

## SUPREME COURT OF NEWFOUNDLAND AND LABRADOR TRIAL DIVISION

### NOTICE TO THE PROFESSION

Several changes to the Rules were published in *The Newfoundland and Labrador Gazette* on Friday, December 14, 2012 as Regulation 88/12. Below is a brief summary of the substantive amendments. Unless otherwise noted, the amendments came into force on publication.

- **Rule 7A.04 (Class Actions)**

This amendment changed the reference to a possible representative plaintiff where members of the class are persons under a disability from the Registrar to the Public Trustee (rule 7A.04(7)(a)).

- **Rule 20A.08 (Offers to Settle)**

There are five substantive amendments to this rule. They come into force on February 1, 2013. Two amendments will modify the current rules with respect to the default cost consequences of an offer to settle. In rule 20A.08(1), the plaintiff will be entitled to double party and party costs plus taxed disbursements after the date of service of the offer if the plaintiff made an offer and the outcome at trial is as favourable or more favourable. Rule 20A.08(2) will be amended to read that the defendant will be entitled to party and party costs plus taxed disbursements after the date of the offer if the defendant made an offer and the outcome at trial is no more favourable than the offer. These rules are, of course, subject to an order otherwise.

Three provisions will be added to rule 20A.08. The first provides for costs consequences where the defendant makes an offer and the action is dismissed at trial. In that situation, the defendant will be entitled to party and party costs to the date of the service of the offer and thereafter to double party and party costs unless otherwise ordered. The second new rule relates to the scale of costs. It says that where a party has been awarded costs after judgment under a column of the Scale of Costs, the judge shall not change the column if it is later determined that the cost consequences of an offer to settle apply. For example, if the plaintiff is entitled to costs under column 3 of the Scale of Costs after trial, the judge cannot change the column under which costs are calculated when determining an application under rule 20A.08(3). The last addition to this rule provides that the substantive rules with respect to costs consequences of offers to settle will not apply to family proceedings but the rules setting out the procedure after a trial or hearing if an offer to settle was made will apply to family proceedings.

As noted above, these changes will come into force on February 1, 2013. The transition provision states that where a hearing of an application under rule 20A.08(3) has commenced prior to February 1, 2013, then the rules in force prior to February 1, 2013 apply. This means that the date of the offer and the filing date of the application under rule 20A.08(3) do not determine the rules that apply. From this point forward, the only way that the current rules will presumptively apply is when the hearing of the application takes place before February 1, 2013. The parties may, however, argue during the hearing of an application after February 1, 2013 that the current rules should still apply.

- **Rule 55.17 (Costs)**

Rule 55.17(3) previously provided that a copy of each contingency fee agreement must be filed with the court. This rule has been repealed and a requirement to provide a copy of the signed agreement to the client has been added.

- **Rule 56.30 (Probate, Administration and Guardianship Rules)**

Under the *Mentally Disabled Persons' Estates Act*, the Public Trustee becomes the guardian of the estate of a person admitted as an involuntary patient to a hospital under the *Mental Health Care and Treatment Act*. The amendments to this rule bring it in line with the substance and the title of the legislation. Specifically, the word "Registrar" in rule 56.30(1)(d) has been replaced with the words "Public Trustee". In the same rule, the reference to the legislation has been changed to section 20(4) of *The Mentally Disabled Persons' Estates Act*.

If you have questions about these rule changes, please contact the Court's Legal Officer at (709) 729-4743.

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