

**RULE 22**  
**SPECIAL CASE**

**WHERE AVAILABLE**

- 22.01** (1) Where the parties to a proceeding concur in stating a question of law in the form of a special case for the opinion of the court, any party may move before a judge to have the special case determined.
- (2) Where the judge is satisfied that the determination of the question may dispose of all or part of the proceeding, substantially shorten the hearing or result in a substantial saving of costs, the judge may hear and determine the special case.

**FACTUMS REQUIRED**

- 22.02** On a motion under Rule 22.01, each party shall serve on every other party to the motion a factum consisting of a concise argument stating the facts and law relied on by the party, and file it, with proof of service, in the court office where the motion is to be heard, at least two days before the hearing.

**REMOVAL INTO APPEAL DIVISION**

- 22.03** (1) A motion under Rule 22.01 may be made to a judge of the Appeal Division for leave to have a special case determined in the first instance by that court and the judge may grant leave where subrule 22.01(2) is satisfied and where the special case raises an issue in respect of which,
- (a) there are conflicting decisions of judges of the Trial Division and there is no decision of the Appeal Division of this Province;
  - (b) there is a conflict between decisions of courts at the appellate level in Prince Edward Island and an appellate court of another province, or between decisions of appellate courts of two or more other provinces; or
  - (c) one of the parties seeks to establish that a decision at the appellate court level in Prince Edward Island should not be followed.

- (2) A judge who grants leave under subrule (1) may give directions in respect of the time and form in which the case is to be listed for hearing and the exchange and filing of factums, and subject to any such directions, Rule 61 (appeals to an appellate court) applies with necessary modifications.

### **FORM OF SPECIAL CASE**

**22.04** A special case (Form 22A) shall,

- (a) set out concisely the material facts, as agreed on by the parties, that are necessary to enable the court to determine the question stated;
- (b) refer to and include a copy of any documents that are necessary to determine the question;
- (c) set out the relief sought, as agreed on by the parties, on the determination of the question of law; and
- (d) be signed by the solicitors for the parties.

### **HEARING OF SPECIAL CASE**

- 22.05** (1) On the hearing of a special case the court may draw any reasonable inference from the facts agreed on by the parties and documents referred to in the special case.
- (2) On the determination of the question of law the court may make an order or grant judgment accordingly.

### ***Rule 22***

*DesRoches v. Graham et al.* (1995), 132 Nfld. & P.E.I.R. 142 (P.E.I.S.C.-T.D.)

The parties, in a joint submission, sought the court's opinion by way of a special case on the issue as to whether the insurer was obligated to pay the plaintiff's claim under a policy of insurance it had issued.

*Redmond, Earl A. Inc. v. LaPierre (Blair) Inc.* (1995), 127 Nfld. & P.E.I.R. 329 (P.E.I.S.C.-T.D.)

The plaintiff and the defendant presented a joint submission by way of a special case on the basis that its determination may dispose of all or a part of the proceeding. The question before the court was whether the defendant, a sub-

contractor, was an unnamed insured in the Builders All Risk Policy taken out by the plaintiff, a general contractor, thereby preventing the insurer from bringing a subrogated action against the defendant.

*MacCallum v. Charlottetown (City)* (1995), 127 Nfld. & P.E.I.R. 300 (P.E.I.S.C.-A.D.)

The purpose of Rule 22 is to, where the parties agree and the judge deems appropriate, deal with certain questions of law which would either wholly or partially dispose of the action without the lengthy procedural complexities of a trial. The Court should insist upon compliance with the Rule before the special case is heard.