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SMALL CLAIMS

Rule 74 relating to proceedings in the Small Claims Section of the Supreme Court of Prince Edward was amended as of January 1, 2004. It is now published under separate cover and copies of the rule, together with the amended forms, may be obtained from the Registrar's Office of the Prothonotary's Office.

By the Ninth Series of Amendments to the Rules of Civil Procedure in The Supreme Court of Prince Edward Island approved on the 16th of August, 2005 by Order-in-Council No. 2005-459, to come into effect on September 1, 2005 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section, were amended: Forms: 7A, 10A, 20 E & G; Rules: 19.01 to 19.03, 20.06(2), 20.08(9)&(10), 20.08(12)(b), 20.08(16)to(21).

By the Eleventh Series of Amendments to the Rules of Civil Procedure in The Supreme Court of Prince Edward Island approved on the 17th of July, 2007 by Order-in-Council No. 2007-454, to come into effect on September 1, 2007 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$8,000.) were amended: Forms: 11A, 11B, 11C, 11D, 13A, 13B, 14A, 20E, 20F, 20H, 20I, 20J, 20K, 20L, 20M; Rules: 1.03, 8.01, 9.01, 9.03, 10.01(2) and (4), 11.01, 11.05, 11.06, 11.07, 12.01, 13.01(1), 13.02 to 13.05, 14.05, 20.08(3), 20.08(6).

Chief Justice Gerard Mitchell
September 1, 2007

By the Thirteenth Series of Amendments to the Rules of Civil Procedure in the Supreme Court of Prince Edward Island approved on the 14th of July, 2009 by Order-in-Council No. EC2009-357, to come into effect on September 1, 2009 the following Rules & Forms within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$8,000.) were amended: Forms: 7A, 10A; Rules: 1.01, 1.02, 1.03(1), 1.03(2), 4.03(2)(d)(ii), 8.01(6), 13.06.

Chief Justice David H. Jenkins
Chair, Rules Committee
September 1, 2009

Executive Council by Order-in-Council No. EC2017-387 raised the Small Claims limit from \$8,000. to \$16,000. effective July 8, 2017, published in the July 8, 2017 issue of the **Royal Gazette**.

By the Twenty-first Series of Amendments to the Rules of Civil Procedure in the Supreme Court of Prince Edward Island approved on the 8th of August, 2017 by Order-in-Council No. EC2017-462, to come into effect on September 1, 2017 the following Rule within Rule 74, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000.) was amended: Rule 14.06(a).

Chief Justice David H. Jenkins
Chair, Rules Committee
September 1, 2017

The Twenty-ninth Series of Amendments to the Rules of Civil Procedure, effective September 1, 2023, were made, formulated and adopted by the Rules Committee, approved on July 7, 2023, by Executive Council Order-in-Council No. EC2023-569 approved the proposed amendment to Rule 74 – all its subrules 1 – 21, and all the associated Forms 4A – 20K, relating to proceedings in the Small Claims Section (Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000), and published in the July 22, 2023 issue of the **Royal Gazette**.

Chief Justice James W. Gormley
Chair, Rules Committee
September 1, 2023

**RULES FOR PROCEEDINGS WITHIN
THE JURISDICTION OF THE SMALL CLAIMS SECTION
(Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000.00)**

RULE 1

INTERPRETATION

CITATION AND APPLICATION

1.01 These rules may be cited as the Small Claims Section Rules and they govern all proceedings in the Small Claims Section of the Supreme Court of Prince Edward Island.

DEFINITIONS

1.02 In these rules,

“**clerk**” means the deputy registrar of the Small Claims Section of the Supreme Court of Prince Edward Island and any person acting in the place of or under the direction of the said deputy registrar;

“**court**” means the Small Claims Section of the Supreme Court of Prince Edward Island;

“**defendant’s claim**” means a counterclaim, crossclaim or third party claim.

“**disability**”, where used in respect of a person or party, means that the person or party is,

- (a) a minor,
- (b) unable to make reasonable judgments in respect of matters relating to their personal affairs within the meaning of section 40(4)(b) of the *Mental Health Act* whether the person or party has a guardian or not;

“**file**” means to deliver a document to the court, for acceptance and placement in the official record of the proceeding;

“**holiday**” means,

- (a) any Saturday or Sunday,
- (b) New Year’s Day,
- (c) Islander Day,
- (d) Good Friday,
- (e) Easter Monday,
- (f) Victoria Day,
- (g) Canada Day,
- (h) Civic Holiday,
- (i) Labour Day,
- (j) National Day for Truth and Reconciliation

- (k) Thanksgiving Day,
- (l) Remembrance Day,
- (m) Christmas Day,
- (n) Boxing Day, and
- (o) any special holiday proclaimed by the Governor General or the Lieutenant Governor.

and if New Year's Day, Canada Day, National Day for Truth and Reconciliation, or Remembrance Day falls on a Saturday or Sunday, the following Monday is a holiday, and if Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are holidays, and if Christmas Day falls on a Friday, the following Monday is a holiday;

“order” includes a judgment;

“pleading” means a statement of claim, statement of defence, counterclaim, crossclaim, or third party claim

“prothonotary” means the prothonotary of the Supreme Court of Prince Edward Island.

General Principle

- 1.03** (1) These rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every proceeding on its merits in accordance with section 15.(1) of the *Judicature Act*.

Matters Not Covered in Rules

- (2) If these rules do not cover a matter adequately, the court may give directions and make any order that is just, and the practice shall be decided by analogy to these rules, by reference to the *Judicature Act* and the *Act* governing the action and, if the court considers it appropriate, by reference to the *Rules of Civil Procedure*.

Orders on Terms

- 1.04** When making an order under these rules, the court may impose such terms and give such directions as are just.

Forms

- 1.05** The forms prescribed by these rules shall be used where applicable and with such variations as the circumstances require.

Telephone and Video Conferences

- 1.06** (1) At the discretion of the court, if facilities for a telephone or video conference are available at the court, all or part of any of the following may be heard or conducted by telephone or video conference:
- (a) a settlement conference.
 - (b) a motion.
 - (c) a trial.

RULE 2

NON-COMPLIANCE WITH THE RULES

EFFECT OF NON-COMPLIANCE

2.01 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 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.

COURT MAY DISPENSE WITH COMPLIANCE

2.02 If necessary in the interest of justice, the court may dispense with compliance with any rule at any time.

RULE 3

TIME

Computation

- 3.01** If these rules or an order of the court prescribe a period of time for the taking of a step in a proceeding, the time shall be counted by excluding the first day and including the last day of the period; if the last day of the period of time falls on a holiday, the period ends on the next day that is not a holiday.

Powers of Court

- 3.02 (1)** The court may lengthen or shorten any time prescribed by these rules or an order, on such terms as are just.

Consent

- (2) A time prescribed by these rules for serving or filing a document may be lengthened or shortened by filing the consent of the parties.

RULE 4

PARTIES UNDER DISABILITY

Plaintiff's Litigation Guardian

- 4.01** (1) An action by a person under disability shall be commenced or continued by a litigation guardian.

Consent

- (2) A plaintiff's litigation guardian shall, at the time of filing a claim or as soon as possible afterwards, file with the clerk a consent (Form 4A) in which the litigation guardian,
- (a) states the nature of the disability;
 - (b) in the case of a minor, states the minor's birth date;
 - (c) sets out their relationship, if any, to the person under disability;
 - (d) states that they have no interest in the proceeding contrary to that of the person under disability;
 - (e) acknowledges that they are aware of their liability to pay personally any costs awarded against them or against the person under disability; and
 - (f) states whether they are represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.

Defendant's Litigation Guardian

- 4.02** (1) An action against a person under disability shall be defended by a litigation guardian.
- (2) A defendant's litigation guardian shall file with the statement of defence a consent (Form 4A) in which the litigation guardian,
- (a) states the nature of the disability;
 - (b) in case of a minor, states the minor's birth date;
 - (c) sets out their relationship, if any, to the person under disability;
 - (d) states that they have no interest in the proceeding contrary to that of the person under disability; and
 - (e) states whether they are represented by a lawyer or agent and, if so, gives that person's name and confirms that the person has written authority to act in the proceeding.
- (3) If it appears to the court that a defendant is a person under disability and the defendant does not have a litigation guardian the court may, after notice to the proposed litigation guardian, appoint as litigation guardian for the defendant any person who has no interest in the action contrary to that of the defendant.

