

PLEADINGS

RULE 25

PLEADINGS IN AN ACTION

PLEADINGS REQUIRED OR PERMITTED

Action Commenced by Statement of Claim or Notice of Action

- 25.01** (1) In an action commenced by statement of claim or notice of action, pleadings shall consist of the statement of claim (Form 14A, 14B or 14D), statement of defence (Form 18A) and reply (Form 25A), if any.

Counterclaim

- (2) In a counterclaim pleadings shall consist of the counterclaim (Form 27A or 27B), defence to counterclaim (Form 27C) and reply to defence to counterclaim (Form 27 D), if any.

Crossclaim

- (3) In a crossclaim, pleadings shall consist of the crossclaim (Form 28A), defence to crossclaim (Form 28B) and reply to defence to crossclaim (Form 28C), if any.

Third Party Claim

- (4) In a third party claim, pleadings shall consist of the third party claim (Form 29A), third party defence (Form 29B) and reply to third party defence (Form 29C), if any.

Pleading Subsequent to Reply

- (5) No pleading subsequent to a reply shall be delivered without the consent in writing of the opposite party or leave of the court.

FORM OF PLEADINGS

- 25.02** Pleadings shall be divided into paragraphs numbered consecutively, and each allegation shall, so far as is practical, be contained in a separate paragraph.

SERVICE OF PLEADINGS

Who is to be Served

- 25.03** (1) Every pleading shall be served,
- (a) initially on every opposite party and on every other party who has delivered a pleading or a notice of intention to

defend in the main action or in a counterclaim, crossclaim or third or subsequent party claim in the main action; and

- (b) subsequently on every other party forthwith after the party delivers a pleading or a notice of intention to defend in the main action or in a counterclaim, crossclaim or third or subsequent party claim in the main action.

Service on Added Parties

- (2) Where a person is added as a party to an action, the party doing so shall serve on the added party all the pleadings previously delivered in the main action and in any counterclaim, crossclaim or third or subsequent party claim in the main action, unless the court orders otherwise.

Where Personal Service Not Required

- (3) Where a pleading is an originating process, personal service on parties other than an opposite party is not required.

TIME FOR DELIVERY OF PLEADINGS

Statement of Claim

- 25.04** (1) The time for service of a statement of claim is prescribed by Rule 14.08.

Statement of Defence

- (2) The time for delivery of a statement of defence is prescribed by Rule 18.01.

Reply

- (3) A reply, if any, shall be delivered within ten days after service of the statement of defence except where the defendant counterclaims, in which case a reply and defence to counterclaim, if any, shall be delivered within twenty days after service of the statement of defence and counterclaim.

In a Counterclaim

- (4) The time for delivery of pleadings in a counterclaim is prescribed by Rule 27.

In a Crossclaim

- (5) The time for delivery of pleadings in a crossclaim is prescribed by Rule 28.

In a Third Party Claim

- (6) The time for delivery of pleadings in a third party claim is prescribed by Rule 29.

CLOSE OF PLEADINGS

25.05 Pleadings in an action are closed when,

- (a) the plaintiff has delivered a reply to every defence in the action or the time for delivery of a reply has expired; and
- (b) every defendant who is in default in delivering a defence in the action has been noted in default.

RULES OF PLEADING - APPLICABLE TO ALL PLEADINGS

Material Facts

- 25.06** (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

Pleading Law

- (2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded.

Condition Precedent

- (3) Allegations of the performance or occurrence of all conditions precedent to the assertion of a claim or defence of a party are implied in the party's pleading and need not be set out, and an opposite party who intends to contest the performance or occurrence of a condition precedent, shall specify in the opposite party's pleading the condition and its non-performance or non-occurrence.

Inconsistent Pleading

- (4) A party may make inconsistent allegations in a pleading where the pleading makes it clear that they are being pleaded in the alternative.
- (5) An allegation that is inconsistent with an allegation made in a party's previous pleading or that raises a new ground of claim shall not be made in a subsequent pleading but by way of amendment to the previous pleading.

Notice

- (6) Where notice to a person is alleged, it is sufficient to allege notice as a fact unless the form or a precise term of the notice is material.

Documents or Conversations

- (7) The effect of a document or the purport of a conversation, if material, shall be pleaded as briefly as possible, but the precise words of the document or conversation need not be pleaded unless those words are themselves material.

Nature of Act or Condition of Mind

- (8) Where fraud, misrepresentation, breach of trust, malice or intent is alleged, the pleading shall contain full particulars, but knowledge may be alleged as a fact without pleading the circumstances from which it is to be inferred.

