

Judicature Act

CHAPTER 240 OF THE REVISED STATUTES, 1989

as amended by

1989, c. 20, s. 1; 1992, c. 16, ss. 30-68; 1996, c. 23, ss. 10, 11;
1997 (2nd Sess.), c. 5; 1998, c. 12, ss. 3-10; 2000, c. 28, s. 55;
2003 (2nd Sess.), c. 1, s. 26; 2008, c. 60; 2009, c. 17; 2019, c. 17



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An Act Respecting a Supreme Court of Judicature

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NOTE - See transitional provisions contained in 1997 (2nd Sess.), c. 5, ss. 8-11.

Short title

1 This Act may be cited as the *Judicature Act*. R.S., c. 240, s. 1.

INTERPRETATION

Interpretation

2 In this Act, and the Rules,

- (a) “Court” means the Court of Appeal or the Supreme Court;
- (aa) “Court of Appeal” means the Nova Scotia Court of Appeal and includes a judge thereof whether sitting in court or in chambers;
- (b) “defendant” includes every person served with an originating notice or other process or entitled to attend any proceeding;
- (c) “judgment” includes an order, rule or decree;
- (d) “oath” includes solemn affirmation and statutory declaration;
- (e) “party” includes every person served with an originating notice, or entitled to attend any proceeding although not named on the record;
- (f) “plaintiff” includes every person asking any relief or declaration against any other person in any proceeding;
- (g) “proceeding” means any civil or criminal action, suit, cause or matter, or any interlocutory application therein, including a proceeding formerly commenced by a writ of summons, third party notice, counterclaim, petition, originating summons or originating motion or in any other manner;
- (h) “Rules” includes the *Civil Procedure Rules* and any other rules made pursuant to this Act;
- (i) “Supreme Court” means the Supreme Court of Nova Scotia and includes a judge thereof whether sitting in court or in chambers;
- (j) “Supreme Court (Family Division)” means the Supreme Court of Nova Scotia (Family Division) and includes a judge thereof whether sitting in court or in chambers. R.S., c. 240, s. 2; 1992, c. 16, s. 30; 1998, c. 12, s. 3.

CONSTITUTION OF THE COURT OF APPEAL
AND THE SUPREME COURT

Supreme Court of Nova Scotia

3 The Supreme Court of Nova Scotia as constituted before this Act, a court of common law and equity possessing original and appellate jurisdiction in both civil and criminal cases, shall continue as the Supreme Court of Nova Scotia with original jurisdiction and as the Nova Scotia Court of Appeal with appellate jurisdiction for the Province. R.S., c. 240, s. 3; 1992, c. 16, s. 32.

Jurisdiction, power and authority

4 (1) The Court shall continue to be a superior court of record, having civil and criminal jurisdiction and it has all the jurisdiction, power and authority that on the coming into force of this Act, was vested in or might have been exercised by the Supreme Court, and such jurisdiction, power, and authority shall be exercised in the name of the Court.

(2) *repealed 1992, c. 16, s. 33.*

R.S., c. 240, s. 4; 1992, c. 16, s. 33.

Court for Divorce and Matrimonial Causes

5 The Supreme Court shall exercise all the jurisdiction, powers and authority belonging to or exercised by the Court for Divorce and Matrimonial Causes before the first day of March, 1972. R.S., c. 240, s. 5; 1992, c. 16, s. 34.

6 *repealed 1992, c. 16, s. 35.*

Jurisdiction and power of Court of Appeal

7 The Court of Appeal shall exercise all the jurisdiction, powers and authority belonging to or exercised by the Supreme Court *in banco* before the first day of August, 1966, and the judges of the Court of Appeal shall exercise all the jurisdiction, powers and authority belonging to or exercised by a judge of the Supreme Court before that date in relation to the Supreme Court *in banco*. R.S., c. 240, s. 7; 1992, c. 16, s. 36.

Jurisdiction and power of Supreme Court

8 The Supreme Court shall exercise all the jurisdiction, powers and authority belonging to or exercised by the Supreme Court of Nova Scotia before the first day of August, 1966, and not assigned to the Court of Appeal by this or any other Act and the judges of the Supreme Court shall exercise all the jurisdiction, powers and authority belonging to or exercised by a judge of the Supreme Court of Nova Scotia before that date and not assigned to the judges of the Court of Appeal by this or any other Act. R.S., c. 240, s. 8; 1992, c. 16, s. 37.

Reference to Supreme Court in banco or Appeal Division

9 A reference in any enactment to the Supreme Court *in banco* or a judge thereof or to the Appeal Division of the Court or a judge thereof is, whether expressed in those terms or not, a reference to the Court of Appeal or a judge thereof and shall be so construed. R.S., c. 240, s. 9; 1992, c. 16, s. 38.

Reference to Supreme Court or Trial Division

10 Subject to Section 9, a reference in any other enactment to the Supreme Court or the Trial Division of the Supreme Court or a judge thereof is a reference to the Supreme Court or a judge thereof and shall be so construed. R.S., c. 240, s. 10; 1992, c. 16, s. 39.

Reference to Chief Justice

11 A reference in any other enactment to the Chief Justice that relates to the functions assigned by this Act to the Supreme Court or a reference in any other enactment to the Chief Justice of the Trial Division of the Supreme Court is a reference to the Chief Justice of the Supreme Court and shall be so construed, but in any other case a reference to the Chief Justice is a reference to the Chief Justice of Nova Scotia. R.S., c. 240, s. 11; 1992, c. 16, s. 40.

Reference to Court for Divorce and Matrimonial Causes

12 A reference in any other enactment to the Court for Divorce and Matrimonial Causes, or to judges of that Court, shall be and shall be construed as a reference to the Supreme Court or a judge thereof. R.S., c. 240, s. 12; 1992, c. 16, s. 41.

Exercise of jurisdiction

13 The jurisdiction of the Court shall be exercised in the manner provided in this Act and the Rules and, where no special provisions are contained in this Act or the Rules, it shall be exercised in accordance with the practice and procedure followed by the Supreme Court of Nova Scotia before the first day of March, 1972. R.S., c. 240, s. 13; 1992, c. 16, s. 42.

Marking of court documents

14 (1) *repealed 1992, c. 16, s. 43.*

(2) Every document relating to a proceeding in the Court of Appeal shall be marked with the name of the Court of Appeal.

(3) Every document relating to a proceeding in the Supreme Court shall be marked with the name of the Supreme Court.

(4) Every document relating to a proceeding in the Supreme Court (Family Division) shall be marked with the name of the Supreme Court (Family Division). R.S., c. 240, s. 14; 1992, c. 16, s. 43; 1998, c. 12, s. 4.

SEAL

Seal for Supreme Court and for Court of Appeal

15 (1) The Governor in Council may from time to time determine and declare the seal to be used in the Supreme Court and by which its proceedings shall be certified and authenticated.

