainant’s evidence leading to differing verdicts rested in the inferior quality of her reliability on count one versus on count two. The reasons illustrated that the judge appreciated the difference between credibility and reliability, and that he distinguished between them in his analysis. There was no error in the trial judge’s approach nor the results of his analysis: *R. v. Murray*, 2023 NSCA 77, 2023 CarswellNS 911 (N.S. C.A.).