

GENERAL MATTERS

RULE 1

CITATION, APPLICATION AND INTERPRETATION

CITATION

Short Title

1.01 (1) These rules may be cited as the Rules of Civil Procedure.

Subdivision

(2) In these rules,

- (a) all the provisions identified by the same number to the left of the decimal point comprise a Rule (for example, Rule 1, which consists of Rules 1.01 to 1.06);
- (b) a provision identified by a number with a decimal point is a rule (for example, Rule 1.01); and
- (c) a rule may be subdivided into,
 - (i) subrules (for example, subrule 1.01(2)),
 - (ii) clauses (for example, clause 1.01(2)(c) or 2.02(a)),
 - (iii) subclauses (for example, subclause 1.01(2)(c)(iii) or 7.01(c)(i)), and
 - (iv) paragraphs (for example, 1 of Rule 1.03).

Alternative Method of Referring to Rules

(3) In a proceeding in a court, it is sufficient to refer to a rule or subdivision of a rule as "rule" followed by the number of the rule, subrule, clause, or subclause (for example, Rule 1.01, Rule 1.01(2), Rule 1.01(2)(c), or Rule 1.01(2)(c)(iii)).

APPLICATION OF RULES

1.02 (1) These rules, subject to subrule (2), apply to all proceedings in the Supreme Court and the Court of Appeal except that only Rule 74 applies to proceedings in the Small Claims Section of the Supreme Court.

DEFINITIONS

1.03 (1) In these rules, unless the context requires otherwise,

- (a) "Act" means the *Judicature Act*;
- (b) "action" means a proceeding that is not an application and includes a proceeding commenced by,
 - (i) statement of claim,

- (ii) notice of action,
- (iii) counterclaim,
- (iv) crossclaim,
- (v) third or subsequent party claim, or
- (vi) divorce petition or counter petition;
- (c) "affidavit" includes a statutory declaration and an agreed statement of facts;
- (d) "appellant" means a person who brings an appeal;
- (e) "appellate court" means the Prince Edward Island Court of Appeal;
- (f) "applicant" means a person who makes an application;
- (g) "application" means a proceeding commenced by notice of application as referred to in Rule 38;
- (g.1) "case management coordinator" is a deputy registrar designated by the Supreme Court of Prince Edward Island to coordinate and set down case management conferences, pre-trial conferences and status hearings;
- (h) "court" means the court in which a proceeding is pending and,
 - (i) In the Prince Edward Island Court of Appeal, the court or judge or the judges thereof whether sitting in court or chambers; and
 - (ii) In the Supreme Court, the court or a judge thereof whether sitting in court or chambers; and
 - (iii) Where the Prothonotary has the power to act means the Prothonotary;
- (i) "decision" means the reasons given by the court for its judgment or order;
- (j) "defendant" means a person against whom an action is commenced;
- (k) "deliver" means serve and file with proof of service, and "delivery" has a corresponding meaning;
- (l) "disability", where used in respect of a person, means that the person is,
 - (i) a minor, or

- (ii) mentally incompetent or incapable of managing his affairs, whether or not so declared by a court;
- (m) "discovery" means discovery of documents, examination for discovery, inspection of property and medical examination of a party as provided under Rules 30 to 33;
- (m.1) "document" includes data and information in electronic form;
- (m.2) "electronic" includes created, recorded, transmitted or stored in digital form or in other intangible form by electronic, magnetic or optical means or by any other means that has capabilities for creation, recording, transmission or storage similar to those means, and "electronically" has a corresponding meaning;
- (n) "hearing" means the hearing of an application, motion, reference, appeal, assessment of costs, or a trial;
- (o) "holiday" means,
 - (i) any Saturday or Sunday,
 - (ii) New Year's Day,
 - (iii) Islander Day,
 - (iv) Good Friday,
 - (v) Easter Monday,
 - (vi) Victoria Day,
 - (vii) Canada Day,
 - (viii) Civic Holiday,
 - (ix) Labour Day,
 - (x) Thanksgiving Day,
 - (xi) Remembrance Day,
 - (xii) Christmas Day,
 - (xiii) Boxing Day, and
 - (xiv) any special holiday proclaimed by the Governor General or the Lieutenant Governor,