(2) The Governor in Council may from time to time determine and declare the seal to be used in the Court of Appeal and by which its proceedings shall be certified and authenticated. R.S., c. 240, s. 15; 1992, c. 16, s. 44.

JUDGES

Composition of Court of Appeal

16 (1) The Court of Appeal shall be composed of the Chief Justice of Nova Scotia, who shall be the chief justice of the Court of Appeal, and seven other judges.

(2) For each office of judge of the Court of Appeal there shall be the additional office of supernumerary judge of the Court of Appeal and for the office of Chief Justice of Nova Scotia there shall be such additional offices of judge as are, from time to time, required for the purpose of section 32 of the *Judges Act* (Canada). 1992, c. 16, s. 45.

Composition of Supreme Court

- 17 (1)** The Supreme Court shall be composed of
- (a) the Chief Justice of the Supreme Court;
 - (b) the Associate Chief Justice of the Supreme Court;
 - (c) the Associate Chief Justice of the Supreme Court (Family Division); and
 - (d) not more than forty-seven other judges.

(1A) The Supreme Court shall include a Family Division composed of the Chief Justice of the Supreme Court, the Associate Chief Justice of the Supreme Court (Family Division) and not more than twenty-four other judges.

(2) For each office of judge of the Supreme Court there shall be the additional office of supernumerary judge of the Supreme Court and for the office of Chief Justice of the Supreme Court and the office of Associate Chief Justice of the Supreme Court there shall be such additional offices of judge as are, from time to time, required for the purpose of section 32 of the *Judges Act* (Canada). 1992, c. 16, s. 45; 1997 (2nd Sess.), c. 5, s. 1; 2000, c. 28, s. 55; 2019, c. 17, s. 1.

18 *repealed 1998, c. 12, s. 5.*

Holding other office under Government

19 The judges of the Court shall hold no other office under Government, except by way of judicial appointment. R.S., c. 240, s. 19.

Constitution Act, 1867

20 The person appointed Chief Justice of Nova Scotia, the person appointed Chief Justice of the Supreme Court, the person appointed Associate Chief Justice of the Supreme Court, ~~and~~ the person appointed Associate Chief Justice of the Supreme Court (Family Division) and the persons appointed as judges of the Court shall be appointed in accordance with the provisions of the *Constitution Act, 1867*. R.S., c. 240, s. 20; 1992, c. 16, s. 46; 1997 (2nd Sess.), c. 5, s. 2.

Responsibilities of Chief Justices and duties of Associate Chief Justices

20A (1) The Chief Justice of Nova Scotia is responsible for the administration of the judicial functions of the Court of Appeal, including, without limiting the generality of the foregoing, the scheduling of the sittings of the Court of Appeal and the assignment of judicial duties.

(2) The Chief Justice of the Supreme Court is responsible for the administration of the judicial functions of the Supreme Court, including, without limiting the generality of the foregoing, the scheduling of the sittings of the Supreme Court and the assignment of judicial duties.

(3) The Associate Chief Justice of the Supreme Court shall carry out the duties assigned to the Associate Chief Justice by the Chief Justice of the Supreme Court.

(4) The Associate Chief Justice of the Supreme Court (Family Division) shall carry out the duties assigned to the Associate Chief Justice (Family Division) by the Chief Justice of the Supreme Court. 1992, c. 16, s. 47; 1997 (2nd Sess.), c. 5, s. 3.

Equal power and jurisdiction of judges

21 Except where otherwise provided, all judges of the Court of Appeal have in all respects equal power, authority and jurisdiction and all judges of the Supreme Court have in all respects equal power, authority and jurisdiction. 1992, c. 16, s. 48.

Ex officio judge

21A A judge of the Supreme Court is *ex officio* a judge of the Court of Appeal. 1996, c. 23, s. 10.

Precedence of judges

22 (1) The Chief Justice of Nova Scotia shall have precedence over all the other judges of the Court.

(2) The Chief Justice of the Supreme Court shall have precedence next after the Chief Justice of Nova Scotia over all other judges of the Court.

(3) The Associate Chief Justice of the Supreme Court shall have precedence next after the Chief Justice of the Supreme Court over all other judges of the Court.

(3A) The Associate Chief Justice of the Supreme Court (Family Division) shall have precedence next after the Associate Chief Justice of the Supreme Court over all other judges of the Court.

(4) The other judges of the Court of Appeal shall have precedence next after the Associate Chief Justice of the Supreme Court (Family Division) according to seniority of appointment.

(5) The other judges of the Supreme Court shall have precedence next after the judges of the Court of Appeal according to seniority of first appointment to a court pursuant to section 96 of the *Constitution Act, 1867*. R.S., c. 240, s. 22; 1992, c. 16, s. 49; 1997 (2nd Sess.), c. 5, s. 4.

Acting Chief Justices and judges

23 (1) In the absence or incapacity of the Chief Justice of Nova Scotia or if such office is vacant, the next senior judge, other than a supernumerary judge of the Court of Appeal shall have and exercise the powers and perform the duties of the Chief Justice of Nova Scotia.

(2) In the absence or incapacity of a judge of the Court of Appeal or in case of a vacancy in the Court of Appeal, the Chief Justice of Nova Scotia may designate a judge of the Supreme Court to act as a judge of the Court of Appeal.

(3) In the absence or incapacity of the Chief Justice of the Supreme Court or if such office is vacant, the Associate Chief Justice of the Supreme Court shall have and exercise the powers and perform the duties of the Chief Justice.

(3A) In the absence or incapacity of the Chief Justice of the Supreme Court and the Associate Chief Justice of the Supreme Court or if such offices are vacant, the Associate Chief Justice (Family Division) shall have and exercise the powers and perform the duties of the Chief Justice.

(4) In the absence or incapacity of the Chief Justice of the Supreme Court, the Associate Chief Justice of the Supreme Court and the Associate Chief Justice of the Supreme Court (Family Division) or if such offices are vacant, the next senior judge, other than a supernumerary judge, of the Supreme Court shall have and exercise the powers and perform the duties of the Chief Justice. R.S., c. 240, s. 23; 1992, c. 16, s. 50; 1997 (2nd Sess.), c. 5, s. 5.

Attendance at meetings

24 The judges of the Court are authorized from time to time to attend meetings, on the call of either the Chief Justice of Nova Scotia or the Chief Justice of the Supreme Court, for the purpose of considering the operation of this Act or any other matters relating to the administration of justice. R.S., c. 240, s. 24; 1992, c. 16, s. 51.

JUDICIAL DISTRICTS

Descriptions of districts and resident judges

25 (1) The Province consists of the following judicial districts:

(a) Cape Breton District, consisting of the counties of Cape Breton, Inverness, Richmond and Victoria;

(b) Central District, consisting of the counties of Antigonish, Colchester, Cumberland, Guysborough and Pictou and the Municipality of the District of East Hants;

(c) Halifax District, consisting of the County of Halifax;

(d) Southwestern District, consisting of the Counties of Annapolis, Digby, Kings, Lunenburg, Queens, Shelburne and Yarmouth and the Municipality of the District of West Hants.

