

Publisher's Note
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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 It has also retained the Annotated *Nova Scotia Civil Procedure Rules (1972)* as an historical reference.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 *Class Proceedings Act* and the *Rules of Practice (2009)*.

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Case Law Highlights

Rules of Practice (2009) — Rule 36 — The accused was a taxi driver who was convicted of sexually assaulting two passengers. The accused began appeal proceedings, but subsequently died. The sister of the accused wished to continue the appeal posthumously, and brought an application to act as the personal representative for the accused to prosecute the appeal. Her application was dismissed. Rare or exceptional circumstances were not present. The issue of the identification evidence of the voice of the accused did not make for a strong case on the appeal, and did not transcend the death of the accused. The case did not solely turn on identification of the voice of the accused. The issue of the dangers regarding cross-racial evidence was a matter of public importance, but issue was not so rare as to grant increased importance to the case at the bar. A new trial would not likely lead to an acquittal. The accused, through his sister, appealed the denial of a personal representative to prosecute the appeal, and the appeal was dismissed. Absent an error in principle, deference was owed to the balancing of the Smith factors whether special circumstances exist to make it in the interests of justice to hear an appeal rendered moot by the accused's death. There was no basis to interfere with the discretion exercised by the Summary Conviction Appeal Court judge: *R. v. MacLellan*, 2019 NSCA 2, 2019 CarswellNS 26 (N.S. C.A.), affirming 2017 NSSC 307, 2017 CarswellNS 866 (N.S. S.C.).

Rules of Practice (2009) — Rule 91 — The accused was convicted in Provincial Court, for failing to provide a breath sample. The accused unsuccessfully appealed the judgment in the summary appeals court. The accused claimed that the police officer did not make a proper demand for the breath sample. The accused claimed that his refusal was not unequivocal. The accused did not raise these concerns at trial, or in the summary appeals court. The accused applied for leave to appeal the summary appeals court judgment, to the provincial Court of Appeal. The accused's application was dismissed. There were no larger issues that impacted the justice system. The accused received only a fine, and the minimum one-year driving prohibition; his liberty was not significantly impacted. The officer's belief that the accused may have been impaired was objectively and subjectively reasonable. The new issue of a potential Charter of Rights violation could not be raised, at this stage of the litigation. In any event, there was no indication of when or how the officer asked the accused to provide the sample. The accused had not identified a legal error which would lead to leave being granted.: *R. v. Amyotte*, 2018 NSCA 98, 2018 CarswellNS 963 (N.S. C.A.), refusing leave to appeal 2017 NSSC 278, 2017 CarswellNS 822 (N.S. S.C.).