

RULE 60
ENFORCEMENT OF ORDERS

DEFINITIONS

60.01 In Rules 60.02 to 60.19,

- (a) "creditor" means a person who is entitled to enforce an order for the payment or recovery of money;
- (b) "debtor" means a person against whom an order for the payment or recovery of money may be enforced.

ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY

General

60.02 (1) In addition to any other method of enforcement provided by law, an order for the payment or recovery of money may be enforced by,

- (a) a writ of execution (Form 60A) under Rule 60.07;
- (b) garnishment under Rule 60.09;
- (c) a writ of sequestration (Form 60B) under Rule 60.10; and
- (d) the appointment of a receiver.

Recovery of Costs without Order Awarding Costs

- (2) Where under these rules a party is entitled to costs on the basis of a certificate of assessment of costs without an order awarding costs, and the costs are not paid within seven days after the certificate of assessment of costs is signed, the party may enforce payment of the costs by the means set out in subrule (1) on filing with the Registrar an affidavit setting out the basis of entitlement to costs and attaching a copy of the certificate of assessment.

ENFORCEMENT OF ORDER FOR POSSESSION OF LAND

60.03 An order for the recovery or delivery of the possession of land may be enforced by a writ of possession (Form 60C) under Rule 60.11.

ENFORCEMENT OF ORDER FOR RECOVERY OF PERSONAL PROPERTY

60.04 (1) An order for the recovery of possession of personal property other than money may be enforced by a writ of delivery (Form

60D), which may be obtained on filing with the Registrar a requisition together with a copy of the order as entered.

- (2) Where the property is not delivered up under a writ of delivery, the order may be enforced by a writ of sequestration (Form 60B) under Rule 60.10.

ENFORCEMENT OF ORDER TO DO OR ABSTAIN FROM DOING ANY ACT

60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under Rule 60.12.

ENFORCEMENT BY OR AGAINST A PERSON NOT A PARTY

- 60.06** (1) An order that is made for the benefit of a person who is not a party may be enforced by that person in the same manner as if he or she were a party.
- (2) An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if he or she were a party.

WRIT OF EXECUTION

Where Available Without Leave

- 60.07** (1) Where an order may be enforced by a writ of execution, the creditor is entitled to the issue of one or more writs of execution (Form 60A), on filing with the Registrar a requisition setting out,
- (a) the date and amount of any payment received since the order was made; and
 - (b) the amount owing and the rate of post-judgment interest,
- together with a copy of the order as entered and any other evidence necessary to establish the amount awarded and the creditor's entitlement.

Where Leave is Required

- (2) If ten years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a writ of execution shall not be issued unless leave of the court is first obtained.
- (3) An order granting leave to issue a writ of execution and sale ceases to have effect if the writ is not issued within one year after the date of the order granting leave, but the court may grant leave on a subsequent motion.

Order for Payment into Court

- (4) Where an order is for the payment of money into court, the writ of execution shall contain a notice that all money realized by the sheriff under the writ is to be paid in to court.

Order for Payment at Future Time

- (5) Where an order is for payment at or after a specified future time, the writ of execution shall not be issued until after the expiration of that time.

Delivery to Sheriff

- (6) When a writ of execution is delivered to a sheriff, the sheriff shall endorse thereon the date and time of delivery.

Duration and Renewal

- (7) A writ of execution issued against a party against whom judgment has been recovered remains in force so long as the judgment remains in force.
- (8) Where a writ of execution is filed with a sheriff, the sheriff shall, not less than thirty days nor more than sixty day before expiration of the writ, mail a notice of its expiration to the creditor, at the address shown on the writ or the most recent request to renew it.

Change of Debtor's Name

- (9) Where the name of a debtor named in a writ of execution is changed after the writ is issued, the creditor may file an affidavit with the sheriff setting out the change, and the sheriff shall,
- (a) amend the writ by adding the new name of the debtor following the words " now known as"; and
 - (b) amend the index of writs to show the new name.

Writ to Bear Creditor's Address

- (10) Every writ of execution shall bear the name and address of the creditor and his or her solicitor, if any.
- (10.1) If the address of the creditor's solicitor changes after the writ is issued, the creditor may have the new address noted on the writ by filing a requisition to that effect with the Sheriff

Property in Hands of Receiver

- (11) A writ of execution shall not be enforced against property in the hands of a receiver appointed by a court.