(2) There shall be for each judicial district at least two judges of the Supreme Court designated as resident judges.

(3) Subject to subsection (4), the resident judges shall be designated by the Chief Justice of the Supreme Court after consultation with the Attorney General.

(4) A judge of the Supreme Court who was, immediately prior to the coming into force of this subsection, a judge of a county court is deemed to be designated as a resident judge for the judicial district in which that county court would be located but for its abolition.

(5) A designation of a judge pursuant to or deemed by this Section shall not be changed or rescinded except with the consent of that judge.

(6) A resident judge shall reside within the judicial district for which the judge is designated. 1992, c. 16, s. 52.

Power to establish justice centres and areas

26 The Minister of Justice may establish justice centres and for each the justice centre area it serves. 1996, c. 23, s. 11.

OATH OF JUSTICES

Oath of office

27 (1) Before assuming the duties of his office, a judge of the Court shall take the following oath:

I do solemnly and sincerely promise and swear, that I will
duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as
So help me God.

(2) The oath shall be administered by the Lieutenant Governor or such person as is appointed by him to administer the same or by any person who is appointed by the Governor General to administer oaths of office. R.S., c. 240, s. 27.

SESSIONS AND SITTINGS

Sessions and sittings

28 Subject to the Rules, the Supreme Court and the judges thereof shall have power to sit and act at any time and at any place for the transaction of any part of the business of the Supreme Court, or of a judge, or for the discharge of any duty which by any statute or otherwise is required to be discharged. R.S., c. 240, s. 28; 1992, c. 16, s. 54.

Rules

29 The judges of the Supreme Court or a majority of them, in addition to any other such power granted to them by this Act, may make rules respecting sessions, sittings or circuits of the Supreme Court and any matter relating thereto. R.S., c. 240, s. 29; 1992, c. 16, s. 54.

Special sittings

30 (1) Whenever it appears necessary for the disposal of any proceeding in any county, the Supreme Court may order special sittings of the Supreme Court to be held in such county for the trial and disposal of such proceeding.

(2) The judge presiding at such sittings may hear and determine any proceeding which may be disposed of by a judge sitting in court or chambers. R.S., c. 240, s. 30; 1992, c. 16, s. 54.

Extension and adjournment of sittings

31 The presiding judge may from time to time in his discretion extend and adjourn any sittings for such time as he deems necessary for the disposal of any proceeding on the docket. R.S., c. 240, s. 31.

Delay of sittings

32 If a judge is prevented for any reason from arriving at the place appointed for holding sittings on the day fixed for holding the same, the sheriff shall

give public notice that the Supreme Court will sit on the following day and shall give such notice from day to day until a judge arrives for the sittings. R.S., c. 240, s. 32; 1992, c. 16, s. 54.

FAMILY DIVISION

Jurisdiction

32A (1) The Supreme Court (Family Division) has and may exercise in such judicial districts, or parts of a district, as are designated by the Governor in Council pursuant to Section 32H the powers and duties possessed by the Supreme Court in relation to, and has and may exercise jurisdiction in relation to, proceedings in the following matters:

- (a) formation of marriage;
- (b) dissolution and annulment of marriage;
- (c) judicial separation and separation orders;
- (d) rights to property in disputes among spouses or members of the same family;
- (e) restitution of conjugal rights;
- (f) applications under the *Testators' Family Maintenance Act*;
- (g) declarations of status, including validity of marriage, parentage, legitimacy and legitimation;
- (h) alimony, maintenance and protection for spouses;
- (i) maintenance of children, including affiliation proceedings and agreements;
- (j) maintenance of parents;
- (k) enforcement of alimony and maintenance orders, including reciprocal enforcement of those orders;
- (l) custody and access to children;
- (m) adoption;
- (n) matters arising under the *Child Abduction Act*;
- (o) interspousal and familial torts;
- (p) *repealed 1998, c. 12, s. 6.*
- (q) consent to medical treatment of minors;
- (r) *repealed 1998, c. 12, s. 6.*
- (s) change of name;
- (t) *parens patriae* jurisdiction;
- (u) divorce;

(v) the interpretation, enforcement or variation of a marriage contract, cohabitation agreement, separation agreement or paternity agreement;

(w) resulting trust or unjust enrichment involving persons who have cohabited including, but not limited to, relief by way of constructive trust or a monetary award;

(x) those other matters that are provided by or under an enactment to be within the jurisdiction of the Family Division.

(2) In addition to those matters referred to in subsection (1), the Governor in Council may by order confer on the Supreme Court (Family Division) jurisdiction over any or all charges, offences and matters arising from any one or more of the following Acts or subjects:

(a) the *Labour Standards Code* in so far as it relates to a prosecution for an offence respecting the employment of children;

(b) the *Young Persons' Summary Proceedings Act*;

(c) the *Young Offenders' Act* (Canada);

(d) sections 172, 215 and 733.1 of the *Criminal Code* (Canada);

(e) sections 266, 810 and 811 of the *Criminal Code* (Canada), where the parties are spouses or parent and child;

(f) charges or proceedings under the *Criminal Code* (Canada) with respect to incest and other sexual offences committed by a family member against another member of the same family, corrupting children, failing to provide necessaries, abandoning children, abduction of children by members of the same family, assaults by a member of a family against another member of the same family and thefts by a family member from another member of the same family;

(g) such other Acts or matters as the Governor in Council deems appropriate. 1997 (2nd Sess.), c. 5, s. 6.

Judges of Family Division

32B (1) Any judge of the Supreme Court may hear and determine proceedings brought in the Supreme Court (Family Division) and for such purpose such judge is a judge of the Supreme Court (Family Division).

(2) Any judge of the Supreme Court (Family Division) may hear and determine any proceeding brought in the Supreme Court but the substantial majority of that judge's time shall be spent hearing and determining proceedings in the Supreme Court (Family Division). 1998, c. 12, s. 7.

Transfer from or to Family Division

32C (1) A judge of the Supreme Court (Family Division) may, in accordance with the Rules, order that a proceeding commenced in the Supreme Court (Family Division) be transferred out of that Division or to another court.

(2) Where a proceeding that should not have been commenced in the Supreme Court (Family Division) is so commenced, a judge of the Supreme Court (Family Division) may at any stage of the proceeding, order that the proceeding be transferred out of that Division or to another court in which the proceeding may properly be taken, and all steps taken by any party in the proceeding and all orders made therein before the transfer are valid and effectual as if they were taken or made where the proceedings ought to have been commenced.

