

RULE 12
**CLASS PROCEEDINGS AND OTHER REPRESENTATIVE
PROCEEDINGS**

[EC2022-390, published in *Royal Gazette* May 28, 2022,
effective June 1, 2022]

DEFINITIONS

12.01 In rules 12.02 to 12.07, “Act” means the *Class Proceedings Act*.

TITLE OF PROCEEDING

12.02 (1) In a proceeding commenced under subsection 3 (1) of the Act, the title of the proceeding shall include, after the names of the parties, “Proceeding under the *Class Proceedings Act*”.

(2) In a proceeding referred to in section 4 of the Act, the notice of motion for an order certifying the proceeding, the order certifying it and all subsequent documents shall include, after the names of the parties, “Proceeding under the *Class Proceedings Act*”.

DISCOVERY OF CLASS MEMBERS

12.03 (1) For the purpose of subrule 31.11 (1) (reading in examination of party), a class member who is examined for discovery under subsection 20 (2) of the Act is examined in addition to the party.

(2) Rule 31.10 (discovery of non-parties with leave) and clause 34.15 (1) (b) (sanctions for default or misconduct by person to be examined) do not apply when a class member is examined for discovery under subsection 20 (2) of the Act.

CONTENTS OF JUDGMENTS AND ORDERS

12.04 (1) A judgment in a proceeding under the Act, or an order approving a settlement under section 38 of the Act or approving a discontinuance or abandonment of a proceeding under section 39 of the Act, shall contain directions with respect to,

(a) the distribution of amounts awarded under section 32 or 35 of the Act, and the costs of distribution;

- (b) the payment of amounts owing under an enforceable agreement made under section 44 of the Act between a lawyer and a representative party; and
 - (c) the payment of the costs of the proceeding.
- (2) An order certifying two or more proceedings as a class proceeding under section 4 of the Act or decertifying a class proceeding under section 13 of the Act shall contain directions with respect to pleadings and other procedural matters.

PROCEEDING AGAINST REPRESENTATIVE DEFENDANT

12.05 Where numerous persons have the same interest, one or more of them may defend a proceeding on behalf or for the benefit of all, or may be authorized by the court to do so.

PROCEEDING BY UNINCORPORATED ASSOCIATION OR TRADE UNION

12.06 Where numerous persons are members of an unincorporated association or trade union and a proceeding under the Act would be an unduly expensive or inconvenient means for determining their claims, one or more of them may be authorized by the court to bring a proceeding on behalf of or for the benefit of all.

CLASS ACTION DATABASE

12.07 Every party who commences a class proceeding under the Act shall within 10 days of service or filing submit to the Canadian Bar Association National Class Actions Database

- (a) a completed registration, in the form provided by the Canadian Bar Association,
- (b) a copy of their originating process,
- (c) a copy of their motion for certification (not including affidavits in support), and
- (d) a copy of any amendment to the foregoing,

and shall forthwith serve and file confirmation of fulfillment of this requirement.

King & Dawson v. Government of P.E.I., 2020 PECA 13

The Court of Appeal confirmed that a motion for certification should issue. It found the motions judge did not make any error in defining the class, defining the common issues, and defining the preferable procedure. The only error found by the Court was the issuance of a procedural roadmap set out by the motions judge. The Court found it to be a nullity because it was made without notice and without the parties having the opportunity to be heard.

King & Dawson v. Government of PEI, 2019 PESC 27

On a motion for certification of a proposed class action, the court relied on the direction of the Supreme Court of Canada in *Western Canadian Shopping Centres Inc. v. Dawson*, 2001 SCC 46 that class actions are available whether or not legislation in the province has been passed allowing same. The court allowed the certification and set out in Appendix A “considerations to be applied to determine the availability of class actions and the procedure to be followed by the parties to a class action proceeding in this province”.

Horne et al. v. Canada (Attorney General) (1995), 129 Nfld. & P.E.I.R. 109 (PEISCTD)

P.E.I. Supreme Court quoted a Nova Scotia Court of Appeal decision which listed seven requirements to be met before a representative action can be brought:

- (1) Class must be properly defined;
- (2) All members must have a common interest;
- (3) There must be a wrong common to all;
- (4) Damages suffered must be the same to all except in amount;
- (5) The relief sought must be beneficial to all;
- (6) None of the members of the class may have an interest antagonistic to the other members;
- (7) There must be created in the course of the action or as a result thereof a fund or a pool of assets which is isolated and subject to pro rata distribution should the need arise.