

## COMMENCEMENT OF PROCEEDINGS

### RULE 14

#### ORIGINATING PROCESS

#### HOW PROCEEDING COMMENCED

##### **By Issuing Originating Process**

- 14.01** (1) All civil proceedings shall be commenced by the issuing of an originating process by the registrar of the court except where a statute provides otherwise and as provided in subrule (2).

##### **Exceptions**

- (2) A counterclaim or counterpetition that is only against persons who are already parties to the main action, and a crossclaim, shall be commenced by the delivery of the pleading containing the counterclaim, counterpetition or crossclaim, and the pleading need not be issued.

##### **Where Leave Required**

- (3) Where leave to commence a proceeding is required, it shall be obtained by motion.

##### **Relying on Subsequent Fact**

- (4) A party may rely on a fact that occurs after the commencement of a proceeding, even though the fact gives rise to a new claim or defence, and, if necessary, may move to amend an originating process or pleading to allege the fact.

#### PROCEEDING BY ACTION AS GENERAL RULE

- 14.02** Every proceeding in the court shall be by action, except where a statute or these rules provide otherwise.

#### ACTIONS - BY STATEMENT OF CLAIM OR NOTICE OF ACTION

##### **Statement of Claim**

- 14.03** (1) The originating process for the commencement of an action is a statement of claim (Form 14A (general) or 14B (mortgage actions)), except as provided by,
- (a) subrule (2) (notice of action);
  - (b) Rule 14.04 (divorce petition);
  - (c) Rule 27.03 (counterclaim against person not already a party);
  - (d) subrule 29.02(1) (third party claim);
  - (e) Rule 29.11 (fourth and subsequent party claims);
  - (f) Rule 76 (winding up of a company);

- (g) Rule 77 (proceeding under *Controverted Elections (Provincial Act)*);
- (h) Rule 78 (proceeding under *Controverted Election Act (Canada)*),and
- (i) a proceeding authorized by any statute of Prince Edward Island or Canada to be commenced by petition.

**Notice of Action**

- (2) Where there is insufficient time to prepare a statement of claim, an action other than a divorce action may be commenced by the issuing of a notice of action (Form 14C) that contains a short statement of the nature of the claim.
- (3) Where a notice of action is used, the plaintiff shall file a statement of claim (Form 14D) within thirty days after the notice of action is issued, and no statement of claim shall be filed thereafter except with the written consent of the defendant or with leave of the court obtained on notice to the defendant.
- (4) The notice of action shall not be served separately from the statement of claim.

**Information for Court Use**

- (4.1) Form 14F (Information for court use) shall be filed together with Form 14A, 14B, or 14C, as the case may be, as well as Forms 14E and 68A.
- (5) In an action commenced by issuing a notice of action the statement of claim may alter or extend the claim stated in the notice of action.

**DIVORCE ACTIONS - BY PETITION**

**14.04** The originating process for the commencement of a divorce action is a petition for divorce (Form 70A), except as provided by subrule 70.09(6) (counterpetition against person not already a party).

**APPLICATIONS - BY NOTICE OF APPLICATION**

**Notice of Application**

**14.05** (1) The originating process for the commencement of an application is a notice of application (Form 14E, 68A or 74A).

**Application under Statute to Supreme Court**

(2) Where a statute authorizes the commencement of a proceeding by an application to the Supreme Court or a judge thereof, the proceeding may be brought by application.

**Application Under Rules**

(3) A proceeding may be brought by application where these rules authorize the commencement of a proceeding by application or where the relief claimed is for,

- (a) the opinion, advice or direction of the court on a question affecting the rights of a person in respect of the administration of the estate of a deceased person or the execution of a trust;
- (b) an order directing executors, administrators or trustees to do or abstain from doing any particular act in respect of an estate or trust for which they are responsible;
- (c) the removal or replacement of one or more executors, administrators or trustees, or the fixing of their compensation;
- (d) the determination of rights that depend on the interpretation of a deed, will, contract or other instrument, or on the interpretation of a statute, order in council, regulation or municipal by-law or resolution;
- (e) the declaration of an interest in or charge on land, including the nature and extent of the interest or charge or the boundaries of the land, or the settling of the priority of interest or charges;
- (f) the approval of an arrangement or compromise or the approval of a purchase, sale, mortgage, lease or variation of trust;
- (g) an injunction, mandatory order or declaration or the appointment of a receiver or other consequential relief when ancillary to relief claimed in a proceeding properly commenced by a notice of application; or
- (h) in respect of any matter where it is unlikely that there will be any material facts in dispute.

