

Prince Edward Island

Small Claims Section Actions Where the Debt or Damages Claimed Do Not Exceed \$16,000.

RULES OF COURT

Rule 74

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**.

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.

The forms for proceedings in the Small Claims Section were amended, effective January 1, 2004. They are now published under separate cover. The publication containing the Rule and the Forms is available from the Registrar's Office or 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

20E&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

Rules: 1.03, 8.01, 9.01

9.03, 10.01(2) and (4), 11.01

14A 11.05, 11.06, 11.07, 12.01
20E, 20F, 20H, 20I, 20J, 20K, 20L, 20M 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

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 sub-rule 1.01 thereof, is applicable only to proceedings in the small claims section of the trial division.

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. The order was made pursuant to subrules 13.03(3)(b) and 12.02(1)(a) of the **Rules of Civil Procedure** governing cases in the Small Claims Section. The motions judge set aside the Prothonotary's order as he concluded the statement of claim did disclose a reasonable cause of action.

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.

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.

NOTE: The following cases were decided under old rule 74 repealed January 1, 2004.

City of Charlottetown v. MacIssac 2003 PESCTD 07

The court, on the motion of the defendant pursuant to Rule 74.01(4), agreed to apply Rule 21.01(b) to the proceeding commenced by the plaintiff in the Small Claims Section. The court went on to find that it was plain and obvious the statement of claim issued by the plaintiff disclosed no reasonable cause of action, and accordingly, it was struck out pursuant to Rule 21.01(b).

Grudich v. Babington 2002 PESCAD 20

Rule 61 does not apply to appeals from decisions in small claims matters and accordingly the deemed abandonment provisions of that Rule are not applicable to this case.

Martin v. East Coast Limber and Maibec Industries Inc. (1998), 166 Nfld. & P.E.I.R. 295 (P.E.I.S.C.-T.D.)

The plaintiff was successful in a small claims action against one of the defendants. The solicitor for the defendants made an application to the trial judge relying on Rule 49.10 seeking costs on the grounds that an offer, at least as favourable or more favourable than the judgment, had been made to the plaintiff prior to the hearing. Both defendants sought party and party costs, in accordance with Rule 74.22 (2)(d), from the date of the offer.

The trial judge found that while all the Rules, particularly Rule 74.22, apply to small claims procedures, the court is given a wide discretion in awarding costs; and in the circumstances of this case, where success was somewhat divided, each party should pay their own costs.

Dodds v. Bielert (1997), 151 Nfld. & P.E.I.R. 282 (P.E.I.S.C.-T.D.)

To establish service of the notice of claim by certified mail, the claimant or plaintiff need only prove by affidavit that the notice of claim was so posted.

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

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**RULES FOR THE 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;

“**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 his or her 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;

“**holiday**” means,

- (a) any Saturday or Sunday,
- (b) New year’s Day,
- (c) Good Friday,
- (d) Easter Monday,
- (e) Victoria Day,
- (f) Canada Day,
- (g) Civic Holiday,
- (h) Labour Day,
- (l) Thanksgiving Day,

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

and if New Year's Day, Canada Day 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;

“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 Provided For

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

General Heading

- (2) Every document in a proceeding, except a notice of garnishment and certificate of service, shall have a general heading in accordance with Form 1A.

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 his or her relationship, if any, to the person under disability;
 - (d) states that he or she has no interest in the proceeding contrary to that of the person under disability;
 - (e) acknowledges that he or she is aware of his or her liability to pay personally any costs awarded against him or her or against the person under disability; and
 - (f) states whether he or she is 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 defence a consent (Form 4B) 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 his or her relationship, if any, to the person under disability;
 - (d) states that he or she has no interest in the proceeding contrary to that of the person under disability; and
 - (e) states whether he or she is 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 defendant's claim.

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.

DEFENCE

5.02 If a proceeding is commenced against a partnership using the firm name, the partnership's 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

- 5.01** (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 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 move before a judge for leave to do so; the judge 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 directs.

