

Prince Edward Island

**Small Claims Section Actions Where the Debt or
Damages Claimed Do Not Exceed \$16,000.**

RULES OF CIVIL PROCEDURE

RULE 74

**NOTICE: THE SMALL CLAIMS SECTION RULES AND FORMS ARE PUBLISHED IN A
SEPARATE BOOKLET, AVAILABLE AT THE COURT REGISTRY, AND AVAILABLE ELECTRONICALLY
ON THE COURT'S WEBSITE.**

Rule 74 relating to proceedings in the Small Claims Section of the Supreme Court of Prince Edward was amended as of January 1, 2004.

By the Ninth Series of Amendments to the Rules of Civil Procedure in The Supreme Court of Prince Edward Island approved on the 16th of August, 2005 by Order-in-Council No. 2005-459, to come into effect on September 1, 2005 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section, were amended: Forms: 7A, 10A, 20 E & G; Rules: 19.01 to 19.03, 20.06(2), 20.08(9)&(10), 20.08(12)(b), 20.08(16)to(21).

By the Eleventh Series of Amendments to the Rules of Civil Procedure in The Supreme Court of Prince Edward Island approved on the 17th of July, 2007 by Order-in-Council No. 2007-454, to come into effect on September 1, 2007 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$8,000.) were amended: Forms: 11A, 11B, 11C, 11D, 13A, 13B, 14A, 20E, 20F, 20H, 20I, 20J, 20K, 20L, 20M; Rules: 1.03, 8.01, 9.01, 9.03, 10.01(2) and (4), 11.01, 11.05, 11.06, 11.07, 12.01, 13.01(1), 13.02 to 13.05, 14.05, 20.08(3), 20.08(6).

Chief Justice Gerard Mitchell
September 1, 2007

By the Thirteenth Series of Amendments to the Rules of Civil Procedure in the Supreme Court of Prince Edward Island approved on the 14th of July, 2009 by Order-in-Council No. EC2009-357, to come into effect on September 1, 2009 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$8,000.) were amended: Forms: 7A, 10A; Rules: 1.01, 1.02, 1.03(1), 1.03(2), 4.03(2)(d)(ii), 8.01(6), 13.06.

Chief Justice David H. Jenkins
Chair, Rules Committee
September 1, 2009

Executive Council by Order-in-Council No. EC2017-387 raised the Small Claims limit from \$8,000. to \$16,000. effective July 8, 2017, published in the July 8, 2017 issue of the **Royal Gazette**.

By the Twenty-first Series of Amendments to the Rules of Civil Procedure in the Supreme Court of Prince Edward Island approved on the 8th of August, 2017 by Order-in-Council No. EC2017-462, to come into effect on September 1, 2017 the following Rule within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000.) was amended: Rule 14.06(a).

Chief Justice David H. Jenkins

Chair, Rules Committee
September 1, 2017

The Twenty-ninth Series of Amendments to the Rules of Civil Procedure, effective September 1, 2023, were made, formulated and adopted by the Rules Committee, approved on the 7th day of July, 2023, by Executive Council Order-in-Council No. EC2023-569, published in the July 22, 2023 issue of the **Royal Gazette**, the proposed amendments to Rule 74 – all its subrules 1 – 21, and all the associated Forms 4A – 20K, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000).

Chief Justice James W. Gormley
Chair, Rules Committee
September 1, 2023

The Thirtieth Series of Amendments to the Rules of Civil Procedure, effective September 1, 2024, were made, formulated and adopted by the Rules Committee, approved on the 18th day of July, 2024, by Executive Council Order-in-Council No. EC2024-685, published in the July 27, 2024 issue of the **Royal Gazette**, the proposed amendments to Rule 74 – all its subrules 1 – 21, and all the associated Forms 4A – 20K, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000).

Chief Justice James W. Gormley
Chair, Rules Committee
September 1, 2024

The Thirty-first Series of Amendments to the Rules of Civil Procedure, effective September 1, 2025, were made, formulated and adopted by the Rules Committee, approved on the 10th day of June 2025, by Executive Council Order-in-Council No. EC2025-573 and published in the **Royal Gazette** on June 21st, 2025, the proposed amendments to Rule 74 – rules 1.02 “disability” (b), 12.01(2), 18.02(1), and Form 4A 2, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000).

Chief Justice James W. Gormley
Chair, Rules Committee
September 1, 2025

The Thirty-second Series of Amendments to the Rules of Civil Procedure, effective September 1, 2026, were made, formulated and adopted by the Rules Committee, approved on the 28th day of July 2026, by Executive Council Order-in-Council No. EC2026-794 and published in the **Royal Gazette** on August 8, 2026, the proposed amendments to Rule 74 – rules 1.02 “disability” (b), 4.03(2), 8.02. Small Claims Form 4 A 2. and Form 15 – Instruction Sheet were also amended, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000).

Chief Justice James W. Gormley
Chair, Rules Committee
September 1, 2026

**RULES FOR THE PROCEEDINGS WITHIN
THE JURISDICTION OF THE SMALL CLAIMS SECTION
(Actions Where the Debt or Damages Claimed Do not Exceed \$16,000.)**

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**RULES FOR PROCEEDINGS WITHIN
THE JURISDICTION OF THE SMALL CLAIMS SECTION
(Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000.00)**

RULE 1

INTERPRETATION

CITATION AND APPLICATION

1.01 These rules may be cited as the Small Claims Section Rules and they govern all proceedings in the Small Claims Section of the Supreme Court of Prince Edward Island.

DEFINITIONS

1.02 In these rules,

“**clerk**” means the deputy registrar of the Small Claims Section of the Supreme Court of Prince Edward Island and any person acting in the place of or under the direction of the said deputy registrar;

“**court**” means the Small Claims Section of the Supreme Court of Prince Edward Island;

“**defendant’s claim**” means a counterclaim, crossclaim or third party claim.

“**disability**”, where used in respect of a person or party, means that the person or party is,

- (a) a minor,
- (b) lacking capacity in respect of their financial matters and/or personal matters within the meaning of the *Adult Guardianship and Trusteeship Act* whether the person or party has a guardian and/or trustee or not;

“**file**” means to deliver a document to the court, for acceptance and placement in the official record of the proceeding;

“**holiday**” means,

- (a) any Saturday or Sunday,
- (b) New Year’s Day,
- (c) Islander Day,
- (d) Good Friday,
- (e) Easter Monday,
- (f) Victoria Day,
- (g) Canada Day,
- (h) Civic Holiday,
- (i) Labour Day,
- (j) National Day for Truth and Reconciliation
- (k) Thanksgiving Day,

- (l) Remembrance Day,
- (m) Christmas Day,
- (n) Boxing Day, and
- (o) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

and if New Year's Day, Canada Day, National Day for Truth and Reconciliation, or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday;

“order” includes a judgment;

“pleading” means a statement of claim, statement of defence, counterclaim, crossclaim, or third party claim

“prothonotary” means the prothonotary of the Prince Edward Island Court of Appeal and the Supreme Court of Prince Edward Island, and includes the deputy prothonotary.

General Principle

- 1.03** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 15.(1) of the *Judicature Act*.

Matters Not Covered in Rules

- (2) If these rules do not cover a matter adequately, the court may give directions and make any order that is just, and the practice shall be decided by analogy to these rules, by reference to the *Judicature Act* and the *Act* governing the action and, if the court considers it appropriate, by reference to the *Rules of Civil Procedure*.

Orders on Terms

- 1.04** When making an order under these rules, the court may impose such terms and give such directions as are just.

Forms

- 1.05** The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require.

Telephone and Video Conferences

- 1.06** (1) At the discretion of the court, if facilities for a telephone or video conference are available at the court, all or part of any of the following may be heard or conducted by telephone or video conference:
- (a) a settlement conference.
 - (b) a motion.
 - (c) a trial.

RULE 2

NON-COMPLIANCE WITH THE RULES

EFFECT OF NON-COMPLIANCE

2.01 A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute.

COURT MAY DISPENSE WITH COMPLIANCE

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time.

RULE 3

TIME

Computation

- 3.01** If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

Powers of Court

- 3.02 (1)** The court may lengthen or shorten any time prescribed by these rules or an order, on such terms as are just.

Consent

- (2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties.

RULE 4

PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

- 4.01** (1) An action by a person under disability shall be commenced or continued by a litigation guardian.

Consent

- (2) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the clerk a consent (Form 4A) in which the litigation guardian,
- (a) states the nature of the disability;
 - (b) in the case of a minor, states the minor's birth date;
 - (c) sets out his or her relationship, if any, to the person under disability;
 - (d) states that he or she has no interest in the proceeding contrary to that of the person under disability;
 - (e) acknowledges that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and
 - (f) states whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.

Defendant's Litigation Guardian

- 4.02** (1) An action against a person under disability shall be defended by a litigation guardian.
- (2) A defendant's litigation guardian shall file with the statement of defence a consent (Form 4A) in which the litigation guardian,
- (a) states the nature of the disability;
 - (b) in case of a minor, states the minor's birth date;
 - (c) sets out his or her relationship, if any, to the person under disability;
 - (d) states that he or she has no interest in the proceeding contrary to that of the person under disability; and
 - (e) states whether he or she is represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.
- (3) If it appears to the court that a defendant is a person under disability and the defendant does not have a litigation guardian the court may, after notice to the proposed litigation guardian, appoint as litigation guardian for the defendant any person who has no interest in the action contrary to that of the defendant.

Who May Be Litigation Guardian

- 4.03** (1) Any person who is not under disability may be a plaintiff's or defendant's litigation guardian, subject to subrule (2).
- (2) If the plaintiff or defendant,
- (a) is a minor, in a proceeding to which subrule 4.01(2) does not apply, the parent or person with lawful custody or another suitable person shall be the litigation guardian;
 - (b) lacks capacity and has a guardian and/or trustee with authority to act as litigation guardian in the proceeding, the guardian shall be the litigation guardian;
 - (c) lacks capacity and does not have a guardian and/or trustee with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;
 - (d) lacks capacity and has neither a guardian and/or trustee with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power,
 - (i) a suitable person who has no interest contrary to that of the person who lacks capacity may be the litigation guardian, or
 - (ii) if no such person is available and able to act, the Official Guardian appointed pursuant to s. 33 of the *Judicature Act* shall be the litigation guardian.

Duties of the Litigation Guardian

- 4.04** (1) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps reasonably necessary for the protection of those interests, including the commencement and conduct of a counterclaim.

Official Guardian

- (2) The Official Guardian may act as litigation guardian without filing the consent required by subrule 4.01(2) or 4.02(2).

Power of Court

- 4.05** The court may remove or replace a litigation guardian at any time.

Setting Aside Judgment, etc.

- 4.06** If an action has been brought against a person under disability and the action has not been defended by a litigation guardian, the court may set aside the noting of default or any judgment against the person under disability on such terms as are just, and may set aside any step that has been taken to enforce the judgment.

Settlement Requires Court's Approval

- 4.07** No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court.

Money to be Paid into Court

- 4.08** (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless the court orders otherwise, and shall afterwards be paid out or otherwise disposed of as ordered by the court.
- (2) If money is payable to a person under disability under an order or settlement, the court may order that the money shall be paid directly to the person, and payment made under the order discharges the obligation to the extent of the amount paid.

RULE 5

PARTNERSHIPS AND SOLE PROPRIETORSHIPS

PARTNERSHIPS

5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.

STATEMENT OF DEFENCE

5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's statement of defence shall be delivered in the firm name and no person who admits being a partner at any material time may defend the proceeding separately, except with leave of the court.

Notice to Alleged Partner

- 5.03** (1) In a proceeding against a partnership using the firm name, a plaintiff who seeks an order that would be enforceable personally against a person as a partner may serve the person with the claim, together with a notice to alleged partner (Form 5A).
- (2) A person served as provided in subrule (1) is deemed to have been a partner at the material time, unless the person defends the proceeding separately denying having been a partner at the material time.

Disclosure of Partners

- 5.04** (1) If a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose immediately in writing the names and addresses of all partners constituting the partnership at a time specified in the notice; if a partner's address is unknown, the partnership shall disclose the last known address.
- (2) If a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its statement of defence may be struck out.

Enforcement of Order

- 5.05** (1) An order against a partnership using the firm name may be enforced against the partnership's property.
- (2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,
- (a) under that rule, is deemed to have been a partner at the material time;
 - (b) has admitted being a partner at that time; or
 - (c) has been adjudged to have been a partner at that time.

Against Person not Served as Alleged Partner

- (3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a

person who was served as provided in rule 5.03, the party may make a motion for leave to do so; a judge or prothonotary may grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge or prothonotary directs.

Sole Proprietorships

- 5.06** (1) If a person carries on business in a business name other than his or her own name, a proceeding may be commenced by or against the person using the business name.
- (2) Rules 5.01 to 5.05 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.

RULE 6

FORUM AND JURISDICTION

Place of Commencement and Trial

- 6.01** (1) An action shall be commenced in either Charlottetown or Summerside, whichever place is nearest to
- (a) where the cause of action arose, or
 - (b) where the defendant or, if there are several defendants, where any one of them resides or carries on business.
- (2) An action shall be tried in the place where it is commenced, but if the court is satisfied that the balance of convenience substantially favours holding the trial at another place than those described in subrule (1), the court may order that the action be tried at that other place.
- (3) If, when an action is called for trial or settlement conference, the court finds that the place where the action was commenced is not the proper place of trial, the court may order that the action be tried in the other place where it could have been commenced under this rule.

Jurisdiction

- 6.02** A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction.

RULE 7

COMMENCEMENT OF PROCEEDINGS

Statement of Claim

- 7.01** (1) An action shall be commenced by filing a statement of claim (Form 7A) and a Designation of Address for Service (form 8A) with the clerk, together with a copy for each defendant.

Contents of Claim, Attachments

- (2) The following requirements apply to the statement of claim:
1. It shall contain the following information, in concise and non-technical language:
 - i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued.
 - ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. The name, address and telephone number, and email address if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is self-represented, the plaintiff's address and telephone number, and email address if any.
 - v. The address where the plaintiff believes the defendant may be served.
 2. If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the statement of claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached. Documents shall be page numbered.

Issuing Claim

- 7.02** (1) On receiving the statement of claim, the clerk shall immediately issue it by dating, signing and sealing it and assigning it a court file number.
- (2) The original of the statement of claim shall remain in the court file and copies shall be given to the plaintiff for service on the defendant.

RULE 8

SERVICE

Service of Particular Documents - Claims

- 8.01** (1) A plaintiff's statement of claim and designation of address for service, or defendant's counterclaim, crossclaim or third party claim (Form 7A, 10A, 10B or 10C) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Time for Service of Claim

- (2) A statement of claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed.

Statement of Defence

- (3) A statement of defence and designation of address for service shall be served by mail or email by the clerk.

Notice of Default Judgment

- (4) A notice of default judgment (Form 11B) shall be served by mail or email by the clerk, on all parties named in the statement of claim.

Assessment Order

- (4.1) An order made following a trial under subrule 11.04 shall be served by the clerk on the plaintiff and the defendant who was noted in default, by mail or by email.

Settlement Conference Order

- (5) An order made at a settlement conference shall be served by the clerk by mail or email, on all parties.