Claim for Relief

- (9) Where a pleading contains a claim for relief, the nature of the relief claimed shall be specified and, where damages are claimed,
- (a) the amount claimed for each claimant in respect of each claim shall be stated; and
 - (b) the amounts and particulars of special damages need only be pleaded to the extent that they are known at the date of the pleading, but notice of any further amounts and particulars shall be delivered forthwith after they become known and, in any event, not less than ten days before trial.

RULES OF PLEADING - APPLICABLE TO DEFENCES

Admissions

- 25.07** (1) In a defence, a party shall admit every allegation of fact in the opposite party's pleading that the party does not dispute.

Denials

- (2) Subject to subrule (6), all allegations of fact that are not denied in a party's defence shall be deemed to be admitted unless the party pleads having no knowledge in respect of the fact.

Different Version of Facts

- (3) Where a party intends to prove a version of the facts different from that pleaded by the opposite party, a denial of the version

so pleaded is not sufficient, but the party shall plead the party's own version of the facts in the defence.

Affirmative Defences

- (4) In a defence, a party shall plead any matter on which the party intends to rely to defeat the claim of the opposite party and which, if not specifically pleaded, might take the opposite party by surprise or raise an issue that has not been raised in the opposite party's pleading.

Effect of Denial of Agreement

- (5) Where an agreement is alleged in a pleading, a denial of the agreement by the opposite party shall be construed only as a denial of the making of the agreement or of the facts from which the agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the agreement.

Damages

- (6) In an action for damages, the amount of damages shall be deemed to be in issue unless specifically admitted.

WHERE A REPLY IS NECESSARY

Different Version of Facts

- 25.08** (1) A party who intends to prove a version of the facts different from that pleaded in the opposite party's defence shall deliver a reply setting out the different version, unless it has already been pleaded in the claim.

Affirmative Reply

- (2) A party who intends to reply in response to a defence on any matter that might, if not specifically pleaded, take the opposite party by surprise or raise an issue that has not been raised by a previous pleading shall deliver a reply setting out that matter, subject to subrule 25.06(5) (inconsistent claims or new claims).

Reply Only Where Required

- (3) A party shall not deliver a reply except where required to do so by subrule (1) or (2).

Deemed Denial of Allegations Where No Reply

- (4) A party who does not deliver a reply within the prescribed time shall be deemed to deny the allegations of fact made in the defence of the opposite party.

RULES OF PLEADING - APPLICABLE TO REPLIES

Admissions

25.09 (1) A party who delivers a reply shall admit every allegation of fact in the opposite party's defence that the party does not dispute.

Effect of Denial of Agreement

(2) Where an agreement is alleged in a defence, a denial of the agreement in the opposite party's reply, or a deemed denial under subrule 25.08(4), shall be construed only as a denial of the making of the agreement or of the facts from which the agreement may be implied by law, and not as a denial of the legality or sufficiency in law of the agreement.

PARTICULARS

25.10 Where a party demands particulars of an allegation in the pleading of an opposite party, and the opposite party fails to supply them within seven days, the court may order particulars to be delivered within a specified time.

STRIKING OUT A PLEADING OR OTHER DOCUMENT

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court.

McQuaid v. Govt. of PEI et al., 2017 PECA 21

The moving party bears the onus of establishing on an evidentiary basis there is no genuine issue requiring a trial.

The respondent physicians did not adduce expert evidence to show they satisfied the applicable standard of care and therefore the second part of the test requiring the responding party to establish there is evidence which offers a real chance of success to the responding party based on the pleadings did not arise.

The respondent physicians cross-appealed on the limitation period. The respondent physicians adduced evidence to show that for several of the defendant physicians the statement of claim was filed outside the limitation period. The appellant adducing no evidence to meet her evidentiary burden, the cross-appeal was allowed.

CMT et al. v. Gov't of PEI et al, 2016 PESC 4

The plaintiffs claimed against the defendants for \$25 million dollars for breach of contract and interference in economic relations. The Government and one defendant filed a motion to strike numerous paragraphs of the claim and one defendant claimed to have it struck in its entirety.

The motions judge found the statement of claim should be struck in its entirety. He found the claim was a “*wholesale violation of the rules of pleadings.*” The claim could not be repaired by amendments or deletions. The claim constituted an abuse of the courts processes.

However, pursuant to Rule 25.11 the motions judge granted the plaintiffs the opportunity to start afresh and file a newly drafted statement of claim.

Lauer v. Attorney General of Canada 2015 PESC 15

The Plaintiff failed to provide any particulars of the special damages claimed. Further, no justification or support was provided for general, aggravated and punitive damages. As a result, the Court struck the claim for lacking particulars and not supported by the pleadings.