(3) A judge of the Supreme Court or of another court having jurisdiction in a proceeding that could be commenced in the Supreme Court (Family Division) may, in accordance with the Rules, order that the proceeding be transferred to the Supreme Court (Family Division). 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

Open court

32D Subject to Section 37 and any other Act, whether of the Legislature of the Province or of the Parliament of Canada, that applies to proceedings in the Supreme Court (Family Division), a judge of the Supreme Court (Family Division) shall hear a matter in open court unless after considering

- (a) the public interest in hearing the proceeding in open court;
- (b) any potential harm that may be caused to any person if matters of a private nature were disclosed in open court; and
- (c) any representations made by the parties,

the judge is of the opinion that the matter should be heard, in whole or in part, *in camera*. 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

Power to adjourn

32E (1) A judge, on application or on the judge's own motion, may adjourn a proceeding brought in the Supreme Court (Family Division) where the judge considers that any party to the proceeding or any child affected by the proceeding would benefit by counselling or mediation or professional services.

(2) Where a proceeding brought in the Supreme Court (Family Division) is adjourned pursuant to subsection (1), the judge may order a party to pay all or any portion of the fees and expenses specified in the order for any of the services. 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

Power to direct report

32F (1) Upon application or on the judge's own motion, a judge of the Supreme Court (Family Division) may direct a family counsellor, social worker,

probation officer or other person to make a report concerning any matter that, in the opinion of the judge, is a subject of the proceeding.

(2) A person directed to make a report pursuant to subsection (1) shall file a written report with the Supreme Court (Family Division) together with a copy of the report for each party to the proceeding and for the judge.

(3) The contents of a report filed pursuant to subsection (2) may be received in evidence in the proceeding.

(4) A person filing a report pursuant to subsection (2) is a competent and compellable witness.

(5) Any party, including the party calling the person as a witness, may cross-examine the person referred to in subsection (4).

(6) No action lies or shall be instituted against a person who prepares a report pursuant to subsection (1) for any loss or damage suffered by a person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done by that person in the carrying out or supposed carrying out of that duty.

(7) A judge may, subject to the regulations, specify in an order made pursuant to subsection (1) the amount of any charge for the report that each party is required to pay. 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

Duties of peace officer

32G It is the duty of a peace officer to serve any process issued out of the Supreme Court (Family Division), to execute any order issued by any judge of the Supreme Court (Family Division), to convey a young offender to such place or places as may be directed in such orders and to assist the Supreme Court (Family Division) and the officers of the Division in carrying out the *Young Offenders Act* (Canada) and any other matters or enactment for which the Supreme Court (Family Division) is responsible. 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

Power to designate area

32H The Governor in Council may designate a judicial district, or part of a district, in which the Supreme Court (Family Division) may exercise its jurisdiction and may designate whether that jurisdiction is exclusive or concurrent. 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 8.

Regulations

32I The Governor in Council may make regulations respecting

- (a) mediation and alternate dispute-resolution mechanisms; and
- (b) costs and fees for services provided in the Supreme Court (Family Division). 1997 (2nd Sess.), c. 5, s. 6; 1998, c. 12, s. 9.

TRIALS AND PROCEDURES

Single judge in Supreme Court and power to decide or reserve decision

33 (1) Every proceeding in the Supreme Court and all business arising out of the same shall be heard, determined and disposed of before a single judge.

(2) In all such proceedings any judge sitting in court shall be deemed to constitute the Supreme Court.

(3) A judge of the Supreme Court shall decide questions coming properly before him, but may reserve any proceeding or any point in any proceeding for the consideration of the Court of Appeal. R.S., c. 240, s. 33; 1992, c. 16, s. 55.

Trials and procedure

34 Subject to rules of Court, the trials and procedure in all cases, whether of a legal or equitable nature, shall be as nearly as possible the same and the following provisions shall apply:

(a) in civil proceedings, unless the parties in person or by their counsel or solicitors consent to a trial of the issues of fact or the assessment or inquiry of damages without a jury, the issues of fact shall be tried with a jury in the following cases:

(i) where the proceeding is an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment,

(ii) where either of the parties in a proceeding requires the issues of fact to be tried or the damages to be assessed or inquired of with a jury and files with the prothonotary and leaves with the other party or his solicitor a notice to that effect at least sixty days before the first day of the sittings at which the issues are to be tried or the damages assessed or inquired of, except that, upon an application to the Supreme Court or to a judge made before the trial or by the direction of the judge at the trial, such issues may be tried or such damages assessed or inquired of by a judge without a jury, notwithstanding such notice,

(iii) where the judge at the trial in his discretion directs that the issues of fact shall be tried or the damages assessed or inquired of with a jury;

(b) in all other cases the issues of fact or the assessment or inquiry of damages in civil proceedings shall be tried, heard and determined and judgment given by a judge without a jury;

(c) if in any proceeding both legal and equitable issues are raised, they shall be heard and determined at the same time, unless the Supreme Court or a judge, or the judge at the trial, otherwise directs or unless under the foregoing provisions of this Section either of the parties requires that the legal issues of fact be tried with a jury;

(d) upon the hearing of any proceeding, the presiding judge may, of his own motion or by consent of the parties, reserve judgment until a future day, not later than six months from the day of reserving judgment, and his judgment whenever given shall be considered as if given at the time of the hearing and shall be filed with the prothonotary of the Supreme Court for the county in which the hearing was tried, who shall immediately give notice in writing to the parties to the cause or their respective solicitors that such judgment has been filed, and each of the parties shall have and exercise, within twenty days, or within such further time as the Supreme Court may order, from the service of such notice, all such rights as he possessed or might have exercised if judgment had been given on the hearing of the proceeding;

(e) upon any trial with a jury of any proceeding except a proceeding for libel, the jury shall, if so directed by the judge, give a special verdict, and if not so directed may give either a general or a special verdict;

(f) upon a trial with a jury of any proceeding, except a proceeding for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment,

(i) the judge, instead of directing the jury to give either a general or a special verdict, may direct the jury to answer any questions of fact raised by the issues,

(ii) such questions may be stated to them by the judge, and counsel may require the judge to direct the jury to answer any other questions raised by the issues or necessary to be answered by the jury in order to obtain a complete determination of all matters involved in the proceeding,

(iii) the jury shall answer such questions and shall not give any verdict and the judge shall give a judgment in the proceeding not inconsistent with the answers of the jury to such questions,

(iv) if the judge refuses to direct the jury to answer any questions which counsel requires him to submit to them, such refusal may be used as a ground for a new trial. R.S., c. 240, s. 34; 1992, c. 16, s. 56.

Assessor to assist Court

35 (1) Subject to the Rules, the Court may, in any proceeding in which it deems it expedient, call in the aid of one or more assessors specially qualified and try and hear such proceeding wholly or in part with the assistance of such assessor or assessors.

(2) The remuneration, if any, to be paid by any party to such assessor shall be determined by the Court. R.S., c. 240, s. 35.