Who May Be Litigation Guardian

- 4.03** (1) Any person who is not under disability may be a plaintiff's or defendant's litigation guardian, subject to subrule (2).
- (2) If the plaintiff or defendant,
- (a) is a minor, in a proceeding to which subrule 4.01(2) does not apply, the parent or person with lawful custody or another suitable person shall be the litigation guardian;
 - (b) is mentally incapable and has a guardian with authority to act as litigation guardian in the proceeding, the guardian shall be the litigation guardian;
 - (c) is mentally incapable and does not have a guardian with authority to act as litigation guardian in the proceeding, but has an attorney under a power of attorney with that authority, the attorney shall be the litigation guardian;
 - (d) is mentally incapable and has neither a guardian with authority to act as litigation guardian in the proceeding nor an attorney under a power of attorney with that power,
 - (i) a suitable person who has no interest contrary to that of the incapable person may be the litigation guardian, or
 - (ii) if no such person is available and able to act, the Official Guardian appointed pursuant to s. 33 of the *Judicature Act* shall be the litigation guardian.

Duties of the Litigation Guardian

- 4.04** (1) A litigation guardian shall diligently attend to the interests of the person under disability and take all steps reasonably necessary for the protection of those interests, including the commencement and conduct of a counterclaim.

Official Guardian

- (2) The Official Guardian may act as litigation guardian without filing the consent required by subrule 4.01(2) or 4.02(2).

Power of Court

- 4.05** The court may remove or replace a litigation guardian at any time.

Setting Aside Judgment, etc.

- 4.06** If an action has been brought against a person under disability and the action has not been defended by a litigation guardian, the court may set aside the noting of default or any judgment against the person under disability on such terms as are just, and may set aside any step that has been taken to enforce the judgment.

Settlement Requires Court's Approval

4.07 No settlement of a claim made by or against a person under disability is binding on the person without the approval of the court.

Money to be Paid into Court

4.08 (1) Any money payable to a person under disability under an order or a settlement shall be paid into court, unless the court orders otherwise, and shall afterwards be paid out or otherwise disposed of as ordered by the court.

(2) If money is payable to a person under disability under an order or settlement, the court may order that the money shall be paid directly to the person, and payment made under the order discharges the obligation to the extent of the amount paid.

RULE 5

PARTNERSHIPS AND SOLE PROPRIETORSHIPS

PARTNERSHIPS

5.01 A proceeding by or against two or more persons as partners may be commenced using the firm name of the partnership.

STATEMENT OF DEFENCE

5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's statement of defence shall be delivered in the firm name and no person who admits being a partner at any material time may defend the proceeding separately, except with leave of the court.

Notice to Alleged Partner

5.03 (1) In a proceeding against a partnership using the firm name, a plaintiff who seeks an order that would be enforceable personally against a person as a partner may serve the person with the claim, together with a notice to alleged partner (Form 5A).

(2) A person served as provided in subrule (1) is deemed to have been a partner at the material time, unless the person defends the proceeding separately denying having been a partner at the material time.

Disclosure of Partners

5.04 (1) If a proceeding is commenced by or against a partnership using the firm name, any other party may serve a notice requiring the partnership to disclose immediately in writing the names and addresses of all partners constituting the partnership at a time specified in the notice; if a partner's address is unknown, the partnership shall disclose the last known address.

(2) If a partnership fails to comply with a notice under subrule (1), its claim may be dismissed or the proceeding stayed or its statement of defence may be struck out.

Enforcement of Order

5.05 (1) An order against a partnership using the firm name may be enforced against the partnership's property.

(2) An order against a partnership using the firm name may also be enforced, if the order or a subsequent order so provides, against any person who was served as provided in rule 5.03 and who,

(a) under that rule, is deemed to have been a partner at the material time;

(b) has admitted being a partner at that time; or

(c) has been adjudged to have been a partner at that time.

Against Person not Served as Alleged Partner

(3) If, after an order has been made against a partnership using the firm name, the party obtaining it claims to be entitled to enforce it against any person alleged to be a partner other than a person who

was served as provided in rule 5.03, the party may make a motion for leave to do so; a judge or prothonotary may grant leave if the person's liability as a partner is not disputed or, if disputed, after the liability has been determined in such manner as the judge or prothonotary directs.

Sole Proprietorships

- 5.06** (1) If a person carries on business in a business name other than their own name, a proceeding may be commenced by or against the person using the business name.
- (2) Rules 5.01 to 5.05 apply, with necessary modifications, to a proceeding by or against a sole proprietor using a business name, as though the sole proprietor were a partner and the business name were the firm name of a partnership.

RULE 6

FORUM AND JURISDICTION

Place of Commencement and Trial

- 6.01** (1) An action shall be commenced in either Charlottetown or Summerside, whichever place is nearest to
- (a) where the cause of action arose, or
 - (b) where the defendant or, if there are several defendants, where any one of them resides or carries on business.
- (2) An action shall be tried in the place where it is commenced, but if the court is satisfied that the balance of convenience substantially favours holding the trial at another place than those described in subrule (1), the court may order that the action be tried at that other place.
- (3) If, when an action is called for trial or settlement conference, the court finds that the place where the action was commenced is not the proper place of trial, the court may order that the action be tried in the other place where it could have been commenced under this rule.

Jurisdiction

- 6.02** A cause of action shall not be divided into two or more actions for the purpose of bringing it within the court's jurisdiction.

RULE 7

COMMENCEMENT OF PROCEEDINGS

Statement of Claim

- 7.01** (1) An action shall be commenced by filing a statement of claim (Form 7A) and a Designation of Address for Service (form 8A) with the clerk, together with a copy for each defendant.

Contents of Claim, Attachments

- (2) The following requirements apply to the statement of claim:
1. It shall contain the following information, in concise and non-technical language:
 - i. The full names of the parties to the proceeding and, if relevant, the capacity in which they sue or are sued.
 - ii. The nature of the claim, with reasonable certainty and detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. The name, address and telephone number, and email address if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is self-represented, the plaintiff's address and telephone number, and email address if any.
 - v. The address where the plaintiff believes the defendant may be served.
 2. If the plaintiff's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the statement of claim, unless it is unavailable, in which case the claim shall state the reason why the document is not attached.

Issuing Claim

- 7.02** (1) On receiving the statement of claim, the clerk shall immediately issue it by dating, signing and sealing it and assigning it a court file number.
- (2) The original of the statement of claim shall remain in the court file and copies shall be given to the plaintiff for service on the defendant.

RULE 8

SERVICE

Service of Particular Documents - Claims

- 8.01** (1) A plaintiff's statement of claim or defendant's counterclaim, crossclaim or third party claim (Form 7A, 10A, 10B or 10C) shall be served personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Time for Service of Claim

- (2) A statement of claim shall be served within six months after the date it is issued, but the court may extend the time for service, before or after the six months has elapsed.

Statement of Defence

- (3) A statement of defence shall be served by mail or email by the clerk.

Notice of Default Judgment

- (4) A notice of default judgment (Form 11B) shall be served by mail or email by the clerk, on all parties named in the statement of claim.

Assessment Order

- (4.1) An order made following a trial under subrule 11.04 shall be served by the clerk on the plaintiff and the defendant who was noted in default, by mail or by email.

Settlement Conference Order

- (5) An order made at a settlement conference shall be served by the clerk by mail or email, on all parties.

Summons to Witness

- (6) A summons to witness (Form 18A) shall be served personally by the party who requires the presence of the witness, or by the party's lawyer or agent, at least 10 days before the trial date; at the time of service, attendance money calculated in accordance with the regulations made under the *Court Fees Act* shall be paid or tendered to the witness.

Notice of Garnishment

- (7) A notice of garnishment (Form 20E) shall be served by the creditor,
- (a) together with a sworn affidavit for enforcement request (Form 20J), on the debtor, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03; and
 - (b) together with a garnishee's statement (Form 20F), on the garnishee, by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Notice of Garnishment Hearing

- (8) A notice of garnishment hearing (Form 20K) shall be served by the person requesting the hearing on the creditor, debtor, garnishee and co-owner of the debt, if any, and any other interested persons by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Other Documents

- (9) A document not referred to in subrules (1) to (8) may be served by mail, by email, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03, unless the court orders otherwise.