Summons to Witness

- (6) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent, at least 10 days before the trial date; at the time of service, attendance money calculated in accordance with Rule 57 Tariff in the *Rules of Civil Procedure* shall be paid or tendered to the witness.

Notice of Garnishment

- (7) A notice of garnishment (Form 20E) shall be served by the creditor,
- (a) together with a sworn affidavit for enforcement request (Form 20J), on the debtor, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
 - (b) together with a garnishee's statement (Form 20F), on the garnishee, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Notice of Garnishment Hearing

- (8) A notice of garnishment hearing (Form 20K) shall be served by the person requesting the hearing on the creditor, debtor, garnishee and co-owner of the debt, if any, and any other interested persons by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Other Documents

- (9) A document not referred to in subrules (1) to (8) may be served by mail, by email, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

Personal Service

8.02 If a document is to be served personally, service shall be made,

- (a) **Individual** - on an individual, other than a person under disability, by leaving a copy of the document with him or her;
- (b) **Municipality** - on a municipal corporation, by leaving a copy of the document with the chair, mayor, the chief administrative officer, or the clerk of the municipality, or with a lawyer for the municipality;
- (c) **Corporation** - on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;
- (d) **Board or Commission** - on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;
- (e) **Person outside Prince Edward Island carrying on business in Prince Edward Island** - on a person outside Prince Edward Island who carries on business in Prince Edward Island, by leaving a copy of the document with anyone carrying on business in Prince Edward Island for the person;
- (f) **Crown in Right of Canada** - on His Majesty the King in right of Canada, in accordance with section 23(2) of the *Crown Liability and Proceedings Act (Canada)*;
- (g) **Government of Prince Edward Island** – on the Government of Prince Edward Island, in accordance with section 10 of the *Crown Proceedings Act*;
- (h) **Minor** - on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having their care or lawful custody, by leaving another copy of the document with the parent or other person;
- (i) **Person Who Lacks Capacity – on a person who lacks capacity-**
 - (i) if there is a guardian, trustee or an attorney acting under a validated power of attorney with authority to act in the proceeding, by leaving a copy of the document with the guardian, trustee, or attorney,
 - (ii) if there is no guardian, trustee or attorney acting under a validated power of attorney with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,
 - (iii) if there is no guardian, trustee or attorney with authority to act in the proceeding, validated or

not, by leaving a copy of the document bearing the person's name and address with the Public Guardian and Trustee and leaving an additional copy with the person;

- (j) **Partnership** - on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and
- (k) **Sole Proprietorship** - on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.

Alternatives to Personal Service

- 8.03** (1) If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a statement of claim, counterclaim, crossclaim or third party claim, service may also be made in accordance with subrule (7) or (7.1).

At Place of Residence

- (2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,
 - (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and
 - (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Corporation

- (3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Prince Edward Island cannot be found at the last address recorded with the Consumer, Corporate and Insurance Services Division of the office of the Attorney General of Prince Edward Island, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Prince Edward Island, as the case may be, at that address.

When Effective

- (4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed.

Acceptance of Service by Lawyer

- (5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.
- (6) By accepting service the lawyer is deemed to represent to the court that he or she has the client's authority to accept service.

Service of Claim by Mail, Registered Mail or Courier to Last known Address

- (7) Service of a statement of claim, counterclaim, crossclaim or third party claim may be made by sending a copy of it by mail, in an envelope showing the sender's return address, to the last known address of the person to be served.

- (7.1) Service of a statement of claim, counterclaim, crossclaim or third party claim may be made by sending a copy of it by registered mail or by courier, in an envelope showing the sender's return address, to the last known address of the person to be served.
- (8) Service under subrule (7) is deemed to have been effected on the 5th day after the date of mailing if an affidavit of service (Form 8B),
- (a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief;
 - (b) indicates that the claim has not been returned to the deponent; and
 - (c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim.
- (8.1) Service under subrule (7.1) is effective on the date on which receipt of the copy of the claim is verified, as shown in a delivery confirmation provided by or obtained from Canada Post or the commercial courier, as the case may be.
- (9) The affidavit of service shall not be completed before the day referred to in subsection (8) or (8.1).

SUBSTITUTED SERVICE

- 8.04** If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.

SERVICE OUTSIDE PRINCE EDWARD ISLAND

- 8.05** If the defendant is outside Prince Edward Island, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.

PROOF OF SERVICE

- 8.06** An affidavit of service (Form 8B) made by the person effecting the service constitutes proof of service of a document.

Service by Mail

- 8.07** (1) If a document is to be sent by mail under these rules, it shall be sent, by regular letter mail or registered mail, to the last address of the person or of the person's lawyer or agent that is,
- (a) on file with the court, if the document is to be served by the clerk;
 - (b) known to the sender, if the document is to be served by any other person.

When Effective

- (2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.

Exception

- (3) Subrule (2) does not apply when a claim is served by registered mail under subrule 8.03(7).

Service by Courier

- 8.07.1** (1) If a document is to be served by courier under these rules, it shall be sent by means of a commercial courier to the last address of the person or of the person's representative that is on file with the court or known to the sender.

When Effective

- (2) Service of a document sent by courier is deemed to be effective on the fifth day following the date on which the courier verifies to the sender that the document was delivered.

Exception

- (3) This rule does not apply when a claim is served by courier under subrule 8.03 (7.1).

Service by Email

- 8.08** (1) Except as otherwise specified in any other rule, if a document is to be served by email under these rules, it shall be sent to,
- (a) the last email address provided by the person to be served or the person's lawyer or, if no email address is provided, to the person's or lawyer's last known email address.

Service by Clerk

- (2) In the case of a document to be served by the clerk by email, the document shall, except as otherwise specified in any other rule, be sent to the email address provided in Form 8A, Designation of Address for Service.

Requirements re Email Message

- (3) The email message to which a document served by email in accordance with these rules is attached shall include,
- (a) the sender's name, address, telephone number, and email address;
 - (b) the name of the person or representative being served;
 - (c) the date and time of the email; and
 - (d) the name and telephone number of a person to contact in the event of a transmission problem.

When Effective

- (4) Service of a document by email is deemed to be effective,
- (a) on the day the email is sent; or
 - (b) if the email is sent between 4 p.m. and midnight, on the following day.

Notice of Change of Address for Service

- 8.09** (1) a party whose address for service changes shall serve a new Form 8A Designation of Address for Service on the other parties and file with the court within seven days after the change takes place.
- (2) service may be proved by affidavit.

Failure to Receive Document

- 8.10** A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document,
- (a) did not come to the person's notice; or
 - (b) came to the person's notice only at some time later than when it was served or is deemed to have been served.

RULE 9

STATEMENT OF DEFENCE

STATEMENT OF DEFENCE

9.01 A defendant who wishes to dispute a statement of claim shall file a statement of defence (Form 9A), and a Designation of Address for Service (Form 8A) with a copy for every party with the clerk:

- (a) within twenty days after being served with the statement of claim where the defendant is served in Prince Edward Island;
- (b) within forty days after being served with the statement of claim where the defendant is served elsewhere.

CONTENTS OF STATEMENT OF DEFENCE, ATTACHMENTS

9.02 The following requirements apply to the statement of defence:

- (1) It shall contain the reasons why the defendant disputes the statement of claim, expressed in concise non-technical language with a reasonable amount of detail.
- (2) If the statement of defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the statement of defence, unless it is unavailable, in which case the statement of defence shall state the reason why the document is not attached. Documents shall be page numbered.

Admission of Liability and Proposal of Terms of Payment

- 9.03** (1) In their statement of defence, a defendant may admit liability for all or part of the statement of claim, and propose terms of payment.
- (1.1) The clerk shall fix a time for a settlement conference, allowing for a reasonable notice period after the date the statement of defence is served, and serve a notice of settlement conference on the parties, by mail or email.

Where No Dispute

- (2) If, at the settlement conference, the parties agree on terms of payment, the court or the prothonotary may issue an order reflecting the agreement, and,
- (a) the defendant shall make payment in accordance with the order;
 - (b) in case of failure to make payment in accordance with the order, the clerk shall sign judgment for the unpaid balance of the undisputed amount on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance.

Dispute

- (3) If, at the settlement conference, the parties do not agree to terms of payment, the matter will proceed to a trial.

RULE 10

DEFENDANT'S CLAIM

DEFENDANT'S CLAIM

- 10.01** (1) In addition to their statement of defence, Form 9A, a defendant may make a claim,
- (a) against the plaintiff;
 - (b) against any other person,
 - (i) arising out of the transaction or occurrence relied upon by the plaintiff, or
 - (ii) related to the statement of claim; or
 - (c) against the plaintiff and against another person in accordance with clause (b).
- (2) The defendant's claim shall be in Form 10A (Counterclaim), 10B (Crossclaim) and/or 10C (Third Party Claim) and may be issued,
- (a) within 20 days after the day on which the statement of defence is filed; or
 - (b) after the time described in clause (a) but before trial or default judgment, with leave of the court.

Copies

- (3) The defendant shall provide a copy of the defendant's claim to the court.

Contents of Defendant's claim, Attachments

- (4) The following requirements apply to the defendant's claim:
- 1. It shall contain the following information:
 - i. The names of the parties to the statement of claim and to the defendant's claim and, if relevant, the capacity in which they sue or are sued.
 - ii. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. The defendant's name, address and telephone number, and email address if any.
 - v. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and email address.
 - vi. The address where the defendant believes each person against whom the claim is made may be served.
 - vii. The court file number assigned to the statement of claim.
 - viii. If it is in form 10C Third Party Claim, the defendant shall attach a copy of the statement of claim, and the statement of defence filed by the defendant.
 - 2. If the defendant's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defendant's claim, unless it is unavailable, in which case the defendant's claim shall state the reason why the document is not attached. Documents shall be page numbered.

Issuance

- (5) On receiving the defendant's claim, the clerk shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the statement of claim and shall place the original in the court file.

SERVICE

- 10.02** A defendant's claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01(1) and (2).

Defence to Defendant's Claim

- 10.03** (1) A party who wishes to dispute the defendant's claim may, within 20 days after service, file a statement of defence (Form 9A) with the clerk, together with a copy for each of the other parties. A third party who files a statement of defence shall also file a Form 8A Designation of Address for Service.
- (1.1) The statement of defence shall have the style of cause of the defendant's claim, depending upon whether the defendant's claim is in Form 10A (Counterclaim), 10B (Crossclaim) or 10C (Third Party Claim).
- (2) On receiving the statement of defence to a defendant's claim, the clerk shall retain the original in the court file and shall serve a copy on each party in accordance with subrule 8.01(3).

Defendant's Claim to be Tried with Main Action

- 10.04** (1) A defendant's claim shall be tried and disposed of at the trial of the action, unless the court orders otherwise.

Exception

- (2) If it appears that a defendant's claim may unduly complicate or delay the trial of the action or cause undue prejudice to a party, the court may order separate trials or direct that the defendant's claim proceed as a separate action.

Rights of a Third Party

- (3) If the defendant files a third party claim in Form 10C, the third party may at the trial contest the defendant's liability to the plaintiff but only if the third party has filed a statement of defence in accordance with subrule 10.03(1).

Application of Rules to Defendant's Claim

- 10.05** (1) These rules apply, with necessary modifications, to a defendant's claim as if it were a statement claim, and to a statement of defence to a defendant's claim as if it were a statement of defence to a statement of claim.

Exception

- (2) When a person against whom a defendant's claim is made is noted in default, judgment against that person may be obtained only in accordance with rule 11.03.

RULE 11

DEFAULT PROCEEDINGS

Noting Defendant in Default

- 11.01** (1) If a defendant fails to file a statement of defence within the time required by rule 9.01, the clerk shall, subject to subrule (2) below, when proof is filed that the statement of claim was served, note the defendant in default, using Form 11C.

Leave Required for Person under Disability

- (2) A person under disability may not be noted in default under subrule (1), except with leave of the court.

Service Outside Prince Edward Island

- (3) If all the defendants have been served outside Prince Edward Island, the clerk shall not note any defendant in default until it is proved, by an affidavit of jurisdiction (Form 11A) submitted to the clerk, or by evidence presented before a judge, that the action was properly brought in Prince Edward Island.

Default Judgment, Statement of Claim

- 11.02** (1) If a defendant has been noted in default, the clerk may enter judgment in respect of a claim against the defendant for a debt or liquidated demand in money, including interest if claimed.

Partial Defence

- (2) If a defence is filed in respect of part only of a claim to which subrule (1) applies, the clerk may note the party against whom the claim was made in default and enter default judgment in respect of the part for which no defence was filed.
- (3) Entry of judgment under this rule does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim.

Notice of Default

- (4) A notice of default judgment (Form 11B) shall be served in accordance with subrule 8.01(4).

Default Judgment, Defendant's Claim

- 11.03** If a party against whom a defendant's claim is made has been noted in default, judgment may be obtained against the party only at trial or on motion.

When All Defendants Noted in Default

- 11.04** (1) If all defendants have been noted in default, the plaintiff may proceed in respect of any claim other than one referred to in subrule 11.02(1), by
- (a) filing a notice of motion and supporting affidavit (Forms 15A and 15B) requesting a motion in writing for an assessment of damages, setting out the reasons why the motion should be granted and attaching any relevant documents; or
 - (b) requesting a trial.

Inadequate Supporting Affidavit

- (2) On a motion in writing for an assessment of damages, a judge or prothonotary who finds the plaintiff's affidavit inadequate or unsatisfactory may order that,
- (a) a further affidavit be provided; or
 - (b) a trial be held.

- (3) If a trial is to be held under clause (2)(b), the clerk shall fix a date and send a notice of trial to the plaintiff.
- (4) A motion in writing for an assessment of damages or a trial pursuant to clause (1)(b) or (2)(b) shall be heard and decided by a judge or the prothonotary, who shall provide brief written reasons for the decision.

Matters to be Proved

- (5) On a motion in writing for an assessment of damages or at trial pursuant to clause (1)(b) or (2)(b), the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim.

Service of Order

- (6) An order made on a motion in writing for an assessment of damages shall be served by the clerk in accordance with subrule 8.01(4.1).

Consequences of Noting in Default

- 11.05** (1) Except bringing a motion under subrule 11.06, a defendant who has been noted in default shall not file a statement of defence or take any other step in the proceeding, without the plaintiff's consent or leave of the court.
- (2) A defendant who has been noted in default is not entitled to notice of any step in the proceeding and need not be served with any other document, except the following:
 - 1. Subrule 11.02 (4) (service of default judgment).
 - 2. Rule 12.01 (amendment of statement of claim or statement of defence).
 - 3. Post judgment proceedings against a debtor under rule 20.
 - 4. Written reasons of judge or prothonotary under rule 11.04(4).

Setting Aside Noting of Default by Court on Motion

- 11.06** The prothonotary or a judge may set aside the noting in default or default judgment against a party and any step that has been taken to enforce the judgment, on such terms as are just, if the party makes a motion to set aside and the court is satisfied that,
 - (a) the party has a meritorious defence and a reasonable explanation for the default; and
 - (b) the motion is made as soon as is reasonably possible in all the circumstances.