Interpretation of Sections 35B to 35H

35A In Sections 35B to 35H,

- (a) “judgment creditor” means a person who is entitled to receive payment of or to enforce a judgment;
- (b) “judgment debtor” means an person who is obligated to make payment under a judgment or against whom a judgment may be enforced;
- (c) “periodic payments” means the payment of money to a judgment creditor at a future time or times. 2003 (2nd Sess.), c. 1, s. 26.

Periodic payments

35B In a court proceeding in which damages are claimed for personal injuries or for the death of a person, or under the *Fatal Injuries Act*, the court may, on the application of any party, order that the future pecuniary damages and such other damages as the parties may agree be paid in whole or in part by periodic payments. 2003 (2nd Sess.), c. 1, s. 26.

Duty of court respecting order for periodic payments

35C Where the court orders damages to be paid by periodic payments, the judgment shall

- (a) identify each head of damage for which a periodic payment is to be made;
 - (b) in respect of each head of damage for which periodic payments are awarded, state
 - (i) the amount of each periodic payment,
 - (ii) the date of or the interval between each periodic payment,
 - (iii) the recipient of each periodic payment,
 - (iv) any annual percentage increase in the amount of each periodic payment, and
 - (v) the date or event on which the periodic payments will terminate;
- and
- (c) contain or have attached to it any other material that the court considers appropriate. 2003 (2nd Sess.), c. 1, s. 26.

Security for periodic payments

35D (1) Unless the court orders otherwise, a judgment that orders damages to be paid by periodic payments is conditional on the judgment debtor’s filing with the court, within thirty days after the day the judgment is rendered or such other time as the court may fix, security to assure the payment of the judgment.

(2) Security under subsection (1) shall be in the form of an annuity contract issued by a life insurer satisfactory to the court, or in any other form that is satisfactory to the court.

(3) Where security is filed and approved under this Section, the judgment debtor by whom or on whose behalf the security is filed is discharged from all liability to the judgment creditor in respect of the damages that are to be paid by periodic payments, but the owner of the security remains liable for the periodic payments until they are paid. 2003 (2nd Sess.), c. 1, s. 26.

Where judgment creditor dies

35E Where a judgment creditor dies before the date or event on which periodic payments are terminated for a head of damage under subclause (v) of clause (b) of Section 35C, the remaining periodic payments for that head of damage shall continue to be paid to the estate of the judgment creditor until the termination date, unless the judgment provides otherwise. 2003 (2nd Sess.), c. 1, s. 26.

Commutation of periodic payments to lump sum

35F Except as provided in subsection (2) of Section 35D and Section 35E, no award for periodic payments of damages shall be commuted into a lump sum. 2003 (2nd Sess.), c. 1, s. 26.

Exemption of periodic payments from execution, etc.

35G Periodic payments of damages for loss of future earnings are exempt from garnishment, attachment, execution or any other process or claim to the same extent that wages or earnings are exempt under law. 2003 (2nd Sess.), c. 1, s. 26.

Award for periodic payments not assignable or transferable

35H An award for periodic payments is not assignable or transferable. 2003 (2nd Sess.), c. 1, s. 26.

Application of Sections 35A to 35H

35I Sections 35A to 35H apply to all proceedings, whether commenced before or after the coming into force of those Sections. 2003 (2nd Sess.), c. 1, s. 26.

Judgment by judge leaving office or absent

36 (1) Where a judge resigns his office, is appointed to any other court or ceases to hold office, he may at any time within eight weeks after such event give judgment or grant an order in any proceeding previously tried or heard before him, as if he had continued in office.

(2) Where a judge has heard any proceeding jointly with other judges in the Court of Appeal, he may at any time within the period mentioned in subsection (1) take part in the giving of judgment by the Court of Appeal, as if he were a member of it.

(3) Where a judge has heard a proceeding jointly with other judges in the Court of Appeal and he resigns, is appointed to any other court, ceases to hold office, dies or is absent through illness or other cause without having handed his opinion in writing to any other judge of the Court of Appeal, then the remaining

judges shall, notwithstanding any other provisions of this Act, give the judgment or order of the Court of Appeal in the proceeding.

(4) Where a judge has heard a proceeding jointly with other judges in the Court of Appeal, and he resigns, is appointed to any other court, ceases to hold office, dies or is absent through illness or other cause before judgment is delivered by the Court of Appeal but has handed his opinion in writing to any other judge of the Court of Appeal, the remaining judges shall, notwithstanding any other provision of this Act, deliver judgment in the proceeding and the written judgment of the dead or absent judge shall be read by one of the other judges and has the same effect as if he were present. R.S., c. 240, s. 36; 1992, c. 16, s. 57.

Exclusion of public from court

37 Where a judge of the Supreme Court at any proceeding deems it to be in the interest of public morals, the maintenance of order or the proper administration of justice, he may order that the public be excluded from the court. R.S., c. 240, s. 37; 1992, c. 16, s. 58.

APPEALS

Appeal to Court of Appeal

38 (1) Except where it is otherwise provided by any enactment, an appeal lies to the Court of Appeal from any decision, verdict, judgment or order of the Supreme Court or a judge thereof, whether in court or in chambers.

(1A) Notwithstanding any enactment but subject to Sections 39 and 40, an appeal lies to the Court of Appeal from any decision, verdict, judgment or order of the Supreme Court (Family Division) or a judge thereof.

(2) The Court of Appeal also has jurisdiction as provided by any Act of the Parliament of Canada or of the Legislature.

(3) If, upon the hearing of any appeal, it appears to the Court of Appeal that a new trial should be ordered, it may order that the decision, verdict, judgment or order be set aside and that a new trial be held subject to such terms and conditions as the Court of Appeal may direct.

(4) Nothing in this Section restricts the jurisdiction and power of the Court of Appeal exercised by the Appeal Division of the Supreme Court before the first day of March, 1972. R.S., c. 240, s. 38; 1992, c. 16, s. 59; 1997 (2nd Sess.), c. 5, s. 7; 1998, c. 12, s. 10.

Appeal from costs or consented to order

39 No order of the Supreme Court made with the consent of the parties is subject to appeal, and no order of the Supreme Court as to costs only that by law are left to the discretion of the Supreme Court is subject to appeal on the ground that the discretion was wrongly exercised or that it was exercised under a misapprehen-

sion as to the facts or the law or on any other ground, except by leave of the Court of Appeal. R.S., c. 240, s. 39; 1992, c. 16, s. 60.

Appeal from interlocutory order upon leave

40 There is no appeal to the Court of Appeal from any interlocutory order whether made in court or chambers, save by leave as provided in the Rules or by leave of the Court of Appeal. R.S., c. 240, s. 40; 1992, c. 16, s. 61.