Personal Service

8.02 If a document is to be served personally, service shall be made,

- (a) **Individual** - on an individual, other than a person under disability, by leaving a copy of the document with them;
- (b) **Municipality** - on a municipal corporation, by leaving a copy of the document with the chair, mayor, the chief administrative officer, or the clerk of the municipality, or with a lawyer for the municipality;
- (c) **Corporation** - on any other corporation, by leaving a copy of the document with an officer, director or agent of the corporation, or with a person at any place of business of the corporation who appears to be in control or management of the place of business;
- (d) **Board or Commission** - on a board or commission, by leaving a copy of the document with a member or officer of the board or commission;
- (e) **Person outside Prince Edward Island carrying on business in Prince Edward Island** - on a person outside Prince Edward Island who carries on business in Prince Edward Island, by leaving a copy of the document with anyone carrying on business in Prince Edward Island for the person;
- (f) **Crown in Right of Canada** - on His Majesty the King in right of Canada, in accordance with section 23(2) of the *Crown Liability and Proceedings Act (Canada)*;
- (g) **Government of Prince Edward Island** - on the Government of Prince Edward Island, in accordance with section 10 of the *Crown Proceedings Act*;
- (h) **Minor** - on a minor, by leaving a copy of the document with the minor and, if the minor resides with a parent or other person having their care or lawful custody, by leaving another copy of the document with the parent or other person;
- (i) **Mentally Incapable Person** - on a mentally incapable person,
 - (i) if there is a guardian or an attorney acting under a validated power of attorney for personal care with authority to act in the proceeding, by leaving a copy of the document with the guardian or attorney,
 - (ii) if there is no guardian or attorney acting under a validated power of attorney for personal care with authority to act in the proceeding but there is an attorney under a power of attorney with authority to act in the proceeding, by leaving a copy of the document with the attorney and leaving an additional copy with the person,

- (iii) if there is neither a guardian nor an attorney with authority to act in the proceeding, by leaving a copy of the document bearing the person's name and address with the Public Trustee and leaving an additional copy with the person;
- (j) **Partnership** - on a partnership, by leaving a copy of the document with any one or more of the partners or with a person at the principal place of business of the partnership who appears to be in control or management of the place of business; and
- (k) **Sole Proprietorship** - on a sole proprietorship, by leaving a copy of the document with the sole proprietor or with a person at the principal place of business of the sole proprietorship who appears to be in control or management of the place of business.

Alternatives to Personal Service

- 8.03 (1)** If a document is to be served by an alternative to personal service, service shall be made in accordance with subrule (2), (3) or (5); in the case of a statement of claim, counterclaim, crossclaim or third party claim, service may also be made in accordance with subrule (7) or (7.1).

At Place of Residence

- (2) If an attempt is made to effect personal service at a person's place of residence and for any reason personal service cannot be effected, the document may be served by,
 - (a) leaving a copy in a sealed envelope addressed to the person at the place of residence with anyone who appears to be an adult member of the same household; and
 - (b) on the same day or the following day, mailing another copy of the document to the person at the place of residence.

Corporation

- (3) If the head office or principal place of business of a corporation or, in the case of an extra-provincial corporation, the attorney for service in Prince Edward Island cannot be found at the last address recorded with the Consumer, Corporate and Insurance Services Division of the office of the Attorney General of Prince Edward Island, service may be made on the corporation by mailing a copy of the document to the corporation or to the attorney for service in Prince Edward Island, as the case may be, at that address.

When Effective

- (4) Service made under subrule (2) or (3) is effective on the fifth day after the document is mailed.

Acceptance of Service by Lawyer

- (5) Service on a party who is represented by a lawyer may be made by leaving a copy of the document with the lawyer or an employee in the lawyer's office, but service under this subrule is effective only if the lawyer or employee endorses on the document or a copy of it an acceptance of service and the date of the acceptance.
- (6) By accepting service the lawyer is deemed to represent to the court that they have the client's authority to accept service.

Service of Claim by Mail, Registered Mail or Courier to Last known Address

- (7) Service of a statement of claim, counterclaim, crossclaim or third party claim may be made by sending a copy of it by mail, in an envelope showing the sender's return address, to the last known address of the person to be served.
- (7.1) Service of a statement of claim, counterclaim, crossclaim or third party claim may be made by sending a copy of it by registered mail or by courier, in an envelope showing the sender's return address, to the last known address of the person to be served.
- (8) Service under subrule (7) is deemed to have been effected on the 5th day after the date of mailing if an affidavit of service (Form 8B),
 - (a) indicates that the deponent believes the address to which the claim is sent to be the last known address of the person to be served, and states the reasons for the belief;
 - (b) indicates that the claim has not been returned to the deponent; and
 - (c) indicates that the deponent has no reason to believe that the person to be served did not receive the claim.
- (8.1) Service under subrule (7.1) is effective on the date on which receipt of the copy of the claim is verified, as shown in a delivery confirmation provided by or obtained from Canada Post or the commercial courier, as the case may be.
- (9) The affidavit of service shall not be completed before the day referred to in subsection (8) or (8.1).

SUBSTITUTED SERVICE

8.04 If it is shown that it is impractical to effect prompt service of a claim personally or by an alternative to personal service, the court may allow substituted service.

SERVICE OUTSIDE PRINCE EDWARD ISLAND

8.05 If the defendant is outside Prince Edward Island, the court may allow as costs of the action the costs reasonably incurred in effecting service of the claim on the defendant there.

PROOF OF SERVICE

8.06 An affidavit of service (Form 8B) made by the person effecting the service constitutes proof of service of a document.

Service by Mail

- 8.07** (1) If a document is to be sent by mail under these rules, it shall be sent, by regular letter mail or registered mail, to the last address of the person or of the person's lawyer or agent that is,
- (a) on file with the court, if the document is to be served by the clerk;
 - (b) known to the sender, if the document is to be served by any other person.

When Effective

- (2) Service of a document by mail is deemed to be effective on the fifth day following the date of mailing.

Exception

- (3) Subrule (2) does not apply when a claim is served by registered mail under subrule 8.03(7).

Service by Courier

- 8.07.1** (1) If a document is to be served by courier under these rules, it shall be sent by means of a commercial courier to the last address of the person or of the person's representative that is on file with the court or known to the sender.

When Effective

- (2) Service of a document sent by courier is deemed to be effective on the fifth day following the date on which the courier verifies to the sender that the document was delivered.

Exception

- (3) This rule does not apply when a claim is served by courier under subrule 8.03 (7.1).

Service by Email

- 8.08** (1) Except as otherwise specified in any other rule, if a document is to be served by email under these rules, it shall be sent to,

- (a) the last email address provided by the person to be served or the person's lawyer or, if no email address is provided, to the person's or lawyer's last known email address.

Service by Clerk

- (2) In the case of a document to be served by the clerk by email, the document shall, except as otherwise specified in any other rule, be sent to the email address provided in Form 8A, Designation of Address for Service.

Requirements re Email Message

- (3) The email message to which a document served by email in accordance with these rules is attached shall include,
- (a) the sender's name, address, telephone number, and email address;
 - (b) the name of the person or representative being served;
 - (c) the date and time of the email; and
 - (d) the name and telephone number of a person to contact in the event of a transmission problem.

When Effective

- (4) Service of a document by email is deemed to be effective,

- (a) on the day the email is sent; or
- (b) if the email is sent between 4 p.m. and midnight, on the following day.

Notice of Change of Address for Service

- 8.09** (1) A party whose address for service changes shall serve a new Form 8A Designation of Address for Service on the other parties and file with the court within seven days after the change takes place.

- (2) Service may be proved by affidavit.

Failure to Receive Document

- 8.10** A person who has been served or who is deemed to have been served with a document in accordance with these rules is nevertheless entitled to show, on a motion to set aside the consequences of default, on a motion for an extension of time or in support of a request for an adjournment, that the document,

- (a) did not come to the person's notice; or
- (b) came to the person's notice only at some time later than when it was served or is deemed to have been served.

RULE 9

STATEMENT OF DEFENCE

STATEMENT OF DEFENCE

- 9.01** A defendant who wishes to dispute a statement of claim shall file a statement of defence (Form 9A), and a Designation of Address for Service (Form 8A) with a copy for every party with the clerk:
- (a) within twenty days after being served with the statement of claim where the defendant is served in Prince Edward Island;
 - (b) within forty days after being served with the statement of claim where the defendant is served elsewhere.

CONTENTS OF STATEMENT OF DEFENCE, ATTACHMENTS

- 9.02** The following requirements apply to the statement of defence:

- (1) It shall contain the reasons why the defendant disputes the statement of claim, expressed in concise non-technical language with a reasonable amount of detail.
- (2) If the statement of defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the statement of defence, unless it is unavailable, in which case the statement of defence shall state the reason why the document is not attached.

Admission of Liability and Proposal of Terms of Payment

- 9.03**
- (1) In their statement of defence, a defendant may admit liability for all or part of the statement of claim, and propose terms of payment.
 - (1.1) The clerk shall fix a time for a settlement conference, allowing for a reasonable notice period after the date the statement of defence is served, and serve a notice of settlement conference on the parties, by mail or email.

Where No Dispute

- (2) If, at the settlement conference, the parties agree on terms of payment, the court or the prothonotary may issue an order reflecting the agreement, and,
 - (a) the defendant shall make payment in accordance with the order;
 - (b) in case of failure to make payment in accordance with the order, the clerk shall sign judgment for the unpaid balance of the undisputed amount on the filing of an affidavit by the plaintiff swearing to the default and stating the amount paid and the unpaid balance.

Dispute

- (3) If, at the settlement conference, the parties do not agree to terms of payment, the matter will proceed to a trial.

