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Part 10 - Temporary Remedies

Rule 41 - Interlocutory Injunction and Receivership

Educational Notes

This Rule maintains the general law of injunctions obtained before a dispute is heard and determined on the merits. It replaces the previous R.43.01. The Rules no longer allow for an interim injunction that is essentially final. Rule 41.06 requires the moving party to (among other things) undertake to bring the claim to final determination without delay. If a permanent injunction or receivership is the final remedy sought, it must be obtained under Rule 75 - Injunction or Rule 73 – Receiver. Rule 41 does not apply to motions for the appointment of an interim receiver under the *Bankruptcy and Insolvency Act*.

41.01 - Definitions

In this Rule,

“interim injunction” and “interim receivership” mean an order for an injunction or receivership effective before a motion for an interlocutory injunction or interlocutory receivership is determined;

“interlocutory injunction” and “interlocutory receivership” mean an order for an injunction or receivership granted on notice of motion and effective before the trial of an action or hearing of an application to which the interlocutory injunction or interlocutory receivership relate;

41.02 - Scope of Rule 41

- (1) Nothing in this Rule alters the general law about obtaining an interim or interlocutory injunction before a dispute is heard and determined on the merits.
- (2) An interim receivership serves to control a corporation or other entity, or to protect assets, until a motion for an interlocutory receivership is determined.
- (3) An interlocutory receivership serves one of the following purposes:
 - (a) to control a corporation or other entity during a dispute about the corporation or entity;
 - (b) to liquidate some or all assets at issue so as to preserve the value of the assets pending the outcome of a dispute;
 - (c) to serve a function similar to an interlocutory injunction before default judgment, summary judgment, or the trial or hearing of a defended or contested proceeding for a final receivership order;
 - (d) otherwise, to achieve justice in a proceeding about a corporation, another entity, or assets.
- (4) An order for a permanent injunction or a final order for receivership may be obtained after an action or an application is determined, under Rule 73 - Receiver, or Rule 75 - Injunction.
- (5) This Rule has no application to a motion for the appointment of an interim receiver under the *Bankruptcy and Insolvency Act*.

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- (6) A party may make a motion for an interim or interlocutory injunction, or an interim or interlocutory receivership, in accordance with this Rule.
- (7) A judge may grant an injunction, or appoint a receiver, before the trial of an action or hearing of an application, in accordance with subsection 43(9) of the *Judicature Act* and this Rule.

41.03 - Motion on notice

A party who moves for an interlocutory injunction or interlocutory receivership must make the motion by notice of motion to be heard in chambers or by special appointment.

41.04 - Interim injunction or receivership

- (1) A party who files an undertaking as required by Rule 41.06 may make a motion for an interim injunction or interim receivership.
- (2) A judge who is satisfied on all of the following may grant the motion:
 - (a) the party claims an injunction or receivership as a final remedy in the proceeding, or it is in the interests of justice that an injunction or receivership be in place before determination of the claims in the proceeding;
 - (b) the party has moved, or will move, for an interlocutory injunction or interlocutory receivership and is proceeding without delay;
 - (c) an urgency exists and it cannot await the determination of the motion for an interlocutory injunction or interlocutory receivership;
 - (d) considering all of the circumstances, it is just to issue an order for an interim injunction or interim receivership.

41.05 - *Ex parte* interim injunction or receivership

- (1) A judge who is satisfied there are circumstances of sufficient gravity to justify making a motion for an interim injunction or interim receivership without notice may grant an *ex parte* order.
- (2) Rules 22.04 to 22.09 of Rule 22 - General Provisions for Motions apply to an *ex parte* motion for an interim injunction or interim receivership.

41.06 - Undertaking and award of damages

- (1) A party who makes a motion for an interim or interlocutory injunction, or an interim or interlocutory receivership, must file, with the *ex parte* motion or notice of motion, an undertaking to do all of the following:
 - (a) indemnify another party for losses caused by the interim or interlocutory injunction or the interim or interlocutory receivership if a judge who finally determines the claim is satisfied that the injunction or receivership is not justified in light of the findings on final determination;

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- (b) move without delay for an interlocutory injunction or interlocutory receivership, if the party successfully makes a motion for an interim injunction or interim receivership;
- (c) bring the party's claim to a final determination without delay.
- (2) A judge may assess damages, and grant an order for judgment on an undertaking after a claim is discontinued or dismissed.
- (3) A failure to proceed without delay may be dealt with under Rule 88 - Abuse of Process.

41.07 - Powers and duties of interim or interlocutory receiver

- (1) A judge who orders the appointment of an interim or interlocutory receiver may specify powers and duties of the receiver in the order.
- (2) A judge may vary the powers and duties of the receiver by subsequent order.
- (3) The duties of a receiver and powers of a judge, under Rule 73 - Receiver, apply to an interim or interlocutory receivership.

41.08 - Restraining or mandatory injunction

An interim or interlocutory injunction may be restraining, mandatory, or part restraining and part mandatory.

41.09 - Termination and variation

- (1) An interlocutory injunction or interlocutory receivership terminates when the claim to which it relates is discontinued, or the claim is finally disposed of and the final disposition does not provide for the interlocutory injunction or interlocutory receivership to continue as a final injunction or final receivership.
- (2) A judge who is satisfied that circumstances have changed may terminate, or vary the terms of, an interlocutory injunction or interlocutory receivership.

