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### **NOVA SCOTIA ANNOTATED RULES OF PRACTICE**

**David S. Ehrlich**  
**Release No. 5, July 2022**

#### **Publisher's Special Release Note 2021**

The pages in this work were reissued in August 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the August 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Table of Contents for an overview of the title's organization.

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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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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 and adds case law to case law and commentary to *Rules of Practice (2009)* and Related Legislation. Also in this release, updates to Selected Legal Literature section and to two memos (What test will be applied by the courts with respect to production of metadata related to digital images?; and What is the admissibility of expert evidence from an auditor or accountant?).

### **Highlights**

***Rules of Practice (2009) — Rule 90*** — The husband appealed a corollary relief order granted in the parties' divorce hearing in the Supreme Court (Family Division). The order addressed parenting arrangements, child support, spousal support, and the division of matrimonial property. The apportionment of the parties' debts was factored into the judge's division of matrimonial property. The husband applied to the Court of Appeal, seeking to stay the provisions of the order related to retroactive and prospective child support and the division of matrimonial property and debt. The husband's affidavit lacked sufficient detail to substantiate his claim for irreparable harm. The motion for a stay was dismissed: *Green v. Green*, 2022 NSCA 30, 2022 CarswellNS 235 (N.S. C.A.).

***Small Claims Court Act***— The court's own research has not revealed any authority for the proposition that an adjudicator loses jurisdiction, errs in law, or denies natural justice merely by awarding damages in excess of the specific amount claimed, after hearing and assessing the evidence. It is theoretically possible that such a procedure could amount to a denial of natural justice or an excess of jurisdiction, but the appellant has not shown a basis to find that this happened in this instance. Once all of the evidence and arguments were before the adjudicator, he was entitled to render a fair decision, including correcting what he found to be erroneous mathematical calculations presented by the parties. That is precisely what the adjudicator did in the instant case: *JeBailey v. Hawa's Electric Limited*, 2022 NSSC 101, 2022 CarswellNS 237 (N.S. S.C.), affirming *Hawa's Electric Limited v. Elias JeBailey*, 2021 NSSM 17, 2021 CarswellNS 499 (N.S. Small Cl. Ct.).

### **ProView Developments**

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- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages