

RULE 22 – THIRD PARTY PROCEDURE

Filing a third party notice

- (1) A party of record who is not a plaintiff may file a third party notice in Form 21 if the party of record alleges against any person (in this rule called "the third party"), whether or not the third party is a party to the action, that
 - (a) the party is entitled to contribution or indemnity from the third party in respect of a claim made against the party in the action,
 - (b) the party is entitled to any relief against the third party relating to or connected with the original subject matter of the action, or
 - (c) a question or issue relating to or connected with any relief claimed in the action or with the original subject matter of the action is substantially the same as a question or issue between the party and the third party and should properly be determined in the action.

Contents of a third party notice

- (2) A third party notice must contain a statement of claim.

When leave is required

- (3) A party of record may file a third party notice
 - (a) at any time with leave of the court, or
 - (b) without leave of the court,
 - (i) at any time before a notice of trial is delivered, or
 - (ii) if a notice of trial has been delivered, at least 120 days before the scheduled trial date.

Application for leave

- (4) Notice of an application for leave under subrule (3)(a) shall be
 - (a) served on the proposed third party, and
 - (b) delivered to all parties of record.

Service and delivery of a third party notice

- (5) A party who files a third party notice shall promptly
 - (a) serve on each person named as a third party in the third party notice

(i) copies of that third party notice, and

(ii) if the third party was not a party of record at the time of the filing of the third party notice, copies of any pleadings that have previously been delivered by any party to the action, and

(b) deliver a copy of the third party notice to each party of record.

Application to set aside notice

(6) At any time, on application, the court may set aside a third party notice.

Appearance

(7) A third party may enter an appearance in Form 9 in accordance with Rule 14 and shall promptly deliver a copy of the appearance to each other party of record.

Statement of defence

(8) A third party who has entered an appearance shall file and deliver to each other party of record a statement of defence to the third party notice within 14 days after the later of

(a) the time limited for appearance, and

(b) the service of the third party notice.

Reply

(9) The party who issued the third party notice shall file and deliver any reply within 7 days after the statement of defence to the third party notice has been delivered.

Default of appearance

(10) If a third party has not entered an appearance to a third party notice and the time for doing so has expired, the party who filed the third party notice may apply for judgment in default of appearance against the third party and notice of that application shall be delivered to each other party of record.

Default of statement of defence

(11) If a third party has filed an appearance to the third party notice but has not filed a statement of defence and the time for filing the statement of defence has expired, the party who filed the third party notice may apply for judgment in default of statement of defence against the third party and notice of the application shall be delivered to each other party of record.

Relief

- (12) On an application under subrule (10) or (11), the court may grant any or all of the relief claimed in the third party notice.

Statement of defence to statement of claim

- (13) A third party who has entered an appearance may file and deliver a statement of defence to the plaintiff's statement of claim, raising any defence open to a defendant.

Contribution or indemnity claimed under the *Contributory Negligence Act*

- (14) A defendant who claims contribution or indemnity under the *Contributory Negligence Act* from a person shall do so,
- (a) if the person is a plaintiff, by counterclaim, or
 - (b) in any other case, whether or not the person is a party to the action, by third party notice.

Apportionment of liability claimed under the *Contributory Negligence Act*

- (15) A defendant who does not claim contribution or indemnity under the *Contributory Negligence Act* but who does claim an apportionment of liability under that *Act* shall claim that apportionment in the statement of defence.

When statement of defence to third party notice not required

- (16) A defendant against whom a third party notice is filed need not deliver a statement of defence to the third party notice and is deemed to deny the allegation of fact made in the third party notice and to rely on the facts pleaded in that party's statement of defence to the plaintiff's claim if
- (a) the third party notice contains no claim other than a claim for contribution or indemnity under the *Contributory Negligence Act*,
 - (b) the defendant has filed and delivered a statement of defence to the plaintiff's claim, and
 - (c) the defendant intends, in defending against the third party claim, to rely on the facts pleaded in that statement of defence and on no other facts.

Application for directions

- (17) A party affected by a third party procedure may apply to the court for directions.

Third party procedure not to prejudice the plaintiff

- (18) The court may impose terms on any third party procedure to limit or avoid any prejudice or unnecessary delay that might otherwise be suffered by the plaintiff as a result of that third party procedure.

Trial

- (19) An issue between the party filing the third party notice and the third party may be tried at the time the court may direct.