Sole Proprietorships

- 5.06** (1) If a person carries on business in a business name other than his or her 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

- 6.01** (1) The plaintiff shall name in the Plaintiff's claim the place where he proposes the action is to be tried.
- (2) Where no place has been named for the trial of the action the place shall be where the plaintiff's claim was issued.
- 6.02** The court on the motion of any party may order that the trial be held at a place other than determined by Rule 6.01 where the court is satisfied that,
- (a) the balance of convenience substantially favours the holding of the trial in another place;
 - or
 - (b) it is likely that a fair trial cannot be had at the place named in the plaintiff's claim.
- 6.03** 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

Plaintiff's Claim

- 7.01** (1) An action shall be commenced by filing a plaintiff's claim (Form 7A) with the clerk, together with a copy of the claim for each defendant.

Contents of Claim, Attachments

- (2) The following requirements apply to the 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 fax number if any, of the lawyer or agent representing the plaintiff or, if the plaintiff is unrepresented, the plaintiff's address and telephone number, and fax number 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 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 plaintiff's 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 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 - Plaintiff's or Defendant's Claim

- 8.01** (1) A plaintiff's claim or defendant's claim (Form 7A or 10A) 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 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.

Defence

- (3) A defence shall be served by the clerk, by mail or by fax.

Notice of Default Judgment

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

Pre-Trial Conference Order

- (5) An order made at a pre-trial conference shall be served by the clerk by mail or by fax, 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 *Judicature Act* and 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 services as provided in rule 8.03.

Notice of Examination

- (9) A notice of examination (Form 20H) shall be served by the creditor on the debtor or person to be examined by mail, by courier, personally as provided in rule 8.02 or by an alternative to personal service as provided in rule 8.03.

Financial Statement

- (10) If the person to be examined is the debtor and the debtor is an individual, the creditor shall serve the notice of examination on the debtor together with a blank financial information form (Form 20I).
- (11) The notice of examination and, if applicable, the financial information form shall be served at least 30 days before the date fixed for the examination.

Notice of Contempt Hearing

- (12) A notice of a contempt hearing (Form 20I) shall be served by the creditor on the debtor personally as provided in rule 8.02.

Other Documents

- (13) A document not referred to in subrules (1) to (13) may be served by mail, by fax, 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 him or her;
 - (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 Her Majesty the Queen in right of Prince Edward Island, in accordance with section 23(2) of the *Crown Liability and Proceedings Act (Canada)*;
- (g) **Government of Prince Edward Island** - 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 his or her 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 plaintiff's claim or defendant's claim, service may also be made in accordance with subrule (7).

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 he or she has the client's authority to accept service.

Service of Claim by Mail to Last known Address

- (7) Service of a plaintiff's claim or defendant's 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.
- (8) Service under subrule (7) is deemed to have been effected on the 20th 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.
- (9) The affidavit of service shall not be completed before the day referred to in subsection (8).

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 The following constitute proof of service of a document:

- (1) If the document was served by a sheriff or sheriff's officer, a certificate of service (Form 8A) endorsed on a copy of the document.
- (2) In all other cases, an affidavit of service (Form 8B) made by the person effecting the service.

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 mail under subrule 8.03(7).

Service by Fax

- 8.08** (1) Service of a document by fax is deemed to be effective,
 - (a) on the day of transmission, if transmission takes place before 4 p.m. on a day that is not a holiday;
 - (b) on the next day that is not a holiday, in any other case.
- (2) A document containing 16 or more pages, including the cover page and the backsheet, may be served by fax only between 4 p.m. and 8 a.m. the following day, unless the party to be served consents in advance.

Failure to Receive Document

- 8.09** 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

DEFENCE

DEFENCE

9.01 A defendant who wishes to dispute a plaintiff's claim shall file a defence (Form 9A), with a copy for every plaintiff with the clerk:

- (a) within twenty days after being served with the claim where the Defendant is served in Prince Edward Island;
- (b) within forty days after service of the claim where the Defendant is served elsewhere.

CONTENTS OF DEFENCE, ATTACHMENTS

9.02 The following requirements apply to the defence:

- (1) It shall contain the following information:
 - i. The reasons why the defendant disputes the plaintiff's claim, expressed in concise non-technical language with a reasonable amount of detail.
 - ii. The defendant's name, address and telephone number, and fax number if any.
 - iii. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.
- (2) If the defence is based in whole or in part on a document, a copy of the document shall be attached to each copy of the defence, unless it is unavailable, in which case the defence shall state the reason why the document is not attached.

