RULE 47

JURY NOTICE

ACTIONS TO BE TRIED WITH A JURY

47.01 A party to an action may require that the issues of fact be tried or the damages be assessed, or both, by a jury, by delivering a jury notice (Form 47A) no later than the time prescribed in Rule 50.01(3) for the filing of the pre-trial conference memorandum, unless the *Judicature Act* or another statute requires that the action be tried without a jury.

STRIKING OUT JURY NOTICE

Where Jury Notice not in Accordance with Statute or Rules

47.02 (1) A motion to strike out a jury notice on the ground that,

(a) a statute requires a trial without a jury; or

(b) the jury notice was not delivered in accordance with Rule 47.01,

may be made to the court.

Where Jury Trial Inappropriate

(2) A motion to strike out a jury notice on the ground that the action ought to be tried without a jury shall be made to a judge.

Discretion of Trial Judge

(3) Where a motion striking out a jury notice is refused, the refusal does not affect the discretion of the trial judge, in a proper case, to try the action without a jury.

Fraser v. Runighan, 2020 PESC 20

In a motion for leave for an extension of time to file a jury notice under Rule 47.01, the court considered the application of Rule 48.06 and determined that, given the matter was not currently set down for trial, the motion could proceed without the requirement for leave. The court then determined that the defendants could not rely on the jury notice filed by the plaintiffs and later withdrawn. As unconscionable delay and prejudice existed in this case, the court dismissed the defendants' request to deliver a jury notice.

Metro Credit Union Limited v. McInnis, 2011 PECA 7

The Court of Appeal may only set aside the order of a motions judge striking a jury notice if the motions judge exercised his or her discretion arbitrarily or capriciously, or based the exercise of discretion on an incorrect or inapplicable principle of law.

Irving Oil v. Blanchard, 2002 PESCTD 52

There is a substantive right to a trial by jury and the time for filing a jury notice should be extended unless there has been unconscionable delay or the party opposite is likely to be prejudiced. If the defendant's counterclaim continues to include a claim for equitable relief, the jury notice should be struck in accordance with s-s. 3(2)(k) of the ***Jury Act*** R.S.P.E.I. 1988 Cap. J-5.1. The complexity of the issues in this case did not warrant the striking of the jury notice.

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 granted a motion permitting an amendment to the pleadings. The plaintiff then filed a jury notice. On appeal, the jury notice was struck. An order allowing the amendment of the 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 court inferred a limitation on the reopening of the pleadings from the circumstances surrounding the order allowing the amendments.

DesRoches v. Di-Carra Inc. & Carragher, [1999] P.E.I.J. No. 33 (Q.L.) (P.E.I.S.C.-T.D.)

On a motion by the defendants, the motions judge dismissed an application to strike a jury notice in an action grounded in constructive dismissal where aggravated damages and damages for mental distress were being sought.

Burns v. Thompson Newspapers Co. (1997), 150 Nfld. & P.E.I.R. 358 (P.E.I.S.C.-T.D.)

Plaintiff's claim against the defendant sought injunctive relief. The defendant moved to set aside the jury notice issued by the plaintiff. Subsection 3(2) of the *Jury Act*, R.S.P.E.I. 1988 Cap. S-10, provides that actions in which there is a claim for an injunction or a mandatory order must be heard without a jury. Therefore, the court ordered that unless the plaintiff withdrew its claim for injunctive relief, the motion to strike the jury notice would be granted. The court also ordered if the statement of claim was amended to remove the claim for injunctive relief, the motion to strike the jury notice would be denied as the defendant had not otherwise convinced the court the action was one which ought to be tried without a jury.