Dismissal by Prothonotary - Undefended Actions

- 11.07** (1) Unless a judge orders otherwise, the prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied:
 - (a) More than 180 days have passed since the date the statement of claim was issued or an order was made extending the time for service of the statement of claim under subrule 8.01(2),
 - (b) No defence has been filed and no request has been made to note the defendant in default,
 - (c) The action has not been disposed of by order and has not been set down for trial, and
 - (d) The prothonotary has given 45 days notice to the plaintiff that the action will be dismissed as abandoned.

Dismissal by Prothonotary - Defended Actions

- (2) Unless the court orders otherwise, the prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied:
 - (a) More than 150 days have passed since the date the first statement of defence was filed.
 - (b) No settlement conference has been completed.
 - (c) The action has not been disposed of by order and has not been set down for trial.
 - (d) The prothonotary has given 45 days notice to the parties that the action will be dismissed as abandoned.

Exception Where Terms of Settlement Signed

- (3) Subrules (1) and (2) do not apply if terms of settlement (Form 14A) signed by all parties have been filed.

Exception Where Admission of Liability

- (4) Subrule (2) does not apply if the statement of defence contains an admission of liability for the plaintiff's claim and a proposal of terms of payment under subrule 9.03(1).

Service of Orders

- (5) The prothonotary shall serve a copy of an order made under subrule (1) on the plaintiff and a copy of an order made under subrule (2) on all parties to the action.

Order made on Consent of the Parties

- 11.08 (1) The prothonotary may, with consent of the parties, make an order granting the following relief:
 - (a) amending a statement of claim or statement of defence,
 - (b) adding, deleting or substituting a party,
 - (c) setting aside the noting in default or default judgment against a party and any specified step to enforce the judgment that has not yet been completed,
 - (d) restoring a matter that was dismissed under rule 11.01(1) to the list,
 - (e) noting that payment has been made in full satisfaction of a judgment or terms of settlement, or
 - (f) dismissing an action.

Service of order

- (2) The clerk shall serve the parties a copy of an order made under subrule (1) in accordance with subrule 8.01(13).

Notice of Setting Aside of Enforcement Step

- (3) Where an order is made setting aside a specified step to enforce a judgment under subparagraph 11.08(1)(c), the clerk shall file a copy of the order with the Sheriff.

RULE 12

AMENDMENT, DISMISSAL AND DISCONTINUANCE

Right to Amend

- 12.01** (1) A pleading may be amended by filing with the clerk a copy that is marked “Amended” in which any additions are underlined and any other changes are identified.

Service

- (2) The amended document shall be served by the party making the amendment on all parties, including any parties in default, in accordance with Rule 8.01.

Time

- (3) Filing and service of the amended document shall take place at least 30 days before the trial, unless the prothonotary or a judge, on motion, allows a shorter notice period.

Service on Added Party

- (4) A person added as a party shall be served with the pleading as amended, except that if the person is added as a party at trial, the prothonotary or a judge may dispense with service of the pleading.

No Amendment Required in Response

- (5) A party who is served with an amended document is not required to amend the party’s defence or claim.

Striking Out or Amending Pleading

- 12.02** (1) The prothonotary or a judge may strike out or amend a pleading or anything in a pleading on the ground that it
- (a) discloses no reasonable cause of action or defence, as the case may be;
 - (b) is scandalous, frivolous or vexatious;
 - (c) may prejudice, embarrass or delay the fair trial of the action; or
 - (d) is otherwise an abuse of the court’s process.
- (2) The prothonotary or a judge may order the action to be stayed or dismissed or judgment to be entered accordingly, or may impose such terms as are just.

Discontinuing Action

- 12.03** (1) A plaintiff may discontinue all or part of an action against any defendant
- (a) before the close of pleadings, by serving on all parties who have been served with the statement of claim a notice of discontinuance, Form 12A, and filing it with proof of service;
 - (b) after the close of pleadings, with leave of the court; or
 - (c) at any time, by filing the consent in writing of all parties.
- (2) Unless the court orders otherwise, or the parties agree, where a plaintiff discontinues an action against a defendant, the defendant is entitled to the costs of the action.
- (3) Subrules 12.03(1) and (2) apply, with necessary modifications, to a defendant’s claim.

Peni Brook v. Town of Montague, 2016 PESC 19

In exercising their discretion under Rule 12.02 and 13.04, the Prothonotary must provide reasons for striking out a Plaintiff's Claim.

Hawkes v. Aliant, 2006 PESCTD 48; (2006), 263 Nfld. & P.E.I.R. 175

The Prothonotary made an order at a pre-trial conference striking out the plaintiff's statement of claim because it disclosed no reasonable cause of action, pursuant to subrules 13.03(3)(b) and 12.02(1)(a). The motions judge set aside the Prothonotary's order as the statement of claim did disclose a reasonable cause of action.

RULE 13

SETTLEMENT CONFERENCES

Settlement Conference

- 13.01** (1) If a statement of defence has been filed, the clerk shall fix a date for a settlement conference and serve a notice of settlement conference on the parties, together with a list of proposed witnesses (Form 13A) to be completed by the parties.
- (1.1) A settlement conference shall be held within 60 days after the first statement of defence has been filed, unless otherwise ordered by the prothonotary.
- (2) The judge or prothonotary conducting the settlement conference may impose sanctions for the failure of a party, who has received a notice of settlement conference, to attend the settlement conference, including
- (a) an award of costs;
 - (b) dismissal of part or all of the statement of claim;
 - (c) noting the defendant in default.

Inadequate Preparation

- (3) If a person who attends a settlement conference is, in the opinion of the judge or prothonotary conducting the conference, so inadequately prepared as to frustrate the purposes of the conference, the court may award costs against that person.

Limit on Costs

- (4) Costs awarded under subrule (2) or (3) shall not exceed \$100 unless there are circumstances which, in the opinion of the judge or prothonotary, require a higher award.

Attendance

- 13.02** (1) A party and the party's lawyer, if any, shall, unless the court orders otherwise, participate in the settlement conference,
- (a) by personal attendance; or
 - (b) at the discretion of the court, by telephone or video conference.

Authority to Settle

- (2) A party who requires another person's approval before agreeing to a settlement shall, before the settlement conference, arrange to have ready telephone access to the other person throughout the conference.

Additional Settlement Conferences

- (3) The prothonotary or a judge may order the parties to attend an additional settlement conference.
- (4) The clerk shall fix a time and place for any additional settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A) on the parties.

Purposes of Settlement Conference

- 13.03** (1) The purposes of a settlement conference are:
- (a) to resolve or narrow the issues in the action;
 - (b) to expedite the disposition of the action;

- (c) to facilitate settlement of the action;
 - (d) to assist the parties in effective preparation for trial; and
 - (e) to promote full disclosure between the parties of the relevant facts and evidence.
- (2) At the settlement conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action.

Disclosure

- (3) At least 10 days before the date of the settlement conference, each party shall serve on every other party and file with the court:
- (a) a copy of any paper or electronic document, photograph, or other material capable of being copied, to be relied on at the trial, including an expert report, not attached to the party's statement of claim or statement of defence, which documents shall be attached to Form 13B, and page numbered; and
 - (b) a list of proposed witnesses (Form 13A) and of other persons with knowledge of the matters in dispute in the action.

Further Disclosure Restricted

- (4) Except as otherwise provided or with the consent of the parties, the matters discussed at the settlement conference shall not be disclosed to others until after the action has been disposed of.

Recommendations to Parties

- 13.04** (1) The judge or the prothonotary conducting the settlement conference may make recommendations to the parties on any matter relating to the conduct of the action in order to fulfil the purposes of a settlement conference, including recommendations as to:
- (a) the formulation and simplification of issues in the action;
 - (b) the elimination of claims or defences that appear to be unsupported; and
 - (c) the admission of facts or documents without further proof.

Orders at Settlement Conference

- (2) A judge or prothonotary conducting a settlement conference may make any order relating to the conduct of the action that the court could make.
- (3) Without limiting the generality of subrule (2), the judge or prothonotary may make:
- (a) an order for the joinder of parties; consolidation of actions, or hearing together of two or more applications;
 - (b) an order amending or striking out a pleading under Rule 12;
 - (c) an order referring a matter to a referee under Rule 21;
 - (d) an order for costs under subrule 13.01(4) ;
 - (e) with written reasons, an order staying or dismissing the action;
 - (f) an order directing production of documents; and
 - (g) an order directing an additional settlement conference under subrule 13.02(3).
- (4) If the settlement conference is conducted by the prothonotary, a judge may, on the prothonotary's recommendation, make any order that could be made under subrule (2).

Memorandum

- (5) At the end of the settlement conference, the judge or prothonotary may prepare a memorandum summarizing:
- (a) the issues remaining in dispute;
 - (b) the matters agreed on by the parties;

- (c) any evidentiary matters that the judge or prothonotary considers relevant; and
- (d) information relating to the scheduling of the remaining steps in the proceeding.
- (6) The memorandum shall be filed with the clerk, and the clerk shall give the trial judge a copy.

Judge Not To Preside At Trial

- 13.05 A judge who conducts a settlement conference in an action shall not preside at the trial of the action unless the parties consent in writing.

Appeal From Prothonotary's Order to be Governed by *Rules Of Civil Procedure*

- 13.06 An appeal from an order made by the prothonotary shall be commenced by serving a notice of appeal (Form 62A made pursuant to the *Rules of Civil Procedure*) on all parties whose interests may be affected by the appeal, within thirty days after the date of the order appealed from and the provisions of Rule 62 of the *Rules of Civil Procedure* shall apply.

Peni Brook v. Town of Montague, 2016 PESC 19

In exercising their discretion under Rule 12.02 and 13.04, the Prothonotary must provide reasons for striking out a Plaintiff's Claim.

Hawkes v. Aliant, 2006 PESCTD 48; (2006), 263 Nfld. & P.E.I.R. 175

The Prothonotary made an order at a pre-trial conference striking out the plaintiff's statement of claim because it disclosed no reasonable cause of action, pursuant to subrules 13.03(3)(b) and 12.02(1)(a). The motions judge set aside the Prothonotary's order as the statement of claim did disclose a reasonable cause of action.

RULE 14

OFFER TO SETTLE

- 14.01** A party may serve on any other party an offer to settle a claim on the terms specified in the offer. The offer to settle may be in Form 14A.

Time For Making Offer

- 14.02** An offer to settle may be made at any time, but if it is made less than seven days before the hearing commences, the costs consequences referred to in rule 14.07 do not apply.

Withdrawal

- 14.03** (1) An offer to settle may be withdrawn at any time before it is accepted by serving notice of its withdrawal on the party to whom it was made. The notice of withdrawal may be in Form 14D.

Expiry When Court Disposes of Claim

- (2) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.

No Disclosure of Offer to Trial Judge

- 14.04** If an offer to settle is not accepted, no communication about it shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined.

Acceptance

- 14.05** (1) An offer to settle may be accepted by serving an acceptance of the offer on the party who made it, at any time before it is withdrawn or the court disposes of the claim in respect of which it is made. An acceptance of offer may be in Form 14C.

Payment Into Court As Condition

- (2) An offer by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court; in that case, the defendant may accept the offer only by paying the money into court and notifying the plaintiff of the payment.
- (3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 14.06.

Costs

- (4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled:
- (a) in the case of an offer made by the defendant, to the plaintiff's disbursements assessed to the date the plaintiff was served with the offer;
 - (b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements assessed to the date that the notice of acceptance was served.

Terms of Settlement

- (5) The terms of an accepted offer to settle may be set out in Terms of Settlement (Form 14B).

Failure to Comply With Accepted Offer

14.06 If a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may:

- (a) make a motion to the court for judgment in the terms of the accepted offer;
or
- (b) continue the proceeding as if there had been no offer to settle.

Costs Consequences of Failure to Accept

14.07 (1) When a plaintiff makes an offer to settle that is not accepted by the defendant, the court may award the plaintiff an amount not exceeding twice the costs of the action, if the following conditions are met:

- 1. The plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer.
- 2. The offer was made at least seven days before the trial.
- 3. The offer was not withdrawn and did not expire before the trial.

(2) When a defendant makes an offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs awardable to a successful party from the date the offer was served, if the following conditions are met:

- 1. The plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer.
- 2. The offer was made at least seven days before the trial.
- 3. The offer was not withdrawn and did not expire before the trial.

King v. Charlottetown (City) and Shaw's Towing, 2023 PECA 3

The Plaintiff was successful at trial, and damages were assessed against one defendant in the amount of \$6,200. The defendants had made an offer to settle pursuant to Rule 14.07. The Court of Appeal found that the offer lacked certainty and therefore, did not qualify as an offer under Rule 14.07(2). To be effective, an offer must be fixed and determinable. The Court of Appeal also found that the offer had been overvalued, and the judgment had been undervalued. The costs order was set aside and the defendant was ordered to pay \$1,308 to the plaintiff for trial costs, and \$1,775 for appeal costs.

Baxter v. Crosby's Auto Sales, 2004 PESCTD 59

The parties allegedly entered into an agreement on the issues in dispute. The defendant made a motion under Rule 14.06 of the Small Claims Rules for judgment in accordance with the terms of the agreement. In the circumstances, there being an allegation by the plaintiff the agreement was entered into on the basis of a fraudulent misrepresentation by the defendant, the motion judge declined to grant judgment on the terms of the agreement. The proceeding was to continue to trial.

RULE 15

MOTIONS

NOTICE OF MOTION

- 15.01** (1) Unless the court orders otherwise, a motion shall be commenced by the filing of a notice of motion (Form 15A) and an affidavit (Form 15B).
- (2) A copy of the notice of motion and the affidavit shall be served at least seven days before the hearing date on every other party.
- (3) Except where a statute, these rules, or an order of a judge provides otherwise, the motion may be heard and decided by the prothonotary.

Affidavit in response

- 15.02** (1) A party who prepares an affidavit (Form 15B) in response to the moving party's notice of motion and affidavit shall serve it on every other party and file it, with proof of service, at least three days before the hearing date.

Costs

- 15.03** (1) No costs are recoverable in respect of a motion except that if the court is satisfied that a motion should not have been brought or opposed, or that the motion was necessary because of a party's default, the court may fix the costs of the motion and order that they be paid immediately.
- (2) The costs of a motion fixed by the court under subrule (1), in addition to disbursements, shall not exceed \$100 unless there are circumstances which, in the opinion of the judge or prothonotary, require a higher award.

RULE 16

NOTICE OF TRIAL

- 16.01** (1) At or after the settlement conference the clerk shall, if a trial is necessary, fix a date and time for the trial, and serve a Notice of Trial, Form 16A, on the parties.

RULE 17

ATTENDANCE AT TRIAL

FAILURE TO ATTEND

- 17.01** (1) If an action is called for trial and all the parties fail to attend, the trial judge may strike the action off the trial list.
- (2) If an action is called for trial and a party fails to attend, the trial judge may:
- (a) proceed with the trial in the party's absence;
 - (b) if the plaintiff attends and the defendant fails to do so, strike out the statement of defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the statement of claim, subject to subrule (3).
 - (c) if the defendant attends and the plaintiff fails to do so, dismiss the action and allow the defendant to prove the defendant's claim, if any; or
 - (d) make such other order as is just.
- (2.1) In the case described in clause (2)(b) or (c), the person with the claim is not required to prove liability against the party who has failed to attend, but is required to prove the amount of the claim.
- (3) In the case described in clause (2)(b), if an issue as to the proper place of trial under subrule 6.01(1) is raised in the statement of defence, the trial judge shall consider it and make a finding.
- (4) A judge may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial.