Seizure of Personal Property

- (12) Where personal property is seized under a writ of execution, the sheriff shall, on request, deliver an inventory of the property seized to the debtor or the debtor's agent or employee before or, where this is not practicable, within a reasonable time after the property is removed from the premises on which it was seized.

Sale of Personal Property

- (13) Personal property seized under a writ of execution shall not be sold by the sheriff unless notice of the time and place of the sale has been,
- (a) mailed to the creditor at the address shown on the writ or the creditor's solicitor and to the debtor at his or her last known address, at least ten days before the sale; and
 - (b) published in a newspaper of general circulation in the place where the property was seized.

Abortive Sale

- (14) Where personal property seized under a writ of execution remains unsold for want of buyers, the sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances.
- (15) On receipt of a notice under subrule (14), the creditor may instruct the sheriff in writing to sell the personal property in such a manner as the sheriff considers will realize the best price that can be obtained.

STATUTORY EXECUTION AGAINST LAND

Sale of Land

- 60.08** (1) A creditor may not take any step to sell land under a writ of execution until four months after the writ was filed with the sheriff or, where the writ has been withdrawn, four months after the writ was re-filed.
- (2) No sale of land under a writ of execution may be held until six months after the writ was filed with the sheriff or, where the writ has been withdrawn, six months after the writ was re-filed.
- (3) A sale of land shall not be held under a writ of execution unless notice of the time and place of sale has been,
- (a) mailed to the creditor at the address shown on the writ or to the creditor's solicitor and to the debtor at his or her last known address, at least thirty days before the sale;

- (b) published in the Royal Gazette once at least thirty days before the sale and in a newspaper of general circulation in the place where the land is situate, once each week for two consecutive weeks, the last notice to be published not less than one week nor more than three weeks before the date of sale; and
 - (c) posted in a conspicuous place in the local courthouse for at least thirty days before the sale.
- (4) The notice shall set out,
- (a) a short description of the property to be sold, including the property number;
 - (b) the short title of the proceeding;
 - (c) the time and place of the intended sale; and
 - (d) the name of the debtor whose interest is to be sold.
- (5) The Sheriff may adjourn a sale to a later date where the Sheriff considers it necessary in order to realize the best price that can be obtained in all the circumstances, and where the sale is adjourned, it may be conducted on the later date with such further notice, if any, as the Sheriff considers advisable.
- (6) Where a notice of sale of land under a writ of execution is published in The Royal Gazette before the writ expires, the sale may be completed by a sale and transfer of the land after the writ expires.

Abortive Sale

- (7) Where land seized under a writ of execution remains unsold for want of buyers, the Sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances.
- (8) On receipt of a notice under subrule (7), the creditor may instruct the Sheriff in writing to sell the land in such manner as the Sheriff considers will realize the best price that can be obtained.

GARNISHMENT

Where Available

- 60.09** (1) A creditor under an order for the payment or recovery of money may enforce it by garnishment of debts payable to the debtor by other persons.

Joint Debts Garnishable

- (1.1) Where 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 (16) may be garnished.

Where Leave Required

- (2) If ten years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a notice of garnishment shall not be issued unless leave of the court is first obtained.
- (3) An order granting leave to issue a notice of garnishment ceases to have effect if the notice is not issued within one year after the date of the order granting leave, but the court may grant leave again on a subsequent motion.

Obtaining Notice of Garnishment

- (4) A creditor under an order for the payment or recovery of money who seeks to enforce it by garnishment shall file with the registrar where the proceeding was commenced a requisition for garnishment (Form 60F) together with a copy of the order as entered, any other evidence necessary to establish the amount awarded and the creditor's entitlement, and an affidavit stating,
- (a) the date and amount of any payment received since the order was made;
 - (b) the amount owing, including postjudgment interest;
 - (c) details of how the amount owing and the postjudgment interest are calculated;
 - (c.1) the address of the debtor.
 - (d) the name and address of each person to whom a notice of garnishment is to be directed;
 - (e) that the creditor believes that those persons are or will become indebted to the debtor and the grounds for the belief;
 - (f) such particulars of the debts as are known to the creditor;
 - (g) where a person to whom a notice of garnishment is to be directed is not in Prince Edward Island, that the debtor is entitled to sue that person in Prince Edward Island to recover the debt, and the basis of entitlement to sue in Prince Edward Island; and
 - (h) where a person to whom a notice of garnishment is to be directed is not then indebted but will become indebted to

the debtor, such particulars of the date on and the circumstances under which the debt will arise as are known to the creditor.