41.10 - Order in aid of another court

- (1) A judge who is satisfied on all of the following may, in a proceeding started under Rule 5 - Application, grant an order for an interim or interlocutory injunction or receivership to aid the similar order of a court of another jurisdiction:
 - (a) the order of the other court is made on a basis on which a similar order may be made in Nova Scotia;
 - (b) the order of the Supreme Court of Nova Scotia will aid the enforcement or effectiveness of the order of the other court;
 - (c) there is no proceeding under which the same issues in the proceeding before the other court are to be determined by the Supreme Court of Nova Scotia;
 - (d) the party against whom the order is made is protected in ways similar to the requirement for an undertaking to pay damages, and to proceed without delay, in Rule 41.06.

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- (2) An interlocutory injunction or interlocutory receivership order made by a superior court of another province or a territory of Canada is presumed to be made on a basis on which a similar order may be made in Nova Scotia.

Rule 42 - Preservation Order

Educational Notes

This Rule allows a party to move for an order preserving relevant evidence (such as an *Anton Piller* order under the previous R.37.04), property claimed in the proceeding, or assets that could satisfy a judgment (such as a *Mareva* injunction).

42.01 - Scope of Rule 42

- (1) A party to a proceeding may make a motion for an order preserving any of the following, in accordance with this Rule:
 - (a) evidence that is relevant to an issue in the proceeding;
 - (b) property claimed in the proceeding;
 - (c) assets that would be available to satisfy a judgment claimed in the proceeding.
- (2) A similar motion may be made to a prothonotary in limited circumstances under Rule 43 - Temporary Recovery Order, and Rule 44 - Attachment.

42.02 - Preservation of evidence, or property, by injunction

- (1) A party who files an undertaking as required by Rule 42.07 may make a motion for an injunction to preserve evidence relevant to an issue in, or to preserve property claimed in, a proceeding.
- (2) The motion must be made on notice to each party and the person in control of the evidence or property, unless the motion may be made *ex parte* under Rule 22.03, of Rule 22 - General Provisions for Motions.
- (3) The order may be restraining, mandatory, or part restraining and part mandatory.

42.03 - Preservation of property or evidence by seizure (Anton Piller or similar orders)

- (1) A party who files an undertaking as required by Rule 42.07 may make an *ex parte* motion for an order for seizure of evidence relevant to an issue in, or property claimed in, a proceeding.
- (2) The party must satisfy the judge that the party has met requirements of the common law for an order for seizure, such as the requirements on each of the following subjects:
 - (a) the need for an *ex parte* order to preserve the property or evidence;
 - (b) the strength of the party's case;
 - (c) the likelihood of the evidence or property being hidden, removed, lost, or destroyed;
 - (d) the seriousness of the damage to the party if the evidence or property is hidden, removed, lost, or destroyed.
- (3) An order for delivery or seizure must include terms for preserving the thing that is the subject of the order while causing the least intrusion on the party who holds it, and each of the following kinds of orders is less intrusive than the next:

Rule 42 - Preservation Order

- (a) a preservation order restraining the person who holds the thing from disposing of it, requiring the person to preserve it, or providing a combination of restraints and mandatory requirements necessary in the circumstances;
 - (b) seizure by injunction to put another person in control of the thing by forced delivery, such as a mandatory injunction requiring the person holding the thing to deliver it to the sheriff, an experienced insolvency practitioner, or another person approved by the judge;
 - (c) an order for seizure of the thing by the sheriff, an experienced insolvency practitioner, or another person approved by the judge.
- (4) The order must provide a time, date, and place for a rehearing on notice.
 - (5) The order may provide terms, including terms for storage of the thing until the rehearing.

42.04 - Entry, contempt, and use of force

- (1) An order for delivery or seizure may authorize a person appointed under the order to enter on lands or to take control of a moveable.
- (2) The order may include a direction requiring a person who receives notice of the order to cooperate in the delivery or seizure.
- (3) The provision in the order containing the direction may include the words "Failure to obey this direction may be punishable as a contempt of court."
- (4) The order must not authorize the use of force against a person, but it may authorize the person appointed under the order to open a building or moveable, including to break a lock or take down a barrier.
- (5) The order must require the appointed person to do all of the following:
 - (a) hold the thing delivered or seized;
 - (b) not permit access by a party until further order;
 - (c) file a report in writing about the enforcement of the order before the date set for the rehearing.

42.05 - Supervising lawyer

- (1) A judge who grants an order for delivery or seizure may appoint a lawyer to supervise the delivery or seizure.
- (2) The judge must appoint a lawyer to act as supervisor of a delivery or seizure that may include the delivery or seizure of a thing containing privileged information.
- (3) The person appointed to take delivery or make a seizure must follow the directions of a supervising lawyer.

42.06 - Rehearing

The provisions about rehearing an *ex parte* motion, in Rule 22 - General Provisions for Motions, apply to an *ex parte* motion for a preservation order.