RULE 10

DEFENDANT'S CLAIM

DEFENDANT'S CLAIM

- 10.01** (1) In addition to their statement of defence, Form 9A, a defendant may make a claim,
- (a) against the plaintiff;
 - (b) against any other person,
 - (i) arising out of the transaction or occurrence relied upon by the plaintiff, or
 - (ii) related to the statement of claim; or
 - (c) against the plaintiff and against another person in accordance with clause (b).
- (2) The defendant's claim shall be in Form 10A (Counterclaim), 10B (Crossclaim) and/or 10C (Third Party Claim) and may be issued,
- (a) within 20 days after the day on which the statement of defence is filed; or
 - (b) after the time described in clause (a) but before trial or default judgment, with leave of the court.

Copies

- (3) The defendant shall provide a copy of the defendant's claim to the court.

Contents of Defendant's claim, Attachments

- (4) The following requirements apply to the defendant's claim:
- 1. It shall contain the following information:
 - i. The names of the parties to the statement of claim and to the defendant's claim and, if relevant, the capacity in which they sue or are sued.
 - ii. The nature of the claim, expressed in concise non-technical language with a reasonable amount of detail, including the date, place and nature of the occurrences on which the claim is based.
 - iii. The amount of the claim and the relief requested.
 - iv. The defendant's name, address and telephone number, and email address if any.
 - v. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and email address.
 - vi. The address where the defendant believes each person against whom the claim is made may be served.
 - vii. The court file number assigned to the statement of claim.
 - viii. If it is in form 10C Third Party Claim, the defendant shall attach a copy of the statement of claim, and the statement of defence filed by the defendant.
 - 2. If the defendant's claim is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defendant's claim, unless it is unavailable, in which case the defendant's claim shall state the reason why the document is not attached.

Issuance

- (5) On receiving the defendant's claim, the clerk shall immediately issue it by dating, signing and sealing it, shall assign it the same court file number as the statement of claim and shall place the original in the court file.

SERVICE

10.02 A defendant's claim shall be served by the defendant on every person against whom it is made, in accordance with subrules 8.01(1) and (2).

Defence to Defendant's Claim

10.03 (1) A party who wishes to dispute the defendant's claim may, within 20 days after service, file a statement of defence (Form 9A) with the clerk, together with a copy for each of the other parties. A third party who files a statement of defence shall also file a Form 8A Designation of Address for Service.

(1.1) The statement of defence shall have the style of cause of the defendant's claim, depending upon whether the defendant's claim is in Form 10A (Counterclaim), 10B (Crossclaim) or 10C (Third Party Claim).

(2) On receiving the statement of defence to a defendant's claim, the clerk shall retain the original in the court file and shall serve a copy on each party in accordance with subrule 8.01(3).

Defendant's Claim to be Tried with Main Action

10.04 (1) A defendant's claim shall be tried and disposed of at the trial of the action, unless the court orders otherwise.

Exception

(2) If it appears that a defendant's claim may unduly complicate or delay the trial of the action or cause undue prejudice to a party, the court may order separate trials or direct that the defendant's claim proceed as a separate action.

Rights of a Third Party

(3) If the defendant files a third party claim in Form 10C, the third party may at the trial contest the defendant's liability to the plaintiff but only if the third party has filed a statement of defence in accordance with subrule 10.03(1).

Application of Rules to Defendant's Claim

10.05 (1) These rules apply, with necessary modifications, to a defendant's claim as if it were a statement claim, and to a statement of defence to a defendant's claim as if it were a statement of defence to a statement of claim.

Exception

(2) When a person against whom a defendant's claim is made is noted in default, judgment against that person may be obtained only in accordance with rule 11.03.

RULE 11

DEFAULT PROCEEDINGS

Noting Defendant in Default

- 11.01** (1) If a defendant fails to file a statement of defence within the time required by rule 9.01, the clerk shall, subject to subrule (2) below, when proof is filed that the statement of claim was served, note the defendant in default, using Form 11C.

Leave Required for Person under Disability

- (2) A person under disability may not be noted in default under subrule (1), except with leave of the court.

Service Outside Prince Edward Island

- (3) If all the defendants have been served outside Prince Edward Island, the clerk shall not note any defendant in default until it is proved, by an affidavit of jurisdiction (Form 11A) submitted to the clerk, or by evidence presented before a judge, that the action was properly brought in Prince Edward Island.

Default Judgment, Statement of Claim

- 11.02** (1) If a defendant has been noted in default, the clerk may enter judgment in respect of a claim against the defendant for a debt or liquidated demand in money, including interest if claimed.

Partial Defence

- (2) If a defence is filed in respect of part only of a claim to which subrule (1) applies, the clerk may note the party against whom the claim was made in default and enter default judgment in respect of the part for which no defence was filed.
- (3) Entry of judgment under this rule does not affect the plaintiff's right to proceed on the remainder of the claim or against any other defendant for all or part of the claim.

Notice of Default

- (4) A notice of default judgment (Form 11B) shall be served in accordance with subrule 8.01(4).

Default Judgment, Defendant's Claim

- 11.03** If a party against whom a defendant's claim is made has been noted in default, judgment may be obtained against the party only at trial or on motion.

When All Defendants Noted in Default

- 11.04** (1) If all defendants have been noted in default, the plaintiff may proceed in respect of any claim other than one referred to in subrule 11.02(1), by
- (a) filing a notice of motion and supporting affidavit (Forms 15A and 15B) requesting a motion in writing for an assessment of damages, setting out the reasons why the motion should be granted and attaching any relevant documents; or
 - (b) requesting a trial.

Inadequate Supporting Affidavit

- (2) On a motion in writing for an assessment of damages, a judge or prothonotary who finds the plaintiff's affidavit inadequate or unsatisfactory may order that,
- (a) a further affidavit be provided; or
 - (b) a trial be held.
- (3) If a trial is to be held under clause (2)(b), the clerk shall fix a date and send a notice of trial to the plaintiff.
- (4) A motion in writing for an assessment of damages or a trial pursuant to clause (1)(b) or (2)(b) shall be heard and decided by a judge or the prothonotary, who shall provide brief written reasons for the decision.

Matters to be Proved

- (5) On a motion in writing for an assessment of damages or at trial pursuant to clause (1)(b) or (2)(b), the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim.

Service of Order

- (6) An order made on a motion in writing for an assessment of damages shall be served by the clerk in accordance with subrule 8.01(4.1).

Consequences of Noting in Default

- 11.05** (1) Except bringing a motion under subrule 11.06, a defendant who has been noted in default shall not file a statement of defence or take any other step in the proceeding, without the plaintiff's consent or leave of the court.
- (2) A defendant who has been noted in default is not entitled to notice of any step in the proceeding and need not be served with any other document, except the following:
- 1. Subrule 11.02 (4) (service of default judgment).
 - 2. Rule 12.01 (amendment of statement of claim or statement of defence).
 - 3. Post judgment proceedings against a debtor under rule 20.
 - 4. Written reasons of judge or prothonotary under rule 11.04(4).

Setting Aside Noting of Default by Court on Motion

- 11.06** The prothonotary or a judge may set aside the noting in default or default judgment against a party and any step that has been taken to enforce the judgment, on such terms as are just, if the party makes a motion to set aside and the court is satisfied that,
- (a) the party has a meritorious defence and a reasonable explanation for the default; and
 - (b) the motion is made as soon as is reasonably possible in all the circumstances.

Dismissal by Prothonotary - Undefended Actions

- 11.07** (1) Unless a judge orders otherwise, the prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied:

- (a) More than 180 days have passed since the date the statement of claim was issued or an order was made extending the time for service of the statement of claim under subrule 8.01(2),
- (b) No defence has been filed and no request has been made to note the defendant in default,
- (c) The action has not been disposed of by order and has not been set down for trial, and
- (d) The prothonotary has given 45 days notice to the plaintiff that the action will be dismissed as abandoned.

Dismissal by Prothonotary - Defended Actions

- (2) Unless the court orders otherwise, the prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied:
 - (a) More than 150 days have passed since the date the first statement of defence was filed.
 - (b) No settlement conference has been completed.
 - (c) The action has not been disposed of by order and has not been set down for trial.
 - (d) The prothonotary has given 45 days notice to the parties that the action will be dismissed as abandoned.

Exception Where Terms of Settlement Signed

- (3) Subrules (1) and (2) do not apply if terms of settlement (Form 14A) signed by all parties have been filed.

Exception Where Admission of Liability

- (4) Subrule (2) does not apply if the statement of defence contains an admission of liability for the plaintiff's claim and a proposal of terms of payment under subrule 9.03(1).

Service of Orders

- (5) The prothonotary shall serve a copy of an order made under subrule (1) on the plaintiff and a copy of an order made under subrule (2) on all parties to the action.

Order made on Consent of the Parties

- 11.08 (1) The prothonotary may, with consent of the parties, make an order granting the following relief:
 - (a) amending a statement of claim or statement of defence,
 - (b) adding, deleting or substituting a party,
 - (c) setting aside the noting in default or default judgment against a party and any specified step to enforce the judgment that has not yet been completed,
 - (d) restoring a matter that was dismissed under rule 11.01(1) to the list,
 - (e) noting that payment has been made in full satisfaction of a judgment or terms of settlement, or
 - (f) dismissing an action.