Adjournment

- 17.02** Upon request of a party, or on the court's own motion, the court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense.

Setting Aside Judgment

- 17.03** (1) If a defendant satisfies the person who conducted the hearing that
- (a) they did not attend the hearing because
 - (i) they did not receive notice of it, or
 - (ii) they were unable to attend for good reason, and
 - (b) judgment was entered against them,
- the person who conducted the hearing may direct the clerk to set aside the judgment and permit the defendant to file a statement of defence.
- (2) Where a judgment has been set aside under paragraph (1), the clerk shall inform the plaintiff.

RULE 18

EVIDENCE AT TRIAL

AFFIDAVIT

18.01 At the trial of an undefended action, the plaintiff's case may be proved by affidavit unless the trial judge or prothonotary order otherwise.

Inspection

18.01.1 The trial judge may, in advance of a trial and in the presence of the parties or their representatives, inspect any real or personal property concerning which a question arises in the action.

Written Statements and Documents

- 18.02** (1) A written statement or document described in subrule (2) that has been served on all parties and filed at least 14 days before the trial date shall be received in evidence unless the trial judge orders otherwise.
- (2) Subrule (1) applies to the following written statements and documents:
1. The signed written statement of any witness, including the written report of an expert, to the extent that the statement relates to facts and opinions to which the witness would be permitted to testify in person.
 2. Any other document, including but not limited to a hospital record or medical report made in the course of care and treatment, a financial record, a bill, documentary evidence of loss of income or property damage, and a repair estimate.

Name, Telephone Number, Email Address and Address of Witness or Author

- (3) A party who serves on another party a written statement or document described in subrule (2) shall page number the documents and shall append to or include in the statement or document the name, telephone number, email address and address for service of the witness or author.
- (4) A party who has been served with a written statement or document described in subrule (2) and who wishes to cross-examine the witness or author may summon them as a witness under subrule 18.03(1).

Where Witness or Author is Summoned

- (5) A party who serves a summons to witness on a witness or author referred to in subrule (3) shall, at the time the summons is served, notify all other parties of the summons.

Summons to Witness

- 18.03** (1) A party who requires the attendance of a person in Prince Edward Island as a witness at a trial may serve the person with a summons to witness (Form 18A) requiring them to attend the trial at the time and place stated in the summons.
- (2) The summons may also require the witness to produce at the trial the documents or other things in their possession, control or power relating to the matters in question in the action that are specified in the summons.

- (3) A summons to witness shall be served in accordance with subrule 8.01(6) and, at the same time, attendance money shall be paid or tendered to the witness in accordance with Rule 57 Tariff of the *Rules of Civil Procedure*.
- (4) Service of a summons to witness and the payment or tender of attendance money may be proved by affidavit.
- (5) A summons to witness continues to have effect until the attendance of the witness is no longer required.

Failure to Attend or Remain in Attendance

- (6) If a witness whose evidence is material to the conduct of an action fails to attend at the trial or to remain in attendance in accordance with the requirements of a summons to witness served on them, the trial judge may, by warrant (Form 18B) directed to all police officers in Prince Edward Island, cause the witness to be apprehended anywhere within Prince Edward Island and promptly brought before the court.
- (7) On being apprehended, the witness may be detained in custody until their presence is no longer required or released on terms as are just, and may be ordered to pay the costs arising out of the failure to attend or remain in attendance.

Abuse of Power to Summon Witness

- (8) If satisfied that a party has abused the power to summon a witness under this rule, the court may order that the party pay directly to the witness an amount as compensation for inconvenience and expense.

RULE 19

COSTS

EXPENSES

Unsuccessful party to pay successful party's expenses

19.01 Unless the court orders otherwise, an unsuccessful party shall pay to the successful party the following expenses:

- a) any fees the successful party paid for filing any documents;
- b) reasonable amounts the successful party paid for serving any documents; and
- c) any other reasonable charges or expenses the successful party incurred that the court considers directly relate to the conduct of the proceeding.

Compensation for unnecessary expenses

19.02 The court may order a party whose conduct causes another party to incur unnecessary expenses to pay all or part of those expenses.

COSTS

Limit

19.03 The court may order a party to pay the other party's costs of up to 15% of the amount claimed or of the value of the property sought to be recovered.

Penalty

19.04 Notwithstanding Rule 19.03, the court may order a party to pay the other party's costs in an amount greater than 15% of the amount claimed or of the value of the property sought to be recovered, if the court is satisfied that:

- a) the party brought an action or defended an action with no reasonable basis for success;
or
- b) the party has unduly complicated or prolonged an action or has otherwise acted unreasonably.

Three Rivers v. Power, 2023 PESC 43

Rule 19.03 expresses an expectation that costs up to 15% of the amount claimed be ordered to a successful party. However, a costs award should also be just and proportionate in all of the circumstances. The court ordered costs below 15% of the claimed amount, a counsel fee, and filing/service fees.

King v. Charlottetown (City) and Shaw's Towing, 2023 PECA 3

The Plaintiff was successful at trial, and damages were assessed against one defendant in the amount of \$6,200. The defendants had made an offer to settle pursuant to Rule 14.07. The Court of Appeal found that the offer lacked certainty and therefore, did not qualify as an offer under Rule 14.07(2). To be effective, an offer must be fixed and determinable. The Court of Appeal also found that the offer had been overvalued, and the judgment had been undervalued. The costs order was set aside and the defendant was ordered to pay \$1,308 to the plaintiff for trial costs, and \$1,775 for appeal costs.

Grafton Management Inc. v. Charlottetown (City), 2021 PECA 11

The court set out a framework for assessing costs of a self-represented litigant. Costs are in the discretion of the judge, and when exercising that discretion judges should be mindful of the purpose for awarding costs. Lost opportunity cost may be a factor but is not a condition precedent to an award of costs to a self-represented litigant. A self-represented litigant should not be compensated in relation to time and effort expended on a case which flow from the simple fact of being a litigant. Self-represented litigants are not entitled costs on the same basis as a litigant who retains counsel.

Peni Brook v. Town of Montague, 2016 PESC 33

The court stated that costs for self-represented parties may include expenses associated with activities reasonably required by the case. The Plaintiff was awarded costs for travel, research and filing fees.

Kelly v. Aliant Telecom, 2008 PESCTD 12

The general power of the court, in Rule 2.02, to act in the interest of justice permits the court to depart from Rule 19.02, which states that an award of costs shall not exceed 15 percent of the amount claimed. The court stated that it is implicit in Rule 19.02 that costs shall not exceed \$1,200 (15% of the \$8000 limit), barring unreasonable behaviour in the proceeding. The court awarded costs of \$1000 and disbursements of \$250.

Whiteway v. O'Halloran, 2007 PESCAD 22; (2007), Nfld. & P.E.I.R. 239

On an appeal from a decision in a small claims matter, costs are to be fixed in accordance with the provisions of Rule 57 because Rule 74, pursuant to subrule 1.01 thereof, is applicable only to proceedings in the small claims section of the trial division.

MRSB v. Cardinal & Ors., 2006 PESCTD 16

Subrule 19.02 of the Small claims Rules, while a factor to consider in awarding costs in a small claims proceedings, does not reduce or otherwise affect the authority of the court to award costs under s-s. 53(1) of the **Supreme Court Act**, R.S.P.E.I. 1988, Cap. S-10.

O'Hanley v. Wheatley & Gulf Surveys, 2005 PESCTD 20

The court allowed costs against the plaintiff under Rules 19.01, 19.02, 19.03, 19.04, in the amount of \$1,194 plus taxes in favour of one defendant, and \$3,364 plus taxes in favour of the second defendant.

MRSB v. Cardinal & Ors., 2006 PESCTD 16

Sub-rule 19.02 of the Small Claims Rules, while a factor to consider in awarding costs in a small claim proceeding, does not reduce or otherwise affect the authority of the court to award costs under s-s.53(1) of the *Supreme Court Act*, R.S.P.E.I. 1988, Cap. S-10.

RULE 20

ENFORCEMENT OF ORDERS

DEFINITIONS

20.01 In rules 20.02 to 20.10:

“creditor” means a person who is entitled to enforce an order for the payment or recovery of money;

“debtor” means a person against whom an order for the payment or recovery of money may be enforced.

Power of Court

20.02 (1) The court may:

- (a) stay the enforcement of an order of the court for such time and on such terms as are just; and
- (b) vary the times and proportions in which money payable under an order of the court shall be paid if it is satisfied that the debtor’s circumstances have changed.

Termination on Default

- (2) An order for periodic payment terminates immediately if the debtor is in default under it for 21 days, unless the creditor waives the default.

GENERAL

20.03 In addition to any other method of enforcement provided by law,

- (a) an order for the payment or recovery of money may be enforced by:
 - (i) a writ of seizure and sale of personal property (Form 20C) under rule 20.06;
 - (ii) a writ of seizure and sale of land (Form 20D) under rule 20.07; and
 - (iii) garnishment under rule 20.08; and
- (b) a further order as to payment may be made under subrule 20.10(7).

Certificate of Judgment

- 20.04** (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor’s request, supported by an affidavit stating the amount still owing, issue a certificate of judgment (Form 20A).
- (2) The certificate of judgment shall state:
 - (a) the date of the order and the amount awarded;
 - (b) the rate of post-judgment interest payable; and
 - (c) the amount owing, including post-judgment interest.

Delivery of Personal Property

- 20.05** (1) An order for the delivery of personal property may be enforced by a writ of delivery (Form 20B) issued by the clerk to a sheriff, on the request of the person in whose favour the order was made, supported by an affidavit of that person or the person's agent stating that the property has not been delivered.

Seizure of Other Personal Property

- (2) If the property referred to in a writ of delivery cannot be found or taken by the sheriff, the person in whose favour the order was made may make a motion to the court for an order directing the sheriff to seize any other personal property of the person against whom the order was made.
- (3) The sheriff shall keep personal property seized under subrule (2) until the court makes a further order for its disposition.

Storage Costs

- (4) The person in whose favour the order is made shall pay the sheriff's storage costs in advance and from time to time; if the person fails to do so, the seizure shall be deemed to be abandoned.

Writ of Seizure and Sale of Personal Property

- 20.06** (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue to a sheriff a writ of seizure and sale of personal property (Form 20C), and the sheriff shall enforce the writ for the amount owing, post-judgment interest and the sheriff's fees and expenses.

Duration and Renewal

- (2) A writ of seizure and sale of personal property remains in force for five years after the date of its issue and for a further five years after its renewal.
- (3) A writ of seizure and sale of personal property may be renewed before its expiration by filing with the clerk a request to renew it.
- (4) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any.

Inventory of Property Seized

- (5) Within a reasonable time after a request is made by the debtor or debtor's agent, the sheriff shall deliver an inventory of personal property seized under a writ of seizure and sale of personal property.

Sale of Personal Property

- (6) Personal property seized under a writ of seizure and sale of personal property shall not be sold by the sheriff unless notice of the time and place of sale has been:

- (a) mailed to the creditor at the address shown on the writ or the creditor's lawyer or agent and to the debtor at the debtor's last known address at least 14 days before the sale; and
- (b) advertised in a manner that is likely to bring it to the attention of the public.

Writ of Seizure and Sale of Land

- 20.07** (1) If an order for the payment or recovery of money is unsatisfied, the clerk shall at the creditor's request, supported by an affidavit stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form 20D).
- (2) A writ for the seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale of land issued under Rule 60 of the *Rules of Civil Procedure*.

Garnishment

- 20.08** (1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons.

Joint Debts Garnishable

- (2) If a debt is payable to the debtor and to one or more co-owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (15) may be garnished.

Obtaining Notice of Garnishment

- (3) A creditor who seeks to enforce an order by garnishment shall file with the clerk an affidavit for enforcement request (Form 20J) stating:
- (i) the date of the order and the amount awarded,
 - (ii) the place at which the order was made,
 - (iii) the rate of post-judgment interest payable,
 - (iv) the total amount of any payments received since the order was granted,
 - (v) the amount owing, including post-judgment interest,
 - (vi) the name and address of each person to whom a notice of garnishment is to be directed,
 - (vii) the creditor's belief that those persons are or will become indebted to the debtor, and the grounds for the belief, and
 - (viii) any particulars of the debts that are known to the creditor.
- (4) On the filing of the material required by subrule (3), the clerk shall issue notices of garnishment (Form 20E) naming as garnishees the persons named in the affidavit.
- (5) A notice of garnishment issued under subrule (4) shall name only one debtor and only one garnishee.

Service of Notice of Garnishment

- (6) The notice of garnishment shall be served by the creditor in accordance with subrule 8.01(6) and a copy filed with the Sheriff.
- (6.1) The creditor shall serve the notice of garnishment on the debtor within five days of serving it on the garnishee.
- (6.2) If the garnishee is a financial institution, the notice of garnishment and all further notices required to be served under this rule shall be served at the branch at which the debt is payable.
- (6.3) Service of the notice of garnishment may be proved by affidavit.

Garnishee Liable From Time of Service

- (7) The garnishee is liable to pay to the Sheriff any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice on the garnishee or 10 days after the debt becomes payable, whichever is later.
- (8) For the purposes of subrule (7), a debt of the garnishee to the debtor includes:
 - (a) a debt payable at the time the notice of garnishment is served; and
 - (b) a debt payable (whether absolutely or on the fulfilment of a condition) within 24 months after the notice is served.

Payment by Garnishee to Sheriff

- (9) A garnishee who admits owing a debt to the debtor shall pay it to the Sheriff in the manner prescribed by the notice of garnishment, subject to section 17 of the *Garnishee Act*.

Equal Distribution Among Creditors

- (10) If the clerk has issued notices of garnishment in respect of a debtor at the request of more than one creditor and the Sheriff receives payment under any of the notices of garnishment, the Sheriff shall distribute the payment equally among the creditors who have filed a request for garnishment and have not been paid in full.

Disputing Garnishment

- (11) A garnishee referred to in subrule (12) shall, within 10 days after service of the notice of garnishment, file with the court a statement (Form 20F) setting out the particulars.
- (12) Subrule (11) applies to a garnishee who,
 - (a) wishes to dispute the garnishment for any reason; or
 - (b) pays to the Sheriff less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor, because the debt is owed to the debtor and to one or more co-owners or for any other reason.

Service on Creditor and Debtor

- (13) If the garnishee's statement indicates that the debt is owed to the debtor and to one or more co-owners, the garnishee shall also serve copies of the statement on the creditor and the debtor.

Notice to Co-owner of Debt

- (14) A creditor who is served with a garnishee's statement under subrule (13) shall forthwith send to the co-owners of the debt, in accordance with rule 8.01(10), a notice to co-owner of debt (Form 20G) and a copy of the garnishee's statement.