42.07 - Undertaking and award of damages

- (1) A party who makes a motion for an order preserving evidence or property must file, with the *ex parte* motion or notice of motion, an undertaking to do all of the following:
 - (a) indemnify a person who has an interest in the property that is the subject of the order for losses caused by the enforcement of the order, if a judge who finally determines the claim is satisfied that the order is not justified in light of the findings on final determination;
 - (b) move without delay for an interlocutory injunction or interlocutory receivership, if the party successfully makes a motion for an interim injunction or interim receivership;
 - (c) bring the party's claim to a final determination without delay.
- (2) A judge may assess damages, and grant an order for judgment on an undertaking, after a claim is discontinued or dismissed.
- (3) A failure to proceed without delay may be dealt with under Rule 88 - Abuse of Process.

42.08 - Privilege and other confidential information

- (1) A preservation order that might cause one of the following to be taken from a person, or shown to anyone other than the person holding it, must include terms protecting confidential information:
 - (a) records that are likely to include communications between a lawyer and the lawyer's client;
 - (b) records that are likely to include other privileged communications;
 - (c) anything that, when inspected or tested, may give up a trade secret or otherwise disclose confidential information.
- (2) The terms of the order may include a process for making and determining claims of privilege or confidentiality and a requirement that a judge, the court, or an independent lawyer hold the thing preserved until the claims are determined.

42.09 - Sale of property

- (1) A judge who is satisfied that the property is perishable or is diminishing in value, or that it is otherwise in the interests of justice to order a sale, may order the sale of property, including land, that is the subject of a claim in a proceeding.
- (2) The property may be sold in accordance with Rule 74 - Other Sales by the Court.
- (3) The proceeds of the sale must be paid into court, unless the order for sale provides otherwise.
- (4) Interests in the property continue as interests in the proceeds of sale as if the proceeds were the property.

42.10 - Dispute about security interest

- (1) A party who claims property held, or claimed to be held, by another party under an instrument that secures the payment of money may pay into court the amount claimed,

interest calculated under the instrument to the date when the claim is likely to be finally determined, and estimated costs.

- (2) A judge may order the party claiming property under a security instrument to deliver the property to the party paying the money into court.
- (3) The security interest, and any other interest in the property, continues against the fund in court as if the fund were the property.

42.11 - Preservation of assets (Mareva Injunction)

- (1) A party who files an undertaking required by Rule 41.06, of Rule 41 - Interlocutory Injunction and Receivership, may make a motion for an interim or interlocutory injunction that does any of the following:
 - (a) restrains a party from disposing of assets available to satisfy a judgment claimed in the proceeding;
 - (b) restrains a party from removing assets from Nova Scotia;
 - (c) requires a party or other person to cooperate in preserving assets.
- (2) The party must satisfy the judge that the party has met requirements of the common law for an injunction preserving assets, such as the requirements on each of the following subjects:
 - (a) a claim for damages;
 - (b) the strength of the party's case;
 - (c) the risk that assets will be made unavailable to satisfy a judgment for the damages;
 - (d) the likelihood of recovery on a judgment for the damages if the assets are not preserved.
- (3) Rule 41 - Interlocutory Injunction and Receivership, applies to an injunction preserving assets, except an interlocutory injunction for preservation of assets continues until judgment is satisfied.
- (4) An injunction preserving assets may be directed to a person who has control of an asset belonging to a party claimed against, or in which the party has an interest.

Rule 43 - Temporary Recovery Order

Educational Notes

This Rule allows for a motion to the prothonotary to obtain possession of the property claimed in a proceeding. The motion must be accompanied by an affidavit proving the value of the property, the party's entitlement to it, and that the party obtained legal advice, and by a bond. It replaces the previous R.48.

43.01 - Scope of Rule 43

- (1) A temporary recovery order is available in limited circumstances, before a proceeding is heard and determined, to obtain possession of property claimed in the proceeding.
- (2) A party may obtain temporary possession of property, in accordance with this Rule.

43.02 - Motion for temporary recovery order

- (1) A party who claims possession of property in an action or application may make a motion to the prothonotary for a temporary recovery order.
- (2) The motion must be supported by an affidavit and either of the following:
 - (a) the bond of a recognized surety company;
 - (b) the party's own bond with, unless the prothonotary permits otherwise, two or more sureties.
- (3) If the party's own bond is filed with sureties, the motion must also be supported by affidavits of the sureties proving that, collectively, they have sufficient net worth to cover a claim in an amount one and a quarter times the value of the property.

43.03 - Affidavit

The party who seeks a temporary recovery order must provide reliable evidence of the value of the property and establish all of the following:

- (a) the party is entitled to possession of the property, the party who has possession of the property is not entitled to withhold possession from the party seeking the order, a demand for possession has been made, and the demand has been refused;
- (b) the party has retained a lawyer to advise the party about the motion, and received advice about the party's entitlement to possession and the party's obligation under the bond.

