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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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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 Appendix B (Related Legislation) and Appendix IF (Issues in Focus).

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Highlights

This release includes case law updates, including the following decisions of interest:

- **Nova Scotia Civil Procedure Rules (2009)—Disclosure and Discovery—Rule 18—Discovery—Annotations—**In *LeClair v. MacDonald*, 2026 CarswellNS 119, 2026 NSCA 16, the plaintiff's claim involved allegations of sexual misconduct by the defendant between 2013 and 2018, including sexual innuendo, unwanted advances, and harassment. The plaintiff alleged the torts of sexual assault and intentional infliction of mental distress (IIMD). The defendant brought a motion to strike portions of the statement of claim, including the IIMD claim, on the basis that it was statute-barred. The motion judge granted the defendant's motion, but the plaintiff appealed. She argued that the IIMD claim was not statute-barred because the alleged misconduct was sexual in nature and should fall within the exemption from limitation periods under s. 11(a) of the Limitation of Actions Act. She also argued that the statutory interpretation issue was novel and should not have been decided at the pleading stage. The appeal was allowed in part. The Nova Scotia Court of Appeal set aside the order striking the IIMD claim, holding that the motion judge erred by not applying the correct procedural rules for summary judgment on pleadings. The Court found that the interpretation of s. 11(a) was complex and should not have been decided at the pleading stage without proper evidence and consideration of legislative intent. The IIMD claim was not clearly unsustainable, and the motion to strike that claim should have been dismissed. However, the Court dismissed the appeal concerning the striking of paragraphs 39 and 41, finding that those portions lacked material facts. *LeClair v. MacDonald*, 2026 CarswellNS 119, 2026 NSCA 16
- **Appendix IF. Issues in Focus—IF:3 When is litigation privilege waived with respect to surveillance evidence?—**Litigation privilege may be claimed over surveillance evidence which has been created for the dominant purpose of litigation. Litigation privilege, unlike solicitor-client privilege, is neither absolute in scope nor permanent in nature; rather, there are a myriad of circumstances when it may be waived. Accordingly, for the purposes of this article, three prominent examples have been selected to demonstrate when litigation privilege has been waived in the context of surveillance evidence: 1) legislative provisions governing disclosure, production and evidentiary requirements which may influence a party to explicitly waive litigation privilege; 2) documents which do not meet the 'dominant purpose test' and therefore litigation privilege is waived; and 3) actions by counsel which, by implication and/or inference, waive litigation privilege by triggering common law principles of fairness and consistency. This memo has been updated.

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