

## **RULE 3**

### **TIME**

#### **COMPUTATION**

- 3.01** (1) In the computation of time under these rules or an order, except where a contrary intention appears,
- (a) where there is a reference to time expressed as clear days, weeks, months, or years, or as "at least" or "not less than" a number of days, weeks, months, or years, the first and last day, week, month or year shall be excluded.
  - (b) in the calculation of time not expressed as clear days, or other period of time not referred to in clause (a), the first day shall be excluded and the last day included.
  - (c) where a period of less than seven days is prescribed, holidays shall not be counted;
  - (d) where the time for doing an act under these rules expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (e) service of a document, other than an originating process, made after 4 p.m. or at any time on a holiday shall be deemed to have been made on the next day that is not a holiday.
- (2) When a time of day is mentioned in these rules or in any document in a proceeding, the time referred to shall be taken as the time observed locally.

#### **EXTENSION OR ABRIDGMENT**

##### **General Powers of Court**

- 3.02** (1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.
- (2) A motion for an order extending time may be made before or after the expiration of the time prescribed.

##### **Times in Appeals**

- (3) An order under subrule (1) extending or abridging a time prescribed by these rules and relating to an appeal to the Court of Appeal may be made by a panel or by one judge of the Court of Appeal.

##### **Consent**

- (4) A time prescribed by these rules for serving, filing or delivering a document may be extended or abridged by consent.

#### **WHEN PROCEEDING MAY BE HEARD**

##### **Hearings Throughout the Year**

- 3.03** Proceedings may be heard throughout the year, except that during July and August and from December 24th to the following January 6th, both dates

inclusive, no trial of an action shall be held unless all parties consent or the court orders otherwise.

### **Court Office Hours**

- 3.04** (1) Court offices shall be open for business between 9:00 A.M. and 4:00 P.M. every day except a holiday, and except during the summer months when the Prince Edward Island Government offices open at 8:00 A.M. and close at 4:00 P.M., at which time the court offices shall be open for business at 8:30 A.M. and close at 3:30 P.M.
- (2) With the consent of the prothonotary an office may be open at any time where the relief sought requires urgency.

*Ayangma v. City of Charlottetown*, 2016 PECA 14

#### Rule 3.02

The court granted an application for an extension of time to file a Notice of Appeal. The court found that while the applicant did not meet the factors to be considered when granting an extension, it was in the interests of justice to do so.

*Thomas v. Thomas Estates*, 2016 PECA 13

#### Rules 3.02, 61.03, 61.03(1)

The court denied an application for an extension of time to commence two appeals. The court again cited the applicable factors:

1. Does the appeal have merit?
2. Was there a *bona fide* intention to appeal?
3. Is there a reasonable excuse for a delay in not filing within the prescribed time?
4. Are there exceptional or special circumstances justifying the extension of time?

Additionally, the court treats the question of whether the “*justice of the case*” requires that an extension be given as the governing principle and employs all of the mentioned factors, as well as prejudice to the other party, as factors. This approach facilitates a full assessment of the competing interests.

*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.

*Bentham v. Bentham* (1999), 170 Nfld. & P.E.I. R. 273 (P.E.I.S.C.-A.D.)

Application for an extension of time to file a Notice of Appeal. The decision of Mitchell J.A. in *Bryant v. Fenton* (1998) 166 Nfld. & P.E.I. R. 109 (P.E.I.S.C.-A.D.) was applied. Despite the fact the time for filing an appeal had elapsed twelve months prior to the application, an extension was granted on certain conditions.

*Bryant v. Fenton* (1998) 166 Nfld. & P.E.I. R. 109 (P.E.I.S.C.-A.D.)

The appellant sought an order, pursuant to Rule 3.02, to extend the time prescribed by Rule 61.07(1) for perfecting an appeal. Although a motion had been made to the Prothonotary pursuant to Rule 61.11(1) to dismiss the appeal, the Court extended the time for perfecting the appeal because it is desirable to have appeals decided on their merits and because the respondent would not suffer any prejudice by the granting of the extension. The appellant

was, however, ordered to pay the costs of the respondent in making the motion for dismissal to the Prothonotary.

*In the Matter of the Estate of Duncan MacCannell*, [1995] 2 P.E.I.R. 87 (P.E.I.S.C.A.D.)

The court denied an application for an extension of time to file a notice of appeal because the applicant did not demonstrate he had an arguable case on appeal.

*Ellis and Birt Ltd. v. Island Regulatory and Appeals Commission (P.E.I.)* (1993), 105 Nfld. & P.E.I.R. 65 (P.E.I.S.C.-A.D.)

The Rule is applicable to an application to extend or abridge the time for filing a notice of appeal pursuant to s.13 of the **Island Regulatory and Appeals Commission Act** R.S.P.E.I. 1988 Cap. I-11.

*D.B. and L.B. v. Director of Child Welfare* (1992), 100 Nfld. & P.E.I.R. 333 (P.E.I.S.C.-A.D.)

On an application to extend or abridge the time for filing a notice of appeal the Court must address the following questions: (1) does the appeal have merit; (2) was there a bona fide intention to appeal; (3) is there a reasonable excuse for the delay in not filing within the prescribed time and; (4) are there exceptional or special circumstances justifying the extension of time?