Service of order

- (2) The clerk shall serve the parties a copy of an order made under subrule (1) in accordance with subrule 8.01(13).

Notice of Setting Aside of Enforcement Step

- (3) Where an order is made setting aside a specified step to enforce a judgment under subparagraph 11.08(1)(c), the clerk shall file a copy of the order with the Sheriff.

Ayangma v Amfoubalela, 2022 PECA 11

The first issue in a motion to set aside default judgment is proof of service by the plaintiff. Here, where the process server did not indicate how they were able to identify the defendant, service was defective. Where service is not defective, the defendant must also show that the motion to set aside was made as soon as possible after they became aware of the judgment, there is a plausible explanation for the default, and the defendant's case is arguable on its merits. The motions judge should lean in favour of setting aside, and the Court of Appeal will intervene only where the motions judge is "clearly wrong". A litigant who argues that a matter should not be heard on its merits because of a minor legal technicality should expect skepticism from the court.

RULE 12

AMENDMENT, DISMISSAL AND DISCONTINUANCE

Right to Amend

- 12.01** (1) A pleading may be amended by filing with the clerk a copy that is marked “Amended” in which any additions are underlined and any other changes are identified.

Service

- (2) The amended document shall be served by the party making the amendment on all parties, including any parties in default, in accordance with subrule 8.01(13).

Time

- (3) Filing and service of the amended document shall take place at least 30 days before the trial, unless the prothonotary or a judge, on motion, allows a shorter notice period.

Service on Added Party

- (4) A person added as a party shall be served with the pleading as amended, except that if the person is added as a party at trial, the prothonotary or a judge may dispense with service of the pleading.

No Amendment Required in Response

- (5) A party who is served with an amended document is not required to amend the party’s defence or claim.

Striking Out or Amending Pleading

- 12.02** (1) The prothonotary or a judge may strike out or amend a pleading or anything in a pleading on the ground that it
- (a) discloses no reasonable cause of action or defence, as the case may be;
 - (b) is scandalous, frivolous or vexatious;
 - (c) may prejudice, embarrass or delay the fair trial of the action; or
 - (d) is otherwise an abuse of the court’s process.
- (2) The prothonotary or a judge may order the action to be stayed or dismissed or judgment to be entered accordingly, or may impose such terms as are just.

Discontinuing Action

- 12.03** (1) A plaintiff may discontinue all or part of an action against any defendant
- (a) before the close of pleadings, by serving on all parties who have been served with the statement of claim a notice of discontinuance, Form 12A, and filing it with proof of service;
 - (b) after the close of pleadings, with leave of the court; or
 - (c) at any time, by filing the consent in writing of all parties.
- (2) Unless the court orders otherwise, or the parties agree, where a plaintiff discontinues an action against a defendant, the defendant is entitled to the costs of the action.
- (3) Subrules 12.03(1) and (2) apply, with necessary modifications, to a defendant’s claim.

Peni Brook v. Town of Montague 2016 PESC 19

In exercising their discretion under Rule 12.02 and 13.04, the Prothonotary must provide reasons for striking out a Plaintiff's Claim.

Hawkes v. Aliant 2006 PESCTD 48; (2006), 263 Nfld. & P.E.I.R. 175

The Prothonotary made an order at a pre-trial conference striking out the plaintiff's statement of claim because it disclosed no reasonable cause of action, pursuant to subrules 13.03(3)(b) and 12.02(1)(a). The motions judge set aside the Prothonotary's order as the statement of claim did disclose a reasonable cause of action.

RULE 13

SETTLEMENT CONFERENCES

Settlement Conference

- 13.01** (1) If a statement of defence has been filed, the clerk shall fix a date for a settlement conference and serve a notice of settlement conference on the parties, together with a list of proposed witnesses (Form 13A) to be completed by the parties.
- (1.1) A settlement conference shall be held within 60 days after the first statement of defence has been filed, unless otherwise ordered by the prothonotary.
- (2) The judge or prothonotary conducting the settlement conference may impose sanctions for the failure of a party, who has received a notice of settlement conference, to attend the settlement conference, including
- (a) an award of costs;
 - (b) dismissal of part or all of the statement of claim;
 - (c) noting the defendant in default.

Inadequate Preparation

- (3) If a person who attends a settlement conference is, in the opinion of the judge or prothonotary conducting the conference, so inadequately prepared as to frustrate the purposes of the conference, the court may award costs against that person.

Limit on Costs

- (4) Costs awarded under subrule (2) or (3) shall not exceed \$100 unless there are circumstances which, in the opinion of the judge or prothonotary, require a higher award.

Attendance

- 13.02** (1) A party and the party's lawyer, if any, shall, unless the court orders otherwise, participate in the settlement conference,
- (a) by personal attendance; or
 - (b) at the discretion of the court, by telephone or video conference.

Authority to Settle

- (2) A party who requires another person's approval before agreeing to a settlement shall, before the settlement conference, arrange to have ready telephone access to the other person throughout the conference.

Additional Settlement Conferences

- (3) The prothonotary or a judge may order the parties to attend an additional settlement conference.
- (4) The clerk shall fix a time and place for any additional settlement conference and serve a notice of settlement conference, together with a list of proposed witnesses (Form 13A) on the parties.

Purposes of Settlement Conference

- 13.03** (1) The purposes of a settlement conference are:

- (a) to resolve or narrow the issues in the action;
 - (b) to expedite the disposition of the action;
 - (c) to facilitate settlement of the action;
 - (d) to assist the parties in effective preparation for trial; and
 - (e) to promote full disclosure between the parties of the relevant facts and evidence.
- (2) At the settlement conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action.

Disclosure

- (3) At least 10 days before the date of the settlement conference, each party shall serve on every other party and file with the court:
- (a) a copy of any paper or electronic document, photograph, or other material capable of being copied, to be relied on at the trial, including an expert report, not attached to the party's statement of claim or statement of defence, which documents shall be attached to Form 13B, and page numbered; and
 - (b) a list of proposed witnesses (Form 13A) and of other persons with knowledge of the matters in dispute in the action.

Further Disclosure Restricted

- (4) Except as otherwise provided or with the consent of the parties, the matters discussed at the settlement conference shall not be disclosed to others until after the action has been disposed of.

Recommendations to Parties

- 13.04** (1) The judge or the prothonotary conducting the settlement conference may make recommendations to the parties on any matter relating to the conduct of the action in order to fulfil the purposes of a settlement conference, including recommendations as to:
- (a) the formulation and simplification of issues in the action;
 - (b) the elimination of claims or defences that appear to be unsupported; and
 - (c) the admission of facts or documents without further proof.

Orders at Settlement Conference

- (2) A judge or prothonotary conducting a settlement conference may make any order relating to the conduct of the action that the court could make.
- (3) Without limiting the generality of subrule (2), the judge or prothonotary may make:
- (a) an order for the joinder of parties; consolidation of actions, or hearing together of two or more applications;
 - (b) an order amending or striking out a pleading under Rule 12;
 - (c) an order referring a matter to a referee under Rule 21;
 - (d) an order for costs under subrule 13.01(4) ;
 - (e) with written reasons, an order staying or dismissing the action;
 - (f) an order directing production of documents; and
 - (g) an order directing an additional settlement conference under subrule 13.02(3).
- (4) If the settlement conference is conducted by the prothonotary, a judge may, on the prothonotary's recommendation, make any order that could be made under subrule (2).

Memorandum

- (5) At the end of the settlement conference, the judge or prothonotary may prepare a memorandum summarizing:
 - (a) the issues remaining in dispute;
 - (b) the matters agreed on by the parties;
 - (c) any evidentiary matters that the judge or prothonotary considers relevant; and
 - (d) information relating to the scheduling of the remaining steps in the proceeding.

- (6) The memorandum shall be filed with the clerk, and the clerk shall give the trial judge a copy.

Judge Not To Preside At Trial

- 13.05** A judge who conducts a settlement conference in an action shall not preside at the trial of the action unless the parties consent in writing.

Appeal From Prothonotary's Order to be Governed by *Rules Of Civil Procedure*

- 13.06** An appeal from an order made by the prothonotary shall be commenced by serving a notice of appeal (Form 62A made pursuant to the *Rules of Civil Procedure*) on all parties whose interests may be affected by the appeal, within thirty days after the date of the order appealed from and the provisions of Rule 62 of the *Rules of Civil Procedure* shall apply.

Peni Brook v. Town of Montague, 2016 PESC 19

In exercising their discretion under Rule 12.02 and 13.04, the Prothonotary must provide reasons for striking out a Plaintiff's Claim.

Hawkes v. Aliant 2006 PESCTD 48; (2006), 263 Nfld. & P.E.I.R. 175

The Prothonotary made an order at a pre-trial conference striking out the plaintiff's statement of claim because it disclosed no reasonable cause of action, pursuant to subrules 13.03(3)(b) and 12.02(1)(a). The motions judge set aside the Prothonotary's order as the statement of claim did disclose a reasonable cause of action.

