

## Table of Contents

### Part 15 - Other Kinds of Proceedings

Rule 66 - Account.....	P15 - 001
66.01 - Scope of Rule 66.....	P15 - 001
66.02 - Final order for accounting.....	P15 - 001
66.03 - Accounting before or after judgment.....	P15 - 001
66.04 - Content of order.....	P15 - 001
66.05 - Order settling accounts.....	P15 - 002
Rule 67 - Builders' Lien.....	P15 - 003
67.01 - Scope of Rule 67.....	P15 - 003
67.02 - All Rules apply.....	P15 - 003
67.03 - Builders' alternative claim for judgment.....	P15 - 003
67.04 - Notice.....	P15 - 004
67.05 - Default judgment.....	P15 - 004
Rule 68 - Class Proceeding.....	P15 - 005
68.01 - Scope of Rule 68.....	P15 - 005
68.02 - Statement that proceeding is under Act.....	P15 - 005
68.03 - National and Provincial Registration.....	P15 - 005
68.04 - Amendment of pleading.....	P15 - 006
68.05 - Counterclaim, crossclaim, and third party claim.....	P15 - 006
68.06 - Discovery.....	P15 - 006
68.07 - Settlement involving child or person unable to manage affairs.....	P15 - 006
68.08 - Simple representative proceeding.....	P15 - 006
68.09 - Communication and cooperation with other court.....	P15 - 007
68.10 - Recognition of class proceeding before another court.....	P15 - 007
Rule 69 - Controverted Election.....	P15 - 008

69.01 - Scope of Rule 69.....	P15 - 008
69.02 - Election petition.....	P15 - 008
69.03 - Notice to respondent.....	P15 - 009
69.04 - Petition as application.....	P15 - 009
69.05 - Directions and date for hearing.....	P15 - 009
69.06 - Election document as evidence.....	P15 - 009
69.07 - Substitute parties.....	P15 - 010
Rule 70 - Assessment of Damages.....	P15 - 011
70.01 - Scope of Rule 70.....	P15 - 011
70.02 - When assessment made.....	P15 - 011
70.03 - Obtaining date for assessment.....	P15 - 011
70.04 - Assessment heard as motion.....	P15 - 012
70.05 - Damages assessed to date of assessment.....	P15 - 012
70.06 - Discount rates.....	P15 - 012
70.07 - Prejudgment interest on liquidated claims.....	P15 - 012
70.08 - Interim payment.....	P15 - 013
70.09 - Periodic payments.....	P15 - 014
Rule 71 - Guardianship.....	P15 - 015
71.01 - Scope of Rule 71.....	P15 - 015
71.02 - Application.....	P15 - 015
71.03 - Notice to person who is subject of application.....	P15 - 015
71.04 - Notice to other persons.....	P15 - 015
71.05 - Affidavits.....	P15 - 016
71.06 - Order appointing guardian.....	P15 - 017
71.07 - Bond.....	P15 - 017
71.08 - Inventory.....	P15 - 017
71.09 - Material improvement in medical condition.....	P15 - 018
71.10 - Motion or application for disposition of property.....	P15 - 018

71.11 - Disposition of proceeds.....	P15 - 018
71.12 - Report on disposal.....	P15 - 019
71.13 - Approval of contract to be made by child.....	P15 - 019
Rule 72 - Mortgages.....	P15 - 020
72.01 - Scope of Rule 72.....	P15 - 020
72.02 - Claiming foreclosure, sale, and possession.....	P15 - 020
72.03 - Parties.....	P15 - 020
72.04 - Consent of first mortgagee.....	P15 - 020
72.05 - Evidence for order.....	P15 - 021
72.06 - Contested application for foreclosure, sale, and possession....	P15 - 021
72.07 - Default judgment or uncontested application.....	P15 - 021
72.08 - Sale.....	P15 - 022
72.09 - Possession.....	P15 - 023
72.10 - Order confirming sale.....	P15 - 023
72.11 - Deficiency judgment.....	P15 - 024
72.12 - Motion for assessment of deficiency.....	P15 - 025
72.13 - Calculation of deficiency.....	P15 - 025
72.14 - Surplus.....	P15 - 026
72.15 - Other foreclosure remedies.....	P15 - 027
72.16 - Redemption.....	P15 - 027
Rule 73 - Receiver.....	P15 - 028
73.01 - Scope of Rule 73.....	P15 - 028
73.02 - Motion for appointment of receiver.....	P15 - 028
73.03 - Prior and subsequent encumbrancers.....	P15 - 028
73.04 - Powers of receiver.....	P15 - 028
73.05 - Injunction.....	P15 - 029
73.06 - Duties of a receiver.....	P15 - 029
73.07 - Security.....	P15 - 029