Admission of Liability and Proposal of Terms of Payment

9.03 (1) A defendant who admits liability for all or part of the plaintiff's claim but wishes to arrange terms of payment may in the defence admit liability and propose terms of payment.

Where No Dispute

- (2) If the plaintiff does not dispute the proposal within the 20-day period referred to in subsection (3),
 - (a) the defendant shall make payment in accordance with the proposal as if it were a court order;
 - (b) in case of failure to make payment in accordance with the proposal, 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) The plaintiff may dispute the proposal within 20 days after service of the defence by filing with the clerk and serving on the defendant a request for a hearing (Form 9B) before the prothonotary or other person appointed by the court.
- (4) The clerk shall fix a time for the hearing, allowing for a reasonable notice period after the date the request is served, and serve a notice of hearing on the parties.

Manner of Service

- (5) The notice of hearing shall be served by mail or fax.

Financial Information Form, Defendant an Individual

- (6) The clerk shall serve a financial information form (Form 20I) on the defendant, together with the notice of hearing, if the defendant is an individual.
- (7) Where a defendant receives a financial information form under subrule (6), he or she shall complete it and serve it on the creditor before the hearing, but shall not file it with the court.

Order

- (8) On the hearing, the prothonotary or other person may make an order (Form 9C) as to terms of payment by the defendant.

Failure to Appear, Default Judgment

- (9) If the defendant does not appear at the hearing, the clerk may sign default judgment against the defendant for the part of the claim that has been admitted and shall serve a notice of default judgment (Form 11A) on the defendant in accordance with subrule 8.01(4) immediately.

Failure to Make Payments

- (10) Unless the prothonotary or other person specifies otherwise in the order as to terms of payment, if the defendant fails to make payment in accordance with the order, the clerk shall sign judgment for the unpaid balance on the filing of an affidavit by the plaintiff swearing or affirming to the default and stating the amount paid and the unpaid balance.

RULE 10

DEFENDANT'S CLAIM

DEFENDANT'S CLAIM

- 10.01** (1) 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 plaintiff's 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 and may be issued within 20 days of the filing of the defence.

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 plaintiff's 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 fax number if any.
 - v. If the defendant is represented by a lawyer or agent, that person's name, address and telephone number, and fax number if any.
 - 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 plaintiff's claim.
 - 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 claim, unless it is unavailable, in which case the 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 plaintiff's 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 defence (Form 9A) with the clerk, together with a copy for each of the other parties or persons against whom the defendant's or plaintiff's claim is made.
- (2) On receiving the 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 alleges, in a defendant's claim, that a third party is liable to the defendant for all or part of the plaintiff's claim in the action, the third party may at the trial contest the defendant's liability to the plaintiff.

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 plaintiff's claim, and to a defence to a defendant's claim as if it were a defence to a plaintiff's claim.

Exception

- (2) However, 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 defence with the clerk within the prescribed time, the clerk may, when proof is filed that the claim was served, note the defendant in default.

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 for 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, Plaintiff's 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.

Trial when Defendant Noted in Default

- 11.04** (1) If a defendant has been noted in default, the plaintiff shall proceed to trial in respect of any claim other than one referred to in subrule 11.02(1), and the clerk shall, after noting the defendant in default, fix a trial date and send a notice of trial (Form 16A) to the plaintiff and any defendant who has filed a defence.

- (2) At the trial, the plaintiff is not required to prove liability against a defendant noted in default, but is required to prove the amount of the claim.

Consequences of Noting in Default

- 11.05** (1) A defendant who has been noted in default shall not file a defence or take any other step in the proceeding, except bringing a motion under subrule 11.06(1), without leave of the court or the plaintiff's consent.
- (2) Any step in the proceeding may be taken without the consent of a defendant who has been noted in default; the defendant is not entitled to notice of any step in the proceeding and need not be served with any other document.
 - (3) 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 claim or defence).
 3. Postjudgment proceedings against a debtor under rule 20.