Mercier v. Summerside Police 2010 PESC 1; [2010] P.E.I.J. No. 1

The plaintiff’s statement of claim did not comply with Rule 25; however, because the time for the commencement of the plaintiff’s action was close to the expiration of the limitation period and because the claim was not frivolous or vexatious, the motions judge struck the statement of claim with leave to amend. The motions judge found that the limitation period should always be considered in deciding to strike a statement of claim without leave to amend.

Kelly v. Canada (Attorney General) 2009 PESC 41; [2009] P.E.I.J. No. 67; (2009), 294 Nfld & P.E.I.R.

Motions were brought to determine a legal issue before trial and to strike out and dismiss the plaintiff’s statement of claim. The statement of claim was dismissed because the action was barred by the *Statute of Limitations*. The court also found that aside from the action being out of time, the statement of claim did not disclose a reasonable cause of action.

Ayangma v. Govt. of P.E.I. & Ors. 2005 PESCTD 25

Pleadings may be struck out in their entirety for repeated violations of the Rules respecting pleadings because this renders the pleading frivolous, vexatious or an abuse of process or something which may prejudice or delay the fair trial of the action.

Oliver v. Severance et al. 2005 PESCTD 7

Fact disclosure in the pleadings may be minimal; however, the allegations must be grounded in the pleading of some material facts.

Rofe v. Kay Aviation b.v. 2001 PESCAD 7

The statement of claim shall set forth relevant material facts from which it may be concluded that if such facts were proven, the claim would be successful. When the action alleges fraud, breach of trust, malice or intent on the part of the defendant, the plaintiff must provide not only the relevant material facts capable of proving these allegation but as well, full particulars of those material facts.

Stevenson v. National Bank 2001 PESCAD 14

The pleadings were closed; however, after a motion by the defendant to strike the plaintiff's statement of claim was partially successful, the court allowed the parties an opportunity to amend their pleadings. The plaintiff then filed a jury notice. On appeal, the jury notice was struck. The court held that an order allowing the amendment of pleadings will have the effect of reopening the pleadings for all purposes unless a limitation is otherwise indicated. The limitation may be explicitly stated in the order permitting the amendment or it may be inferred from the circumstances surrounding the issuance of the order. The limitation here was inferred from the circumstances surrounding the order allowing the amendments.

Stetson and Lidstone v. MacNeil, [1997] 1 P.E.I.R. 371 (P.E.I.S.C.T.D.)

The court considered an application by the plaintiffs to strike certain allegations contained in the defendant's statement of defence. The application was grounded on a number of different sections of this Rule, and it was allowed in part.

Fobes v. University of Prince Edward Island, [1997] 2 P.E.I.R. 157 (P.E.I.S.C.T.D.)

The plaintiff's statement of claim was struck because it offended the prohibition against the pleading of evidence.

Island Opry Inc. et al. v. Tweedy Ross (1996), 138 Nfld. & P.E.I.R. 36 (P.E.I.S.C.-T.D.)

Defendant filed a statement of defence which did not materially dispute the version of the facts being relied upon by the plaintiff. When, in cross-examination, defendant's counsel posed questions which clearly related to a version of the facts not pleaded in the statement of defence, plaintiff's counsel objected, relying on this Rule. The court upheld the objection and found the Rule was designed to expressly limit the effect of a general or mere denial by a defendant. The defendant then made application to amend the statement of defence. See cases noted under Rule 2 and Rule 26.

Ryan v. Kirby & Bothwell, [1993] 2 P.E.I.R. 263 (P.E.I.S.C.T.D.)

The court found the allegations set forth in the statement of defence did not contain evidence and that it was in accordance with Rule 25.07.

Ryan v. Kirby & Bothwell, [1993] 2 P.E.I.R. 263 (P.E.I.S.C.T.D.)

The admonition against pleading evidence contained in Rule 25.06 has general application to all pleadings. Here the pleading in issue was the statement of defence.

Mills v. Huynh (No.1) (1992), 104 Nfld. & P.E.I.R. 125 (P.E.I.S.C.-A.D.)

This rule makes it mandatory for a plaintiff to supply a defendant with notice of the particulars of a claim for special damages. The obligation under Rule 25.06(9) is independent of any demand from the defendant. A plaintiff is not relieved of the obligation by a defendant's failure to file a statement of defence or to make a demand for particulars in answer to a statement of claim which is void of the particulars of a special damage claimed.

Kinch v. Tignish Credit Union, [1997] 1 P.E.I.R. 455 (P.E.I.S.C.T.D.)

Statement of Claim was struck because it was frivolous and vexatious.