

PARTIES AND JOINDER

RULE 5

JOINDER OF CLAIM AND PARTIES

JOINDER OF CLAIMS

- 5.01** (1) A plaintiff or applicant may in the same proceeding join any claims the plaintiff or applicant has against an opposite party.
- (2) A plaintiff or applicant may sue in different capacities and a defendant or respondent may be sued in different capacities in the same proceeding.
- (3) Where there is more than one defendant or respondent, it is not necessary for each to have an interest in all the relief claimed or in each claim included in the proceeding.

JOINDER OF PARTIES

Multiple Plaintiffs or Applicants

- 5.02** (1) Two or more persons who are represented by the same solicitor of record may join as plaintiffs or applicants in the same proceeding where,
- (a) they assert, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
- (b) a common question of law or fact may arise in the proceeding; or
- (c) it appears that their joining in the same proceeding may promote the convenient administration of justice.

Multiple Defendants or Respondents

- (2) Two or more persons may be joined as defendants or respondents where,
- (a) there are asserted against them, whether jointly, severally or in the alternative, any claims to relief arising out of the same transaction or occurrence, or series of transactions or occurrences;
- (b) a common question of law or fact may arise in the proceeding;

- (c) there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief;
- (d) damage or loss has been caused to the same plaintiff or applicant by more than one person, whether or not there is any factual connection between the several claims apart from the involvement of the plaintiff or applicant, and there is doubt as to the person or persons from whom the plaintiff or applicant is entitled to relief or the respective amounts for which each may be liable; or
- (e) it appears that their being joined in the same proceeding may promote the convenient administration of justice.

JOINDER OF NECESSARY PARTIES

General Rule

- 5.03** (1) Every person whose presence is necessary as a party to enable the court to adjudicate effectively and completely on the issues in a proceeding shall be joined as a party to the proceeding.

Claim by Person Jointly Entitled

- (2) A plaintiff or applicant who claims relief to which any other person is jointly entitled with the plaintiff or applicant shall join, as a party to the proceeding, each person so entitled.

Claim by Assignee of Chose in Action

- (3) In a proceeding by the assignee of a debt or other chose in action, the assignor shall be joined as a party unless,
- (a) the assignment is absolute and not by way of charge only; and
 - (b) notice in writing has been given to the person liable in respect of the debt or chose in action that it has been assigned to the assignee.

Power of Court to Add Parties

- (4) The court may order that any person who ought to have been joined as a party or whose presence as a party is necessary to enable the court to adjudicate effectively and completely on the issues in the proceeding shall be added as a party.

Party Added as Defendant or Respondent

- (5) A person who is required to be joined as a party under subrule (1), (2) or (3) and who does not consent to be joined as a plaintiff or applicant shall be made a defendant or respondent.

Relief Against Joinder of Party

- (6) The court may by order relieve against the requirement of joinder under this rule.

MISJOINDER, NON-JOINDER AND PARTIES INCORRECTLY NAMED

Proceedings not to be Defeated

- 5.04** (1) No proceeding shall be defeated by reason of the misjoinder or non-joinder of any party and the court may, in a proceeding, determine the issues in dispute so far as they affect the rights of the parties to the proceeding and pronounce judgment without prejudice to the rights of all persons who are not parties.

Adding, Deleting or Substituting Parties

- (2) At any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment.

Adding Plaintiff or Applicant

- (3) No person shall be added as plaintiff or applicant unless the person's consent is filed.

RELIEF AGAINST JOINDER

- 5.05** Where it appears that the joinder of multiple claims or parties in the same proceeding may unduly complicate or delay the hearing or cause undue prejudice to a party, the court may,
- (a) order separate hearings;
 - (b) require one or more of the claims to be asserted, if at all, in another proceeding;
 - (c) order that a party be compensated by costs for having to attend, or be relieved from attending, any part of a hearing in which the party has no interest;
 - (d) stay the proceeding against a defendant or respondent, pending the hearing of the proceeding against another defendant or respondent, on condition that the party

against whom the proceeding is stayed is bound by the findings made at the hearing against the other defendant or respondent; or

- (e) make such other order as is just.

MacWilliams v. Bank of Nova Scotia and Walker (1995), 130 Nfld. & P.E.I.R. 251 (P.E.I.S.C.-T.D.)

Motion by the plaintiff pursuant to Rules 5 & 26 seeking leave to amend the statement of claim by adding the third party as a defendant. The Court found: (1) there would be no prejudice to the third party as he had been involved in the proceeding since being joined by the defendant; (2) there were common questions of fact and thus common issues to be dealt with in the action against the defendant and the third party thereby causing a duplication if the plaintiff was compelled to initiate a separate action against the third party.

Simmonds v. Law Society of P.E.I. (1995), 125 Nfld. & P.E.I.R. 220 (P.E.I.S.C.-A.D.) appeal from *Simmonds v. Law Society of P.E.I.* (1994), 115 Nfld. & P.E.I.R. 50 (P.E.I.S.C.-T.D.)

The **Judicial Review Act** R.S.P.E.I. 1988 Cap. J-3 has not excluded the application of the Rules of Court. Therefore, Rules 5.03 and 5.04 apply to an application for judicial review and they allow the court to add a person as a party, if the court considers that person is necessary as a party for the court to adjudicate effectively and completely on the issues.

Continental Insurance Co. v. Lehman Manufacturing (Canada) Ltd. et al. (1991), 94 Nfld. & P.E.I.R. 354 (P.E.I.S.C.-T.D.)

On an application to join a party as a defendant it is not the role of the court to consider the merits of the factual basis for the proposed joinder of the party. The principles which should be considered in determining whether the joinder of defendants in one action is appropriate are, applying *Thames Steel Construction Ltd. v. Portman et al.* (1980), 111 D.L.R. (3d) 460 (Ont. H.C.) (1) whether the claims of the plaintiff arise out of the same transaction or series of transactions; (2) whether or not there is a common issue of law or fact of sufficient importance to render it desirable that the claims against the proposed defendant be tried together; (3) whether the expense and delay that would be caused by compelling the plaintiff to bring separate actions against the proposed defendant would be greatly out of proportion to the inconvenience, expense or embarrassment which that defendant would be put if the actions were tried together; (4) if the liability of the proposed defendant is contingent upon the plaintiff first establishing that he suffered a loss in respect of the transaction with the named defendant, then the application to join the proposed defendant may be considered premature. Where the

alternative claims arise out of the same transaction(s) and involve a common question of fact or law, then the governing principle in determining whether joinder should be allowed is the balance of convenience.