Setting Aside Noting of Default by Court on Motion

- 11.06** The court 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) The Prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:
- (a) More than 180 days have passed since the date the claim was issued or an order was made extending the time for service of the 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.
 - (d) The Prothonotary has given 45 days notice that the action will be dismissed as abandoned.

Dismissal by Prothonotary - Defended Actions

- (2) The Prothonotary shall make an order dismissing an action as abandoned if the following conditions are satisfied, unless the court orders otherwise:

- (a) More than 150 days have passed since the date the first defence was filed.
- (b) No pre-trial 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 that the action will be dismissed as abandoned.

Transition

- (3) If an action was started before September 1, 2007, the following applies:
 - (a) The action or a step in the action shall be carried on under these rules on or after September 1, 2007.
 - (b) Despite paragraph 1, if a step in the action is taken on or after September 1, 2007, the timetable set out in subrules (1) and (2) shall apply as if the action started on the date on which the step was taken.
- (4) If an action was commenced before September 1, 2007 and no step is taken in the action on or after that date, the Prothonotary may make an order dismissing it as abandoned if,
 - (a) where an action is undefended, more than two years have passed since the date the claim was issued and the conditions set out in paragraphs (b), (c), and (d) of subrule (1) are satisfied; or
 - (b) more than two years have passed since the date the first defence was filed and the conditions set out in paragraphs (b), (c), and (d) of subrule (2) are satisfied.

Exception Where Terms of Settlement Signed

- (5) Subrules (1), (2) and (4) do not apply if terms of settlement (Form 14A) signed by all parties have been filed.

Exception Where Admission of Liability

- (6) Subrule (2) and clause (4)(b) do not apply if the 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

- (7) The Prothonotary shall serve a copy of an order made under subrule (1) or clause (4)(a) on the plaintiff and a copy of an order made under subrule (2) or clause (4)(b) on all parties to the action.

Consent Order

- 11.08** (1) The Prothonotary shall, on the filing of a request for Prothonotary's order (Form 11C), make an order granting the relief sought, including costs, if the following conditions are satisfied:
 - (a) The relief sought is,
 - (i) amending a claim or defence,
 - (ii) adding, deleting or substituting a party,

- (iii) 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,
 - (iv) restoring a matter that was dismissed under rule 11.01(1) to the list,
 - (v) noting that payment has been made in full satisfaction of a judgment or terms of settlement, or
 - (vi) dismissing an action.
- (b) The consent for Prothonotary's order (Form 11D) signed by all parties (including any party to be added, deleted or substituted) is filed.
 - (c) The consent states that no party that would be affected by the order is under disability.
 - (d) The consent states that each party has received a copy of the request for Prothonotary's order (Form 11C) and the consent for Prothonotary's order (Form 11D).

Service of order

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

Refusal to Make Order

- (3) Where the Prothonotary refuses to make an order, the clerk shall serve a copy of the request for Prothonotary's order (Form 11C), with reasons for the refusal, on all the parties.

Notice of Setting Aside of Enforcement Step

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

RULE 12

AMENDMENT

Right to Amend

- 12.01** (1) A plaintiff's or defendant's claim and a defence to a plaintiff's or defendant's claim 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 court, on motion, allows a shorter notice period.

Service on Added Party

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

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 Claim or Defence

- 12.02** (1) The court may strike out or amend a claim or defence or anything in a claim or defence 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 court may order the action to be stayed or dismissed or judgment to be entered accordingly, or may impose such terms as are just.

RULE 13

PRE-TRIAL CONFERENCES

Pre-trial Conference

- 13.01** (1) If a defence has been filed, the clerk shall fix a date for a pre-trial conference and serve a notice of pretrial conference on the parties, together with a list of proposed witnesses (Form 13A).
- (2) The judge or prothonotary conducting the pre-trial conference may impose sanctions for the failure of a party, who has received a notice of pre-trial conference, to attend the pre-trial conference, including
- (a) the award of costs;
 - (b) dismissal of part or all of the plaintiff's claim;
 - (c) noting the defendant in default.

Inadequate Preparation

- (3) If a person who attends a pre-trial 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 \$50 unless there are special circumstances.