Garnishment Hearing

- (15) At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, and upon service of a Notice of Garnishment Hearing, Form 20K, on the creditor, debtor, garnishee, co-owner of debt, and any other interested person, as the case may be, the court may
- (a) if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of the claim;
 - (b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer;
 - (c) vary or suspend periodic payments under a notice of garnishment; or
 - (d) determine any other matter in relation to a notice of garnishment.

Time to Request Hearing

- (16) A person who has been served with a notice to co-owner of debt is not entitled to dispute the enforcement of the creditor's order for the payment or recovery of money or a payment made by the Sheriff unless the person requests a garnishment hearing within 30 days after the notice is sent.

Enforcement Against Garnishee

- (17) If the garnishee does not pay to the Sheriff the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise.

Payment to Person other than Sheriff

- (18) If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the Sheriff, the garnishee remains liable to pay the debt in accordance with the notice.

Effect of Payment to Sheriff

- (19) Payment of a debt by a garnishee with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt to the extent of the payment.

- (20) Unless a hearing has been requested under subrule (15), the Sheriff shall, when proof is filed that the notice of garnishment was served on the debtor, distribute to a creditor payments received under a notice of garnishment as they are received.

Payment if Debt Jointly Owned

- (21) If a payment of a debt owed to the debtor and one or more co-owners has been made to the Sheriff, no request for a garnishment hearing is made and the time for doing so under subrule (16) has expired, the creditor may file with the Sheriff within 30 days after that expiry
- (a) proof of service of the notice to co-owner; and
 - (b) an affidavit stating that the creditor believes that no co-owner of the debt is a person under disability, and the grounds for the belief.
- (22) The affidavit required by subrule (21) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.
- (23) If the creditor does not file the material referred to in subrule (21) the sheriff shall return the money to the garnishee.

Consolidation Order

- 20.09** (1) A debtor against whom there are two or more unsatisfied orders for the payment of money may make a motion to the court for a consolidation order.
- (2) The debtor shall file with the motion an affidavit stating:
- (a) the names and address of the creditors who have obtained an order for the payment of money against the debtor;
 - (b) the amount owed to each creditor;
 - (c) the amount of the debtor's income from all sources, identifying them; and
 - (d) the debtor's current financial obligations and any other relevant facts.

Notice of Motion

- (3) Notice of the motion and a copy of the affidavit shall be served on each of the creditors mentioned in the affidavit at least seven days before the hearing date.

Contents of Consolidation Order

- (4) At the hearing of the motion, the court may make a consolidation order setting out:
- (a) a list of unsatisfied orders for the payment of money against the debtor, indicating in each case the date, court and amount, and the amount unpaid;
 - (b) the amounts to be paid into court by the debtor under the consolidation order; and
 - (c) the times of the payments.

- (5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's income that is subject to seizure or garnishment under section 17 of the *Garnishee Act*.

Creditor May Make Submissions

- (6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment.

Further Orders Obtained After Consolidation Order

- (7) If an order for the payment of money is obtained against the debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the creditor may file with the clerk a certified copy of the order; the creditor shall be added to the consolidation order and shall share in the distribution under it from that time.
- (8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order.

Enforcement Limited While Consolidation Order in Force

- (9) While the consolidation order is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order except issuing a writ of seizure and sale of land and filing it with the sheriff.

Termination on Default

- (10) A consolidation order terminates immediately if the debtor is in default under it for 21 days.

Effect of Termination

- (11) If a consolidation order terminates under subrule (8) or (10), the clerk shall notify the creditors named in the consolidation order, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination.

Manner of Sending Notice

- (12) The notice that the consolidation order is terminated shall be sent by mail or email.

Equal Distribution Among Creditors

- (13) All payments into a consolidation account belong to the creditors named in the consolidation order who shall share equally in the distribution of the money.
- (14) The clerk shall distribute the money paid into the consolidation account at least once every six months.

RULE 21

REFEREE

- 21.01** (1) A referee shall assist the court by performing the advisory duties and functions that it directs.
- (2) A referee shall not make a final decision in any matter referred to them but shall report their findings and recommendations to the court.

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FORM 4A
CONSENT TO ACT AS LITIGATION GUARDIAN

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

CONSENT TO ACT AS LITIGATION GUARDIAN

My name is _____
(name)

And I live at _____
(Street and number)

(City, province, and postal code)

(Phone number and email address)

1. I consent to act as litigation guardian in this action for the

☐ plaintiff, named _____
(name of plaintiff)

☐ defendant, named _____
(name of defendant)

and I acknowledge that I may be personally responsible for any costs awarded against me or against this person.

2. The above named person is under the following disability:

- ☐ a minor whose birth date is _____.
- ☐ meets the criteria for the appointment of a guardian or trustee under the *Adult Guardianship and Trusteeship Act*, RSPEI 1988, Cap. A-4.2.

3. My relationship to the person under disability is: _____.

4. I have no interest in this action adverse to that of the _____.
(plaintiff or defendant)

5. ☐ I have given written authority to _____.
(name of lawyer with authority to act in this proceeding)

of _____
(address for service)

(phone number and email address)

to act in this proceeding.

☐ I am not represented by a lawyer.

(Date)

(signature of litigation guardian)

**FORM 5A
NOTICE TO ALLEGED PARTNER**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE TO ALLEGED PARTNER

TO: *(name and address of alleged partner)* _____

YOU ARE ALLEGED TO HAVE BEEN A PARTNER on _____ *(date or date range)* in the partnership of _____ *(name of partnership)*, a party named in this proceeding.

IF YOU WISH TO DENY THAT YOU WERE A PARTNER at any material time, you must defend this proceeding separately from the partnership, denying that you were a partner at the material time. If you fail to do so you will be deemed to have been a partner on the date (or during the period) set out above.

AN ORDER AGAINST THE PARTNERSHIP MAY BE ENFORCED AGAINST YOU PERSONALLY if you are deemed to have been a partner, if you admit that you were a partner, or if the court finds that you were a partner at the material time.

Date

Signature of plaintiff or plaintiff's lawyer/agent

TO:

**FORM 7A
STATEMENT OF CLAIM**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A SMALL CLAIM HAS BEEN COMMENCED AGAINST YOU BY THE PLAINTIFF.

The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS SMALL CLAIM, you or a lawyer acting for you must prepare a statement of defence (Form 9A) and a designation of address for service (Form 8A), and file it with the clerk of the small claims section of the Supreme Court of Prince Edward Island WITHIN TWENTY DAYS after this claim is served on you, if you are in Prince Edward Island, or WITHIN FORTY DAYS, if you are served outside Prince Edward Island.

IF YOU DO NOT FILE A STATEMENT OF DEFENCE WITHIN THE REQUIRED TIME, JUDGMENT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

ADDRESSES OF COURT OFFICES

Charlottetown Sir Louis Henry Davies Law Courts 42 Water Street Charlottetown, PE C1A 7N8 902-368-6000	Summerside Summerside Law Courts 108 Central Street Summerside, PEI C1N 3L4 902-888-8125
--	--

CLAIM

AMOUNT OF THE CLAIM (including interest accrued to date, if any)

--

REASON FOR CLAIM AND DETAILS

Explain what happened, including where and when, and the amount involved.

--

☐ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM IS NEEDED.

DOCUMENTS

(If the plaintiff is relying on any documents to support the claim, the plaintiff must attach a copy of the documents to the claim with numbered pages. If any documents are lost or unavailable, the plaintiff must explain why in the following space.)

I CLAIM PRE-JUDGMENT INTEREST: (CHECK **ONLY ONE** OF THE FOLLOWING)

☐ Pursuant to a contract at the contract rate of _____ percent (please attach proof of this rate); or
☐ Pursuant to the <i>Judicature Act</i>

I ALSO CLAIM POST-JUDGMENT INTEREST, AND COURT COSTS.

Date

Signature of plaintiff or plaintiff's lawyer/agent

Date

Signature of court clerk

TO: *(name and address of each defendant)*

INSTRUCTIONS FOR MAKING A STATEMENT OF CLAIM
RULE 7
DO NOT FILE THIS PAGE – DETACH BEFORE FILING

Step 1: Complete the Statement of Claim form (Form 7A). Either complete the fillable pdf form or word document and print it, or print a blank form and complete it with clear, legible handwriting.

Be sure to get the defendant's name correct. If the defendant is doing business in the name of a partnership, or is an incorporated company, you may use the online PEI Corporate Business Directory to determine the proper information. Explain what happened in detail. Include dates and places. State the amount you want, or what goods you want returned. Attach copies of any documents that help your case. Examples are contracts, repair bills and photographs of damaged goods. Pages must be numbered.

If you want interest on the amount you are claiming, ask for it on the claim form. You and the defendant may have a contract that sets an annual interest rate. If so, use that rate. If not, claim the *Judicature Act* interest rate posted quarterly in the Royal Gazette.

Step 2: Complete a Designated Address for Service form (Form 8A). This is necessary and important so you can receive documents from the opposite party and the court.

Step 3: File the Statement of Claim and related documents by delivering them or mailing them to the Small Claims Court office at the address indicated on the front of the claim. You must file an original for the court, a copy for yourself, and an additional copy for every defendant. There is a fee and the court clerk will advise you of the amount.

The clerk will keep the original of the Statement of Claim in the court file, and return stamped copies to you to serve (deliver) on each defendant. Service may be done in person, by regular mail, certified mail, or courier.

Before you file: Consider whether making a small claim is practical. It is important to consider that the defendant may not be able to pay if they:

are unemployed;

are bankrupt;

have no ability to pay;

have no property and have nothing else of value belonging to them;

have stopped carrying on business; or

have other debts to pay or judgments registered against them.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR CLAIM

FORM 8A
DESIGNATION OF ADDRESS FOR SERVICE

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

DESIGNATION OF ADDRESS FOR SERVICE

ALL FIELDS ARE REQUIRED UNLESS INDICATED OTHERWISE

Party's name: _____

Lawyer's name (if applicable): _____

Mailing Address for service: _____

Email Address for service: _____

Phone numbers: Home: _____ Work: _____

Cell: _____ Other: _____

CERTIFICATE

I certify and acknowledge as follows.

1. The above addresses are the party's designated addresses for service of documents in this proceeding.

2. Service of documents upon me in this proceeding may be effected by way of delivery to any of the addresses described in this designation.
3. Any document sent, mailed, emailed, or delivered, to any one of these addresses in accordance with the Rules will be deemed to be received by the party.
4. It is my / our (*as the case may be*) responsibility to complete, serve and file a new Designation of Address for Service if my / our addresses change, and unless or until I / we do so, service may be effected upon me / us at any of the addresses contained in this designation. If I / we fail to serve and file an updated Designation of Address for Service, I / we understand that I / we might not receive documents in relation to this proceeding, might not receive notice of any steps taken in this proceeding, and that my / our proceeding or response could be dismissed, or could proceed in my / our absence, without further notice to me / us.

Date

Signature of party or lawyer

FORM 8B
AFFIDAVIT OF SERVICE

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

AFFIDAVIT OF SERVICE

I, _____ (*Full name*), of the (*City, Town, etc*) of _____, in the
Province of _____,

MAKE OATH (or AFFIRM) AND SAY as follows:

I have served the _____ (*Name of document*) on
_____ (*Name of person or company*)

CHECK ONE OF THE FOLLOWING

☐ **PERSONAL SERVICE**

personally on _____ (*if service is on behalf of a company,*
identify the person and position held) by leaving a copy with them on _____
(date), at _____ (address where document was served)

I was able to identify the person by means of (*state the means by which the person's identity was*
ascertained): _____

OR

☐ **SERVICE RESIDENCE**

by leaving a copy on _____ (date) in a sealed envelope addressed to
_____ (name of party to be served) with
_____ (identify person served, if known) who appeared to be an
adult member of the same household in which _____ (name of party to be
served) resides at _____ (address where service was made), and by
sending another copy by regular lettermail addressed to _____ (name of
party to be served), at the same address on _____ (date).

OR

☐ **SERVICE REGISTERED/REGULAR MAIL/COURIER**

by sending a copy in an envelope showing my return address to _____
(name of party to be served) by regular lettermail/registered mail/courier) at
_____ (address to which the document was mailed) on
_____ (date).

I believe that this is the address of _____ (name of party to be served) because
_____ (state reason for belief).

(For regular mail) The document has not been returned to me and I have no reason to believe that it was
not received by _____ (name of party to be served).

(For registered mail or courier) The delivery confirmation is attached.

Note: A Claim served by regular mail is not considered to have been served until five (5) calendar days have elapsed from the date of mailing. Accordingly, the Affidavit of Service cannot be completed until five (5) calendar days from mailing have elapsed.

OR

☐ **SERVICE BY EMAIL**

by sending a copy by email to _____ (*name of party to be served*) at
_____ (*email address*) on _____ (*date*).

I confirm that this is the email address of _____ (*name of party to be served*)
because _____ (*state reason for belief*).

Attached to this affidavit is a true copy of the

☐ registered mail receipt

☐ email attaching the document served

☐ confirmation of delivery by courier

SWORN (or AFFIRMED) BEFORE ME AT

_____ (city), Province of
_____ (province), this ____ day
of _____ (month), 20____.

*A Commissioner for Taking
Affidavits in the Province of Prince
Edward Island*

Signature

FORM 9A
STATEMENT OF DEFENCE

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

STATEMENT OF DEFENCE

This Statement of Defence is being filed on behalf of _____ (Name of defendant).

I/We:

☐ dispute the full claim made by the plaintiff.

☐ admit the full claim and propose the following terms of payment:

\$ _____ (amount) per _____ (week/month) commencing
_____, 20__.

☐ admit part of the claim amounting to \$ _____ (amount) and propose the following terms of payment:

\$ _____ (amount) per _____ (week/month) commencing
_____, 20__.

NOTICE TO PLAINTIFF(S): If this Statement of Defence contains a proposal of terms of payment, the proposal will be discussed at a settlement conference. A Notice of Settlement Conference will be served on the parties by the court.
--

REASONS FOR DISPUTING THE CLAIM AND DETAILS

(Explain what happened, including where and when. Explain why you do not agree with the claim made against you.)

☐ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM IS NEEDED.

DOCUMENTS

(If you are relying on any documents to support your claim, you must attach a copy of the documents to the Statement of Defence, with numbered pages. If any documents are lost or unavailable, you must explain why in the following space.)

Date

Signature of defendant or defendant's lawyer/agent

TO: *(name and address of each plaintiff)*

INSTRUCTIONS FOR FILING A STATEMENT OF DEFENCE

RULE 9

DO NOT FILE THIS PAGE – DETACH BEFORE FILING

Step 1: Complete the Statement of Defence form (Form 9A). Either complete the fillable pdf form or word document and print it, or print a blank form and complete it with clear, legible handwriting. State what is in the Statement of Claim that you disagree with, and why, and if there is anything you do agree with. Attach copies of any documents that help your case. Pages must be numbered. If you want to pay all or part of the amount owing, state how much you will pay and when you will pay.

Step 2: Complete a Designated Address For Service form (Form 8A). This is necessary and important so you can receive documents from the other party and the court.