43.04 - Obligation and bond securing it

- (1) A party who obtains a temporary recovery order must bring the party's claim for possession to final determination without delay and, if the party's claim is dismissed, do both of the following:
 - (a) deliver the property to the party determined to be entitled to it;

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- (b) indemnify the party for losses resulting from the party having been deprived of possession.
- (2) The bond supporting the motion for the order must be for an amount one and a quarter times the value of the property and be payable when the party fails to return property, or to indemnify another party, as required by this Rule 43.04.
- (3) The bond must be executed by a recognized surety company, or be signed and sealed by the party who makes the motion and, unless the prothonotary permits otherwise, at least two sureties.
- (4) The bond must continue until either the court allows the claim of the party who makes the motion, or the court dismisses the claim and the party who obtains the temporary recovery order delivers the property to the party determined to be entitled to it and indemnifies the other party for losses resulting from having been deprived of the possession.
- (5) A party's own bond must contain the standard heading, be entitled "Bond for Temporary Recovery Order", be signed by the party, the sureties, and a subscribing witness, and include all of the following:
 - (a) a reference to the motion and statement of the purpose of the bond;
 - (b) a description of the property;
 - (c) the bond of the party seeking the order and of the sureties;
 - (d) the conditions of the bond;
 - (e) a term that the bond is for the benefit of each other party to the proceeding and the parties' heirs, representatives, successors, and assigns;
 - (f) a term that the bond is assignable at the direction of the court.
- (6) The bond may be in Form 43.04.
- (7) A surety may take security from the party who makes the motion for the temporary recovery order.

Forms

Bond for Temporary Recovery Order(43.04).

43.05 - Form of order

- (1) A temporary recovery order must contain the standard heading, be entitled "Temporary Recovery Order", provide a reference to the motion made for the order, and include all of the following provisions:
 - (a) a direction to the sheriff to immediately take possession of the property;
 - (b) a description of the property;
 - (c) authority to come on land, open a building, take control of a moveable, and break a lock or other barrier;
 - (d) an injunction to restrain a person who has notice of the order from obstructing the seizure and to require a person who has a means of access to provide access;
 - (e) authority for the sheriff to store and protect the property, a requirement the party who obtained the order pay all expenses of enforcing it, and permission for the sheriff not to act on the order if the party fails to make a payment or provide a reasonable advance;

Rule 43 - Temporary Recovery Order

- (f) a direction to the party who obtains the order to deliver a certified copy of the order to the party from whom the property is recovered and immediately advise the sheriff in writing of the time, date, and place of the delivery;
 - (g) if the property is land, a direction to the party who obtains the order to deliver a certified copy of the order to each person who has a recorded interest in the land and, on behalf of the sheriff, to record the order under the *Land Registration Act* or register it under the *Registry Act* ;
 - (h) a provision allowing the party from whom the property is recovered to reacquire possession of the property by filing a bond and obtaining a prothonotary's certificate in accordance with these Rules before the sheriff turns the property over to the party who obtains the order;
 - (i) a direction to the sheriff to turn the property over to the party who obtains the order, unless the certificate is delivered no more than five days after the day of the seizure, or the day a certified copy of the order is delivered to the party from whom the property is recovered, whichever is later;
 - (j) a requirement that the sheriff file a report of the actions taken under the order no more than fifty days after the date the order is issued and file a further report when further action is taken.
- (2) The temporary recovery order may be in Form 43.05.

Forms

Temporary Recovery Order(43.05).

43.06 - Party reacquiring property

- (1) A party who wishes to keep property that is the subject of, or reacquire property taken under, a temporary recovery order must obtain a prothonotary's certificate that the party has filed the required bond, and deliver the certificate to the sheriff before the property is turned over to the party who obtains the temporary recovery order.
- (2) A party who keeps or reacquires property by obtaining and delivering a prothonotary's certificate has the same duties as the party who obtains the recovery order to bring the party's claim for possession to final determination, to deliver the property to the other party if the claim is dismissed, and to indemnify the other party if the claim is dismissed.
- (3) The reacquiring party's bond must be in the same amount as the bond to obtain the temporary recovery order and conform with the requirements for a bond for a temporary recovery order as if the reacquiring party were the party who obtains the order, except the bond must be entitled "Bond to Retain Property" and describe the location, at which and the way the party holds or held, the property.
- (4) A party who files the party's own bond to reacquire or keep property must attach to the bond affidavits of the sureties proving that, collectively, the sureties have sufficient net worth to cover a claim in the amount of the moving party's bond.
- (5) The party's bond may be in Form 43.06A.
- (6) The prothonotary's certificate may be in Form 43.06B.
- (7) A surety may take security from the reacquiring party.

Forms

Bond to Retain Property(43.06A), Prothonotary's Certificate(43.06B).

43.07 - Other person reacquiring property

A person who is not a party and claims an interest in property seized, or to be seized, under a temporary recovery order may make a motion to be joined as a party or a motion for directions under Rule 43.11.

43.08 - How land is seized

The sheriff may take possession of land by any reasonable means, such as changing locks or boarding up premises.

43.09 - How corporate shares or securities are seized

- (1) The sheriff may seize corporate shares, or securities such as bonds or debentures, by delivering a copy of the recovery order to the issuing corporation and providing sufficient information about the holder that the corporation can identify the share, or security, to which the temporary recovery order relates.
- (2) A corporation to whom a temporary recovery order is delivered must do all of the following:
 - (a) freeze transactions in reference to shares or securities described in the recovery order;
 - (b) deliver to the sheriff a statement providing details of the shares or securities, including the measures that are required to record a transfer;
 - (c) abide by the sheriff's directions, or make a motion for directions by a judge;
 - (d) take all steps necessary to prevent an interest in the shares or securities from being transferred, except a transfer permitted by the sheriff or a judge.

