

RULE 17

SERVICE OUTSIDE PRINCE EDWARD ISLAND

DEFINITION

17.01 In Rules 17.02 to 17.06, "originating process" includes a counterclaim against only parties to the main action, and a crossclaim.

SERVICE OUTSIDE PRINCE EDWARD ISLAND WITHOUT LEAVE

17.02 A party to a proceeding may, without a court order, be served outside Prince Edward Island with an originating process or notice of a reference where the proceeding against the party consists of a claim or claims,

Property in Prince Edward Island

- (a) in respect of real or personal property in Prince Edward Island;

Administration of Estates

- (b) in respect of the administration of the estate of a deceased person,
 - (i) in respect of real property in Prince Edward Island, or
 - (ii) in respect of personal property, where the deceased person, at the time of death, was resident in Prince Edward Island;

Interpretation of an Instrument

- (c) for the interpretation, rectification, enforcement or setting aside of a deed, will, contract or other instrument in respect of,
 - (i) real or personal property in Prince Edward Island, or
 - (ii) the personal property of a deceased person who, at the time of death, was resident in Prince Edward Island;

Trustee Where Assets Include Property in Prince Edward Island

- (d) against a trustee in respect of the execution of a trust contained in a written instrument where the assets of the trust include real or personal property in Prince Edward Island;

Mortgage on Property in Prince Edward Island

- (e) for foreclosure, sale, payment, possession or redemption in respect of a mortgage, charge or lien on real or personal property in Prince Edward Island;

Contracts

- (f) in respect of a contract where,
 - (i) the contract was made in Prince Edward Island,
 - (ii) the contract provides that it is to be governed by or interpreted in accordance with the law of Prince Edward Island,
 - (iii) the parties to the contract have agreed that the courts of Prince Edward Island are to have jurisdiction over legal proceedings in respect of the contract, or
 - (iv) a breach of the contract has been committed in Prince Edward Island, even though the breach was preceded or accompanied by a breach outside Prince Edward Island that rendered impossible the performance of the part of the contract that ought to have been performed in Prince Edward Island,

Tort Committed in Prince Edward Island

- (g) in respect of a tort committed in Prince Edward Island;

Damage Sustained in Prince Edward Island

- (h) in respect of damage sustained in Prince Edward Island arising from a tort, breach of contract, breach of fiduciary duty or breach of confidence, wherever committed;

Injunctions

- (i) for an injunction ordering a party to do, or refrain from doing, anything in Prince Edward Island or affecting real or personal property in Prince Edward Island;

Support

- (j) for support;

Custody or Access

- (k) for custody of or access to a minor;

Invalidity of Marriage

- (l) to declare the invalidity of a marriage;

Judgment of a Court Outside Prince Edward Island

- (m) on a judgment of a court outside Prince Edward Island;

Authorized by Statute

- (n) authorized by statute to be made against a person outside Prince Edward Island by a proceeding commenced in Prince Edward Island;

Necessary or Proper Party

- (o) against a person outside Prince Edward Island who is a necessary or proper party to a proceeding properly brought against another person served in Prince Edward Island;

Person Resident or Carrying on Business in Prince Edward Island

- (p) against a person ordinarily resident or carrying on business in Prince Edward Island;

Counterclaim, Crossclaim or Third Party Claim

- (q) properly the subject matter of a counterclaim, crossclaim or third or subsequent party claim under these rules; or

Taxes

- (r) made by or on behalf of the Crown or a municipal corporation to recover money owing for taxes or other debts due to the Crown or the municipality.

SERVICE OUTSIDE PRINCE EDWARD ISLAND WITH LEAVE

- 17.03** (1) In any case to which Rule 17.02 does not apply, the court may grant leave to serve an originating process or notice of a reference outside Prince Edward Island.
- (2) A motion for leave to serve a party outside Prince Edward Island may be made without notice, and shall be supported by an affidavit or other evidence showing in which place or country the person is or probably may be found, and the grounds on which the motion is made.

ADDITIONAL REQUIREMENTS FOR SERVICE OUTSIDE PRINCE EDWARD ISLAND

- 17.04** (1) An originating process served outside Prince Edward Island

without leave shall disclose the facts and specifically refer to the provision of Rule 17.02 relied on in support of such service.