Step 3: File your Statement of Defence (Form 9A), related documents and Designated Address for Service form (Form 8A) by delivering them or mailing them to the court office where the plaintiff filed the Statement of Claim. There is a fee for filing the Statement of Defence, the amount of which may be obtained from the court clerk. You must provide an original for the court, a copy for yourself, and an additional copy for each plaintiff, as the clerk will serve (deliver) the filed documents to the plaintiffs. You must do this within 20 days after you received the claim (40 days if you were served outside Prince Edward Island). If you miss the deadline, you can still file the Statement of Defence as long as the plaintiff has not yet asked the court to have you noted in default.

If you have been noted in default, you must make a motion to the court if you wish to file a statement of defence. Contact the court for further direction in this situation.

What if the Plaintiff owes you money or someone else is responsible for the loss?

If you wish to file a Counterclaim, Crossclaim or Third Party Claim (Forms 10A, 10B or 10C) against the plaintiff or other person, you must file it no later than 20 days after you file your Statement of Defence. There is a fee to file any of these documents, the amount of which may be obtained from the court clerk.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR STATEMENT OF DEFENCE

**FORM 10A
COUNTERCLAIM**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)
(DEFENDANT(S) TO COUNTERCLAIM)

AND:

DEFENDANT(S)
(PLAINTIFF(S) BY COUNTERCLAIM)

COUNTERCLAIM

TO THE PLAINTIFF(S):

A COUNTERCLAIM HAS BEEN COMMENCED AGAINST YOU BY THE DEFENDANT(S).

The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or a lawyer acting for you must prepare a statement of defence (Form 9A), and file it with the clerk of the small claims section of the Supreme Court of Prince Edward Island WITHIN TWENTY DAYS after this counterclaim is served on you, if you are in Prince Edward Island, or WITHIN FORTY DAYS, if you are served outside Prince Edward Island.

IF YOU DO NOT FILE A STATEMENT OF DEFENCE WITHIN THE REQUIRED TIME, JUDGMENT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

COUNTERCLAIM

AMOUNT OF THE COUNTERCLAIM (including interest accrued to date, if any)

--

REASON FOR COUNTERCLAIM AND DETAILS

Explain what happened, including where and when, and the amount of money involved.

--

☐ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM IS NEEDED.

DOCUMENTS

(If the defendant (plaintiff by counterclaim) is relying on any documents to support the counterclaim, the defendant must attach a copy of the documents to the claim, with numbered pages. If any documents are lost or unavailable, the defendant must explain why in the following space.)

I CLAIM PRE-JUDGMENT INTEREST: (CHECK **ONLY ONE** OF THE FOLLOWING)

☐ Pursuant to a contract at the contract rate of _____ percent (please attach proof of this rate); or
☐ Pursuant to the <i>Judicature Act</i>

I ALSO CLAIM POST-JUDGMENT INTEREST, AND COURT COSTS.

Date

Signature of defendant(s) (plaintiff(s) by counterclaim) or the defendant(s) lawyer/agent

Date

(Signature of court clerk)

TO: *(name and address of each defendant to the counterclaim)*

INSTRUCTIONS FOR MAKING A COUNTERCLAIM

RULE 10

DO NOT FILE THIS PAGE – DETACH BEFORE FILING

As a defendant, you can also make a claim of your own against the plaintiff. This is called a Counterclaim. For example, the plaintiff may owe you money. To make your claim against the plaintiff take the following steps:

Step 1: Complete the Counterclaim form (Form 10A). Either complete the fillable pdf form or word document and print it, or print a blank form and complete it with clear, legible handwriting. You are now the "plaintiff by counterclaim." Be sure to get the original plaintiff's name correct. Explain what happened in detail. Include dates and places. State how much money you want or what goods you want returned. Attach copies of any documents that help your case. The pages must be numbered. Examples are contracts, repair bills and photographs of damaged goods. If you want interest on money you are claiming, ask for it on the claim form. You and the plaintiff may have a contract that sets an annual interest rate. If so, use that rate.

Step 2: File the Counterclaim form and related documents by delivering them or mailing them to the court office where the plaintiff's claim was filed. You must file an original for the court, a copy for yourself, and an additional copy for all other parties. You must file your claim no later than 20 days after you file your Statement of Defence, unless you have leave of the court. There is a fee and the court clerk will advise you of the amount. The clerk will return a stamped copy of the Counterclaim form and documents to you.

Step 3: Serve the Counterclaim. You must deliver a copy of the filed Counterclaim and your documents to each of the persons you are claiming against. This is "serving" your claim. There are rules about how this must be done. See Rule 8. The plaintiff will have 20 days to file a Statement of Defence to your claim after receiving it.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR CLAIM

**FORM 10B
CROSSCLAIM**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)
(PLAINTIFF(S) BY CROSSCLAIM)

AND:

DEFENDANT(S)
(DEFENDANT(S) TO CROSSCLAIM)

CROSSCLAIM

TO THE DEFENDANT(S) _____ (name of defendant):

A CROSSCLAIM HAS BEEN COMMENCED AGAINST YOU BY THE DEFENDANT(S)

_____ (name of defendant).

The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS CROSSCLAIM, you or a lawyer acting for you must prepare a statement of defence (Form 9A), and file it with the clerk of the small claims section of the Supreme Court of Prince Edward Island WITHIN TWENTY DAYS after this crossclaim is served on you, if you are in Prince Edward Island, or WITHIN FORTY DAYS, if you are served outside Prince Edward Island.

IF YOU DO NOT FILE A STATEMENT OF DEFENCE WITHIN THE REQUIRED TIME, JUDGMENT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

CROSSCLAIM

AMOUNT OF THE CROSSCLAIM (including interest accrued to date, if any)

--

REASON FOR CROSSCLAIM AND DETAILS

Explain what happened, including where and when, and the amount of money involved.

--

☐ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM IS NEEDED.

DOCUMENTS

(If the defendant (plaintiff by crossclaim) is relying on any documents to support the crossclaim, the defendant must attach a copy of the documents to the claim, with numbered pages. If any documents are lost or unavailable, the defendant must explain why in the following space.)

I CLAIM PRE-JUDGMENT INTEREST: (CHECK **ONLY ONE** OF THE FOLLOWING)

☐ Pursuant to a contract at the contract rate of _____ percent (please attach proof of this rate); or
☐ Pursuant to the <i>Judicature Act</i>

I ALSO CLAIM POST-JUDGMENT INTEREST, AND COURT COSTS.

Date

Signature of defendants(s) (plaintiff(s) by crossclaim)
or the defendant(s) lawyer/agent

Date

(Signature of court clerk)

TO: *(name and address of each defendant to crossclaim)*

INSTRUCTIONS FOR MAKING A CROSSCLAIM

RULE 10

DO NOT FILE THIS PAGE – DETACH BEFORE FILING

As a defendant, you can also make a claim against another defendant(s). This is called a Crossclaim. To make your claim against the other defendant(s) take the following steps:

Step 1: Complete the Crossclaim form (Form 10B). Either complete the fillable pdf form or word document and print it, or print a blank form and complete it with clear, legible handwriting. You are now the "plaintiff by crossclaim." Be sure to get the all parties' names correct. Explain what happened in detail. Include dates and places. State how much money you want or what goods you want returned. Attach copies of any documents that help your case. Pages must be numbered. Examples are contracts, repair bills and photographs of damaged goods. If you want interest on money you are claiming, ask for it on the claim form. You and the plaintiff may have a contract that sets an annual interest rate. If so, use that rate.

Step 2: File the Crossclaim form and related documents by delivering them or mailing them to the court office where the Statement of Claim was filed. You must file an original for the court, a copy for yourself, and an additional copy for all other parties. You must file your Crossclaim no later than 20 days after you file your Statement of Defence, unless you have leave of the court. There is a fee and the court clerk will advise you of the amount. The clerk will return a stamped copy of the Crossclaim form and documents to you.

Step 3: Serve the Crossclaim. You must deliver a copy of the filed Crossclaim and your documents to each of the persons you are claiming against. This is "serving" your Crossclaim. There are rules about how this must be done. See Rule 8. The plaintiff will have 20 days to file a Statement of Defence to your claim after receiving it.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR CLAIM

**FORM 10C
THIRD PARTY CLAIM**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)
(PLAINTIFF(S) BY THIRD PARTY CLAIM)

AND:

THIRD PARTY(IES)

THIRD PARTY CLAIM

TO THE THIRD PARTY(IES):

A THIRD PARTY CLAIM HAS BEEN COMMENCED AGAINST YOU BY THE DEFENDANT(S).

A claim was commenced by the plaintiff(s) against the defendant(s) for the relief claimed in the statement of claim served with this third party claim. The defendant(s) has/have defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's(s') claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or a lawyer acting for you must prepare a statement of defence (Form 9A), and a designation of address for service (Form 8A), and file it with the clerk of the small claims section of the Supreme Court of Prince Edward Island **WITHIN TWENTY DAYS** after this crossclaim is served on you, if you are in Prince Edward Island, or **WITHIN FORTY DAYS**, if you are served outside Prince Edward Island.

IF YOU DO NOT FILE A STATEMENT OF DEFENCE WITHIN THE REQUIRED TIME, JUDGMENT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

THIRD PARTY CLAIM

AMOUNT OF THE CLAIM AGAINST THE THIRD PARTY(IES) (including interest accrued to date, if any)

--

REASON FOR CLAIM AND DETAILS

Explain what happened, including where and when, and the amount of money involved.

--

☐ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM IS NEEDED.

DOCUMENTS

(If the defendant (plaintiff by third party claim) is relying on any documents to support your third party claim, the defendant must attach a copy of the documents to the claim, with numbered pages. If any documents are lost or unavailable, the defendant must explain why in the following space.)

I CLAIM PRE-JUDGMENT INTEREST: (CHECK **ONLY ONE** OF THE FOLLOWING)

☐ Pursuant to a contract at the contract rate of ____ percent (please attach proof of this rate); or
☐ Pursuant to the <i>Judicature Act</i>

I ALSO CLAIM POST-JUDGMENT INTEREST, AND COURT COSTS.

Date

Signature of defendant(s) (plaintiff(s) by third party claim) or the defendant(s) lawyer/agent

Date

(Signature of court clerk)

TO: *(name and address of each defendant to third party claim)*

INSTRUCTIONS FOR MAKING A THIRD PARTY CLAIM

RULE 10

DO NOT FILE THIS PAGE – DETACH BEFORE FILING

As a defendant, you can also make a claim of your own against someone else. This is called a Third Party Claim. For example, you may believe someone else caused the plaintiff's loss and that person should have to pay. To make your claim against the other party, take the following steps:

Step 1: Complete the Third Party Claim form (Form 10C). Either complete the fillable pdf form or word document and print it, or print a blank form and complete it with clear, legible handwriting. You are now the "plaintiff by third party claim." Be sure to get the third party's name correct. Explain what happened in detail. Include dates and places. State how much money is owed or what should be returned. Attach copies of any documents that help your case. Pages must be numbered. Examples are contracts, repair bills and photographs of damaged goods. If you want interest on money you are claiming, ask for it on the claim form.

Step 2: File the Third Party Claim form and related documents by delivering them or mailing them to the court office where the Statement of Claim was filed. You must file an original for the court, a copy for yourself, and a copy for all other parties. You must file your claim no later than 20 days after you file your Statement of Defence, unless you have leave of the court. There is a fee and the court clerk will advise you of the amount. The clerk will return a stamped copy of the Third Party Claim form and documents to you.

Step 3: Serve the Third Party Claim. You must deliver a copy of the filed Third Party Claim, together with your copy of the Statement of Claim and your Statement of Defence to each of the persons you are claiming against. This is "serving" your claim. There are rules about how this must be done. See Rule 8. Each party will have 20 days to file a Statement of Defence to your Third Party Claim after receiving it.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR CLAIM

FORM 11A
AFFIDAVIT OF JURISDICTION

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

AFFIDAVIT OF JURISDICTION

My name is : _____
(Full name)

I live in _____
(Municipality and province)

and I swear/affirm that the following is true:

1. In this action, I am the

☐ plaintiff

☐ representative of the plaintiff(s) _____
(Name of plaintiff(s))

2. I make this affidavit in support of the plaintiff's request to note the defendant(s) in default, where all the defendants have been or will be served outside Prince Edward Island.

3. The plaintiff is entitled to proceed with this action in Prince Edward Island because this is:

- ☐ where the event (cause of action) took place.
- ☐ where the defendant lives or carries on business.

SWORN/AFFIRMED before me at _____)
the City/Town of _____, in the)
County of _____, Province of)
Prince Edward Island, this _____ day of)
_____, 20____.)
_____)
_____)
_____)

A COMMISSIONER FOR TAKING AFFIDAVITS

(Signature)

WARNING: IT IS AN OFFENCE UNDER THE <i>CRIMINAL CODE</i> TO KNOWINGLY SWEAR OR AFFIRM A FALSE AFFIDAVIT.

FORM 11B
NOTICE OF DEFAULT JUDGMENT

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF DEFAULT JUDGMENT

NOTE: Take notice that default judgment has been entered in this action as against the defendant(s) _____ (Name of defendant) for the following sums:

Debt (claimed amount) \$ amount

Pre-judgment interest is calculated

on the sum of \$ at the rate of %

per annum from _____ (date) to _____ (date)

being ____ (number of days) days. \$ amount

Costs \$ amount

Total \$ amount

This judgment bears post-judgment interest at % per annum commencing this date.

(Date)

(Signature of clerk)

NOTE: If you are asking for judgment against different defendants for different amounts, separate Notices of Default Judgment for each defendant will confirm accuracy.

INSTRUCTIONS FOR REQUESTING DEFAULT JUDGMENT
RULE 11
DO NOT FILE THIS PAGE – DETACH BEFORE FILING

Step 1: Note the defendant in default. If you filed a Statement of Claim and the defendant in Prince Edward Island has not filed a Defence within 20 days after you served the claim, or 40 days if you were served outside Prince Edward Island, ask the court clerk to find or “note” the defendant in default. You can do this by filing your Affidavit of Service form (Form 8B) providing the date of service on the defendant, and the Note of Default (Form 11C). (You can get the form from the court office or online at www.courts.pe.ca/forms.)

If you are asking for judgment against different defendants for different amounts, separate Notices of Default Judgment for each defendant will confirm accuracy.

Step 2: Ask a court clerk to sign a default judgment

The court clerk can sign a default judgment in cases where the amount in dispute is stated under an agreement. Examples include unpaid accounts for goods or services sold and delivered, and unpaid loans.

To ask a clerk to sign a default judgment, you must fill out and file a Notice of Default Judgment form (Form 11B).

OR

Ask the court to make a judgment and assess damages

The court (a judge or the prothonotary) can make a judgment and assess damages in cases where the amount in dispute is not spelled out under an agreement. An example of this is damage to your property.

To ask the court to make a judgment and assess damages, you must:

1. Make a written request. To do this, you file a Notice of Motion and support Affidavit (Forms 15A and 15B). In the Affidavit, you state the reasons why the motion should be granted. Attach all relevant documents. You may not have to go to court to speak to the judge or prothonotary. The judge or prothonotary will read all the documents and then decide whether a hearing is necessary.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR DEFAULT JUDGMENT

FORM 11C
NOTE OF DEFAULT

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTE OF DEFAULT

The Defendant has been noted in default.