Attendance

- 13.02** (1) A party and the party's lawyer or agent, if any, shall, unless the court orders otherwise, participate in the pre-trial conference,
- (a) by personal attendance; or
 - (b) 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 pre-trial conference, arrange to have ready telephone access to the other person throughout the conference.

Additional Pre-trial Conferences

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

Purposes of Pre-Trial Conference

- 13.03** (1) The purposes of a pre-trial 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 provide full disclosure between the parties of the relevant facts and evidence.
- (2) At pre-trial conference, the parties or their representatives shall openly and frankly discuss the issues involved in the action.

Disclosure

- (3) At least 14 days before the date of the pre-trial conference, each party shall serve on every other party and file with the court;
 - (a) a copy of any document to be relied on at the trial, including an expert report, not attached to the party's claim or defence; 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 (Form 13B), the matters discussed at the pre-trial conference shall not be disclosed to others until after the action has been disposed of.

Recommendations to Parties

- 13.04 (1) The judge or designated person conducting the pre-trial 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 pre-trial 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 Pre-Trial Conference

- (2) A judge or prothonotary conducting a pre-trial 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;
 - (b) an order amending or striking out a claim or defence under Rule 12;
 - (c) an order referring a matter to a referee under Rule 21; and
 - (d) an order for costs under subrule 13.01(4).
- (4) If the pre-trial conference is conducted by a designated person, a judge may, on that person's recommendation, make any order that could be made under subrule (2).

Memorandum

- (5) At the end of the pre-trial 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 pre-trial conference in an action shall not preside at the trial of the action unless the parties consent in writing.

Appeal From Prothonotary's Order

13.06 An appeal from an order made by the Prothonotary shall be commenced by serving a notice of appeal (Form 62A) 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 shall apply.

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.

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.

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.

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 14A).

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, and the judge may grant judgment accordingly;

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.

(3) If an amount is awarded under subrule (1) or (2) to an unrepresented party, the court may also award the party an amount not exceeding \$300 as compensation for inconvenience and expense.

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 party who has filed a claim or defence.

Costs

- 15.02** (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) shall not exceed \$50 unless there are special circumstances.

RULE 16

NOTICE OF TRIAL

- 16.01** (1) At or after the pre-trial conference the clerk shall, if a trial is necessary,
- (a) fix a date and time for the trial, or
 - (b) direct either of the parties to request, within 30 days, that a date and time be fixed for the trial.

Manner of Service

- (2) The notice of trial shall be served by personal service, mail or fax.

RULE 17

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 defence and dismiss the defendant's claim, if any, and allow the plaintiff to prove the plaintiff's 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.
- (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 defence, the trial judge shall consider it and make a finding.

Adjournment

- 17.02** 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.

Inspection

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

Setting Aside Judgment

- 17.04** (1) If a defendant satisfies the person who conducted the hearing that
- (a) he did not attend the hearing because
 - (i) he did not receive notice of it, or
 - (ii) he was unable to attend for good reason, and
 - (b) Judgment was entered against him
- the person who conducted the hearing may direct the clerk to set aside the judgment and permit the defendant to file a 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 orders otherwise.

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 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 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 him or her 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 him or her 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 his or her 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(6) and, at the same time, attendance money shall be paid or tendered to the witness in accordance with the tariff.
- (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 him or her, 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 his or her 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

DISBURSEMENTS

19.01 A successful party is entitled to have the party's disbursements, including any costs of effecting service, paid by the unsuccessful party, unless the court orders otherwise.

Limit

19.02 Notwithstanding any other Rule of the Rules of Court, except Rule 19.04 (Counsel fee) of these Small Claims Rules, an award of costs in the Small Claims Section, other than disbursements, shall not exceed 15 percent of the amount claimed or of the value of the property sought to be recovered unless the court considers it necessary in the interests of justice to penalize a party, counsel or agent for unreasonable behaviour in the proceeding.

Preparation and Filing

19.03 The court may allow a successful party the actual costs of filing pleadings.

Counsel Fee

19.04 If the amount claimed by a successful party exceeds \$500, exclusive of interest and costs, and the party is represented by a lawyer or student-at-law, the court may allow the party as a counsel fee at trial:

- (a) in the case of lawyer, an amount not exceeding \$300;
- (b) in the case of a student-at-law, an amount not exceeding \$150.