RULES OF LAW

Rules of law

41 In every proceeding commenced in the Court, law and equity shall be administered therein according to the following provisions:

(a) if a plaintiff claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title, or claim whatsoever, asserted by a defendant in any such proceeding or to relief founded upon a legal right which before the first day of October, 1884, could only have been given by a court of equity, the Court shall give to the plaintiff the same relief as would have been given by the court of the Equity Judge or the High Court of Chancery in England when the same existed, in a suit or proceedings for the same or the like purpose properly instituted before the first day of October, 1884;

(b) if a defendant

(i) claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract or against any right, title or claim, asserted by a plaintiff in a proceeding, or

(ii) alleges any ground of equitable defence to any claim of the plaintiff in such a proceeding,

the Court shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, the same effect by way of defence against the claim of the plaintiff as the court of the Equity Judge or the Court of Chancery would have given, if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in either of those courts, for the same or the like purpose, before the first day of October, 1884;

(c) the Court shall have power to grant to a defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right or title claimed or asserted by him,

(i) all such relief against a plaintiff or petitioner as such defendant has properly claimed by his pleading, and as the Court might grant in any suit instituted for that purpose by the same defendant against the same plaintiff, and

(ii) also all such relief relating to or connected with the original subject of the proceeding and in like manner claimed against any other person, whether already a party to the same proceeding or not, who has been duly served with notice in writing of the claim, pursuant to any rule of Court or any order of the Court, as might properly be granted against such person if he had been made a defendant to a proceeding duly instituted by the same defendant for the like purpose,

and every person served with any such notice shall thenceforth be deemed a party to the proceeding with the same rights in respect of his defence against the claim as if he had been duly sued in the ordinary way by the defendant;

(d) the Court shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any proceeding, in the same manner in which the court of equity judge, or the said Court of Chancery, would have recognized, and taken notice of the same, in any suit or proceeding duly instituted therein before the first day of October, 1884;

(e) no proceeding at any time pending in the Court shall be restrained by prohibition or injunction but every matter of equity on which an injunction against the prosecution of any such proceeding might have been obtained prior to the first day of October, 1884, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto provided always that nothing in this Act contained shall disable the Court from directing a stay of proceedings in any proceeding pending before the Court if it or he thinks fit, and any person, whether a party or not to any such proceeding who could have been entitled, prior to the first day of October, 1884, to apply to the Court to restrain the prosecution thereof, or who is entitled to enforce by attachment or otherwise any judgment, contrary to which all or any part of the proceedings have been taken, may apply to the Court thereof by motion in a summary way for a stay of proceedings in such proceeding either generally, or so far as is necessary for the purposes of justice and the Court shall thereupon make such order as shall be just;

(f) subject to the foregoing provisions for giving effect to equitable rights and other matters of equity, and to the other express provisions of this Act, the Court shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to prior to the first day of October, 1884, by the Court either at law or in equity;

(g) the Court, in the exercise of the jurisdiction vested in it in every proceeding pending before it, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to the Court seems just, all such remedies whatsoever as any of the parties thereto appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in the proceeding so that as far as possible all matters so in controversy between the parties may be com-

pletely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided;

(h) when

(i) bondholders, debenture holders or debenture-stock holders are entitled to a mortgage or charge or both by virtue of a trust deed,

(ii) a proceeding is brought for foreclosure and sale of the mortgaged property, and

(iii) on bringing the same to sale no offer is made therefor or no bid or offer as high as the reserved bid, if any, is received therefor,

the sheriff or person authorized by the Court to make such sale, may, with the approbation of the Court, sell the mortgaged property as a whole or in parcels, to the best purchaser or purchasers that can be found, and where, under the terms of such trust deed, the bondholders, debenture holders or debenture-stock holders, or a specified majority of them, have power to sanction the sale or exchange of the mortgaged premises for a consideration, in whole or in part, other than cash, the Court shall have power in any such proceeding to sanction any such sale or exchange, first ascertaining that it has the approval of the requisite number or proportion of bondholders, debenture holders or debenture-stock holders, and to give the necessary directions for the purpose of carrying the same into effect and to direct the trustee to exercise all or any of the powers conferred by such trust deed;

(i) in any proceeding for the recovery of any debt or damages, the Court shall include in the sum for which judgment is to be given interest thereon at such rate as it thinks fit for the period between the date when the cause of action arose and the date of judgment after trial or after any subsequent appeal;

(j) where a party pays money into court in satisfaction of a claim and another party becomes entitled to judgment for an amount equal to or less than that paid into court, the Court shall award interest under clause (i) only to the date of payment into court as if said date had been the date of judgment;

(k) the Court in its discretion may decline to award interest under clause (i) or may reduce the rate of interest or the period for which it is awarded if

(i) interest is payable as of right by virtue of an agreement or otherwise by law,

(ii) the claimant has not during the whole of the pre-judgment period been deprived of the use of money now being awarded, or

(iii) the claimant has been responsible for undue delay in the litigation. R.S., c. 240, s. 41.

Discontinuance of foreclosure proceeding

42 (1) In this Section, “mortgagor” means the original mortgagor to a mortgage document and includes any person deriving title through him.

(2) A mortgagor, who is in default of a mortgage

(a) either

(i) in failing to make a payment of principal or interest or a payment otherwise due under the mortgage, or

(ii) in failing to observe a covenant or term of the mortgage; and

(b) if, as a result of the default referred to in either subclause (i) or (ii) of clause (a) or both, the whole of the balance of the outstanding principal and interest secured by the mortgage has become due and payable,

may before the granting of an order for foreclosure or foreclosure and sale make an application to the Supreme Court to have any proceedings commenced by the mortgagee for the order for foreclosure or foreclosure and sale discontinued.

(3) The Supreme Court may grant an order of discontinuance conditional upon

(a) the payment of all arrears of principal and interest and any other payments due under the mortgage;

(b) the performance of the covenant in default;

(c) the payment of any costs and expenses incurred by the mortgagee and allowed by the Supreme Court; and

(d) the performance of the conditions of the order within such time as the Supreme Court may allow.

(4) The Supreme Court may not grant more than one order pursuant to this Section in respect of the same mortgage.

(5) Her Majesty in right of the Province is bound by this Section. R.S., c. 240, s. 42; 1992, c. 16, s. 62.

Further rules of law

43 (1) No claim of a *cestui que trust* against his trustee, for any property held on any express trust or in respect of any breach of such trust, shall be held to be barred by any statute of limitation.

(2) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

(3) There shall not be any merger by operation of law only of any estate the beneficial interest in which would not prior to the first day of October, 1884, have been deemed merged or extinguished in equity.

(4) A mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent injury or recover damages in respect to any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue jointly with such other person.

(5) Any absolute assignment by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this subsection had not been enacted, to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

(6) In case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of such debt or chose in action has had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he may if he thinks fit call upon the several persons making claim thereto to interplead concerning the same, or he may if he thinks fit pay the same into the Supreme Court, upon obtaining an order therefor, to abide the determination of the Supreme Court in respect thereof.

