

**RULE 2**  
**NON-COMPLIANCE WITH THE RULES**

**EFFECT OF NON-COMPLIANCE**

- 2.01** (1) A failure to comply with these rules is an irregularity and does not render a proceeding or a step, document or order in a proceeding a nullity, and the court,
- (a) may grant all necessary amendments or other relief, on such terms as are just, to secure the just determination of the real matters in dispute; or
  - (b) only where and as necessary in the interest of justice, may set aside the proceeding or a step, document or order in the proceeding in whole or in part.
- (2) The court shall not set aside an originating process on the grounds the proceeding should have been commenced by an originating process other than the one employed.

**ATTACKING IRREGULARITY**

- 2.02** A motion to attack a proceeding or a step, document or order in a proceeding for irregularity shall not be made, except with leave of the court,
- (a) after the expiry of a reasonable time after the moving party knows or ought reasonably to have known of the irregularity; or
  - (b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity.

**COURT MAY DISPENSE WITH COMPLIANCE**

- 2.03** The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

*Dykeman v. MacVarish*, 2020 PESC 38

The court found that Rule 2.01(2) could not be invoked to cure notice defects where a petitioner for divorce was seeking partition under the *Real Property Act* without having met the requirements. The import of Rule 2.01 is not to dispense with the requirement that parties responding to a motion have even a rudimentary sense of what their opponents are requesting.

*Read v. Read et al. (No. 1)* (1995), 131 Nfld. & P.E.I.R. 91 (PEISCTD)

When documentation filed to initiate prejudgment garnishment proceedings does not comply with the Rules of Court the irregularities cannot be cured and it is necessary, in the interests of justice to set aside the proceedings.

*Island Opry Inc. et al. v. Tweedy Ross* (1996), Nfld. & P.E.I.R. 36 (PEISCTD)

The purpose of Rule 2.01(1)(a) is to secure the just determination of the real matter in dispute and accordingly, the defendant was granted an adjournment to amend the statement of defence.

*Dunphy v. Registrar of Motor Vehicles*, 2001 PESCTD 28

The applicant, a minor, made an application for judicial review without the assistance of a litigation guardian. The trial judge applied Rule 2.03 and dispensed with the requirement of Rule 7.01 that a proceeding by a minor shall be commenced by a litigation guardian.

*Wood v. Bonnell* (1993), 104 Nfld. & P.E.I.R. 291 (PEISCAD)

Rule 2.03 was relied upon to cure non-compliance with Rule 61 relating to the filing of documentation on an appeal.