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

- (p) "judgment" means a decision that finally disposes of an application or action on its merits and includes a judgment entered in consequence of the default of a party;
- (q) "judgment creditor" includes a party entitled to a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment creditor;
- (r) "judgment debtor" includes a party required to make a payment of money and costs, or either, under an order, and any executor, administrator or assign of a judgment debtor;
- (s) "mentally incompetent person" means a person, not an infant, who is incapable from infirmity of mind of managing his own affairs;
- (t) "motion" means a motion in a proceeding or an intended proceeding as referred to in Rule 37;
- (u) "moving party " means a person who makes a motion;
- (v) "order" includes a judgment or decree;
- (w) "originating process" means a document, the issuing of which commences a proceeding under these rules, and includes,
 - (i) a statement of claim,
 - (ii) a notice of action,
 - (iii) a petition,
 - (iv) a notice of application,
 - (v) a counterclaim against a person who is not already a party to the main action,
 - (vi) a third or subsequent party claim, and
 - (vii) a counterpetition against a person who is not already a party to the main action,but does not include a counterclaim or counterpetition that is only against persons who are parties to the main action, a crossclaim, or a notice of motion;
- (w.1) "partial indemnity costs" mean costs awarded in accordance with Part I of Tariff A, and "on a partial indemnity basis" has a corresponding meaning;
- (w.2) "person" includes a party to a proceeding;
- (x) "plaintiff" means a person who commences an action;

- (y) "proceeding" means an action or application;
- (z) "Public Trustee" means the Public Trustee as defined in the Public Trustee Act, R.S.P.E.I. 1988, Cap. P-32-2;
- (aa) "referee" means the person to whom a reference in a proceeding is directed;
- (bb) "registrar" means the Registrar and a deputy registrar of the Supreme Court or Court of Appeal;
- (cc) "respondent" means a person against whom an application is made or an appeal or a divorce action is brought, as the circumstances require;
- (dd) "responding party" means a person against whom a motion is made; and
- (ee) "statute" includes a statute passed by the Parliament of Canada;
- (ff) "substantial indemnity costs" mean costs awarded in an amount that is 1.5 times what would otherwise be awarded in accordance with Part I of Tariff A, and "on a substantial indemnity basis" has a corresponding meaning.
- (gg) "trial coordinator" is the deputy registrar designated by the Supreme Court of Prince Edward Island to set down matters for hearing in the Supreme Court of Prince Edward Island.

INTERPRETATION

General Principle

- 1.04** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

Proportionality

- (2) In applying these rules, the court shall make orders and give directions that are proportionate to the importance and complexity of the issues, and to the amount involved, in the proceeding.

Matters Not Provided For

- (3) Where matters are not provided for in these rules, the practice shall be determined by analogy to them.

Party Acting in Person

- (4) Where a party to a proceeding is not represented by a lawyer but acts in person in accordance with subrule 15.01(c), anything

these rules require or permit a lawyer to do shall be done by the party.

Party and Party Costs

- (5) If a statute, regulation or other document refers to party and party costs, these rules apply as if the reference were to partial indemnity costs.

Lawyer and Client Costs

- (6) If a statute, regulation or other document refers to lawyer and client costs, these rules apply as if the reference were to substantial indemnity costs.

ORDERS ON TERMS

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

FORMS

- 1.06** The forms prescribed in the Appendix of Forms shall be used where applicable and with such variations as the circumstances require.

PRACTICE DIRECTIONS

- 1.07** (1) In this rule, “practice direction” means a direction, notice, guide or similar publication for the purpose of governing, subject to these rules, the practice for proceedings.
- (2) A practice direction for proceedings in the Court of Appeal shall be signed by the Chief Justice of Prince Edward Island.
- (3) A practice direction for proceedings in the Supreme Court shall be signed by the Chief Justice of the Supreme Court.