Compensation for Inconvenience and Expense

19.05 The court may order an unsuccessful party to pay to a successful party an amount not exceeding \$300 as compensation for inconvenience and expense, if:

- (a) the successful party is unrepresented;
- (b) the amount claimed exceeds \$500, exclusive of interest and costs; and
- (c) the court is satisfied that the proceeding has been unduly complicated or prolonged by the unsuccessful party.

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 enforce.

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.

Enforcement Limited While Periodic Payment Order in Force

(2) While an order for periodic payment 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

(3) An order for periodic payment terminates immediately if the debtor is in default under it for 21 days.

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 twelve months after the date of its issue and for a further twelve months after each 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 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(7) 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, 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 fax.

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.

Examination of Debtor or Other Persons

- 20.10** (1) If there is default under an order for the payment or recovery of money, the clerk shall, at the creditor's request, issue a notice of examination (Form 20H) directed to the debtor or other person.
- (2) The creditor's request shall be accompanied by
- (a) an affidavit setting out:
 - (i) the date of the order and the amount awarded,
 - (ii) the place where 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, and
 - (v) the amount owing, including post-judgment interest.

Service of Notice of Examination

- (3) The notice of examination shall be served in accordance with subrules 8.01(7) and (8).
- (4) The debtor, any other persons to be examined and any witnesses whose evidence the court considers necessary may be examined in relation to:

- (a) the reason for non payment;
- (b) the debtor's income and property;
- (c) the debts owed to and by the debtor;
- (d) the disposal the debtor has made of any property either before or after the order was made;
- (e) the debtor's present, past and future means to satisfy the order;
- (f) whether the debtor intends to obey the order or has any reason for not doing so; and
- (g) any other matter pertinent to the enforcement of the order.

Who May Be Examined

- (5) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, the sole proprietorship or any partner, may be examined on the debtor's behalf in relation to the matters set out in subrule (4).

Examinations Private

- (6) The examination shall be held in the absence of the public unless the court orders otherwise.

Order As To Payment

- (7) After the examination or if the debtor's consent is filed, the court may make an order as to payment.

Enforcement Limited While Order as to Payment in Force

- (8) While an order as to payment 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.

Contempt Hearing

- (9) The court may cite a person on whom a notice of examination has been served to be in contempt of court, and may order that he or she attend before the court for a contempt hearing, if the person
 - (a) fails to attend as required by the notice of examination, and the court is satisfied that the failure to attend is wilful; or
 - (b) attends and refuses to answer question.

Notice of Contempt Hearing

- (10) When an order for a contempt hearing is made under subrule (9), a notice (Form 20L) setting out the time, date and place of the hearing shall be
 - (a) sent to the creditor by mail or fax; and
 - (b) served on the person by the creditor in accordance with subrule 8.01(12).

Powers of Court at Contempt Hearing

- (11) At the contempt hearing, the court may:
 - (a) order that the person attend at an examination under this rule;
 - (b) make an order to payment; or
 - (c) order that the person be jailed for a period not exceeding 40 days.

Warrant of Committal

- (12) If an order is made under clause (11)(c), the clerk shall issue a warrant of committal (Form 20M) directed to all police officers in Prince Edward Island.
- (13) The warrant authorizes any police officer in Prince Edward Island to take the debtor or other person named in the warrant and deliver him or her to the nearest correctional institution.
- (14) The warrant remains in force for 12 months after its date of issue and may be renewed by order of the court made on the creditor's motion, for 12 months at each renewal.

Discharge

- (15) The person shall be discharged from custody on the order of the court or when the time prescribed in the warrant expires, whichever is earlier.

RULE 21

REFEREE

- 21.01** (1) A referee shall assist the court by performing the advisory duties and functions that it directs.
- (2) Without limiting the generality of subrule (1), if the court so directs, a referee shall conduct pre-trial conferences under Rule 13 and examinations under rule 20.10 (examination of debtor).
- (3) Except under subrule 9.03(5) (order as to terms of payment), a referee shall not make a final decision in any matter referred to him or her but shall report his or her findings and recommendations to the court.