43.10 - Sheriff to deliver property

- (1) The sheriff must hold property seized under a temporary recovery order until five days after the day the property is recovered or the day a copy of the order is delivered to the party from whom the property is recovered, whichever is later.
- (2) The sheriff must deliver the property to one of the following parties, in the following circumstances:
 - (a) the party who obtains the order, if no prothonotary's certificate is delivered during or before the five day period;
 - (b) the party who delivers a prothonotary's certificate to the sheriff before the property is delivered to the party who obtains the order.
- (3) A sheriff who is unsure to whom property should be delivered, or how to make delivery, may hold the property while the sheriff requests directions of a judge.

43.11 - Judge's directions

- (1) A judge may give directions on any subject regarding the enforcement of a temporary recovery order, the seizure of property, or the delivery of property, including on the following subjects:
 - (a) protection of property claimed to be unique;
 - (b) delivery of corporate shares or securities;
 - (c) disclosure of information about the property;
 - (d) sale of property that is perishable or likely to depreciate in value;
 - (e) sufficiency of a bond;
 - (f) a deadline for compliance with a provision in the temporary recovery order.
- (2) The directions prevail over the terms of the temporary recovery order.
- (3) A party, interested non-party, prothonotary, or sheriff may make a motion for directions.

43.12 - Termination by judge

- (1) A judge may terminate a temporary recovery order and give directions for release, assignment, or other disposition of the bond.
- (2) The judge who terminates a temporary recovery order may, instead, grant an interlocutory injunction or a preservation order.

43.13 - Final order, damages, and assignment

- (1) The court may grant a remedy available at law on final disposition of a claim to recovered property, such as any of the following remedies:
 - (a) an order for possession of the property;
 - (b) an injunction requiring one party to deliver the property to another;
 - (c) a declaration of interests in the property;
 - (d) damages for the value of the property, if it can no longer be delivered and the claim to possession of the party who temporarily acquired or reacquired the property is dismissed;
 - (e) damages for losses caused to a party deprived of the property but found to be entitled to possession.
- (2) A judge may direct the prothonotary to assign a bond to a party entitled to indemnification, and the judge may permit the party to recover up to the full limit of the bond or order a limit on the amount that may be recovered.

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Rule 44 - Attachment

Educational Notes

This Rule allows for an *ex parte* motion to the prothonotary for an order preserving assets that could satisfy a future judgment. Rule 44 replaces the previous R.49.

44.01 - Scope of Rule 44

- (1) An attachment order is available in limited circumstances to preserve assets to satisfy a judgment that may be granted in the future.
- (2) A party may obtain an order attaching assets of another party, in accordance with this Rule.

44.02 - Motion for attachment

- (1) A party who claims for damages against another party, and has evidence establishing one of the following grounds against the other party, may make an *ex parte* motion to the prothonotary for an attachment order:
 - (a) the other party resides out of Nova Scotia and does not appear to have assets in Nova Scotia, or assets that can be obtained by order or request of the court, sufficient to satisfy a judgment for the amount of the claim;
 - (b) the other party is a corporation not registered under the Corporations Registration Act;
 - (c) the other party evades delivery of the document originating the proceeding;
 - (d) the other party leaves, or is about to leave, Nova Scotia with intent to defraud a creditor or to avoid delivery of the document originating the proceeding;
 - (e) the other party does anything to put an asset out of the reach of a creditor, or is about to do so;
 - (f) the other party fraudulently incurred a debt or other liability at issue in the proceeding.
- (2) The motion must be supported by an affidavit and either the bond of a recognized surety company or, unless the prothonotary permits otherwise, the party's own bond with two or more sureties.

44.03 - Affidavit

- (1) The party who makes a motion for an attachment order must establish all of the following by affidavit:
 - (a) the amount of a claim for a debt or other liquidated demand, or the amount likely to be assessed on a claim for damages;
 - (b) the amount the party proposes for a limit to the attachment order, which amount may be equal to or less than the value of the moving party's claim;
 - (c) that there is evidence supporting the party's claim;

- (d) one or more of the grounds for obtaining an attachment;
 - (e) retention of a lawyer to advise the party about the motion and the fact, without details, that the lawyer provided advice about the requirements for an attachment and obligations under the bond.
- (2) A party who claims the other party fraudulently incurred a debt or other liability must provide all of the following by affidavit:
- (a) all evidence, without hearsay, reasonably available to the party that establishes the claim of fraud;
 - (b) reference to all information known to the party that tends to contradict the claim of fraud;
 - (c) disclosure of information known to the party that tends to support the claim of fraud but which is not reasonably available to the party for inclusion in an affidavit.
- (3) If the party's own bond is filed, the motion must also be supported by affidavits of two or more sureties proving that, collectively, they have sufficient net worth to cover a claim in an amount one and one quarter times the limit of the proposed attachment order.

