

RULE 15
REPRESENTATION BY LAWYER

INTERPRETATION

Party Acting in Person

15.01 Where a party to a proceeding is not represented by a lawyer but acts in person, anything these rules require or permit a lawyer to do shall be done by the party.

WHERE LAWYER REQUIRED

- 15.02** (a) Subject to the provisions of the *Legal Profession Act* and sub-rule 4 of Rule 74.11 governing proceedings in the small claims section, a party to a proceeding who is under disability or acts in a representative capacity shall be represented by a lawyer.
- (b) A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.
- (c) Any other party to a proceeding may act in person or be represented by a lawyer.

NOTICE OF AUTHORITY TO COMMENCE PROCEEDING

Request for Notice by Lawyer

- 15.03** (1) A person who is served with an originating process may deliver a request that the lawyer who is named in the originating process as the lawyer for the plaintiff or applicant deliver a notice declaring whether he or she commenced or authorized the commencement of the proceeding or whether his or her client authorized the commencement of the proceeding.

Power of Court

- (2) If the lawyer fails to deliver a notice in accordance with the request, the court may,
- (a) order the lawyer to do so;
 - (b) stay the proceeding; and
 - (c) order the lawyer to pay the costs of the proceeding.

Proceeding Commenced without Lawyer's Authority

- (3) If the lawyer declares that he or she did not commence or authorize the commencement of the proceeding, the court may, on motion without notice, stay or dismiss the proceeding.

Proceeding Commenced without Client's Authority

- (4) If a lawyer has commenced a proceeding without the authority of his or her client, the court may, on motion, stay or dismiss the proceeding and order the lawyer to pay the costs of the proceeding.

Effect of Stay

- (5) If a proceeding is stayed under this rule, no further step may be taken without leave of the court.

CHANGE IN REPRESENTATION BY PARTY

Notice of Change of Lawyer

- 15.04** (1) A party who has a lawyer of record may change the lawyer of record by serving on the lawyer and every other party and filing, with proof of service, a notice of change of lawyer (Form 15A) giving the name, address and telephone number of the new lawyer.

Notice of Appointment of Lawyer

- (2) A party acting in person may appoint a lawyer of record by serving on every other party and filing, with proof of service, a notice of appointment of lawyer (Form 15B) giving the name, address and telephone number of the lawyer of record.

Notice of Intent to Act in Person

- (3) Subject to subrule 15.01(1) or (2), a party who has a lawyer of record may elect to act in person by serving on the lawyer and every other party and filing, with proof of service, a notice of intention to act in person (Form 15C) and a designation of address for service (Form 16A.1) that sets out the party's designated address(es) for service and telephone number.

Claim for a Lawyer's Lien

- (4) A party may move, on notice to the party's former lawyer of record, for an order determining whether and to what extent the lawyer has a right to a lawyer's lien.
- (5) In the order, the court may impose such terms as are just in connection with the lien and its discharge.

MOTION BY LAWYER FOR REMOVAL AS LAWYER OF RECORD

Client to be Served

- 15.05** (1) A lawyer may move, on notice to his client, for an order removing him as lawyer of record.
- (2) Service of a notice of motion for the removal of a lawyer from the record and service of the order shall be made on the client,
 - (a) personally or by an alternative to personal service under rule 16.03; or
 - (b) by mailing a copy to the client at,
 - (i) the client's last known address, and
 - (ii) another address, if any, where the lawyer believes the copy is likely to come to the client's attention.

Party under Disability

- (3) Where the party for whom the lawyer is acting is under disability, the notice of motion and the order shall also be served on the litigation guardian for the party and the Official Guardian where the party is a minor, the Public Trustee where the proceeding relates to financial affairs of the party, or the Public Guardian where the proceeding relates to the personal affairs of the party.

Contents of Order

- (4) The order removing a lawyer from the record shall include,
 - (a) the client's last known address, or the address for service if different;
 - (b) another address, if any, where the lawyer believes the copy is likely to come to the client's attention;
 - (c) the client's telephone number, email address, and fax number, if any, unless the court orders otherwise;
 - (d) if the client is a corporation, the text of subrules (5) and (6); and
 - (e) if the client is not a corporation, the text of subrules (8) and (9).
- (5) As soon as possible after the order is served,
 - (a) proof of service of the order, together with a copy of the order, shall be served on every other party; and
 - (b) proof of service under subrule (2), subrule (3) (if applicable), and clause (a) shall be filed.

Corporations

- (6) A client that is a corporation shall, within 30 days after being served with the order removing the lawyer from the record,
 - (a) appoint a new lawyer of record by serving a notice under subrule 15.03(2); or
 - (b) obtain and serve an order under subrule 15.01(b) granting it leave to be represented by a person other than a lawyer.
- (7) If the corporation fails to comply with subrule (5),
 - (a) the Court may dismiss its proceeding or strike out its defence; and
 - (b) in an appeal
 - (i) a Judge of the Court of Appeal may, on motion, dismiss the corporation's appeal, or
 - (ii) the Court hearing the appeal may deny it the right to be heard.

Clients Other Than Corporations

- (8) A client who is not a corporation shall, within 30 days after being served with the order removing the lawyer from the record,
 - (a) appoint a new lawyer of record by serving a notice under subrule 15.03(2); or
 - (b) serve a notice of intention to act in person under subrule 15.03(2).
- (9) If the client fails to comply with subrule (8),
 - (a) the court may dismiss the client's proceeding or strike out his or her defence; and
 - (b) in an appeal,
 - (i) a judge of the appellate court may, on motion, dismiss the client's appeal, or

- (ii) the court hearing the appeal may deny the client the right to be heard.

DUTY OF LAWYER OF RECORD

15.06 A lawyer of record shall act as and remain the lawyer of record for his client until,

- (a) the client delivers a notice under Rule 15.04; or
- (b) an order removing the lawyer from the record has been entered and the lawyer has satisfied the service and filing requirements of subrules 15.05(2), (3) (if applicable), and (5).

WHERE A LAWYER OF RECORD HAS CEASED TO PRACTISE

15.07 Where the lawyer of record for a party has ceased to practise law, and the party for whom the lawyer acted has not served a notice under Rule 15.04, any other party may serve a document on the party by mailing a copy to the party at the party's last known address, or may move for directions.

Heijs v. Breuker, Dutch Trustee in Bankruptcy, 2018 PECA 12

A solicitor of record must remain the solicitor of record until either the client provides notice under Rule 15.03 or the solicitor obtains an order removing himself/herself as solicitor of record which can only be done upon serving a notice of motion on the client as provided in Rule 15.04.

Ayangma v. Charlottetown, 2017 PECA 15

Rule 15.01(c) is a *prima facie* bar to a non-lawyer representing a person in a proceeding. However, it does not oust the inherent jurisdiction of the court to allow a non-lawyer to represent a person where it is necessary in the interests of justice.

Marques v. Bambrick, 2018 PECA 4

The rule is a *prima facie* bar to representation in court by a non-lawyer. A court will exercise its jurisdiction to allow a non-lawyer to appear sparingly and with caution.