(7) Every person who, being surety for the debt or duty of another or being liable with another for any debt or duty, pays such debt or performs such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty or other security which is held by the creditor in respect of such debt or duty, whether such judgment, specialty or other security is or is not deemed at law to be satisfied by the payment of the debt or performance of the duty, and such person shall be entitled to stand in the place of the creditor and to use all the remedies and, if need be, and upon a proper indemnity, use the name of the creditor in any proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor or co-debtor, as the case may be, indemnification for the advances made and the loss sustained by the person who has so paid such debt or performed such duty, and such payment or performance so made by such surety shall not be a defence to such proceeding by him, provided always, that no co-surety, co-contractor or co-debtor shall be entitled to recover from any other co-surety, co-contractor or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person is justly liable.

(8) Stipulations in contracts, as to time or otherwise, which would not before the first day of October, 1884, have been deemed to be, or to have become, of the essence of such contracts in a court of equity, shall receive in the Court the same construction and effect as they would previously thereto have received in equity.

(9) A *mandamus* or an injunction may be granted or a receiver appointed by an interlocutory order of the Supreme Court, in all cases in which it appears to the Supreme Court to be just or convenient that such order should be made, and any such order may be made either unconditionally or upon such terms and conditions as the Supreme Court thinks just, and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Supreme Court thinks fit, whether the person against whom such injunction is sought is, or is not, in possession under any claim of title or otherwise or, if out of possession, does or does not claim a right to do the act sought to be restrained, under any colour of title, and whether the estates claimed by both or by either of the parties are legal or equitable.

(10) In questions relating to the custody and education of infants, the rules of equity shall prevail.

(11) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail. R.S., c. 240, s. 43; 1992, c. 16, s. 63.

Injunction in labour-management dispute

44 (1) In this Section,

(a) “injunction” means an injunction granted by an interlocutory order or judgment and includes an interim injunction;

(b) “labour-management dispute” means a dispute or difference affecting an employer and his employees or a trade union as defined in the *Trade Union Act*.

(2) Subject to subsection (3), no injunction to restrain a person or a trade union from any act in connection with a labour-management dispute shall be granted *ex parte*.

(3) The Supreme Court may grant an injunction *ex parte* in a labour-management dispute if it is satisfied that the case is a proper one for the granting of an injunction and that

(a) a breach of the peace, an interruption of an essential public service, injury to persons or severe damage to property has occurred or is about to occur; and

(b) reasonable attempts have been made to notify the persons or the trade union affected by the application. R.S., c. 240, s. 44; 1992, c. 16, s. 64.

Exemption from seizure under execution

45 (1) The following articles are exempt from seizure under execution:

(a) the wearing apparel and household furnishings and furniture which are reasonably necessary for the debtor and his family;

(b) all fuel and food reasonably necessary for the ordinary use of the family;

(c) all grain and other seeds, and all cattle, hogs, fowl, sheep and other livestock which are reasonably necessary for the domestic use of the debtor and his family;

(d) all medical and health aids reasonably necessary for the debtor and his family;

(e) such farm equipment, fishing nets, tools and implements of, or other chattels, as are used in the debtor's chief occupation, not exceeding in aggregate value the sum determined by the Governor in Council;

(f) one motor vehicle not exceeding in aggregate value the sum of three thousand dollars or such sum as may be determined by the Governor in Council.

(2) For greater certainty, subsection (1) does not affect the rights of a person secured by a duly filed agreement for hire, lease, chattel, conditional sale or charge, other than a floating charge, on a chattel to secure the payment of money or the performance of an obligation and acting pursuant to that agreement, lease, contract, conditional sale or charge, other than a floating charge, on a chattel to secure the payment of money or the performance of an obligation.

(3) The Governor in Council may make regulations determining the aggregate value of chattels used in the debtor's chief occupation and of the motor vehicle actually used in the course of and required for the debtor's full-time occupation, which are exempt from seizure pursuant to this Section.

(4) The exercise by the Governor in Council of the authority contained in subsection (3) shall be regulations within the meaning of the *Regulations Act*. R.S., c. 240, s. 45.

Interpretation of Sections 45B to 45E

45A In Sections 45B to 45E,

(a) "clerk of the court" means

(i) for the Supreme Court, the prothonotary,

- (ii) for the Supreme Court (Family Division), a court officer, or
- (iii) for the Court of Appeal, the Registrar;
- (b) “court” means the Supreme Court or the Court of Appeal. 2009, c. 17, s. 1.

Order against proceeding without leave

45B (1) Where a court is satisfied that a person has habitually, persistently and without reasonable grounds, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from

- (a) starting a further proceeding on the person’s own behalf or on behalf of another person;
- (b) continuing to conduct a proceeding,

without leave of the court.

(2) The court may make the order apply to a spokesperson or agent of a party or to any other person specified by the court who in the opinion of the court is associated with the person against whom the order is made.

(3) Notice of a motion for an order under subsection (1) or (2) must be given to the Minister of Justice and Attorney General, except when the Minister is a party to the proceeding in respect of which the motion is made.

(4) A motion for an order under subsection (1) or (2) may be made by the party against whom the vexatious litigation has been started or conducted, a clerk of the court or, with leave of the court, any other person.

(5) An order may not be made against counsel of record or a lawyer who substitutes for counsel of record. 2009, c. 17, s. 1.

Appeal

45C A person against whom an order has been made under subsection (1) or (2) of Section 45B by the Supreme Court or a judge of the Court of Appeal may appeal the order to the Court of Appeal. 2009, c. 17, s. 1.

Leave to start or continue proceeding

45D (1) A person against whom an order has been made under subsection (1) or (2) of Section 45B may make a motion for leave to start or continue a proceeding and, where a court is satisfied that the proceeding is not an abuse of process and is based on reasonable grounds, the court may grant leave on such terms as the court determines.

(2) A motion in a proceeding in the Court of Appeal for a restraining order under subsection (1) or (2) of Section 45B, or for an order for leave under subsection (1), may be made to a judge of the Court of Appeal.

(3) A court may make rules of court respecting granting leave, including a rule requiring the court to consider the frequency of motions made by or on behalf of the person making the motion for leave. 2009, c. 17, s. 1.

Effect of Sections 45B to 45D

45E Nothing in Sections 45B to 45D limits the authority of a court to make an order in respect of an abuse of a process of the court, including an order for dismissal, a stay or indemnification or to strike a pleading. 2009, c. 17, s. 1.