44.04 - Obligation and bond securing it

- (1) The party who obtains an attachment order must bring the party's claim for judgment to final determination without delay and, if the claim is dismissed or it is allowed in an amount substantially less than the limit of the order, indemnify the other party for losses caused by the attachment.
- (2) The bond supporting the attachment must be for an amount one and one quarter times the limit of the attachment order.
- (3) It must be executed by a recognized surety company, or signed and sealed by the party who makes the motion and, unless the prothonotary permits otherwise, at least two sureties.
- (4) The bond must continue until both of the following conditions are fulfilled:
 - (a) the party who obtains the attachment order brings the claim to a final determination;
 - (b) either the court allows the claim, or the court dismisses the claim and the party who obtains the attachment order indemnifies the other party for losses resulting from the attachment.
- (5) A party's bond must be entitled "Bond for Attachment" and, otherwise, be as provided in Rule 43.04(5), of Rule 43 - Temporary Recovery Order, except references are to be to an attachment order rather than a recovery order.
- (6) The bond may be in Form 44.04.
- (7) A surety may take security from the moving party.

Forms

Bond for Attachment(44.04).

44.05 - Attachment

The interest of a party in one of the following kinds of property is attached when a certified copy of the attachment order is recorded, registered, or delivered as follows:

Rule 44 - Attachment

- (a) land under the *Land Registration Act*, when the copy, and the description referred to in subsection 71(1) of the *Land Registration Act*, are recorded in accordance with that legislation;
- (b) land under the *Registry Act*, when the copy, and the description and appraisal referred to in subsection 23(1) of the *Registry Act*, are registered in accordance with that legislation;
- (c) a moveable in the actual possession of the party, when the copy is delivered to the party;
- (d) a moveable held by another person, when the copy is delivered to the other person;
- (e) a debt or obligation due, or to come due, when the copy is delivered to the person who owes the debt or obligation;
- (f) corporate shares or securities, when the copy is delivered to the issuing corporation;
- (g) other property, when the copy is delivered to the party.

44.06 - Attachment order

- (1) The party who seeks an attachment order must state an amount as the limit of the value of the property to be taken and held by the sheriff, and the amount must be equal to, or less than, the value of the party's claim against the party whose property is to be attached.
- (2) An attachment order must contain the standard heading, be entitled "Attachment Order", provide a reference to the motion for the order, and include all of the following:
 - (a) a statement giving effect to the attachment, stating when it is effective, and limiting the value of property to be attached;
 - (b) a direction to the sheriff to take and hold, as a receiver, attached property about which the sheriff becomes informed including, if information is provided about it, a debt, rent, legacy, share, bond, debenture, other corporate security, currency, fund, demand, or demand accruing due;
 - (c) a mandatory injunction requiring the party, and a person who holds property in which the party has an interest, to immediately deliver the property to the sheriff, unless the sheriff allows otherwise in writing;
 - (d) a mandatory injunction requiring a person who owes a debt or other obligation to the party to pay the debt to the sheriff immediately or immediately after it comes due, and to liquidate and pay to the sheriff any other liquidable obligation as soon as possible under the terms for liquidating the obligation, unless the sheriff permits otherwise in writing;
 - (e) permission, but not a requirement, for the sheriff to make inquiries;
 - (f) a direction for the sheriff to act on relevant and reliable information;
 - (g) a mandatory injunction requiring a person to whom a certified copy of the order is delivered to answer the sheriff's questions and provide information about attached property;
 - (h) a direction to the party who obtains the attachment order to immediately deliver a certified copy of the attachment order to the party whose property is attached, and, if land is to be attached, to take steps on behalf of the sheriff to effect recording under the *Land Registration Act* or registration under the *Registry Act* ;

Rule 44 - Attachment

- (i) permission for the sheriff to make reasonable arrangements for storage and protection of property and a direction to the sheriff to make an inventory of the property taken and held including a description of each attached item, its location, and, if land is to be attached, its value, and provide a copy of the inventory to a party on request;
 - (j) as conditions of the sheriff acting on the order, requirements that the moving party pay the expenses of attachment, taking possession, and holding the property, and provide a reasonable advance required by the sheriff;
 - (k) a direction that the sheriff cease taking property when the value of the attached property reaches the stated limit;
 - (l) a provision that the attachment terminates, obligations to hold property or to make a payment to the sheriff cease, and the sheriff must return property delivered and pay to the other party debts collected under the order if the party whose property is attached delivers a prothonotary's certificate under Rule 44.07.
 - (m) a provision that the order continues until the claim for damages is dismissed or a judgment for the damages is satisfied, unless it is terminated by delivery of a certificate of the prothonotary or a judge orders termination;
 - (n) a requirement the sheriff file a report of the actions taken under the order no more than seventy days after the date the order is issued and file a further report when further action is taken;
 - (o) a statement saying "Failure to comply with this order may be punished as a contempt."
- (3) The attachment order may be in Form 44.06.
- (4) An attachment order does not attach property exempt from execution.
- N.S. Gaz. Pt. 1, [12/16/2009](#)*

Forms

Attachment Order(44.06).