Date

(Signature of court clerk)

FORM 12A
NOTICE OF DISCONTINUANCE

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF DISCONTINUANCE

The plaintiff wholly discontinues this action.

(Date)

(Name, address and telephone number
of plaintiff or plaintiff's lawyer)

TO:

(Name and address of defendant or defendant's lawyer)

FORM 12B
NOTICE OF CHANGE OF LAWYER

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF CHANGE OF LAWYER

The _____ (name of party(ies)), formerly represented by
_____ (name of former lawyer), has appointed _____ (name
of new lawyer) as lawyer of record.

Date

(Name, address and telephone number
of new lawyer)

TO: _____
(Name and address of former lawyer)

AND TO:

(Names and addresses of lawyers for all other parties, or names and addresses of all other parties)

FORM 12C
NOTICE OF APPOINTMENT OF LAWYER

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF APPOINTMENT OF LAWYER

The _____ (name of party(ies)), has appointed _____ (name of lawyer) as lawyer of record.

Date

(Name, address and telephone number
of lawyer)

TO: _____

(Names and addresses of lawyers for all other parties, or names and addresses of all other parties)

FORM 12D
NOTICE OF INTENTION TO ACT IN PERSON

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF INTENTION TO ACT IN PERSON

The _____ (name of party(ies)), formerly represented by
_____ (name of former lawyer) as lawyer of record,
intends to act in person.

With this notice, the _____ (name of party listed above) has served and filed a
designation of address for service (Form 16 A.1) that sets out the party's designated addresses
for service.

Date

(Name, address and telephone number
of party intending to act in person)

TO: _____
(Name and address of former lawyer)

AND TO:

(Names and addresses of lawyers for all other parties, or names and addresses of all other
parties)

FORM 13A
LIST OF PROPOSED WITNESSES

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

LIST OF PROPOSED WITNESSES

Note: EACH PARTY MUST SERVE THIS LIST on all other parties and file it at least ten (10) days before the pre-trial conference.

My name is _____
(Name of Party/Representative)

In this action, I am the:

- ☐ plaintiff
- ☐ defendant
- ☐ representative of the plaintiff(s)
- ☐ representative of the defendant(s)
- ☐ other (please describe) _____

The following is my list of proposed witnesses in this case:

Name of Witness

Address, phone and email address

1. _____

2. _____

3. _____

THE FOLLOWING is my list of other persons with knowledge of the matter in dispute in this case:

Name of Person

Address, phone and email address

1. _____

2. _____

(Attach a separate sheet in the above format for additional witnesses or other persons.)

(Date)

(Signature of party or representative)

FORM 13B
ADDITIONAL DOCUMENTATION

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

ADDITIONAL DOCUMENTATION

1. My name is _____
(Name of Party/Representative)

In this action, I am the:

- ☐ plaintiff
☐ defendant
☐ representative of the plaintiff(s)
☐ representative of the defendant(s)
☐ other (please describe) _____

2. I have attached the following documents to this form which are page numbered:

1. _____
2. _____
3. _____
4. _____

☐ Check this box if additional pages have been attached because more space was needed

(Date)

(Signature of party or representative)

**FORM 14A
OFFER TO SETTLE**

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

OFFER TO SETTLE

My name is _____
(name)

I live in _____
(municipality and province)

1. In this action, I am the:
- ☐ plaintiff
 - ☐ defendant
 - ☐ representative of the plaintiff(s)
 - ☐ representative of the defendant(s)
 - ☐ other (please describe) _____

2. I offer to settle this action against _____
(Name of party(ies))

on the following terms:

(add an attached sheet if required)

3. This offer to settle is available for acceptance until _____.
This offer to settle may be accepted by serving an acceptance of offer to settle (Form 14C may be used) on the party who made it, at any time before it is withdrawn or before the court disposes of the claim to which the offer applies (Rule 14.05(1)). You may access forms at court offices or online at www.courts.pe.ca

(Date)

(Signature of party or representative)

(Name, address, and phone number of party or representative)

TO:

NOTE:	IF YOU ACCEPT AN OFFER TO SETTLE, THEN FAIL TO COMPLY WITH ITS TERMS, judgment in the terms of the accepted offer may be obtained against you on motion to the court, or the action may continue as if there has been no offer to settle (Rule 14.06.)
--------------	---

NOTE:	IF THIS OFFER TO SETTLE IS NOT ACCEPTED, IT SHALL <u>NOT</u> BE FILED WITH THE COURT OR DISCLOSED to the trial judge until all questions of liability and relief (other than costs) have been determined (Rule 14.04.)
--------------	---

FORM 14B
TERMS OF SETTLEMENT

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

TERMS OF SETTLEMENT

Note: IF A PARTY TO THESE TERMS OF SETTLEMENT FAILS TO COMPLY, judgment in the terms of settlement may be obtained against that party on motion to the court or this action may continue as if there has been no settlement.

We,

(Full names)

consent to full and final settlement of the claim

by

(Name of party(ies))

against

(Name of party(ies))

on the following terms:

(If settlement involves a payment by one party to another, set out here, otherwise, go to "OTHER")

DEBT agreed to: \$ _____

INTEREST (if any) calculated

on the sum of \$ _____ at the rate of _____ %

per annum from _____, 20__ to _____, 20__

being _____ days, \$ _____

COSTS \$ _____

TOTAL \$ _____

PAYMENT IS TO BE MADE BY _____
(Name of party(ies))

TO _____ AS FOLLOWS:

(provide terms of payment such as date of commencement, frequency, amount and duration)

OTHER: _____
(Specify)

_____, 20__	)	_____, 20__
(Date)	)	(Date)
_____	)	_____
(Signature of party)	)	(Signature of party)
_____	)	_____
(Name of party)	)	(Name of party)
_____, 20__	)	_____, 20__
(Date)	)	(Date)
_____	)	_____

(Signature of party)

) (Signature of party)

)

(Name of party)

)

(Name of party)

FORM 14C
ACCEPTANCE OF OFFER TO SETTLE

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

ACCEPTANCE OF OFFER TO SETTLE

My name is _____
(name)

I live in _____
(municipality and province)

1. In this action, I am the
☐ plaintiff
☐ defendant
☐ representative of the plaintiff(s)
☐ representative of the defendant(s)
☐ other (please describe) _____
2. I accept the offer to settle from _____
(Name of party(ies))
dated _____ (date).

3. This offer to settle has not expired and has not been withdrawn.

(Date)

(Signature of party or representative)

(Name, address, and phone number of party or
representative)

TO:

CAUTION: IF YOU ACCEPT AN OFFER TO SETTLE, THEN FAIL TO COMPLY WITH ITS TERMS, judgment in terms of the accepted offer may be obtained against you on motion to the court, or this action may continue as if there has been no offer to settle (Rule 14.06.)

FORM 14D
NOTICE OF WITHDRAWAL OF OFFER TO SETTLE

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF WITHDRAWAL OF OFFER TO SETTLE

My name is _____
(name)

I live in _____
(municipality and province)

1. In this action, I am the
- ☐ plaintiff
 - ☐ defendant
 - ☐ representative of the plaintiff(s)/defendant(s)
 - ☐ representative of the defendant(s)
 - ☐ other (please describe) _____

2. I withdraw the offer to settle provided to _____
(Name of party(ies))
dated _____ (date) which has not been accepted.

(Date)

(Signature of party or representative)

(Name, address, and phone number of party or representative)

TO:

**FORM 15A
NOTICE OF MOTION**

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF MOTION

TAKE NOTICE:

A motion will be made to the court by _____ (*Name of party*) at _____ (*Name and location of court*) on _____ (*Date*) at _____ (*Time*) (or as soon thereafter as the motion can be heard).

1. The order sought is:

(set out the order you are seeking)

2. The following material will be relied on at the hearing of the motion:

(Set out what documents will be used to support your request for the order.)

Attach an additional page if necessary and date and sign it.

TAKE NOTICE: If you fail to appear at the hearing of this motion, an order may be made in your absence.
--

(Date)

(Signature of party or party's lawyer/agent)

TO:

INSTRUCTIONS FOR MAKING A MOTION
RULE 15
DO NOT FILE THIS PAGE – DETACH BEFORE FILING

A motion is a request to the court to make an order about a case. For example, a defendant could ask the court for more time to send in a defence or a counterclaim. Or either party could ask for more time to serve documents.

Motions can help the parties in a case. They can also make the case take longer and cost more money. If the judge grants your motion, you can ask the court to make the other party pay some of your costs, or the other party may ask the court to make you pay some of their costs. These costs can include court filing fees, lawyer fees, and expenses for witnesses, photocopying, and delivery of documents.

Step 1: Explain what you are asking the court to do and why. This is done by completing a Notice of Motion and Supporting Affidavit forms (Forms 15A & 15B).

Upon your request, the trial coordinator of the court will provide a hearing date and time. Put the date and time on the Notice of Motion.

Step 2: File the Notice of Motion and Supporting Affidavit (Form 15A & 15B) at the court at least 7 days before the hearing date. There is a filing fee.

Step 3: Where a motion is made on notice, the party making the motion shall, unless the court otherwise orders, serve on all parties all materials to be used on the motion, at least 7 days before the hearing date. There are rules about how this must be done. Also file an Affidavit of Service (Form 8B) proving that the other parties were served.

Motion in Writing for an Assessment of Damages

If all defendants have been noted in default after failing to file a Defence, you can bring a motion in writing for an assessment of damages. You do not have to attend the motion. The judge or the prothonotary will make a decision based on the documents that you filed. If the judge or prothonotary thinks the documents you filed are inadequate, they may order you to provide a further affidavit or to attend a trial.

PLEASE REMEMBER TO DETACH THIS SHEET BEFORE FILING YOUR MOTION

**FORM 15B
AFFIDAVIT**

Court File No. S___ SC _____
(The number assigned by the court)

**SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)**

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

AFFIDAVIT

I, _____ (Full name), of _____ (City),
_____ (Town), etc. in the County of _____ (Name Of County), in the
Province of _____ (Name of Province) **MAKE OATH AND SAY (or AFFIRM) as
follows:**

*Set out the facts in support, in numbered paragraphs. If the facts are not within your own personal
knowledge, give the source of your information*

SWORN (or AFFIRMED) BEFORE ME AT

_____ in the County of _____,
Province of Prince Edward Island, on this
_____ day of _____ (month), _____ (year).

*A Commissioner for taking affidavits (or as
may be)*

(Signature)

WARNING: IT IS A CRIMINAL OFFENCE TO KNOWINGLY SWEAR A FALSE AFFIDAVIT.

**FORM 16A
NOTICE OF TRIAL**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

NOTICE OF TRIAL

TAKE NOTICE:

The trial of this action will be held at *Location of court* on *Date* at *Time* or soon thereafter as the trial may be held.

TAKE NOTICE: IF YOU FAIL TO APPEAR, THIS ACTION MAY BE DISPOSED OF WITHOUT FURTHER NOTICE TO YOU.

Dated at *place* this *date* day of *month*, *year* .

(Signature of Clerk)

**FORM 18A
SUMMONS TO WITNESS**

Court File No. S____ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

SUMMONS TO WITNESS

TO: *Name of witness*
 Address of witness

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE IN COURT at the trial of this action on _____(Date), at _____(Time) at _____(Address of court) and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU AND PRODUCE AT THE TRIAL THE FOLLOWING DOCUMENTS AND THINGS:

State particular documents and things required, in numbered paragraphs.

and all other documents relating to the action in your custody, possession or control.

Witness attendance money is payable with this summons, pursuant to the Rule 57 Tariff of the Rules of Civil Procedure.

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS REQUIRED BY THIS SUMMONS, A WARRANT MAY BE ISSUED FOR YOUR ARREST.

The _____ (*Plaintiff/Defendant*) has requested the clerk to issue this Summons to Witness.

(*Date*)

(*Signature of clerk*)

FORM 18B
WARRANT FOR ARREST OF DEFAULTING WITNESS

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

WARRANT FOR ARREST OF DEAUTLING WITNESS

TO ALL police officers in Prince Edward Island AND TO the officers of all correctional institutions in Prince Edward Island.

1. The witness _____ (name) of _____ (address) was served with a Summons to Witness to give evidence at the trial of this action, and the prescribed attendance money was paid or tendered.
2. The witness failed to
 - a. _____ *attend*
 - b. _____ *remain in attendance*

at the trial, and I am satisfied that the evidence of the witness is material to this proceeding.

YOU ARE ORDERED to arrest and bring the witness _____ (name) before the court to give evidence in this action, and if the court is not then sitting or if the witness cannot be brought before the court immediately, to deliver the witness to a provincial correctional institution or other secure facility, to be detained there until the witness can be brought before the court, or be released on terms that are just.

(Date)

(Signature of judge)

**FORM 20A
CERTIFICATE OF JUDGMENT**

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

CERTIFICATE OF JUDGMENT

TO THE CLERK OF THE SMALL CLAIMS COURT

The person requesting this Certificate is _____ (Name) of
_____ (Address of person requesting Certificate).

A Judgment was recovered in this action against _____ (Name
of person(s)) against whom judgment was recovered) on _____ (Date) in the Small
Claims Section of the Supreme Court of Prince Edward Island for the following:

(A) Debt (Claimed Amount) \$

(B) Pre-judgment interest @ _____
% per annum from _____ to _____ ,
being _____ days \$

(C) Costs \$

Subtotal \$

(D) Less Amount(s) Paid (minus) \$

(E) Post-judgment interest:

calculated at the rate of % per annum
from to ,
being \$ per day

\$

Balance Due

\$

(F) Additional Cost(s)

\$ for

\$ for

\$ for

\$

Total

\$

The amount unpaid on the judgment is \$ _____ (*Total*), as stated in this Certificate.

The rate of post-judgment interest is ____ % **per annum**.

(*Date*)

(*Signature of Clerk*)

**FORM 20B
WRIT OF DELIVERY**

Court File No. S ____ SC _____

(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

WRIT OF DELIVERY

TO THE SHERIFF OF _____ *(Name of County).*

UNDER AN ORDER OF THIS COURT made on _____ *(Date)*

YOU ARE DIRECTED to seize from _____ *(Name of person against whom the order was made)* and to deliver without delay to _____ *(Name of person in whose favour the order was made)* the following personal property:

(set out a description of the property to be delivered together with any identifying marks or serial numbers; if more than one item, set out in a numbered list format)

☐ Check this box if additional pages have been attached because more space was needed

(Date)

(Signature of Clerk)

FORM 20C

WRIT OF SEIZURE AND SALE OF PERSONAL PROPERTY

Court File No. S ____ SC ____
(The number assigned by the court)

**SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)**

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

WRIT OF SEIZURE AND SALE OF PERSONAL PROPERTY

TO: THE SHERIFF OF _____ (Name of County)

Under an order of this court made on _____ (Date) in favour of _____ (Name of creditor)

YOU ARE DIRECTED to seize and sell the personal property of

Surname of individual or name of corporation/firm etc.

First given name (individual only)

Second given name (individual only)

Date of birth if known (individual only)

***Note:** For additional defendants, please list on attached sheet with all the necessary information as requested above.*

situated within your jurisdiction and to realize from the seizure and sale the following sums:

(A) Debt (claimed amount) \$

(B) Pre-judgment interest

at % per annum

from to for
number of days. \$

(C) Costs \$

(D) Post-judgment interest at % per annum

from date of judgment to this date

for days \$

Note: Calculation of interest is always on the amount owing from time to time as payments are received. This is true for both pre-judgment and post-judgment interest.