- (5) The affidavit required by subrule (4) 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.
- (6) On the filing of the requisition and affidavit required by subrule (4), the registrar shall issue notices of garnishment (Form 60G) naming as garnishees the persons named in the affidavit and the creditor shall send a copy of each notice of garnishment to the sheriff of the county in which the debtor resides or, if the debtor resides outside Prince Edward Island, to the sheriff of the county in which the proceeding was commenced.

Service of Notice of Garnishment

- (7) The creditor shall serve the notice of garnishment,
 - (a) on the debtor, together with a copy of the affidavit required by subrule (4); and
 - (b) on the garnishee, with a blank garnishee's statement (Form 60H) attached.
- (8) The notice of garnishment shall be served by ordinary mail, or by personal service or an alternative to personal service under Rule 16.03.
- (9) A notice of garnishment may be served outside Prince Edward Island if the debtor would be entitled to sue the garnishee in Prince Edward Island to recover the debt.
- (10) Where the garnishee is a bank, loan or trust corporation, credit union, caisse populaire or the Province of Prince Edward Island Savings Office, the garnishee shall be served at the branch at which the debt is payable.

Garnishee Liable from Time of Service.

- (11) 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 or supplementary notice of garnishment, less \$10 for the cost of making each payment, within ten days after service on the garnishee or ten days after the debt becomes payable, whichever is later.

- (12) For the purposes of subrule (11), a debt of the garnishee to the debtor includes a debt payable at the time the notice of garnishment is served and a debt,
- (a) payable within ten years after the notice is served; or
 - (b) payable on the fulfilment of a condition within ten years after the notice is served.
- (13) For the purposes of subrule (11), a debt of the garnishee to the debtor does not include,
- (a) if the garnishee is a bank, loan or trust corporation, credit union, caisse populaire or the Province of Prince Edward Island Savings Office, money in an account opened after the notice of garnishment is served;
 - (b) if the garnishee is an employer, a debt arising out of employment that commences after the notice is served; or
 - (c) if the garnishee is an insurer, a debt payable under an insurance policy that is entered into after the notice is served.

Payment by Garnishee to Sheriff

- (14) 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.

When Garnishee Must Serve Statement

- (15) A garnishee who wishes for any reason to dispute the garnishment or who pays to the sheriff less than the amount set out in the notice of garnishment because the debt is owed to the debtor and to one or more co-owners or for any other reason shall, within 10 days after service of the notice of garnishment, serve on the creditor and the debtor and file with the court a garnishee's statement (Form 60H) setting out the particulars.

Notice to Co-owner of the Debt

- (15.1) When a creditor is served with a garnishee's statement that indicates that the debt is owed to the debtor and to one or more co-owners, the creditor shall forthwith serve the co-owners with a notice to co-owner of the debt (Form 60H.1) and a copy of the garnishee's statement.
- (15.2) The notice to co-owner of the debt and the copy of the garnishee's statement shall be served by personal service or an alternative to personal service under Rule 16.03.

Garnishment Hearing

- (16) On motion by a creditor, debtor, garnishee or any other interested person, the court may,
- (a) where it is alleged that the debt of the garnishee to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of his or her claim;
 - (b) determine the rights and liabilities of the garnishee, 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,

and the court may proceed in a summary manner, but where the motion is made to the Prothonotary and raises a genuine issue of fact or of law, it may be adjourned to be heard by a judge.

Enforcement against Garnishee

- (17) Where the garnishee does not pay to the sheriff the amount set out in the notice of garnishment as owing by the garnishee to the debtor and does not serve and file a garnishee's statement, the creditor is entitled on motion to the court, on notice to the garnishee, to an order against the garnishee for payment of the amount that the court finds is payable to the debtor by the garnishee, or the amount set out in the notice, whichever is less.

Payment by Garnishee to Person other than Sheriff

- (18) Where, 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.