TELEPHONE AND VIDEO CONFERENCES WHERE AVAILABLE

- 1.08** (1) If facilities for a telephone or video conference are available at the court or are provided by a party, all or part of any of the following proceedings or steps in a proceeding may be heard or conducted by telephone or video conference as permitted by subrules (2) to (5):
- (a) a motion (Rule 37);
 - (b) an application (Rule 38);
 - (c) a status hearing (Rule 48.13);
 - (d) at trial, the oral evidence of a witness and the argument;
 - (e) a pre-trial conference, case conference or settlement conference;

- (f) an appeal or a motion for leave to appeal;
- (g) a proceeding for judicial review; and
- (h) such other conferences as may be directed by the court or as agreed to by the parties.

Consent

- (2) If the parties consent to a telephone or video conference and if the presiding judge permits it, one of the parties shall make the necessary arrangements.

Order, No Consent

- (3) If the parties do not consent, the court on motion may make an order directing a telephone or video conference on such terms as are just.
- (4) The judge presiding at a proceeding or step in a proceeding may set aside or vary an order made under subrule (3).

Factors to Consider

- (5) In deciding whether to permit or to direct a telephone or video conference, the court shall consider,
 - (a) the general principle that evidence and argument should be presented orally in open court;
 - (b) the importance of the evidence to the determination of the issues in the case;
 - (c) the effect of the telephone or video conference on the court's ability to make findings, including determinations about the credibility of witnesses;
 - (d) the importance in the circumstances of the case of observing the demeanour of a witness;
 - (e) whether a party, witness or lawyer for a party is unable to attend because of infirmity, illness or any other reason;
 - (f) the balance of convenience between the party wishing the telephone or video conference and the party or parties opposing; and
 - (g) any other relevant matter.

Arrangements for Conference

- (6) Where the court permits or directs a telephone or video conference, the court may direct a party to make the necessary arrangements and to give notice of these arrangements to the other parties and to the court.

TRANSITION CLAUSE

- 1.09 (a) Subject to clause 1.08(d), references in these Rules of Court and Forms to “Trial Division,” or “division,” which are in effect immediately before the day the *Judicature Act*, S.P.E.I. 2008 Cap. 20 comes into force, are deemed to refer to the Supreme Court of Prince Edward Island immediately upon the coming into force of the *Judicature Act*, until they are amended, revoked, or replaced under these Rules of Court.
- (b) References in the Rules of Court and Forms to “Appeal Division,” which are in effect immediately before the day the *Judicature Act*, S.P.E.I. 2008 Cap. 20 comes into force, are deemed to refer to the Prince Edward Island Court of Appeal immediately upon the coming into force of the *Judicature Act*, until they are amended, revoked, or replaced under these Rules of Court.
- (c) Effective January 1, 2009, the references to “the Supreme Court Act” and sections thereof shall refer to the *Judicature Act* and equivalent sections of the *Judicature Act*.
- (d) Effective January 1, 2009, the word “division” in the first line of Rule 1.03(1)(h) is replaced by the word “court.”

COMMUNICATIONS OUT OF COURT

- 1.10 When a proceeding is pending before the court, no party to the proceeding and no party’s lawyer shall communicate about the proceeding with a judge out of court, directly or indirectly, unless,
- (a) all the parties consent, in advance, to the out-of-court communication; or
- (b) the court directs otherwise.

Marques v. Bambrick, 2018 PECA 4

Action is defined to include “*counterclaim*.” It is the basis of the claim which must be assessed, not the damages or relief requested. If the underlying action is valid, it cannot be frivolous and vexatious notwithstanding the damages or relief claimed is excessive.

McQuaid v. Trainor, 2018 PECA 30

The appeal considered the question of whether the language of an order falls within the scope of the reasons and accurately reflects the judgment or exceeds the scope of the reasons. The Court found that the terms of an order should remain within the scope of the reasons for judgment upon which it is based.

Dash 224, LLC v. Vector Aerospace Engine Services, 2016 PECA 4

A “*proceeding*” begins with the filing of an action or application which creates a lis between the parties and seeks final relief. Steps taken before proceedings commence are not a step in the proceeding.

Kurylk v. Gallager (1995), 129 Nfld. & P.E.I.R. 306 (PEISCAD)

Rule 1.04(1) was considered in the context of the interpretation of Rule 31. The Court applied the Rule and directed a liberal construction of Rule 31 so as to meet the objectives of full disclosure of facts and issues prior to trial.