**TITLE OF PROCEEDING**

- 14.06** (1) Every originating process shall contain a title of the proceeding setting out the names of all the parties and the capacity by which they are made parties, if other than their personal capacity.
- (2) In an action other than a divorce action, the title of the proceeding shall name the party commencing the action as the plaintiff and the opposite party as the defendant.
- (3) In an application, the title of the proceeding shall name the party commencing the application as the applicant and the opposite party, if any, as the respondent and the notice of application shall state the statutory provision or rule, if any, under which the application is made.

**HOW ORIGINATING PROCESS ISSUED**

- 14.07** (1) (1) An originating process is issued by the registrar's act of dating, signing and sealing it with the seal of the Court and assigning to it a court file number.
- (2) (a) A copy of the originating process shall be filed in the court file when it is issued.

- (b) The filed copy of the originating process in the case of a contested application shall be returned to the party filing same or be destroyed by the registrar when the originating process for the contested application is filed with proof of service as required by Rule 38.07(4).
- (3) Where the originating process is filed electronically, it is issued when it is accepted by the court computer system and a court file number is assigned to it.

#### **TIME FOR SERVICE IN ACTIONS**

- 14.08** (1) Where an action is commenced by a statement of claim, the statement of claim shall be served within six months after it is issued.
- (2) Where an action is commenced by a notice of action, the notice of action and the statement of claim shall be served together within six months after the notice of action is issued.

#### **Simplified Procedure**

- (3) Subrules (1) and (2) are subject to subrules 75.1.06(1), (2), (3), and (4), which provide that in certain circumstances the Registrar shall make an order dismissing the action as abandoned.

#### **STRIKING OUT OR AMENDING**

**14.09** An originating process that is not a pleading may be struck out or amended in the same manner as a pleading.

#### **DISMISSAL OF ACTION WHERE DEFENDANT PAYS CLAIM**

- 14.10** (1) Where the plaintiff's claim is for money only, a defendant, on paying within the time prescribed for delivery of a defence or at any time before he is noted in default, the amount of the plaintiff's claim and the amount claimed for costs, may on motion have the court dismiss the action.
- (2) Where a defendant considers the amount claimed for costs to be excessive, he may pay, within the time prescribed for delivery of a defence or at any time before he is noted in default, the amount of the plaintiff's claim and the sum of \$100 for costs, and the court on motion may dismiss the action and may fix and order payment of the plaintiff's costs or may order payment of the plaintiff's costs as assessed under Rule 58.

*National Police of Colombia v. DASH 224, LLC 2014 PECA 16*

A legal proceeding can be commenced by way of action or application. Motions are made within an action or application to seek interlocutory or interim relief. A proceeding cannot be commenced solely to obtain interlocutory or interim relief.

*Ellis v. Callahan & Camp Abegweit* 2006 PESCTD 52

The court granted an order extending the time for service of the statement of claim on a defendant. If the defendant is alleging prejudice to him as the basis to oppose the extension of time, he must show it is prejudice which has been caused by the delay.

*Sogelco v. Island Sea Products et al.* 2006 PESCTD 3; (2006), 254 Nfld. & P.E.I. R. 301

Where there were issues of fact and credibility in dispute, the case did not qualify to be heard as an application pursuant to Rule 14.05(3)(h).

*Kloosterman v. Grimme* 2005 PESCTD 46; (2005), 251 Nfld. & P.E.I.R. 300

The relevant statute provided for issues to be determined by application. Accordingly, the court directed that pursuant to Rule 14.05(2) the issue between the parties could be brought before the court by way of notice of application. The court provided directions as to how the application could proceed.

*Keeler v. Prince Edward Island* (1998), 162 Nfld. & P.E.I.R. 55 (P.E.I.S.C.-T.D.)

A “notice of claim” served pursuant to s-s.10(2) of the Crown Proceedings Act does not meet the definition of “originating process” in Rule 14.03(1) and even if it could fit within the meaning of “notice of action”, it was not issued out of the court by the Registrar of the Court, as required by the Rules.

*MacDonald Estate v. Clow* [1997] 1 P.E.I.R. 314 (P.E.I.S.C.-T.D.)

An application was brought seeking a declaration the applicant was the owner of certain lands. The court held that as the issue to be resolved involved an interpretation of the deed held by the applicant, the application was properly brought under Rule 14.05(3). Confirmed on appeal. See: [1997] P.E.I.J. No. 97 (P.E.I.S.C.-A.D.) (Q.L.).

*Tignish Credit Union Ltd. v. Murphy* (1993), 109 Nfld & P.E.I.R. 287 (P.E.I.S.C.-T.D.)

Declaratory relief should be sought by an originating process. Rule 14.05 (3)(e) specifically contemplates it be sought by notice of application; however, if the parties agree and if the matter is in fact not dealt with in a summary fashion, the court may entertain the granting of such relief by way of notice of motion.