

## **Rules of the Supreme Court, 1986**

### **PRACTICE NOTE**

#### **P.N. (TD) No. 2004-01**

DATE ISSUED: August 16, 2004

RULES AFFECTED: 5.04.(4), 7, 18, 19 and 29

EFFECTIVE DATE: Upon publication

PREVIOUS PRACTICE NOTES REVISED: N/A

The following Practice Note was filed with the Registrar, as Secretary of the Rules Committee of the Trial Division, and is published pursuant to rule 4.04 of the *Rules of the Supreme Court, 1986*.

### **TITLE OF PROCEEDING ON COURT DOCUMENTS**

#### **Background**

1. Concern has been raised pertaining to problems with counsel changing the style of cause on court documents, both in civil and criminal matters in the Trial Division.
2. The style of cause is referred to in the Rules of the Supreme Court, 1986, as "Title of Proceeding". The Supreme Court Case Management computer system has been designed to record only one title of proceeding for each file. Ongoing documentation, including other pleadings, affidavits and Interlocutory Applications, are expected to use the original unchanged title of proceeding.
3. A problem arises particularly in the issuance of applications in an ongoing matter. Whenever there is a multiplicity of parties so that it is not immediately obvious which party is filing a document, the applying party can be fully identified, as contemplated by Form 29.02A, in the opening sentence or paragraph, for example, "This is the Interlocutory Application of C.D., the Respondent in the within matter, who says that ..."
4. Rule 5.04.(4) provides that all documents subsequently filed or delivered in a

proceeding shall bear the same file number.

5. Rule 7, pertaining to causes of action and parties, deals with joinder of causes of actions and joinder of parties. The joinder of additional parties in a proceeding would result in a new title of proceeding that thereafter should remain unchanged.
6. In the case of consolidation of two or more proceedings, pursuant to Rule 18, it is the practice that the title of proceeding in the original proceeding be thereafter set out on all documents subsequently filed in the consolidated proceeding or a new title of proceeding may be ordered at the time the consolidation order is made. Confusion has also resulted with respect to the appropriate form of the title of proceeding on the consolidation application itself and the resulting order, as well as with respect to the calculation of filing fees relating to such matters.
7. The application of Rules 19.01 and 19.02, pertaining to discontinuance and withdrawal, may result in a change in the title of proceeding. Where there are multiple parties, the discontinuance against a particular defendant or third party may affect the description of the remaining parties. For example, if a plaintiff were to discontinue an action against the "first defendant", the question arises as to whether the "second defendant" should continue to be so described.
8. Rule 29 deals with applications. For example, Form 29.02A, being an Interlocutory Application (Inter Partes), provides for the "Title of Proceeding" followed by the opening words: "The application of (A.B. the plaintiff or C.D. the defendant) herein says ....". It follows that the "Title of Proceeding" would be the same regardless of which party makes the application.
9. To achieve consistency in the use of title of proceeding on court documents and to clarify the practice and procedure in relation thereto, it is considered appropriate to issue the following practice note.

### **Practice Note**

10. Subject to this Practice Note, all pleadings and other documents filed subsequent to the originating document shall bear the original unchanged title of proceeding before being accepted by the Registry of the Trial Division for filing or issuance.
11. Where additional parties are joined in a proceeding pursuant to Rule 7 resulting in a new title of proceeding, that new title of proceeding shall be used on all subsequent pleadings and other documents and shall remain unchanged unless otherwise ordered by the court.
12. Where the Court orders, pursuant to Rule 7.04 or otherwise, that a party shall cease

to be a party in a proceeding, the name and description of the party who has been struck out shall, unless the Court otherwise orders, remain in the title of proceeding on all subsequent pleadings and documents subsequently filed in the proceeding but the word "deleted" shall be added immediately after the party's name in the title of proceeding. For example, if John Doe, the second plaintiff were to be struck out, his name and description would thereafter read "John Doe (deleted), second plaintiff".

13. In an application to combine two or more proceedings, by way of consolidation or otherwise under Rule 18,
  - (a) the title of proceeding on the application and any resulting order may consist of the file number and title of proceeding in each of the original proceedings, arranged one after the other;
  - (b) for the purpose of calculation and collection of filing fees with respect to the application and any resulting order, the application and resulting order shall be treated as having been filed only in the original proceeding first described in the title of proceeding on the application, but in all other respects the application and any resulting order shall be deemed to have been made in each of the original proceedings;
  - (c) in addition to the original application and order, counsel shall supply to the court a number of copies thereof equal to the number of original proceedings affected by the application so that copies may be filed in each original file;
  - (d) on all pleadings and other documents filed subsequent to an order consolidating or otherwise combining the original proceedings, the title of proceeding shall consist of:
    - (i) such new title of proceeding and file number as may be specified in the order; or
    - (ii) if a new title of proceeding and file number are not specified, the file number and title of proceeding in each of the original proceedings, arranged one after the other.
14. Where, pursuant to Rule 19.01, a plaintiff discontinues, without leave, a proceeding against one, or some, but not all, of a number of defendants or a defendant discontinues, without leave, a proceeding against one or some, but not all, of a number of third parties, the name and description of the party with respect to whom the proceeding has been discontinued shall, unless the Court otherwise orders, remain on the title of proceeding on all subsequent pleadings and documents subsequently

filed in the proceeding but the word "discontinued" shall be added immediately after the name of that party in the title of proceeding. For example, if a plaintiff were to discontinue against Richard Roe, the first defendant, the name and description of that party henceforth would appear as "Richard Roe (discontinued), first defendant".

15. In an Interlocutory Application, there shall be inserted, immediately below the title of proceeding, in block form on the left side of the document, wording to the following effect: "In the matter of an application by [name of party], the [plaintiff, defendant, third party, etc.] dated the            day of            , 20    , for [nature of application and general nature of relief requested]." Every subsequent document filed in an application shall specifically identify that application and the date of that application.
16. This Practice Note applies to both civil and criminal matters.
17. This Practice Note does not apply to family law proceedings, which are governed by Rule 56A.08.

AUTHORIZED BY:

---

J. Derek Green  
Chief Justice of the Supreme Court  
of Newfoundland and Labrador, Trial Division

---

Barry R. Sparkes, Q.C.  
Registrar of the Supreme Court  
Secretary, Rules Committee