Publisher's Note

2018 — Release 8

Previous release was 2018-7

From Your Library:

☐ _____

☐ _____

☐ _____

☐ _____

☐

David S. Ehrlich

Nova Scotia Annotated Rules of Practice

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, Old to New and New to Old Rules Concordance, Table of Concordance for all Jurisdictions, Issues in Focus, Rules Cross Reference 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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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 adds and updates case law for the *Court Jurisdiction and Proceedings Transfer Act*, *Limitations of Actions Act*, and the *Rules of Practice (2009).*

Case Law Highlights

Court Jurisdiciton and Proceedings Transfer Act — The defendant made an unsuccessful attempt to have Nova Scotia found *forum non conveniens*. The

THOMSON REUTERS CANADA

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Fax 1-416-298-5082 (Toronto)
Fax 1-877-750-9041 (Toll Free Canada Only)
Email CustomerSupport.LegalTaxCanada@TR.com

plaintiff executor made a motion to have the pleadings amended to add new causes of action and to add a new party. The defendant made a motion to find that the choice of law was Ontario, and that both the action and amendments were statute barred. It was difficult for the court to determine the site of the alleged torts of conversion and breach of fiduciary duty based on conversion, but the harm was being felt by the estate in Nova Scotia. Nova Scotia was the proper law. The action and amendments are not statute barred. The addition of a new party was statute barred. The amendments sought, with the exception of the new party, were granted: *Wamboldt Estate v. Wamboldt*, 2018 NSSC 163, 2018 CarswellNS 519, [2018] N.S.J. No. 264 (N.S. S.C.).

Rules of Practice (2009) — Rule 90 — The court was entitled to exercise its discretion to order security only if "special circumstances" existed, usually circumstances that would make it unlikely that the moving party would be unable to collect costs if successful. Even if such circumstances existed, the court was entitled to decline to exercise its discretion if an order would deprive a good faith appellant from prosecuting an arguable appeal. Although the wife made no more than token payments toward the costs of the divorce trial for more than two years, she eventually paid the order in full. While she had not paid the costs of the variation application, they were not yet due. Although the wife had referred to the possibility of bankruptcy when the husband's registration of the order for the costs of the divorce trial threatened the re-mortgaging of the former matrimonial home, she had not threatened bankruptcy. There was no evidence that the wife was insolvent or had acted in an insolvent manner toward the husband. The husband's subjective fear that the wife would be unable to pay the costs of the appeal if she was unsuccessful had some objective basis, but was not enough to warrant an order for security; *Klefenz v. Klefenz*, 2018 NSCA 56, 2018 CarswellNS 479 (N.S. C.A.).