

NOTICE TO THE PROFESSION

Amendments to Rule 7: Changes to the Rules Relating to Fee Waiver and Costs Exemption Orders

The Rules Committee of the Supreme Court of Newfoundland and Labrador, Trial Division, recently approved amendments to Rule 7 of the *Rules of the Supreme Court, 1986*. The regulation was published in the July 10, 2015 edition of the *Newfoundland and Labrador Gazette* (N.L. Reg. 43/15). The regulation repeals and substitutes the rule which relates to fee waiver and costs exemption orders. The amendment is now in force.

Summary of Amendment

The amendment repeals the current rule 7.19 and substitutes: an amended rule 7.19, dealing with fee waiver; and a new rule 7.20, dealing with costs exemption orders.

(a) Fee Waiver

The amended rule 7.19 allows a party to apply, without notice to any other party, for an order waiving that party's responsibility for the payment of all or a portion of the fees payable pursuant to the *Supreme Court Fees Regulations*.

The amended rule 7.19 prescribes a form for fee waiver applications (Form 7.19A). It further provides that applications may be granted by the Registrar where the applicant can demonstrate that he or she is in receipt of income and employment support under the *Income and Employment Support Act*. Otherwise, such an application will be dealt with by a judge. The application may be decided summarily, at any time, where the judge determines this is appropriate.

The amended rule 7.19 provides that such an application may be granted by a judge where the payment of Court fees will constitute an undue hardship and prevent the applicant from advancing a non-frivolous and non-vexatious claim. The rule also sets out additional factors a judge may consider when determining whether to grant a fee waiver.

(b) Costs Exemption

The amended rule 7.19 no longer deals with costs exemption orders. Applications for an order that a party be exempted from the payment of costs are now governed by rule 7.20.

The new rule 7.20 prescribes a form for the bringing of costs exemption applications (Form 7.20A). Such an application must be made on notice to all other parties and must be made within 30 days of the close of pleadings. Where a party is seeking both a fee waiver and costs exemption order, certain portions of Form 7.20A do not need to be completed.

A judge may grant an application pursuant to the new rule 7.20 where: the applicant is unable to afford to pay an award of costs; the risk of an award of costs being made against the party would

prevent the party from advancing a non-frivolous and non-vexatious claim or defense; and the Court is satisfied that the order would be in the best interests of justice.

An order made pursuant to this rule may be varied where the exempted party's circumstances change. Such an order does not apply to proceedings initiated under Rule 53 (contempt order).

If you have any questions with respect to the above, please contact the Court's Legal Officer at 709-729-4743.

RAYMOND P. WHALEN
Chief Justice of the Supreme Court of
Newfoundland and Labrador, Trial Division