Payment to Sheriff Discharges Garnishee

- (19) Payment of a debt by a garnishee in accordance with a notice of garnishment is a valid discharge of the debt, as between the garnishee and the debtor, to the extent of the payment, including the amount deducted for the cost of making payment under subrule (11).

Creditor to give Notice when Order Satisfied

- (20) When the amount owing under an order that is enforced by garnishment has been paid, the creditor shall forthwith serve a

notice of termination of garnishment (Form 60I) on the garnishee and on the sheriff.

Payment When Debt Jointly Owed

- (21) Where a payment of a debt owed to the debtor and one or more co-owners has been made to the sheriff, no notice of motion for a garnishment hearing is delivered and the time for doing so has expired, the creditor may file with the sheriff, within 30 days thereafter,
 - (a) proof of service of the notice to co-owner; and
 - (b) an affidavit stating that the creditor believes that the 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) Where the creditor does not file the material referred to in subrule (21), the sheriff shall return the money to the garnishee.

Garnishment Before Judgment

- (24) A person who has not obtained an order for the payment or recovery of money, but who has commenced an action for the payment or recovery of money, may file a motion for garnishment and subrules 60.09 (1) to (23) apply with the necessary modifications, except that:
 - (a) the affidavit filed with the motion shall state the nature of the cause of action, the amount of the debt, claim or demand and that it is due and owing by the person against whom the action has been commenced, after making all just discounts;
 - (b) the sheriff shall not pay out any funds garnisheed that are in his possession until the person who commenced the action obtains an order for the payment or recovery of money against whom the action has been commenced;
 - (c) the sheriff may pay any such funds to the Registrar pending the outcome of the action;
 - (d) an order under this section shall only be made by the Prothonotary or a judge.

WRIT OF SEQUESTRATION

Leave Required

- 60.10** (1) A writ of sequestration (Form 60B), directing a sheriff to take possession of and hold the property of a person against whom an order has been made and to collect and hold any income from the property until the person complies with the order, may be issued only with leave of the court, obtained on motion.
- (2) The court may grant leave to issue a writ of sequestration only where it is satisfied that other enforcement measures are or are likely to be ineffective.
- (3) In granting leave to issue a writ of sequestration, the court may order that the writ be enforced against all or part of the person's real and personal property.

Variation or Discharge

- (4) The court on motion may discharge or vary a writ of sequestration on such terms as are just.

WRIT OF POSSESSION

Leave Required

- 60.11** (1) A writ of possession (Form 60C) may be issued only with leave of the court, obtained on motion without notice or at the time an order entitling a party to possession is made.
- (2) The court may grant leave to issue a writ of possession only where it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.

Duration

- (3) A writ of possession remains in force for one year from the date of the order authorizing its issue, and may, before its expiry, be renewed by order for a period of one year from each renewal.

CONTEMPT ORDER

Motion for Contempt Order

- 60.12** (1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

- (2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.
- (3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for Arrest

- (4) A judge may issue a warrant (Form 60J) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

Content of Order

- (5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,
 - (a) be imprisoned for such period and on such terms as are just;
 - (b) be imprisoned if he or she fails to comply with a term of the order;
 - (c) pay a fine;
 - (d) do or refrain from doing an act;
 - (e) pay such costs as are just; and
 - (f) comply with any other order that the judge considers necessary,and may grant leave to issue a writ of sequestration under Rule 60.10 against the person's property.

Where Corporation is in Contempt

- (6) Where a corporation is in contempt, the judge may also make an order under subrule (5) against any officer or director of the corporation and may grant leave to issue a writ of sequestration under Rule 60.10 against his or her property.

Warrant of Committal

- (7) An order under subrule (5) for imprisonment may be enforced by the issue of a warrant of committal (Form 60K).

Discharging or Setting Aside Contempt Order

- (8) On motion, a judge may discharge, set aside, vary or give directions in respect of an order under subrule (5) or (6) and may grant such other relief and make such other order as is just.

Order that Act be done by Another Person

- (9) Where a person fails to comply with an order requiring him or her to do an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.
- (10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

FAILURE TO COMPLY WITH INTERLOCUTORY ORDER

60.13 Where a party fails to comply with an interlocutory order, the court may, in addition to any other sanction provided by these rules,

- (a) stay the party's proceeding;
- (b) dismiss the party's proceeding or strike out the party's defence; or
- (c) make such other relief as is just.