RULE 14

OFFER TO SETTLE

- 14.01** A party may serve on any other party an offer to settle a claim on the terms specified in the offer. The offer to settle may be in Form 14A.

Time For Making Offer

- 14.02** An offer to settle may be made at any time, but if it is made less than seven days before the hearing commences, the costs consequences referred to in rule 14.07 do not apply.

Withdrawal

- 14.03** (1) An offer to settle may be withdrawn at any time before it is accepted by serving notice of its withdrawal on the party to whom it was made. The notice of withdrawal may be in Form 14D.

Expiry When Court Disposes of Claim

- (2) An offer may not be accepted after the court disposes of the claim in respect of which the offer is made.

No Disclosure of Offer to Trial Judge

- 14.04** If an offer to settle is not accepted, no communication about it shall be made to the trial judge until all questions of liability and the relief to be granted, other than costs, have been determined.

Acceptance

- 14.05** (1) An offer to settle may be accepted by serving an acceptance of the offer on the party who made it, at any time before it is withdrawn or the court disposes of the claim in respect of which it is made. An acceptance of offer may be in Form 14C.

Payment Into Court As Condition

- (2) An offer by a plaintiff to settle a claim in return for the payment of money by a defendant may include a term that the defendant pay the money into court; in that case, the defendant may accept the offer only by paying the money into court and notifying the plaintiff of the payment.
- (3) If a defendant offers to pay money to a plaintiff in settlement of a claim, the plaintiff may accept the offer with the condition that the defendant pay the money into court; if the offer is so accepted and the defendant fails to pay the money into court, the plaintiff may proceed as provided in rule 14.06.

Costs

- (4) If an accepted offer to settle does not deal with costs, the plaintiff is entitled:
- (a) in the case of an offer made by the defendant, to the plaintiff's disbursements assessed to the date the plaintiff was served with the offer;
 - (b) in the case of an offer made by the plaintiff, to the plaintiff's disbursements assessed to the date that the notice of acceptance was served.

Terms of Settlement

- (5) The terms of an accepted offer to settle may be set out in Terms of Settlement (Form 14B).

Failure to Comply With Accepted Offer

14.06 If a party to an accepted offer to settle fails to comply with the terms of the offer, the other party may:

- (a) make a motion to the court for judgment in the terms of the accepted offer;
or
- (b) continue the proceeding as if there had been no offer to settle.

Costs Consequences of Failure to Accept

14.07 (1) When a plaintiff makes an offer to settle that is not accepted by the defendant, the court may award the plaintiff an amount not exceeding twice the costs of the action, if the following conditions are met:

- 1. The plaintiff obtains a judgment as favourable as or more favourable than the terms of the offer.
- 2. The offer was made at least seven days before the trial.
- 3. The offer was not withdrawn and did not expire before the trial.

(2) When a defendant makes an offer to settle that is not accepted by the plaintiff, the court may award the defendant an amount not exceeding twice the costs awardable to a successful party from the date the offer was served, if the following conditions are met:

- 1. The plaintiff obtains a judgment as favourable as or less favourable than the terms of the offer.
- 2. The offer was made at least seven days before the trial.
- 3. The offer was not withdrawn and did not expire before the trial.

King v. Charlottetown (City) and Shaw's Towing, 2023 PECA 3

The Plaintiff was successful at trial, and damages were assessed against one defendant in the amount of \$6,200. The defendants had made an offer to settle pursuant to Rule 14.07. The Court of Appeal found that the offer lacked certainty and therefore, did not qualify as an offer under Rule 14.07(2). To be effective, an offer must be fixed and determinable. The Court of Appeal also found that the offer had been overvalued, and the judgment had been undervalued. The costs order was set aside and the defendant was ordered to pay \$1,308 to the plaintiff for trial costs, and \$1,775 for appeal costs.

Baxter v. Crosby's Auto Sales 2004 PESCTD 59

The parties allegedly entered into an agreement on the issues in dispute. The defendant made a motion under Rule 14.06 of the Small Claims Rules for judgment in accordance with the terms of the agreement. In the circumstances, there being an allegation by the plaintiff the agreement was entered into on the basis of a fraudulent misrepresentation by the defendant, the motion judge declined to grant judgment on the terms of the agreement. The proceeding was to continue to trial.

RULE 15

MOTIONS

NOTICE OF MOTION

- 15.01** (1) Unless the court orders otherwise, a motion shall be commenced by the filing of a notice of motion (Form 15A) and an affidavit (Form 15B).
- (2) A copy of the notice of motion and the affidavit shall be served at least seven days before the hearing date on every other party.
- (3) Except where a statute, these rules, or an order of a judge provides otherwise, the motion may be heard and decided by the prothonotary.

Affidavit in response

- 15.02** (1) A party who prepares an affidavit (Form 15B) in response to the moving party's notice of motion and affidavit shall serve it on every other party and file it, with proof of service, at least three days before the hearing date.

Costs

- 15.03** (1) No costs are recoverable in respect of a motion except that if the court is satisfied that a motion should not have been brought or opposed, or that the motion was necessary because of a party's default, the court may fix the costs of the motion and order that they be paid immediately.
- (2) The costs of a motion fixed by the court under subrule (1), in addition to disbursements, shall not exceed \$100 unless there are circumstances which, in the opinion of the judge or prothonotary, require a higher award.

RULE 16

NOTICE OF TRIAL

- 16.01** (1) At or after the settlement conference the clerk shall, if a trial is necessary, fix a date and time for the trial, and serve a Notice of Trial, Form 16A, on the parties.

RULE 17

ATTENDANCE AT TRIAL

FAILURE TO ATTEND

- 17.01** (1) If an action is called for trial and all the parties fail to attend, the trial judge may strike the action off the trial list.
- (2) If an action is called for trial and a party fails to attend, the trial judge may:
- (a) proceed with the trial in the party's absence;
 - (b) if the plaintiff attends and the defendant fails to do so, strike out the statement of defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the statement of claim, subject to subrule (3).
 - (c) if the defendant attends and the plaintiff fails to do so, dismiss the action and allow the defendant to prove the defendant's claim, if any; or
 - (d) make such other order as is just.
- (2.1) In the case described in clause (2)(b) or (c), the person with the claim is not required to prove liability against the party who has failed to attend, but is required to prove the amount of the claim.
- (3) In the case described in clause (2)(b), if an issue as to the proper place of trial under subrule 6.01(1) is raised in the statement of defence, the trial judge shall consider it and make a finding.
- (4) A judge may set aside or vary, on such terms as are just, a judgment obtained against a party who failed to attend at the trial.

Adjournment

- 17.02** Upon request of a party, or on the court's own motion, the court may postpone or adjourn a trial on such terms as are just, including the payment by one party to another of an amount as compensation for inconvenience and expense.

Setting Aside Judgment

- 17.03** (1) If a defendant satisfies the person who conducted the hearing that
- (a) they did not attend the hearing because
 - (i) they did not receive notice of it, or
 - (ii) they were unable to attend for good reason, and
 - (b) Judgment was entered against them

the person who conducted the hearing may direct the clerk to set aside the judgment and permit the defendant to file a statement of defence.

- (2) Where a judgment has been set aside under paragraph (1), the clerk shall inform the plaintiff.

RULE 18

EVIDENCE AT TRIAL

AFFIDAVIT

18.01 At the trial of an undefended action, the plaintiff's case may be proved by affidavit unless the trial judge or prothonotary order otherwise.

Inspection

18.01.1 The trial judge may, in advance of a trial and in the presence of the parties or their representatives, inspect any real or personal property concerning which a question arises in the action.

Written Statements and Documents

18.02 (1) A written statement or document described in subrule (2) that has been served on all parties at least 14 days before the trial date shall be received in evidence unless the trial judge orders otherwise.

(2) Subrule (1) applies to the following written statements and documents:

1. The signed written statement of any witness, including the written report of an expert, to the extent that the statement relates to facts and opinions to which the witness would be permitted to testify in person.
2. Any other document, including but not limited to a hospital record or medical report made in the course of care and treatment, a financial record, a bill, documentary evidence of loss of income or property damage, and a repair estimate.

Name, Telephone Number, Email Address and Address of Witness or Author

(3) A party who serves on another party a written statement or document described in subrule (2) shall append to or include in the statement or document the name, telephone number, email address and address for service of the witness or author.

(4) A party who has been served with a written statement or document described in subrule (2) and who wishes to cross-examine the witness or author may summon them as a witness under subrule 18.03(1).

Where Witness or Author is Summoned

(5) A party who serves a summons to witness on a witness or author referred to in subrule (3) shall, at the time the summons is served, notify all other parties of the summons.

