

RULE 29
THIRD PARTY CLAIM

WHERE AVAILABLE

29.01 A defendant may commence a third party claim against any person who is not a party to the action and who,

- (a) is or may be liable to the defendant for all or part of the plaintiff's claim;
- (b) is or may be liable to the defendant for an independent claim for damages or other relief arising out of,
 - (i) a transaction or occurrence or series of transactions or occurrences involved in the main action, or
 - (ii) a related transaction or occurrence or series of transactions or occurrences; or
- (c) should be bound by the determination of an issue arising between the plaintiff and the defendant.

TIME FOR THIRD PARTY CLAIM

Issuing

29.02 (1) A third party claim (Form 29A) shall be issued within ten days after the defendant delivers a statement of defence, or at any time before the defendant is noted in default.

Exception, Reply

(1.1) A third party claim may be issued within ten days after the plaintiff delivers a reply in the main action to the defendant's statement of defence.

Exceptions, Consent and Leave

(1.2) A third party claim may be issued at any time with the plaintiff's consent or with leave, which the court shall grant unless the plaintiff would be prejudiced thereby.

Service

(2) A third party claim shall be served on the third party personally or by an alternative to personal service under Rule 16.03, together with all the pleadings previously delivered in the main

action or in any counterclaim, crossclaim or third or subsequent party claim in the main action, within thirty days after the third party claim is issued.

- (3) A third party claim shall also be served on every other party to the main action within the time for service on the third party, but personal service is not required.

THIRD PARTY DEFENCE

29.03 Except as provided in subrule 18.02(3) (notice of intent to defend) or 19.01(5) (late filing of defence), a third party may defend against the third party claim by delivering a third party defence (Form 29B),

- (a) within twenty days after service of the third party claim, where the third party is served in Prince Edward Island;
- (b) within forty days after service of the third party claim, where the defendant is served elsewhere in Canada or in the United States of America; or
- (c) within sixty days after service of the third party claim, where the third party is served anywhere else.

REPLY TO THIRD PARTY DEFENCE

29.04 A reply to third party defence (Form 29C), if any, shall be delivered within ten days after service of the third party defence.

DEFENCE OF MAIN ACTION BY THIRD PARTY

Third Party May Defend Main Action

29.05 (1) Where appropriate, the third party may defend against the plaintiff's claim against the defendant by delivering a statement of defence in the main action, in which the third party may raise any defence open to the defendant.

Consequence of Defending Main Action

- (2) A third party who delivers a statement of defence in the main action,
- (a) has the same rights and obligations in the main action, including those in respect of discovery, trial and appeal, as a defendant in the main action; and
 - (b) is bound by any order or determination made in the main action between the plaintiff and the defendant who made the third party claim.

Time for Statement of Defence

- (3) The statement of defence of the third party shall be delivered within the time prescribed by Rule 29.03 for the delivery of the third party defence.

Time for Reply

- (4) The plaintiff's reply, if any, to the statement of defence of the third party shall be delivered within ten days after service of that statement of defence.

Consequence of Not Defending Main Action

- (5) A third party who does not deliver a statement of defence in the main action is bound by any order or determination made in the main action between the plaintiff and the defendant who made the third party claim.

EFFECT OF THIRD PARTY DEFENCE

29.06 Where a third party has delivered a third party defence,

- (a) the third party shall be served with all subsequent documents in the main action;
- (b) judgment in the main action on consent or after the noting of the defendant in default may be obtained only on notice to the third party; and
- (c) where the defendant making the third party claim has also made a crossclaim against a co-defendant, the co-defendant and the third party have the same rights to discovery from each other as if they were parties to the same action.

EFFECT OF DEFAULT OF THIRD PARTY

29.07 Where a third party has been noted in default, the defendant may obtain judgment against the third party only at the trial of the main action or on motion to a judge.

TRIAL OF THIRD PARTY CLAIM

- 29.08** (1) After the close of pleadings in the third party claim it shall be listed for trial as an action as provided in Rule 48 without undue delay and placed on the trial list immediately after the main action.
- (2) The third party claim shall be tried at or immediately after the trial of the main action, unless the court orders otherwise.

PREJUDICE OR DELAY TO PLAINTIFF

29.09 A plaintiff is not to be prejudiced or unnecessarily delayed by reason of a third party claim, and on motion by the plaintiff the court may make such order or impose such terms, including an order that the third party claim proceed as a separate action, as are necessary to prevent prejudice or delay where that may be done without injustice to the defendant or the third party.

THIRD PARTY DIRECTIONS

29.10 Any party affected by a third party claim may move for directions in respect of any matter of procedure not otherwise provided for in these rules.

FOURTH AND SUBSEQUENT PARTY CLAIMS

29.11 (1) A third party may, by commencing a fourth party claim, assert against any person not already a party to the third party claim any claim that is properly the subject matter of a third party claim, and Rules 29.01 to 29.10 apply, with necessary modifications, to the fourth party claim.

(2) A fourth party claim need not be served personally on a fourth party who is a party to the main action, unless the fourth party is a defendant in that action and has failed to deliver a notice of intent to defend or a statement of defence in the main action, in which case the fourth party shall be served personally or by an alternative to personal service under Rule 16.03, whether or not the fourth party has been noted in default in the main action.

(2.1) Despite subrule 29.02(2), when a fourth party claim is served on a person who is already a party to the main action or to any counterclaim, crossclaim or third party claim in the main action, the pleadings previously delivered in the main action or in any counterclaim, crossclaim or third party claim in the main action need not be served.

(3) A fourth or subsequent party may assert any claim that is properly the subject matter of a third party claim in like manner as a third party claim.

APPLICATION TO FOURTH AND SUBSEQUENT PARTY CLAIMS

29.12 The provisions of these rules that apply to third party claims apply, with necessary modifications, to fourth and subsequent party claims.

APPLICATION TO COUNTERCLAIMS AND CROSSCLAIMS

29.13 Rules 29.01 to 29.12 apply, with necessary modifications, to the

assertion of a third party claim by a defendant to a counterclaim or by a defendant to a crossclaim.

A.C.H. v. L.R.H. 2010 PESC 28; [2010] P.E.I.J. No. 25

The petitioner named Wells Fargo as a third party in a divorce proceeding. The proceeding was dismissed because Rule 70.06, relating to divorce proceedings, does not provide for third party procedure.

Eco Forest Group v. Scott & ors. 2001 PESCTD 84

The plaintiff made a motion seeking an order that would require the defendant's third party claim to proceed as a separate action. The primary consideration in the application of Rule 29.01 is to permit the parties involved in a dispute arising from the same fact situation to have their rights determined without a multiplicity of proceedings. The plaintiff's motion was denied. The plaintiff would not be prejudiced by having the third party claim proceed at the same time as the main action, nor would the proceedings be unnecessarily delayed by the inclusion of the third party claim.