44.07 - Terminating attachment

- (1) A party whose property is attached may cause the attachment order to be terminated by obtaining from the prothonotary, and delivering to the sheriff, the prothonotary's certificate that the party has filed a bond to terminate the attachment.
- (2) A party who causes an attachment order to be terminated must promise the party will have sufficient assets to satisfy a judgement in favour of the other party of a value equal to or greater than the amount of the limit of the attachment order.
- (3) The party's bond must conform with the requirements for a moving party's bond as if the party seeking termination were the party seeking attachment, except for each of the following differences:
 - (a) the bond must be entitled "Bond to Terminate Attachment";
 - (b) the bond must be payable when execution is levied against the party on the claim for which the attachment was issued and the execution fails to attach assets of a value equal to, or greater than, the amount of the limit of the attachment order;

Rule 44 - Attachment

- (c) the bond must continue until the claim for damages is dismissed, or the claim is allowed and the judgment is satisfied fully or to the extent of the limit of the attachment order.
- (4) A party who files the party's own bond to terminate an attachment must attach to the bond affidavits of the sureties proving that, collectively, the sureties have sufficient net worth to cover a claim in the amount of the attachment order.
- (5) The party's own bond may be in Form 44.07A.
- (6) The prothonotary's certificate may be in Form 44.07B.
- (7) A surety may not take security from the terminating party, but may take security from another person.

Forms

Prothonotary's Certificate(44.07B), Bond to Terminate Attachment(44.07A).

44.08 - More than one attachment

The sheriff must seize and hold property under attachment orders against the same person in chronological sequence of the orders, such that when assets are held to the limit of the first order the sheriff begins to comply with the next.

44.09 - Disputes about attached property

Disputes about whether the party against whom an attachment order is issued has an interest in something, or an interest that must give way to another interest, may be determined under Rule 76 - Interpleader.

44.10 - Motion to judge

A party, or sheriff, may make a motion to a judge to do any of the following about an attachment order:

- (a) terminate the attachment order, if the party who obtained it does not make sufficient efforts to bring the claim to a final determination;
- (b) terminate the order, if the judge is satisfied the order is not required to secure the party who obtained it, there were not grounds for the order, or there are other good reasons for termination;
- (c) vary the order;
- (d) amend the order, including an amendment having retroactive or retrospective affect;
- (e) order sale of attached property, if it is perishable, or if both of the following apply:
 - (i) the property will be worth substantially less when the claim to judgment is finally determined,
 - (ii) the property does not have substantial intangible value for a party opposed to the sale;
- (f) order a person to disclose information to the sheriff or a person on behalf of the sheriff;
- (g) give directions to the sheriff;

Rule 44 - Attachment

- (h) substitute an experienced insolvency practitioner for the sheriff;
- (i) direct the prothonotary to assign a bond to a party entitled to indemnification, unconditionally or on a condition that limits the amount that may be recovered under the bond.

Rule 45 - Security for Costs

Educational Notes

This Rule allows for a motion for security for costs where a defending or responding party will experience undue difficulty in realizing on a judgment for costs if successful. It does not apply in situations where the undue difficulty arises only from the lack of means of the party making the claim. An order for security for costs stays the proceeding until the security is given or the claim dismissed (R.45.04(1)). Rule 45 is a plain language version of the previous R.42.

45.01 - Scope of Rule 45

- (1) This Rule provides a remedy for a party who defends or contests a claim and will experience undue difficulty realizing on a judgment for costs if the defence or contest is successful.
- (2) A party against whom a claim is made may make a motion for security for costs, in accordance with this Rule.

45.02 - Grounds for ordering security

- (1) A judge may order a party who makes a claim to put up security for the potential award of costs in favour of the party against whom the claim is made, if all of the following are established:
 - (a) the party who makes a motion for the order has filed a notice by which the claim is defended or contested;
 - (b) the party will have undue difficulty realizing on a judgment for costs, if the claim is dismissed and costs are awarded to that party;
 - (c) the undue difficulty does not arise only from the lack of means of the party making the claim;
 - (d) in all the circumstances, it is unfair for the claim to continue without an order for security for costs.
- (2) The judge who determines whether the difficulty of realization would be undue must consider whether the amount of the potential costs would justify the expense of realizing on the judgment for costs, such as the expense of reciprocal enforcement in a jurisdiction where the party making the claim has assets.
- (3) Proof of one of the following facts gives rise to a rebuttable presumption that the party against whom the claim is made will have undue difficulty realizing on a judgment for costs and that the difficulty does not arise only from the claiming party's lack of means:
 - (a) the party making the claim is ordinarily resident outside Nova Scotia;
 - (b) the party claimed against has an unsatisfied judgment for costs in a proceeding in Nova Scotia or elsewhere;
 - (c) the party making the claim is a nominal party, or a corporation, not appearing to have sufficient assets to satisfy a judgment for costs if the defence or contest is successful;

Rule 45 - Security for Costs

- (d) the party making the claim fails to designate an address for delivery or fails to maintain the address as required by Rule 31 - Notice.
- (4) A judge may also order security for costs in either of the following circumstances:
 - (a) the security is authorized by legislation;
 - (b) the same claim is made by the same party in another proceeding, and it is defended or contested by the party seeking security for costs on the same basis as in the proceeding in which security for costs is sought.

Annotations

The plaintiffs were ordered by the Residential Tenancy Board to pay rental arrears. They failed to appear at their own appeal. The landlord brought a further application to recover money for damages to the property. Again, neither adult plaintiff appeared, and an order was made against them. They then sued for breach of contract, negligence and nuisance. The defendant brought an application for summary judgment and security for costs. There was some issue as to whether the old (1972) or Civil Procedure Rules (2008) applied. *Held*, application for security for costs granted. The action will be stayed until the adult plaintiffs post \$5,000. The court decided to apply the new the new Rule 45.02(1), which represents a considerable departure from the old rule (42.01). Here, the plaintiffs' clear and overwhelming attitude was one of non cooperation throughout the proceeding, and their impecuniosity was not a reason to reject the request for security for costs.

