

RULE 26
AMENDMENT OF PLEADINGS

GENERAL POWER OF COURT

26.01 On motion at any stage of an action the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

WHEN AMENDMENTS MAY BE MADE

26.02 A party may amend the party's pleading,

- (a) without leave, before the close of pleadings, if the amendment does not include or necessitate the addition, deletion or substitution of a party to the action;
- (b) on filing the consent of all parties and, where a person is to be added or substituted as a party, the person's consent; or
- (c) with leave of the court.

HOW AMENDMENTS MADE

- 26.03** (1) An amendment to a pleading shall be made on the face of the copy filed in the court office, except that where the amendment is so extensive as to make the amended pleading difficult or inconvenient to read the party shall file a fresh copy of the original pleading as amended, bearing the date of the original pleading and the title of the pleading preceded by the word "amended".
- (2) An amendment to a pleading shall be underlined so as to distinguish the amended wording from the original, and the Prothonotary shall note on the amended pleading the date on which, and the authority by which, the amendment was made.
- (3) Where a pleading has been amended more than once each subsequent amendment shall be underlined with an additional line for each occasion.

SERVICE OF AMENDED PLEADING

Service on Every Party to Action and Related Actions

- 26.04** (1) An amended pleading shall be served forthwith on every person who is, at the time of service, a party to the main action or to a counterclaim, crossclaim or third party claim in the main action, unless the court orders otherwise.

- (2) Proof of service of an amended pleading other than an originating process shall be filed forthwith after it is served.

Amended Originating Process

- (3) Where an amended pleading is an originating process,
 - (a) it need not be served personally on a party who was served with the original pleading and responded to it; and
 - (b) it shall be served personally or by an alternative to personal service under Rule 16.03 on an opposite party who has not responded to the original pleading, whether or not the party has been noted in default.

RESPONDING TO AN AMENDED PLEADING

- 26.05** (1) A party shall respond to an amended pleading within the time remaining for responding to the original pleading, or within ten days after service of the amended pleading, whichever is the longer period, unless the court orders otherwise.
- (2) A party who has responded to a pleading that is subsequently amended and does not respond to the amended pleading within the prescribed time, shall be deemed to rely on the party's original pleading in answer to the amended pleading.

AMENDMENT AT TRIAL

- 26.06** Where a pleading is amended at the trial, and the amendment is made on the face of the record, an order need not be taken out and the pleading as amended need not be filed or served unless the court orders otherwise.

National Police of Colombia v. DASH 224, LLC, 2014 PECA 16

Rule 26 creates an obligation to grant leave to amend a pleading on such terms as are just unless prejudice would result that could not be compensated by costs or an adjournment.

100251 P.E.I. Inc. (c.o.b. Central Roadways) v. Summerside (City), 2010 PESC 27

The defendant's motion to amend its statement of defence to plead the breach of a limitation period was granted. Unless the prejudice to the party opposite cannot be remedied by costs or an adjournment, Rule 26.01 is mandatory.

Lank v. Government of P.E.I., 2010 PESC 9

A motion to amend a pleading filed 11 years previous was denied because the prejudice to the party opposite could not be remedied by either costs or an adjournment.

Peardon v. Long and WTH Funding, 2008 PESCAD 13

The motions judge allowed the defendant's motion to amend the statement of defence and declined the request of the plaintiff to impose as a condition of allowing the amendment, an opportunity for the plaintiff to re-examine the defendant in oral discovery. On appeal the decision of the motions judge was affirmed.

Durrell v. Lloyd Underwriters, 2005 PESCAD 17

Rule 75.1.02(7) as it read prior to an amendment effective September 1, 2004, did not foreclose the operation of Rule 26 when a plaintiff wished to amend a statement of claim to bring the action within Rule 75.1 – Simplified Procedure.

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

Rule 26.01 is not concerned with the nature or magnitude of the amendment as such, but rather with whether prejudice would result that could not be compensated for by costs or an adjournment; however, the nature and magnitude of the amendment are factors to be considered in determining that question. The rule is mandatory and the only discretion left to the court is to decide whether prejudice will result that could not be compensated for by costs or an adjournment. The purpose of Rule 2.01(1)(a) is to secure the just determination of the real matters in dispute.

MacWilliams v. Bank of Nova Scotia and Walker (1995), 130 Nfld. & P.E.I.R. 251 (P.E.I.S.C.-T.D.)

The motion was brought by the plaintiff pursuant to Rules 5 and 26 seeking leave to amend the statement of claim by adding the third party as a defendant. The Court found: (1) there would be no prejudice to the third party as he had been involved in the proceeding since being joined by the defendant; (2) there were common questions of fact and thus common issues to be dealt with in the action against the defendant and any action against the third party. There would be a multiplicity of proceedings if the plaintiff was compelled to initiate a separate action against the third party.