DISPUTE OF OWNERSHIP OF PROPERTY SEIZED BY SHERIFF

60.14 (1) A person who makes a claim in respect of property or the proceeds of property taken or intended to be taken by a sheriff in the execution of any enforcement process against another person shall give notice to the sheriff of the claim and his or her address for service.

- (2) On receiving a claim, the sheriff shall forthwith give notice of claim (Form 60L) to every creditor of the debtor who has filed an enforcement process with the sheriff, by mail addressed to the creditor at the address shown on the enforcement process, and the creditor shall within seven days after receiving the notice

give the sheriff notice in writing stating whether he or she admits or disputes the claim.

- (3) Where the sheriff,
 - (a) receives a notice admitting the claim from every creditor;
or
 - (b) receives a notice admitting the claim from the creditor at whose direction the sheriff took or intended to take the property and does not receive a notice disputing the claim from any other creditor,

he or she shall release the property in respect of which the claim is admitted.

Interpleader Proceedings

- (4) Where the sheriff,
 - (a) does not receive a notice disputing the claim; or
 - (b) does not receive a notice disputing the claim from the creditor at whose direction the Sheriff took or intended to take the property and receives a notice admitting the claim from every other creditor,

the Sheriff shall give notice to every creditor who has filed an enforcement process with the Sheriff, by mail addressed to the creditor at the address shown on the enforcement process that, unless the creditor seeks an interpleader order under Rule 43 within 60 days of the date of the notice, the Sheriff will release the property.

- (5) Where the Sheriff receives a notice disputing the claim, the Sheriff shall give notice to the person making the claim by mail addressed to the person's address for service that, unless the person seeks an interpleader order under Rule 43 within 60 days of the date of the notice, the Sheriff shall proceed as if the claim had been abandoned.

SHERIFF'S REPORT ON EXECUTION OF WRIT

- 60.15** (1) A party or solicitor who has filed a writ of execution with a sheriff may in writing require the sheriff to report the manner in which he or she has executed the writ of execution and the sheriff shall do so forthwith by mailing to the party or solicitor a sheriff's report (Form 60M).
- (2) Where the sheriff fails to comply with a request made under subrule (1) within a reasonable time, the party serving the

request may move before a judge for an order directing the sheriff to comply with the request.

REMOVAL OR WITHDRAWAL OF WRIT OF EXECUTION FROM SHERIFF'S FILE

Executed and Expired Writs of Execution

- 60.16** (1) When a writ of execution has been fully executed or has expired, the sheriff shall endorse a memorandum to that effect on the writ of execution, remove it from his or her file and retain it in a separate file of executed and expired writs.

Withdrawal of Writ of Execution

- (2) A party or solicitor who has filed a writ of execution with a sheriff may withdraw it as against one or more of the debtors named in it by giving the sheriff written instructions to that effect.

Withdrawal of Writ on Debtor's Request

- (3) When a judgment debt has been released by an order of discharge or by a certificate of full performance under the *Bankruptcy and Insolvency Act (Canada)*, the debtor may request that the writ be withdrawn by giving the sheriff,
- a. a written request to withdraw the writ (Form 60 N); and
 - b. a certified copy of the order of discharge or a copy of the certificate of full performance.
- (4) On receiving the documents described in subrule (3), the sheriff shall forthwith send the creditor, by mail addressed to the creditor at the address shown on the writ, a copy of the documents and a notice that the writ will be withdrawn unless the creditor,
- a. makes a motion for an order under the *Bankruptcy and Insolvency Act (Canada)* that the judgment debt is not released by the order of discharge or certificate of full performance; and
 - b. within 30 days after the date of the sheriff's notice, serves the sheriff with a copy of the notice of motion and a copy of all affidavits and other material served for use on the motion.
- (5) The sheriff shall withdraw the writ after the day that is 30 days after the date of the notice to the creditor, unless the creditor has taken the steps described in clause (4)(b). If the creditor takes the

steps described in clause (4)(b), the sheriff shall not withdraw the writ at the debtor's request unless the court orders otherwise.