RULES

Rules of Court

46 The judges of the Court of Appeal or a majority of them may make rules of court in respect of the Court of Appeal and the judges of the Supreme Court or a majority of them may make rules of court in respect of the Supreme Court for carrying this Act into effect and, in particular,

(a) regulating the sittings of the Court and of the judges of the Court in chambers;

(b) regulating the pleading, practice and procedure in the Court and the rules of law which are to prevail in relation to remedies in proceedings therein;

(c) regulating appeals and applications in the nature of appeals;

(d) providing for service out of the jurisdiction;

(e) prescribing and regulating the proceedings under any enactment that confers jurisdiction upon the Court or a judge;

(f) regulating the payment, transfer or deposit into, in or out of any court of any money or property or the dealing therewith;

(g) respecting the rate of interest to be used in determining the capitalized value of an award in respect of future damages;

(h) providing for the physical or mental examination of a party to any proceeding;

(i) regulating the means by which particular facts may be proved and the mode in which evidence thereof may be given in any proceeding or on any application in connection with or at any stage of any proceeding;

(j) generally for regulating any matter relating to the practice and procedure of the Court, or to the duties of the officers thereof, or to the costs of proceedings therein and every other matter deemed expedient for better attaining the ends of justice, advancing the remedies of suitors and carrying

into effect the provisions of this Act, and of all other statutes in force respecting the Court. R.S., c. 240, s. 46; 1992, c. 16, s. 65.

Publication, confirmation and evidence of rules of Court

47 (1) All rules of Court made in pursuance of this Act shall, from and after the publication thereof in the Royal Gazette, or from and after publication in such other manner as the Governor in Council determines, regulate all matters to which they extend.

(2) Notwithstanding subsection (1), the *Civil Procedure Rules* made by the judges of the Supreme Court on the second day of December, 1971, a copy of which was deposited in the office of the Provincial Secretary, are hereby ratified and confirmed and are declared to be the *Civil Procedure Rules* of the Supreme Court and shall have the force of law on and after the first day of March, 1972, until varied in accordance with the provisions of this Act.

(3) Rule 60 of the *Civil Procedure Rules* made by the judges of the Supreme Court on the second day of December, 1971, a copy of which was deposited in the office of the Provincial Secretary, is hereby ratified and confirmed and has the force of law on and after the first day of March, 1972, notwithstanding that it was not published in the Royal Gazette in accordance with Section 65 of the Revised Statutes, 1967, the *Controverted Elections Act*.

(3A) Notwithstanding subsections (1) to (3) and Section 51, the *Civil Procedure Rules* made by the judges of the Court of Appeal and the Supreme Court on the sixth day of June, 2008, and tabled in the House of Assembly by the Minister of Justice, are hereby ratified and confirmed and are declared to be the *Civil Procedure Rules* of the Court of Appeal and the Supreme Court and shall have the force of law as and to the extent provided in those *Civil Procedure Rules* until varied in accordance with the provisions of this Act.

(4) Printed copies of the Rules purporting to be published by the Queen's Printer are evidence of those Rules. R.S., c. 240, s. 47; 2008, c. 60, s. 1.

Powers to make rules of Court

48 Subject to any rules of Court which are made under the provisions of this Act, the judges of the Court shall continue to have and exercise all the powers which immediately preceding the coming into force of this Act they possessed or exercised as to making rules of Court for the regulation of the practice of the Court. R.S., c. 240, s. 48.

Modification of statutory provision

49 Where any provisions in respect of the Court are contained in any Act, rules of Court may be made for modifying such provisions to any extent that is deemed necessary for adapting the same to the practice and procedure of the Court, unless, in the case of any Act passed on or after the first day of October, 1884, this

power is expressly excluded with respect to such Act or any provision thereof. R.S., c. 240, s. 49.

Extension of time

50 Where an enactment authorizes an appeal to the Supreme Court or the Court of Appeal and prescribes a time period during which

- (a) the appeal is to be commenced;
- (b) an application for leave to appeal is to be made;
- (c) a notice is to be given; or
- (d) any other procedural step preliminary to the appeal is to be taken,

the judges of the Court may make rules respecting extension of the time period, notwithstanding that the time period has expired. R.S., c. 240, s. 50; 1992, c. 16, s. 66.

Tabling of rules

51 All rules made in pursuance of this Act shall be laid before the House of Assembly within twenty days next after the same are made, if the Legislature is then sitting, or, if the Legislature is not then sitting, within twenty days after the meeting of the Legislature next after such rules are made, and, if an address praying that any such rules may be cancelled is presented to the Lieutenant Governor by the Assembly within thirty days during which the Legislature has been sitting next after such rules are laid before it, the Governor in Council may thereupon, by order in council, annul the same and the rules so annulled shall thenceforth become void and of no effect but without prejudice to the validity of any proceeding which in the meantime has been taken under the same. R.S., c. 240, s. 51.

GENERAL PROVISIONS**Officers of Court directed by Rules**

52 Subject to any order in that behalf, the business to be performed in the Court or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the Court, in such manner as is directed by the Rules and the officers shall perform such duties in relation to the business as is directed by the Rules and subject to such Rules, all officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner, as before this Act came into force. R.S., c. 240, s. 52.

Referees

53 Subject to the Rules, the prothonotaries and clerks of the Crown shall be official referees for the trial of such questions as are directed to be tried by such officer and the Governor in Council may, if necessary, appoint additional official referees. R.S., c. 240, s. 53; 1992, c. 16, s. 67.

Disposal of court records

54 (1) In this Section, “court records” include all documents, records, letters, transcripts, recordings, exhibits and papers of any kind, or any thing on which information is recorded or stored by any means including graphic, electronic or mechanical means, deposited or on file with or held by the Court.

(2) Court records of the Court of Appeal that are no longer required shall be disposed of by

- (a) destruction without photographing or preserving an image thereof in electronic or other form;
- (b) destruction after having been photographed or an image thereof having been preserved in electronic or other form; or
- (c) transfer to the Public Archives,

in accordance with the directions of the Deputy Attorney General, after consultation with the Provincial Archivist or such other officer or employee of The Board of Trustees of Public Archives of Nova Scotia as the Provincial Archivist may designate, and subject to the approval of the Chief Justice of Nova Scotia, or in accordance with a schedule for the retention and disposal of court records established by the Deputy Attorney General and the Chief Justice after consultation with the Provincial Archivist or such other officer or employee.

(3) Court records of the Supreme Court that are no longer required shall be disposed of by

- (a) destruction without photographing or preserving an image thereof in ~~electronic~~ [electronic] or other form;
- (b) destruction after having been photographed or an image thereof having been preserved in electronic or other form; or
- (c) transfer to the Public Archives,

in accordance with the directions of the Deputy Attorney General, after consultation with the Provincial Archivist or such other officer or employee of The Board of Trustees of Public Archives of Nova Scotia as the Provincial Archivist may designate, and subject to the approval of the Chief Justice of the Supreme Court, or in accordance with a schedule for the retention and disposal of court records established by the Deputy Attorney General and the Chief Justice after consultation with the Provincial Archivist or such other officer or employee. 1992, c. 16, s. 68.