

RULE 27
COUNTERCLAIM

WHERE AVAILABLE

Against the Plaintiff

27.01 (1) A defendant may assert, by way of counterclaim in the main action, any right or claim against the plaintiff, including a claim for contribution and indemnity under the *Contributory Negligence Act* in respect of another party's claim against the defendant.

Against the Plaintiff and Another Person

(2) A defendant who counterclaims against a plaintiff may join as a defendant to the counterclaim any other person, whether a party to the main action or not, who is a necessary or proper party to the counterclaim.

STATEMENT OF DEFENCE AND COUNTERCLAIM

27.02 A counterclaim (Form 27A or 27B) shall be included in the same document as the statement of defence and the document shall be entitled a statement of defence and counterclaim.

COUNTERCLAIM TO BE ISSUED WHERE DEFENDANT TO COUNTERCLAIM NOT ALREADY PARTY TO MAIN ACTION

27.03 Where a person who is not already a party to the main action is made a defendant to the counterclaim, the statement of defence and counterclaim,

- (a) shall be issued,
 - (i) within the time prescribed by Rule 18.01 for delivery of the statement of defence in the main action or at any time before the defendant is noted in default, or
 - (ii) subsequently with leave of the court; and
- (b) shall contain a second title of proceeding showing who is the plaintiff by counterclaim and who are defendants to the counterclaim.

TIME FOR DELIVERY OR SERVICE OF DEFENCE AND COUNTERCLAIM

Where all Parties are Parties to Main Action

- 27.04** (1) Where a counterclaim is only against the plaintiff, or only against the plaintiff and another person who is already a party to the main action, the statement of defence and counterclaim shall be delivered within the time prescribed by Rule 18.01 for the delivery of the statement of defence in the main action, or at any time before the defendant is noted in default.

Where New Party is Brought in

- (2) Where a counterclaim is against the plaintiff and a defendant to the counterclaim who is not already a party to the main action, the statement of defence and counterclaim shall be served, after it has been issued, on the parties to the main action and, together with all the pleadings previously delivered in the main action, on a defendant to the counterclaim who is not already a party to the main action, and shall be filed with proof of service,
- (a) within thirty days after the statement of defence and counterclaim is issued or at any time before the defendant is noted in default, or
 - (b) subsequently with leave of the court.
- (3) A statement of defence and counterclaim need not be served personally on any person who is a party to the main action, except where a defendant to the counterclaim is also a defendant in the main 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 defendant shall be served personally or by an alternative to personal service under Rule 16.03 whether or not the defendant has been noted in default in the main action.

TIME FOR DELIVERY OF DEFENCE TO COUNTERCLAIM

- 27.05** (1) The plaintiff and any other defendant to a counterclaim who is already a party to the main action shall deliver a defence to counterclaim (Form 27C) within twenty days after service of the statement of defence and counterclaim.
- (2) Where the plaintiff delivers a reply in the main action, the defence to counterclaim shall be included in the same document as the reply and the document shall be entitled a reply and defence to counterclaim.
- (3) Except as provided in subrule 18.02(3) (notice of intent to

defend) or 19.01(5) (late delivery of defence), a defendant to a counterclaim who is not already a party to the main action shall deliver a defence to counterclaim,

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

TIME FOR DELIVERY OF REPLY TO DEFENCE TO COUNTERCLAIM

27.06 A reply to defence to counterclaim (Form 27D), if any, shall be delivered within ten days after service of the defence to counterclaim.

AMENDING DEFENCE TO ADD COUNTERCLAIM

- 27.07** (1) A defendant who has delivered a statement of defence that does not contain a counterclaim and who wishes to counterclaim only against the plaintiff or only against the plaintiff and another person who is already a party to the main action may amend the statement of defence in accordance with Rules 26.02 and 26.03 in order to add the counterclaim, and Rule 26.05 (responding to amended pleading) applies to the amended statement of defence and counterclaim.
- (2) A defendant who has delivered a statement of defence that does not contain a counterclaim and who wishes to counterclaim against the plaintiff and another person who is not already a party to the main action may, with leave of the court, have the Registrar issue an amended statement of defence and counterclaim, and Rule 26.05 (responding to amended pleading) applies to the amended statement of defence and counterclaim.

TRIAL OF COUNTERCLAIM

27.08 (1) A counterclaim shall be tried at the trial of the main action, unless the court orders otherwise.

- (2) Where it appears that a counterclaim may unduly complicate or delay the trial of the main action, or cause undue prejudice to a party, the court may order separate trials or order that the counterclaim proceed as a separate action.

DISPOSITION OF COUNTERCLAIM

Where Claim in Main Action not Disputed

- 27.09** (1) Where a defendant does not dispute the claim of the plaintiff in the main action, but asserts a counterclaim, the court may stay the main action or grant judgment, with or without a stay of execution, until the counterclaim is disposed of.

Where Counterclaim not Disputed

- (2) Where the plaintiff does not dispute the counterclaim of a defendant, the court may stay the counterclaim or grant judgment, with or without a stay of execution, until the main action is disposed of.

Where Both Claim and Counterclaim Succeed

- (3) Where both the plaintiff in the main action and the plaintiff by counterclaim succeed, either in whole or in part, and there is a resulting balance in favour of one of them, the court may in a proper case give judgment for the balance and dismiss the smaller claim and may make such order for costs of the claim and counterclaim as is just.

**APPLICATION TO COUNTERCLAIMS, CROSSCLAIMS AND
THIRD PARTY CLAIMS**

27.10 Rules 27.01 to 27.09 apply, with necessary modifications, to the assertion of a counterclaim by a defendant to a counterclaim, by a defendant to a crossclaim and by a third party.