

PRACTICE NOTE 37

RE RULES 30.03(4) AND 30.04

As noted in a recent decision of this Court, Rule 30.03(4) of the P.E.I. Rules of Court expressly requires the annexation to the affidavit of documents of a true copy of all documents which are not privileged. This particular Rule does not appear in the Ontario Rules of Civil Procedure. Rule 30.04 of the P.E.I. Rules of Court, on the other hand, like the Ontario Rule, provides for the inspection by one party of any document of the other party that is not privileged and is referred to in that party's affidavit of documents. There is an apparent conflict between these two Rules.

The prevalent practice in this Province is for copies of documents to accompany the affidavit of documents as required by Rule 30.03(4). In order to resolve the apparent conflict between Rules 30.03(4) and 30.04 they shall be interpreted as follows:

- a) Rule 30.03(4) requires the annexation to the affidavit of documents of a true copy of all documents which are not privileged; and
- b) Rule 30.04 provides an opportunity for a party to inspect the original or the original copy of any document that is annexed to the other party's affidavit of documents as required by Rule 30.03(4).

J. Armand DesRoches
Chief Justice - Trial Division
October 30, 2002