- (6) If the creditor takes the steps described in clause 4(b), the sheriff shall not withdraw the writ at the debtor's request unless the court orders otherwise.
- (7) When a writ of execution is withdrawn, the sheriff shall record the date and time of the withdrawal in a memorandum on the writ of execution, and where it is withdrawn as against all debtors named in it, shall remove the writ or statutory execution from his or her file and return it to the person who withdrew it.

DUTY OF PERSON FILING WRIT WITH SHERIFF

- 60.17** (1) Where a writ of execution has been filed with a sheriff and any payment has been received by or on behalf of the creditor, the creditor shall forthwith give the sheriff notice of the payment.
- (2) Where an order has been satisfied in full, the creditor shall withdraw all writs of execution relating to the order from the office of any sheriff with whom they have been filed.
 - (3) Where the creditor fails to withdraw a writ of execution as required by subrule (2), the court on motion by the debtor may order that the writ of execution be withdrawn.

MOTION FOR DIRECTIONS

60.18 Where a question arises in relation to the measures to be taken by a sheriff in carrying out an order, writ of execution, or notice of garnishment, the sheriff or any interested person may make a motion for directions,

- (a) to the judge or Prothonotary who made the original order;
- (b) to a judge who had jurisdiction to make the original order;
or
- (c) where an appeal has been taken from the original order, to a judge of the Appeal Division.

EXAMINATION IN AID OF EXECUTION

Definitions

- 60.19** (1) In subrules (2) to (6),
- (a) "creditor" includes the sheriff and a person entitled to obtain or enforce a writ of execution, writ of possession, delivery or sequestration;

- (b) "debtor" includes a person against whom a writ of possession, delivery or sequestration may be or has been issued.

Examination of Debtor

- (2) A creditor may examine the debtor in relation to,
 - (a) the reason for non-payment or non-performance of the order;
 - (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 making of the order;
 - (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.
- (3) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, a partner or sole proprietor against whom the order may be enforced, may be examined on behalf of the debtor in relation to the matters set out in subrule (2).
- (4) Only one examination under subrule (2) or (3) may be held in a twelve month period in respect of a debtor in the same proceeding, unless the court orders otherwise.
- (5) Where it appears from an examination under subrules (2) to (4) that a debtor has concealed or made a way with property to defeat or defraud his or her creditors, a judge may make a contempt order against the debtor.

Examination of Person other than Debtor

- (6) Where any difficulty arises concerning the enforcement of an order, the court may,
 - (a) make an order for the examination of any person who the court is satisfied may have knowledge of the matters set out in subrule (2); and
 - (b) make such order for the examination of any other person as is just.

Service on Debtor

- (7) Despite clause 34.04(1)(a) (service on solicitor), a party who is to be examined in aid of execution shall be served with a notice of examination personally or by an alternative to personal service.

COSTS OF ENFORCEMENT

- 60.20** (1) A party who is entitled to enforce an order is entitled to the costs of the following steps on a partial indemnity scale, unless the court on motion orders otherwise:
1. An examination in aid of execution.
 2. The issuing, service, filing, enforcement and renewal of a writ of execution and notice of garnishment.
 3. Any order procedure authorized by these rules for enforcing the order.
- (2) A party entitled to costs under subrule (1) may include in or collect under a writ of execution or notice of garnishment,
- (a) \$50. for the preparation of documents in connection with issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;
 - (b) Disbursements paid to a sheriff, registrar, Prothonotary, court reporter or other public officer and to which the party is entitled under subrule (1), on filing with the Prothonotary a copy of a receipt for each disbursement;
 - (c) An amount determined in accordance with Tariff A for conducting an examination in aid of execution, on filing with the Prothonotary an affidavit stating that the examination was conducted; and
 - (d) Any other costs to which the party is entitled under subrule (1), on filing with the Prothonotary a certificate of assessment of the costs.
- (3) The Prothonotary may fix costs under clause (2)(c),
- a. if all parties consent; or
 - b. if the lawyer's fee does not exceed \$2,000, exclusive of goods and service tax.
- (4) Under clause (3)(b), the Prothonotary shall fix costs of \$750 plus disbursements.

- (5) When costs are to be fixed by the Prothonotary under subrule (3), the party who is entitled to costs shall file a bill of costs with the Prothonotary.