Summons to Witness

18.03 (1) A party who requires the attendance of a person in Prince Edward Island as a witness at a trial may serve the person with a summons to witness (Form 18A) requiring them to attend the trial at the time and place stated in the summons.

(2) The summons may also require the witness to produce at the trial the documents or other things in their possession, control or power relating to the matters in question in the action that are specified in the summons.

(3) A summons to witness shall be served in accordance with subrule 8.01(5) and, at the same time, attendance money shall be paid or tendered to the witness in accordance with Rule 57 Tariff of the *Rules of Civil Procedure*.

- (4) Service of a summons to witness and the payment or tender of attendance money may be proved by affidavit.
- (5) A summons to witness continues to have effect until the attendance of the witness is no longer required.

Failure to Attend or Remain in Attendance

- (6) If a witness whose evidence is material to the conduct of an action fails to attend at the trial or to remain in attendance in accordance with the requirements of a summons to witness served on them, the trial judge may, by warrant (Form 18B) directed to all police officers in Prince Edward Island, cause the witness to be apprehended anywhere within Prince Edward Island and promptly brought before the court.
- (7) On being apprehended, the witness may be detained in custody until their presence is no longer required or released on terms as are just, and may be ordered to pay the costs arising out of the failure to attend or remain in attendance.

Abuse of Power to Summon Witness

- (8) If satisfied that a party has abused the power to summon a witness under this rule, the court may order that the party pay directly to the witness an amount as compensation for inconvenience and expense.

RULE 19

COSTS

EXPENSES

Unsuccessful party to pay successful party's expenses

19.01 Unless the court orders otherwise, an unsuccessful party shall pay to the successful party the following expenses:

- a) any fees the successful party paid for filing any documents;
- b) reasonable amounts the successful party paid for serving any documents; and
- c) any other reasonable charges or expenses the successful party incurred that the court considers directly relate to the conduct of the proceeding.

Compensation for unnecessary expenses

19.02 The court may order a party whose conduct causes another party to incur unnecessary expenses to pay all or part of those expenses.

COSTS

Limit

19.03 The court may order a party to pay the other party's costs of up to 15% of the amount claimed or of the value of the property sought to be recovered.

Penalty

19.04 Notwithstanding Rule 19.03, the court may order a party to pay the other party's costs in an amount greater than 15% of the amount claimed or of the value of the property sought to be recovered, if the court is satisfied that:

- a) the party brought an action or defended an action with no reasonable basis for success; or
- b) the party has unduly complicated or prolonged an action or has otherwise acted unreasonably.

King v. Charlottetown (City) and Shaw's Towing, 2023 PECA 3

Where an offer to settle under Rule 14.07(2) lacks certainty, so that a comparison between the judgment of the court and the offer is incomplete and inaccurate, the offer will not be taken into account in the determination of costs. Here, a litigant who did not conduct themselves with civility during court proceedings had their costs reduced by one-third

Grafton Management Inc. v Charlottetown (City), 2021 PECA 11

The court set out a framework for assessing costs of a self-represented litigant. Costs are in the discretion of the judge, and when exercising that discretion judges should be mindful of the purpose for awarding costs. Lost opportunity cost may be a factor but is not a condition precedent to an award of costs to a self-represented litigant. A self-represented litigant should not be compensated in relation to time and effort expended on a case which flow from the simple fact of being a litigant. Self-represented litigants are not entitled costs on the same basis as a litigant who retains counsel.

Peni Brook v. Town of Montague, 2016 PESC 33

The court stated that costs for self-represented parties may include expenses associated with activities reasonably required by the case. The Plaintiff was awarded costs for travel, research and filing fees.

Kelly v. Aliant Telecom, 2008 PESCTD 12

The general power of the court, in Rule 2.02, to act in the interest of justice permits the court to depart from Rule 19.02, which states that an award of costs shall not exceed 15 percent of the amount claimed. The court stated that it is implicit in Rule 19.02 that costs shall not exceed \$1,200 (15% of the \$8000 limit), barring unreasonable behaviour in the proceeding. The court awarded costs of \$1000 and disbursements of \$250.

Whiteway v. O'Halloran, 2007 PESCAD 22; (2007), Nfld. & P.E.I.R. 239

On an appeal from a decision in a small claims matter, costs are to be fixed in accordance with the provisions of Rule 57 because Rule 74, pursuant to subrule 1.01 thereof, is applicable only to proceedings in the small claims section of the trial division.

MRSB v. Cardinal & Ors., 2006 PESCTD 16

Subrule 19.02 of the Small claims Rules, while a factor to consider in awarding costs in a small claims proceedings, does not reduce or otherwise affect the authority of the court to award costs under s-s. 53(1) of the *Supreme Court Act*, R.S.P.E.I. 1988, Cap. S-10.

O'Hanley v. Wheatley & Gulf Surveys, 2005 PESCTD 20

The court allowed costs against the plaintiff under Rules 19.01, 19.02, 19.03, 19.04, in the amount of \$1,194 plus taxes in favour of one defendant, and \$3,364 plus taxes in favour of the second defendant.

MRSB v. Cardinal & Ors., 2006 PESCTD 16

Sub-rule 19.02 of the Small Claims Rules, while a factor to consider in awarding costs in a small claim proceeding, does not reduce or otherwise affect the authority of the court to award costs under s-s.53(1) of the *Supreme Court Act*, R.S.P.E.I. 1988, Cap. S-10.

RULE 20

ENFORCEMENT OF ORDERS

DEFINITIONS

20.01 In rules 20.02 to 20.10:

“**creditor**” means a person who is entitled to enforce an order for the payment or recovery of money;

“**debtor**” means a person against whom an order for the payment or recovery of money may be enforced.

Power of Court

20.02 (1) The court may:

- (a) stay the enforcement of an order of the court for such time and on such terms as are just; and
- (b) vary the times and proportions in which money payable under an order of the court shall be paid if it is satisfied that the debtor’s circumstances have changed.

Termination on Default

(2) An order for periodic payment terminates immediately if the debtor is in default under it for 21 days, unless the creditor waives the default.

GENERAL

20.03 In addition to any other method of enforcement provided by law,

- (a) an order for the payment or recovery of money may be enforced by:
 - (i) a writ of seizure and sale of personal property (Form 20C) under rule 20.06;
 - (ii) a writ of seizure and sale of land (Form 20D) under rule 20.07; and
 - (iii) garnishment under rule 20.08; and
- (b) a further order as to payment may be made under subrule 20.10(7).

Certificate of Judgment

20.04 (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor’s request, supported by an affidavit stating the amount still owing, issue a certificate of judgment (Form 20A).

(2) The certificate of judgment shall state:

- (a) the date of the order and the amount awarded;
- (b) the rate of post-judgment interest payable; and
- (c) the amount owing, including post-judgment interest.

Delivery of Personal Property

20.05 (1) An order for the delivery of personal property may be enforced by a writ of delivery (Form 20B) issued by the clerk to a sheriff, on the request of the person in whose favour the order

was made, supported by an affidavit of that person or the person's agent stating that the property has not been delivered.

Seizure of Other Personal Property

- (2) If the property referred to in a writ of delivery cannot be found or taken by the sheriff, the person in whose favour the order was made may make a motion to the court for an order directing the sheriff to seize any other personal property of the person against whom the order was made.
- (3) The sheriff shall keep personal property seized under subrule (2) until the court makes a further order for its disposition.

Storage Costs

- (4) The person in whose favour the order is made shall pay the sheriff's storage costs in advance and from time to time; if the person fails to do so, the seizure shall be deemed to be abandoned.

Writ of Seizure and Sale of Personal Property

- 20.06** (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, supported by an affidavit stating the amount still owing, issue to a sheriff a writ of seizure and sale of personal property (Form 20C), and the sheriff shall enforce the writ for the amount owing, post-judgment interest and the sheriff's fees and expenses.

Duration and Renewal

- (2) A writ of seizure and sale of personal property remains in force for five years after the date of its issue and for a further five years after its renewal.
- (3) A writ of seizure and sale of personal property may be renewed before its expiration by filing with the clerk a request to renew it.
- (4) A writ of seizure and sale of personal property shall show the creditor's name, address and telephone number and the name, address and telephone number of the creditor's lawyer or agent, if any.

Inventory of Property Seized

- (5) Within a reasonable time after a request is made by the debtor or debtor's agent, the sheriff shall deliver an inventory of personal property seized under a writ of seizure and sale of personal property.

Sale of Personal Property

- (6) Personal property seized under a writ of seizure and sale of personal property shall not be sold by the sheriff unless notice of the time and place of sale has been:
 - (a) mailed to the creditor at the address shown on the writ or the creditor's lawyer or agent and to the debtor at the debtor's last known address at least 14 days before the sale; and
 - (b) advertised in a manner that is likely to bring it to the attention of the public.

Writ of Seizure and Sale of Land

- 20.07** (1) If an order for the payment or recovery of money is unsatisfied, the clerk shall at the creditor's request, supported by an affidavit stating the amount still owing, issue to the sheriff specified by the creditor a writ of seizure and sale of land (Form 20D).