- (2) Where an originating process is served outside Prince Edward Island with leave of the court, the originating process shall be served together with the order granting leave and any affidavit or other evidence used to obtain the order.

MANNER OF SERVICE OUTSIDE PRINCE EDWARD ISLAND AND PROOF

- 17.05** (1) In this rule, "contracting state" means a contracting state under this Convention; and "Convention" means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters signed at The Hague on November 15, 1965.

General Manner of Service

- (2) An originating process or other document to be served outside Prince Edward Island in a jurisdiction that is not a contracting state may be served in the manner provided by these rules for service in Prince Edward Island, or in the manner provided by the law of the jurisdiction where service is made, if service made in that manner could reasonably be expected to come to the notice of the person to be served.

Manner of Service in Convention States

- (3) An originating process or other document to be served outside Prince Edward Island in a contracting state shall be served:
 - (a) through the central authority in the contracting state; or
 - (b) in a manner that is permitted by the Convention and that would be permitted by these rules if the document were being served in Prince Edward Island.

Proof of Service

- (4) Service may be proved,
 - (a) in the manner provided by these rules for proof of service in Prince Edward Island;
 - (b) in the manner provided by the law of the jurisdiction where service is made; or
 - (c) in accordance with the Convention, if service is made in a contracting state (Forms 17A to 17C).

MOTION TO SET ASIDE SERVICE OUTSIDE PRINCE EDWARD ISLAND

- 17.06** (1) A party who has been served with an originating process outside Prince Edward Island may move, before delivering a defence, a notice of intent to defend or a notice of appearance,
- (a) for an order setting aside the service and any order that authorized the service; or
 - (b) for an order staying the proceeding.
- (2) The court may make an order under subrule (1) or such other order as is just where the court is satisfied that,
- (a) service outside Prince Edward Island is not authorized by these rules;
 - (b) an order granting leave to serve outside Prince Edward Island should be set aside; or
 - (c) Prince Edward Island is not a convenient forum for the hearing of the proceeding.
- (3) Where on a motion under subrule (1) the court concludes that service outside Prince Edward Island is not authorized by these rules, but the case is one in which it would have been appropriate to grant leave to serve outside Prince Edward Island under Rule 17.03, the court may make an order validating the service.
- (4) The making of a motion under subrule (1) is not in itself a submission to the jurisdiction of the court over the moving party.

Dash 224, LLC v. Vector Aerospace Engine Services, 2016 PECA 4

A party does not take a step in a proceeding and does not thereby attorn to the jurisdiction by challenging the jurisdiction of the court.

An appearance under duress is not a voluntary appearance and does not constitute attornment to the jurisdiction.

HZPC Americas v. True North et al. 2006 PESCAD 02; (2006), 22 C.P.C. (6th) 300

The court was entitled to assume jurisdiction and because the respondents were unable to prove there was another more clearly convenient or appropriate forum than Prince Edward Island to adjudicate the two causes of action, the order of the motions judge staying the actions was set aside.

3315207 *Canada Inc. V. Decoexsa Global Logistics Inc.*, (1999) 171 Nfld. & P.E.I.R. 63 (P.E.I.S.C.-T.D.)

Plaintiff, a “Canadian Corporation” with its head office in Charlottetown, P.E.I., commenced an action against the defendant, a corporation doing business in the province of Quebec. The plaintiff claimed the balance owing under the terms of a contract it had made with the defendant. The plaintiff claimed the damages were sustained in Prince Edward Island thereby entitling the plaintiff to serve the defendant *ex juris* pursuant to Rule 17.02 (f)(i) and 17.02 (h). The defendant made a motion to stay the proceedings or in the alternative, for a declaration that Quebec was the most convenient forum for the hearing of the claim.

The Court found that because of the conflicting evidence as to where the contract was made, the plaintiff could not rely on Rule 17.02(f)(i). However, it could rely on Rule 17.02(h) as the damage it sustained was within P.E.I. although such damage may have arisen out of an alleged wrong committed elsewhere. The defendant’s motion was dismissed.