

## **RULE 5 – MULTIPLE CLAIMS AND PARTIES**

### **Multiple claims**

- (1) Subject to subrule (6), a person, whether claiming in the same or different capacities, may join several claims in the same proceeding.

### **Multiple parties**

- (2) Subject to subrule (6), a proceeding may be commenced by or against 2 or more persons where
  - (a) if separate proceedings were brought by or against each of them, a common question of law or fact would arise in all the proceedings, or
  - (b) a right to relief claimed in the proceedings, whether it is joint, several or alternative, is in respect of or arises out of the same transaction or series of transactions, or
  - (c) the court grants leave to do so.
- (3) Subject to any *Act*, statute, regulation or these rules or unless the court otherwise orders, a plaintiff or petitioner who claims relief to which any other person is jointly entitled shall join as parties to the proceeding all persons so entitled, and any of them who do not consent to be joined as a plaintiff or petitioner shall be made a defendant or respondent.
- (4) Where relief is claimed against a person who is jointly liable with some other person, the other person need not be made a party to the proceeding; but where persons may be jointly, but not severally, liable and relief is claimed against some but not all of these persons in a proceeding, the court may stay the proceeding until the other persons who may be liable are added as parties.
- (5) It is not necessary that every party be interested in all the relief sought in a proceeding, but the court may order that a party be compensated for being required to attend, or be relieved from attending, a part of a trial or hearing in which that party has no interest.

### **Separation**

- (6) Where a joinder of several claims or parties in a proceeding may unduly complicate or delay the trial or hearing of the proceeding or is otherwise inconvenient, the court may order separate trials or hearings or make any other order it thinks just.
- (7) Where a counterclaim or a third party proceeding ought to be disposed of by a separate proceeding, the court may so order.

## **Consolidation**

- (8) Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

## **Misjoinder or nonjoinder of parties**

- (9) No proceeding shall be defeated by reason of the misjoinder or nonjoinder of a party and the court may deal with the matter in controversy so far as it affects the rights and interests of the parties before it.

## ***Carriage by Air Act (Canada)***

- (10) In an action under the *Carriage by Air Act (Canada)* and the convention set out in that Act, a high contracting party to the convention who, for the purposes of that action and by virtue of that Act, is deemed to have submitted to the jurisdiction of the court, may be made a defendant subject to these rules.

## **Representative proceeding**

- (11) Where numerous persons have the same interest in a proceeding, other than a proceeding referred to in subrule (17), the proceeding may be commenced and, unless the court otherwise orders, continued by or against one or more of them as representing all or as representing one or more of them.
- (12) At any stage of a proceeding under subrule (11), the court, on the application of a party, may appoint one or more of the defendants or respondents or another person to represent one or more of the persons having the same interest in the proceeding, and where the court appoints a person not named as a defendant or respondent, it shall make an order under Rule 15 adding that person as a defendant or respondent.

## **Enforcement of order made in representative proceeding**

- (13) An order made in a proceeding under subrule (11) is binding on all the persons represented in the proceeding as parties, but shall not be enforced against a person not a party to the proceeding, except with leave of the court as follows:
- (a) an application for leave shall be served on the person against whom the applicant seeks to enforce the order, and that person may dispute liability to have the order enforced against him or her.
- (b) on the application, the court may order that the question of whether the order is enforceable against that person be determined in the manner it thinks just.

## **Representation of interested person who cannot be ascertained**

- (14) In a proceeding concerning

- (a) the administration of the estate of a deceased person,
  - (b) property subject to a trust, or
  - (c) the construction of a written instrument, including an *Act*, statute or regulation,
- the court may appoint one or more persons to represent a person, including an unborn or unascertained person, or the members of a class of persons who have a present, future, contingent or unascertained interest in, or who may be affected by the proceeding, and who, or some of whom, cannot readily be ascertained or found.

(15) If an appointment is made under subrule (14), an order in the proceeding is binding upon a person or class so represented.

(16) Where, in a proceeding referred to in subrule (14), a compromise is proposed and a person or member of a class interested in the compromise is not a party to the proceeding, but

(a) there is another person with the same interest who is a party and who assents to the compromise, or

(b) the absent person or member of the class is represented by a person appointed under subrule (14) who so assents,

the court, if satisfied that the compromise will be for the benefit of the absent person or member of the class and that it is expedient, may approve the compromise and order that it is binding on the absent person or member of the class and, unless the order has been obtained by fraud or non-disclosure of material facts, the person or member of the class is bound accordingly.

### **Representation of beneficiaries by trustees**

(17) A proceeding may be brought by or against trustees or personal representatives without joining a person having a beneficial interest in the trust or estate and, unless the court otherwise orders on the ground that the trustees or personal representatives could not or did not represent the interest of that person, an order granted or made in the proceeding is binding on that person.

(18) Subrule (17) does not limit the power of the court to order a person having an interest to be made a party or to make an order under subrule (14).

### **Representation of deceased person interested in a proceeding**

(19) Where the estate of a deceased person has an interest in a matter in question in a proceeding, but there is no personal representative, the court may proceed in the absence of a person representing the estate of the deceased person or may appoint a person to represent the estate for the purposes of the proceeding, and an order made or granted in the proceeding binds the estate to the same extent as it would

have been bound had a personal representative of the deceased person been a party to the proceeding.

- (20) Before making an order under subrule (19), the court may require notice of the application to be given to a person having an interest in the estate.

**Declaratory order**

- (21) No proceeding shall be open to objection on the ground that only a declaratory order is sought, and the court may make binding declarations of right whether or not consequential relief is or could be claimed.

**Conduct of a proceeding**

- (22) The court may give the conduct of a proceeding to any person it thinks just.