(E) Subsequent costs incurred after judgment \$

Costs of this Execution \$

(F) After the judgment the Debtor paid the sum of: (minus)\$

Total \$ *Total*

(G) Your fees and expenses in enforcing this writ \$ *(Filled in by Sheriff)*

Subsequent post-judgment interest is claimed at % per year or \$ per day.

YOU ARE DIRECTED to pay the proceeds over to the Sheriff for the creditor.

(Date)

(Signature of Clerk)

FORM 20D
WRIT OF SEIZURE AND SALE OF LANDS

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)

AND:

DEFENDANT(S)

WRIT OF SEIZURE AND SALE OF LANDS

TO THE SHERIFF OF _____ *(Name of County)*

UNDER AN ORDER OF THIS COURT made on _____ *(Date)* in favour of
_____ *(Name of creditor)*

YOU ARE DIRECTED to seize and sell the real property of

Surname of individual or name of corporation/firm etc.

First given name (individual only)

Second given name (individual only)

Date of birth if known (individual only)

***Note:** For additional defendants, please list on attached sheet with all the necessary information as requested above.*

situated within your jurisdiction and to realize from the seizure and sale the following sums:

(A) Debt (claimed amount) \$

(B) Pre-judgment interest

at % per annum
from to for
number of days. \$

(C) Costs \$

Sub-total \$

(D) Post-judgment interest at % per annum
from _____ (*date of judgment*) to _____ (*this day*) \$

Note: Calculation of interest is always on the amount owing from time to time as payments are received. This is true for both pre-judgment and post-judgment interest.

(E) Subsequent costs incurred after judgment \$
Costs of this Execution

(F) After the judgment the debtor paid the sum of: (minus)\$

Total \$

(G) Your fees and expenses in enforcing this writ \$ (Filled in by the sheriff)

YOU ARE DIRECTED to pay the proceeds according to law and to report on the execution of this writ if required by the party or solicitor who filed it.

(Date)

(Signature of Clerk)

**FORM 20E
NOTICE OF GARNISHMENT**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

CREDITOR(S)

AND:

DEBTOR(S)

NOTICE OF GARNISHMENT

Note: THE CREDITOR SHALL SERVE THIS NOTICE on the debtor with an Affidavit for Enforcement Request (Form 20J) and serve on the garnishee this notice with a blank Garnishee's Statement (Form 20F).

TO THE GARNISHEE:

The creditor has obtained a court order against the debtor. The creditor claims that you owe or will owe the debtor a debt in the form of wages, salary, pension payments, rent, annuity or other debt that you pay out in a lump-sum, periodically or by installments. (A debt to the debtor includes both a debt payable to the debtor alone and a joint debt payable to the debtor and one or more co-owners).

YOU ARE REQUIRED TO PAY to Sheriff Services:

- (a) all debts now payable by you to the debtor, **within ten (10) days** after this notice is served on you; and
- (b) all debts that become payable by you to the debtor after this notice is served on you, **within ten (10) days** after they become payable.

The total amount of all your payments to Sheriff Services is not to exceed \$_____
(Amount unsatisfied, including Sheriff's fees pursuant to the *Court Fees Act* regulations)

THIS NOTICE IS LEGALLY BINDING ON YOU until it expires or is changed, terminated or satisfied. If you do not pay the total amount or such lesser amount as you are liable to pay, you must serve a Garnishee's Statement (Form 20F) on the creditor and debtor, and file it with the clerk within ten (10) days after this notice is served on you.

EACH PAYMENT, PAYABLE TO SHERIFF SERVICES, MUST BE SENT with a copy of the attached garnishee's payment notice to the clerk at the above court address.

If your debt is jointly owed to the debtor and to one or more co-owners, you must pay the debtor's appropriate share of the amount now payable, or which becomes payable, or such a percentage as the court may order.

The amounts paid into court shall not exceed the portion of the debtor's wages that are subject to seizure or garnishment under the *Garnishee Act*. The portion of wages that can be garnished may be increased or decreased only by issuance of a Certificate of Garnishment. When a Certificate of Garnishment is served on you, you must follow the direction in that court order.

Wages may not be garnished until, following an examination of the judgment debtor, a certificate is issued by the prothonotary, verifying the amount of wages subject to garnishment.

CAUTION TO GARNISHEE: IF YOU FAIL TO PAY to Sheriff Services the amount set out in this notice and do not file a Garnishee's Statement (Form 20F) disputing garnishment, **JUDGMENT MAY BE OBTAINED AGAINST YOU BY THE CREDITOR** for payment of the amount set out above, plus costs. If you make a payment to anyone other than Sheriff Services, you may be liable to pay again.

NOTE: Any party or interested person may complete and serve a Notice of Garnishment Hearing (Form 20K) to determine any matter related to this notice. To obtain forms, attend the nearest Small Claims Court or access the website: www.courts.pe.ca

(Date)

(Signature of Clerk)

The top portion of the garnishee's payment notice is to be completed by the creditor before the Notice of Garnishment is issued. Where it is anticipated that more than one payment will be made by the garnishee, the creditor should supply extra copies of the payment notice.

GARNISHEE'S PAYMENT NOTICE

Make payment by cheque or money order payable to Sheriff Services and send it, along with this payment notice to Sheriff Services at the following address:

Court address: _____

Claim No.: _____

Creditor: _____

Debtor: _____

Garnishee: _____

TO BE COMPLETED BY GARNISHEE FOR EACH PAYMENT

Date of payment: _____, 20____

Amount enclosed: \$ _____

**FORM 20F
GARNISHEE'S STATEMENT**

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

CREDITOR(S)

AND:

DEBTOR(S)

AND:

GARNISHEE(S)

GARNISHEE'S STATEMENT

A Notice of Garnishment was issued on _____, 20____, naming me/us as garnishee.

_____ **I/WE DO NOT OWE** and do not expect to owe to the debtor the amount set out in the Notice of Garnishment for the following reason(s):

_____ The debtor has never worked for me/us.

_____ The debtor stopped working for me/us permanently on _____, 20____.

_____ I/We owed the debtor money and paid it in full on _____, 20____.

_____ I/We do not hold any money in trust for, or to the credit of, the debtor.

_____ Other:

(specify)

_____ **I/WE OWE** or will owe the debtor (or the debtor and one or more co-owners), wages or periodic payments based on the terms explained below:

_____ **I/WE OWE** or will owe the debtor (or the debtor and one or more co-owners), a lump sum of \$ _____, payable on _____, 20____.

_____ **I/WE are not making a payment at this time** because the debtor stopped working for me/us temporarily on _____ (Date), and is expected to return on _____ (Date).

_____ **I/WE are making payment of less than** the amount stated because the debt is owed to the debtor and to one or more co-owners, or for another reason explained below:

(Identify the amount(s) and percentage owed to the debtor and each co-owner)

Co-owner(s) of the debt: _____
(Full legal name(s))

(Address (street & number, unit, municipality, province))

_____ **I/WE are not making a payment at this time or are making a payment of less than the amount stated** because I/we have been served with other notice(s) of garnishment against the debtor. (Provide details below.)

Name of creditor	Name of issuing court	Location of court or Sheriff's Office where payment is currently being made	Date Notice of Garnishment received

_____ **I/WE WILL** dispute the garnishment by completing and serving a Notice of Garnishment Hearing (Form 20K) on the creditor, debtor and co-owner(s) of the debt (if any) and any other interested person, and filing it with the clerk of the court.

(Date)

(Signature of garnishee or representative)

(Full legal name of garnishee)

NOTICE TO GARNISHEE: The garnishee must serve a copy of the Garnishee's Statement on the creditor and the debtor and file it with the court.

NOTE TO CREDITOR: A creditor who is served with a Garnishee's Statement must send it to the co-owners of the debt, if any, together with a Notice to Co-owner of Debt (Form 20G). To obtain forms and self-help materials, attend the nearest Small Claims Court or access the following website: www.gov.pe.ca

FORM 20G
NOTICE TO CO-OWNER OF DEBT

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

CREDITOR(S)

AND:

DEBTOR(S)

AND:

GARNISHEE(S)

NOTICE TO CO-OWNER OF DEBT

T0:

Name of co-owner of debt

Street and number

City, province, postal code

Phone number and email address, if any of co-owner of debt

A LEGAL PROCEEDING

This proceeding has resulted in an order that _____ (Name of Debtor) pay a sum of money to _____ (Name of Creditor).

The creditor has given a Notice of Garnishment to _____ (Name of garnishee) claiming that the garnishee owes a debt to the debtor.

A debt to the debtor includes both a debt payable to the debtor and a debt payable to the debtor and one or more other co-owners. The garnishee has indicated in the attached Garnishee's

Statement that you are a co-owner. Under the Notice of Garnishment, the garnishee has paid one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule 20.08(15) to the Sheriff.

IF YOU HAVE A CLAIM to the money being paid to the Sheriff by the garnishee, you have 30 days from service of this notice to make a motion to the court for a garnishment hearing. If you fail to do so, you may not hereafter dispute the enforcement of the creditor's order for the payment or recovery of money under the Rules of the Small Claims Section and the funds may be paid out to the creditor unless the court orders otherwise.

(Date)

(Signature of Clerk)

FORM 20J
AFFIDAVIT FOR ENFORCEMENT REQUEST

Court File No. S ____ SC ____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)/CREDITOR(S)

AND:

DEFENDANT(S)/DEBTOR(S)

AFFIDAVIT FOR ENFORCEMENT REQUEST

My name is : _____ *(Full name)*

I live in _____ *(Municipality and province)*

and I swear/affirm that the following is true:

1. In this action, I am the

☐ creditor

☐ representative of the creditor(s) _____ *(Name of creditor(s))*

2. An order for the delivery of the following personal property:

(According to the court order, set out description of the property to be delivered. Identify any marks or serial #s)

was made in this action against:

(Name of person against whom the order was made)

on _____ (Date), in the Prince Edward Island Supreme Court, Small Claims Section.
Since the above listed personal property has not been delivered, I make this affidavit in support of a request that the clerk of the court issue a Writ of Delivery (Form 20B) to the Sheriff of the Prince Edward Island Supreme Court.

3. A judgment was made in this action against _____ (Name of debtor)
on _____ (Date) in the Prince Edward Island Small Claims Court for the following sums:

(A) **DEBT** (amount of judgment) \$ _____

(B) **PRE-JUDGMENT INTEREST** calculated
on the sum of \$ _____ at the rate of _____ %
per annum from _____ (Date) to _____ (Date)
being _____ days \$ _____

(C) **COSTS** to date of judgment \$ _____

SUBTOTAL \$ _____

(D) **TOTAL AMOUNT OF PAYMENTS
RECEIVED FROM DEBTOR**
after judgment (if any) (minus) \$ _____

(E) **POST-JUDGMENT INTEREST** to date calculated
on the sum of \$ _____ at the rate of _____ %
per annum from _____ (Date) to _____ (Date)
being _____ days \$ _____

NOTE: Calculation of interest is always on the amount owing from time to time as payments are received. This is true for both pre-judgment and post-judgment interest. Attach a separate sheet setting out how you calculated the total amount of any pre/post-judgment interest.

(F) **SUBSEQUENT COSTS** incurred after judgment (including
the cost of issuing the requested enforcement(s)) \$ _____

Subsequent post-judgment interest continues to accrue at \$ _____ per day.

If further payments are received from debtor, the per diem may need to be re-calculated.
(This figure must match the total figure identified in the enforcement process(es)).

TOTAL DUE \$ _____

I make this affidavit in support of a request that the clerk of the court issue the following enforcement process(es):

(Strike out any section that does not apply and initial)

____ Certificate of Judgment (Form 20A) to the clerk of the Prince Edward Island Small Claims Court.

____ Writ of Seizure and Sale of Personal Property (Form 20C) directed to Sheriff Services.

____ Notice of Garnishment (Form 20E).

I believe that the garnishee _____ (*Name of garnishee*) at _____ (*Address of garnishee*) is indebted to the debtor or will become indebted to the debtor for the following reasons:

The Notice of Garnishment will be served on the debtor _____ (*Name of debtor*) at _____ (*Address of debtor for service*) within five days of serving it on the garnishee.

____ Other (set out the nature of your request): _____

SWORN/AFFIRMED before me at
the City/Town of _____,
in the County of _____,
Province of Prince Edward Island,
this ____ day of _____, 20 ____.

A COMMISSIONER FOR TAKING
AFFIDAVITS

(Signature)

WARNING: IT IS AN OFFENCE UNDER THE <i>CRIMINAL CODE</i> TO KNOWINGLY SWEAR OR AFFIRM A FALSE AFFIDAVIT.

FORM 20K
NOTICE OF GARNISHMENT HEARING

Court File No. S___ SC _____
(The number assigned by the court)

SUPREME COURT OF PRINCE EDWARD ISLAND
(SMALL CLAIMS SECTION)

BETWEEN:

PLAINTIFF(S)/CREDITOR(S)

AND:

DEFENDANT(S)/DEBTOR(S)

NOTICE OF GARNISHMENT HEARING

NOTE: The Notice of Garnishment Hearing must be served by the person requesting the hearing on the creditor, debtor, garnishee, co-owner of debt, if any, and any other interested person.

NOTE: IF YOU FAIL TO ATTEND THIS GARNISHMENT HEARING, AN ORDER MAY BE MADE IN YOUR ABSENCE AND ENFORCED AGAINST YOU.

TO THE PARTIES:

Creditor

Last name of individual or name of company, etc.

First given name

Second given name

Also known as

Address for service (street & number, unit, municipality, province)

Postal code

Phone number

Email address

Representative/Agent

Address for service (street & number, unit, municipality, province)

Postal code

Phone number

Email address

Debtor

Last name of individual or name of company, etc.

First given name	Second given name	Also known as
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address
Representative/Agent		
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address

Co-owner of Debt (if any)

Last name of individual or name of company, etc.		
First given name	Second given name	Also known as
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address
Representative/Agent		
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address

Garnishee

Last name of individual or name of company, etc.		
First given name	Second given name	Also known as
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address
Representative/Agent		
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address

Other Interested Person (if any)

Last name of individual or name of company, etc.		
First given name	Second given name	Also known as
Address for service (street & number, unit, municipality, province)		
Postal code	Phone number	Email address
Representative/Agent		
Address for service (street & number, unit, municipality, province)		

Postal code Phone number Email address

(The person requesting this garnishment hearing or the person's representative must contact the court to obtain a time and date when the court could hold this garnishment hearing.)

THIS COURT WILL HOLD A GARNISHMENT HEARING on _____, 20__, at the
hour of _____ a.m./p.m. or as soon as possible after that time, at _____
(Address of court location)

because:

_____ the creditor _____ the debtor _____ the garnishee _____ the co-owner of debt

_____ other interested person: _____
(Specify)

states the following:

(In separately numbered paragraphs, provide details of your dispute and the order(s) requested.)

(If more space required, attach a separate sheet)

(Date)

(Signature of party or representative)