- (2) A writ for the seizure and sale of land issued under subrule (1) has the same force and effect and may be renewed or withdrawn in the same manner as a writ of seizure and sale of land issued under Rule 60 of the *Rules of Civil Procedure*.

Garnishment

- 20.08** (1) A creditor may enforce an order for the payment or recovery of money by garnishment of debts payable to the debtor by other persons.

Joint Debts Garnishable

- (2) If a debt is payable to the debtor and to one or more co-owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (15) may be garnished.

Obtaining Notice of Garnishment

- (3) A creditor who seeks to enforce an order by garnishment shall file with the clerk an affidavit for enforcement request (Form 20J) stating:
- (i) the date of the order and the amount awarded,
 - (ii) the place at which the order was made,
 - (iii) the rate of post-judgment interest payable,
 - (iv) the total amount of any payments received since the order was granted,
 - (v) the amount owing, including post-judgment interest,
 - (vi) the name and address of each person to whom a notice of garnishment is to be directed,
 - (vii) the creditor's belief that those persons are or will become indebted to the debtor, and the grounds for the belief, and
 - (viii) any particulars of the debts that are known to the creditor.
- (4) On the filing of the material required by subrule (3), the clerk shall issue notices of garnishment (Form 20E) naming as garnishees the persons named in the affidavit.
- (5) A notice of garnishment issued under subrule (4) shall name only one debtor and only one garnishee.

Service of Notice of Garnishment

- (6) The notice of garnishment shall be served by the creditor in accordance with subrule 8.01(6) and a copy filed with the Sheriff.
- (6.1) The creditor shall serve the notice of garnishment on the debtor within five days of serving it on the garnishee.
- (6.2) If the garnishee is a financial institution, the notice of garnishment and all further notices required to be served under this rule shall be served at the branch at which the debt is payable.
- (6.3) Service of the notice of garnishment may be proved by affidavit.

Garnishee Liable From Time of Service

- (7) The garnishee is liable to pay to the Sheriff any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment, within 10 days after service of the notice on the garnishee or 10 days after the debt becomes payable, whichever is later.
- (8) For the purposes of subrule (7), a debt of the garnishee to the debtor includes:
- (a) a debt payable at the time the notice of garnishment is served; and
 - (b) a debt payable (whether absolutely or on the fulfilment of a condition) within 24 months after the notice is served.

Payment by Garnishee to Sheriff

- (9) A garnishee who admits owing a debt to the debtor shall pay it to the Sheriff in the manner prescribed by the notice of garnishment, subject to section 17 of the *Garnishee Act*.

Equal Distribution Among Creditors

- (10) If the clerk has issued notices of garnishment in respect of a debtor at the request of more than one creditor and the Sheriff receives payment under any of the notices of garnishment, the Sheriff shall distribute the payment equally among the creditors who have filed a request for garnishment and have not been paid in full.

Disputing Garnishment

- (11) A garnishee referred to in subrule (12) shall, within 10 days after service of the notice of garnishment, file with the court a statement (Form 20F) setting out the particulars.
- (12) Subrule (11) applies to a garnishee who,
- (a) wishes to dispute the garnishment for any reason; or
 - (b) pays to the Sheriff less than the amount set out in the notice of garnishment as owing by the garnishee to the debtor, because the debt is owed to the debtor and to one or more co-owners or for any other reason.

Service on Creditor and Debtor

- (13) If the garnishee's statement indicates that the debt is owed to the debtor and to one or more co-owners, the garnishee shall also serve copies of the statement on the creditor and the debtor.

Notice to Co-owner of Debt

- (14) A creditor who is served with a garnishee's statement under subrule (13) shall forthwith send to the co-owners of the debt, in accordance with rule 8.01(10), a notice to co-owner of debt (Form 20G) and a copy of the garnishee's statement.

Garnishment Hearing

- (15) At the request of a creditor, debtor, garnishee, co-owner of the debt or any other interested person, and upon service of a Notice of Garnishment Hearing, Form 20K, on the creditor, debtor, garnishee, co-owner of debt, and any other interested person, as the case may be, the court may
- (a) if it is alleged that the garnishee's debt to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of the claim;
 - (b) determine the rights and liabilities of the garnishee, any co-owner of the debt, the debtor and any assignee or encumbrancer;

- (c) vary or suspend periodic payments under a notice of garnishment; or
- (d) determine any other matter in relation to a notice of garnishment.

Time to Request Hearing

- (16) A person who has been served with a notice to co-owner of debt is not entitled to dispute the enforcement of the creditor's order for the payment or recovery of money or a payment made by the Sheriff unless the person requests a garnishment hearing within 30 days after the notice is sent.

Enforcement Against Garnishee

- (17) If the garnishee does not pay to the Sheriff the amount set out in the notice of garnishment and does not send a garnishee's statement, the creditor is entitled to an order against the garnishee for payment of the amount set out in the notice, unless the court orders otherwise.

Payment to Person other than Sheriff

- (18) If, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the Sheriff, the garnishee remains liable to pay the debt in accordance with the notice.

Effect of Payment to Sheriff

- (19) Payment of a debt by a garnishee with a notice of garnishment is a valid discharge of the debt as between the garnishee and the debtor and any co-owner of the debt to the extent of the payment.
- (20) Unless a hearing has been requested under subrule (15), the Sheriff shall, when proof is filed that the notice of garnishment was served on the debtor, distribute to a creditor payments received under a notice of garnishment as they are received.

Payment if Debt Jointly Owned

- (21) If a payment of a debt owed to the debtor and one or more co-owners has been made to the Sheriff, no request for a garnishment hearing is made and the time for doing so under subrule (16) has expired, the creditor may file with the Sheriff within 30 days after that expiry
 - (a) proof of service of the notice to co-owner; and
 - (b) an affidavit stating that the creditor believes that no co-owner of the debt is a person under disability, and the grounds for the belief.
- (22) The affidavit required by subrule (21) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.
- (23) If the creditor does not file the material referred to in subrule (21) the sheriff shall return the money to the garnishee.

Consolidation Order

- 20.09** (1) A debtor against whom there are two or more unsatisfied orders for the payment of money may make a motion to the court for a consolidation order.
- (2) The debtor shall file with the motion an affidavit stating:
 - (a) the names and address of the creditors who have obtained an order for the payment of money against the debtor;

- (b) the amount owed to each creditor;
- (c) the amount of the debtor's income from all sources, identifying them; and
- (d) the debtor's current financial obligations and any other relevant facts.

Notice of Motion

- (3) Notice of the motion and a copy of the affidavit shall be served on each of the creditors mentioned in the affidavit at least seven days before the hearing date.

Contents of Consolidation Order

- (4) At the hearing of the motion, the court may make a consolidation order setting out:
 - (a) a list of unsatisfied orders for the payment of money against the debtor, indicating in each case the date, court and amount, and the amount unpaid;
 - (b) the amounts to be paid into court by the debtor under the consolidation order; and
 - (c) the times of the payments.
- (5) The total of the amounts to be paid into court by the debtor under a consolidation order shall not exceed the portion of the debtor's income that is subject to seizure or garnishment under section 17 of the *Garnishee Act*.

Creditor May Make Submissions

- (6) At the hearing of the motion, a creditor may make submissions as to the amount and times of payment.

Further Orders Obtained After Consolidation Order

- (7) If an order for the payment of money is obtained against the debtor after the date of the consolidation order for a debt incurred before the date of the consolidation order, the creditor may file with the clerk a certified copy of the order; the creditor shall be added to the consolidation order and shall share in the distribution under it from that time.
- (8) A consolidation order terminates immediately if an order for the payment of money is obtained against the debtor for a debt incurred after the date of the consolidation order.

Enforcement Limited While Consolidation Order in Force

- (9) While the consolidation order is in force, no step to enforce the judgment may be taken or continued against the debtor by a creditor named in the order except issuing a writ of seizure and sale of land and filing it with the sheriff.

Termination on Default

- (10) A consolidation order terminates immediately if the debtor is in default under it for 21 days.

Effect of Termination

- (11) If a consolidation order terminates under subrule (8) or (10), the clerk shall notify the creditors named in the consolidation order, and no further consolidation order shall be made in respect of the debtor for one year after the date of termination.

Manner of Sending Notice

- (12) The notice that the consolidation order is terminated shall be sent by mail or email.

Equal Distribution Among Creditors

- (13) All payments into a consolidation account belong to the creditors named in the consolidation order who shall share equally in the distribution of the money.

- (14) The clerk shall distribute the money paid into the consolidation account at least once every six months.

RULE 21

REFEREE

- 21.01** (1) A referee shall assist the court by performing the advisory duties and functions that it directs.
- (2) A referee shall not make a final decision in any matter referred to them but shall report their findings and recommendations to the court.