United Brotherhood of Carpenters and Joiners of America v. United Brotherhood of Carpenters and Joiners, Local 1338 (1997), 148 Nfld. & P.E.I.R. 152 (P.E.I.S.C.A.D.)

The judge granting an interlocutory injunction, remains vested with the jurisdiction to vacate or vary the interlocutory injunction upon proper application of any of the parties.

Horne et al. v. Canada (Attorney General) (1997), 149 Nfld. & P.E.I.R. 46 (P.E.I.S.C.-T.D.)

Application to set aside a post-judgment garnishment proceeding on the grounds of non-compliance with Rule 60.09(4). Situation distinguishable from that where the proceedings are pre-judgment. In exercising its discretion to cure or overlook a defect in compliance with the Rule, the court should employ a reasoned approach and distinguish between formalities and technicalities on the one hand and material defects on the other. What is necessary and contemplated by the Rule regarding post-judgment garnishment proceedings is that there be information and notice so that other interested creditors can be fully informed of the claim for priority and that the court can inquire into the respective rights of the parties.

Safe Haven Guest Home v. McKeil et al. (1996) 147 Nfld. & P.E.I.R. 153 (P.E.I.S.C.-T.D.)

Defendant debtors moved to set aside and quash a pre-judgment garnishee issued by the plaintiff creditor against the corporate defendant. Defendant submits that the plaintiff's documentation for garnishment are deficient.

Pre-judgment garnishment proceedings must be set aside if the procedure set out in the Rules of Court are not meticulously followed. It is not in the interest of justice for the Court to exercise its power to cure or overlook an irregularity unless the irregularity is very trivial in nature.

The affidavit must contain all the information required by Rule 60.09(21) and must be adapted to contain the information required by Rule 60.09(4) or be set aside as a nullity.

Read v. Read et al.(No.1) (1995), 131 Nfld. & P.E.I.R. 91 (P.E.I.S.C.-T.D.)

Action to set aside pre-judgment garnishment proceedings on basis that the form of documentation, the notice of garnishment and the affidavit filed in support of the requisition do not comply with the Rules of Court.

The Court interpreted Rule 60.09(21) to mean that, on filing a requisition for pre-judgment garnishment, the forms required to be filed when post-judgment garnishment is sought, and the information to be provided in those forms, shall be adopted to reflect that the process is being initiated pre-judgment. Therefore, the affidavit to be filed with the requisition must not only contain the information required by Rule 60.09(21)(a) but as well, must be adapted to contain the information required by Rule 60.09(4). The affidavit must contain:

- (1) nature of cause of action;
- (2) amount of debt, claim or demand;
- (3) that the amount is due and owing after making all just discounts;
- (4) how the amount owing, as well as interest, is calculated;
- (5) address of defendant(s);
- (6) how the plaintiff believes the garnishee will become indebted to the defendant and the grounds for forming this belief;
- (7) where the garnishee is not in P.E.I., there must be a statement in the affidavit that the defendant would be entitled to bring action to collect such debts in P.E.I. against the garnishee and the basis upon which the defendant would be so entitled;
- (8) where the garnishee is not at the time of swearing the affidavit indebted to the defendant, but will in the future become indebted, the particulars of the date and the circumstances under which such indebtedness will arise, as they are known to the plaintiff;
- (9) the affidavit need not be deposed to on the basis of the plaintiff's own knowledge, but may be deposed on the basis of the information and belief of the plaintiff, if the source of such information and belief is provided in the affidavit.

The court went on to say that when documentation filed to initiate pre-judgment garnishment does not comply with the Rules of Court, it is necessary, in the interests of justice, to set aside the garnishment proceedings.

A pre-judgment garnishee is an extraordinary remedy and the procedure prescribed for its use must be meticulously observed.

The court also interpreted Rule 60.09(24) as permitting a pre-judgment garnishee only in a case where the plaintiffs claim against the defendant is for a liquidated amount.

Tignish Credit Union Ltd. v. Murphy (1993), 109 Nfld. & P.E.I.R. 287 (P.E.I.S.C.-T.D.)

A writ of possession is the instrument utilized to enforce an order for the recovery or delivery of possession. Before the court can grant leave to issue a writ of possession, the party claiming its right to possession must first have obtained an order for the recovery or delivery of possession.