Flewelling v. Scotia Island Property Ltd. et al. , [2009 NSSC 94](#)

45.03 - Terms of order

- (1) An order for security for costs must require the party making the claim to give security of a kind described in the order, in an amount estimated for the potential award of costs, by a date stated in the order.
- (2) The judge may require any kind of security, including payment of money into court.
- (3) A judge who requires payment into court may fix a deadline for paying the entire amount, or permit the paying party to make the payment in installments.

45.04 - Stay and dismissal

- (1) An order for security for costs stays the proceeding, or that part of the proceeding for which the security is due, until the security is given or the claim is dismissed.
- (2) An order for security for costs to be paid by installments stays the proceeding until the first installment is made or the claim is dismissed.
- (3) A party who obtains an order for security for costs may make a motion for dismissal of the claim if the party ordered to provide security fails to do so as ordered.

Rule 46 - Payment into Court

Educational Notes

This Rule allows a party to pay money into court to comply with an order, provide security for an offer to settle or contribute, satisfy a claim while leaving some amount at issue, such as interest or costs, permit a defence of tender, discharge a lien, or to do as allowed or required by legislation (such as the *Trustee Act*, R.S.N.S. 1989, c.479) or a Rule (such as R.42). Payment into court is required to maintain a defence of tender (R.46.03). It is a plain language version of the previous R.41.

46.01 - Scope of Rule 46

- (1) This Rule allows a party to pay money into court because of a claim, as distinct from Rule 76 - Interpleader, which provides for payment of a fund that is the subject of a dispute.
- (2) This Rule requires a person who defends or contests a claim on the basis of tender to pay money into court.
- (3) Money paid into court is held, and accounted for, as provided in the *Payment into Court Act* and Rule 82 - Administration of Civil Proceedings.
- (4) A party may make a payment into court, in accordance with this Rule.

46.02 - Purposes of payment

A party may make a payment into court to do any of the following:

- (a) comply with an order requiring the payment to be made;
- (b) provide security for an offer to settle or contribute;
- (c) satisfy a claim but leave in issue some amount of the claim, a claim for interest, or a claim for costs;
- (d) permit a defence of tender;
- (e) obtain a discharge of a conditional claim to property under legislation, such as an order vacating the registration of a lien under the *Builders' Lien Act*;
- (f) do as allowed or required by legislation or a Rule, such as payment into court by a trustee under the *Trustee Act* or by a party under Rule 42.10, of Rule 42 - Preservation Order.

46.03 - Defence of tender

A party making a claim answered by a defence of tender of money may have summary judgment on the claim, unless the party defending on the basis of tender pays the amount of the alleged tender into court.

46.04 - Payment into court on notice

- (1) A party may pay money into court by delivering to the prothonotary, and each other party, a notice of payment into court and making the payment to the prothonotary to secure an offer to settle or contribute, satisfy a claim, permit a defence of tender, or provide security required by an order.
- (2) The notice of payment into court must not contain the heading of the proceeding, and it must be entitled "Notice of Payment into Court", be signed by each paying party, and include all of the following information:
 - (a) the registry number;
 - (b) the name of the party making the payment;
 - (c) the name of the party for whose benefit the payment is made;
 - (d) the names of each other party;
 - (e) a statement of the amount and purpose of the payment;
 - (f) a statement of the requirement for keeping the notice confidential.
- (3) The prothonotary must keep the notice confidential, including keeping it from being accessible under Rule 85 - Access to Court Records.
- (4) The notice of payment into court may be in Form 46.04.

Forms

Notice of Payment into Court(46.04).

46.05 - Payment into court on order

- (1) A payment into court not referred to in Rule 46.04 must be made under an order.
- (2) A person who is allowed or required by legislation to pay money into court, and who is not a party to a proceeding in which the money is at issue, may apply for an order for payment into court.
- (3) A person who applies for an order for payment of money into court must include, as respondents, all persons who are known to have an interest in the money and, include in the affidavit, evidence of all of the following:
 - (a) the material facts and documents giving rise to the payment;
 - (b) persons who may have an interest in the disposition of the money;
 - (c) all known information about an interested person's identity and residence.

46.06 - Reduction of payment

- (1) A party may make a motion to a judge to reduce the amount of a payment made into court.
- (2) An order for reduction of the amount of a payment into court must provide directions to the prothonotary for the amount of the payment out of court and the person to whom it is to be made.

46.07 - Payment of money out of court

- (1) A prothonotary may pay money held in court as all parties not disentitled to notice agree, unless one of the following exceptions applies:
 - (a) a child, or a person who is not capable of managing their affairs, is a party;
 - (b) the prothonotary is aware that a person who may be interested in the fund is not a party;
 - (c) the prothonotary refers the motion to a judge.
- (2) A party may make a motion to a judge for an order requiring payment of money by the prothonotary and the affidavit for the motion must include evidence from the prothonotary of the payment into court, interest earned on it, and any payments out of court from the same fund.