73.08 - Motions for directions and other assistance.....	P15 - 030
73.09 - Payment of fees and disbursements.....	P15 - 030
73.10 - Replacing receiver.....	P15 - 030
73.11 - Passing accounts and discharge.....	P15 - 030
73.12 - Receivership jointly with another court.....	P15 - 031
73.13 - Auxiliary receivership.....	P15 - 031
73.14 - Auxiliary interlocutory receivership.....	P15 - 031
Rule 74 - Other Sales by the Court.....	P15 - 032
74.01 - Scope of Rule 74.....	P15 - 032
74.02 - Order for sale or possession.....	P15 - 032
74.03 - Conveying interest of party.....	P15 - 032
74.04 - Method of sale.....	P15 - 032
74.05 - Other terms for conduct of sale.....	P15 - 032
74.06 - Expenses of sale.....	P15 - 033
74.07 - Variation.....	P15 - 033
74.08 - Report.....	P15 - 033
74.09 - Approval and discharge.....	P15 - 033
74.10 - Duty to disclose defects.....	P15 - 033
74.11 - No assurances of title.....	P15 - 034
Rule 75 - Injunction.....	P15 - 035
75.01 - Scope of Rule 75.....	P15 - 035
75.02 - Motion for injunction.....	P15 - 035
75.03 - Injunction is discretionary.....	P15 - 035
75.04 - Terms and conditions.....	P15 - 035
75.05 - Termination.....	P15 - 036
75.06 - Injunction in aid of another court.....	P15 - 036
Rule 76 - Interpleader.....	P15 - 037
76.01 - Scope of Rule 76.....	P15 - 037

76.02 - Who may obtain interpleader.....	P15 - 037
76.03 - How interpleader is obtained.....	P15 - 037
76.04 - Interpleader order.....	P15 - 038
76.05 - Determination of claims.....	P15 - 038
76.06 - Default judgment.....	P15 - 039

## **Part 15 - Other Kinds of Proceedings**

### **Rule 66 - Account**

#### **66.01 - Scope of Rule 66**

A party may obtain an order for an accounting, in accordance with this Rule.

#### **66.02 - Final order for accounting**

- (1) A party who claims an accounting, or makes a claim necessarily involving the taking of accounts, may make a motion for the accounting.
- (2) The party must satisfy a judge that the party is entitled to the accounting under Rule 8 - Default Judgment, under Rule 13 - Summary Judgment, or on the trial of an action or the hearing of an application.

#### **66.03 - Accounting before or after judgment**

- (1) A judge who is satisfied on both of the following may order an accounting before or during the trial of an action or the hearing of an application:
  - (a) the accounting is necessary for the adjudication of a claim;
  - (b) it is just to order the accounting although claims are not finally adjudicated.
- (2) A judge who is satisfied that taking accounts is necessary to give effect to a final order, such as an order for a money judgment, may order an accounting.

#### **66.04 - Content of order**

- (1) An order for an accounting must direct an account to be taken and may provide for an inquiry to be made into an account.
- (2) The order must require the following parties to prepare and file the following kinds of statements:
  - (a) the party required to account, a detailed statement of receipts and disbursements and an accurate statement of assets and liabilities relevant to the accounting;
  - (b) the other party, a statement of acknowledgements and disputes including the party's reasons for disputing a receipt or disbursement.
- (3) The order may include terms or directions on any of the following subjects:
  - (a) a deadline for the party required to account to file financial statements;
  - (b) a deadline for the other party to file a statement of acknowledgements and disputes;
  - (c) disclosure of documents, such as books of account, receipts, and vouchers relevant to the disputed accounts;

Rule 66 - Account

- (d) discovery by the other party of the party required to account on the disputed accounts;
- (e) joining a person under Rule 35 - Parties, or appointing a person to represent an unascertained person under Rule 36 - Representative Party;
- (f) appointing a referee to take the account and inquire into disputed accounts, in accordance with Rule 11 - Reference;
- (g) appointing a time, date, and place for the account to be taken and inquiry to be conducted, if it is to proceed before a judge rather than a referee;
- (h) anything the judge considers reasonable or necessary.

**66.05 - Order settling accounts**

The judge who takes the accounts, or finally determines the issues after a referee files a report, must settle the accounts including all just allowances, and the judge may also do any of the following:

- (a) allow or disallow part or all of the fees or disbursements claimed by the party required to account;
- (b) order costs;
- (c) determine who is entitled to the balance and order payment to that person;
- (d) give directions for payment of money or delivery of other property that the party required to account continues to hold;
- (e) give directions for the trial or hearing of the remaining issues in the proceeding.

## **Rule 67 - Builders' Lien**

### **67.01 - Scope of Rule 67**

- (1) This Rule provides procedures, in addition to the procedures provided under the *Builders' Lien Act*, for an action started to enforce a builder's lien.
- (2) This Rule also allows a person who starts an action for enforcement of a lien under the *Builders' Lien Act* to claim alternatively for a judgment obtainable under Rule 8 - Default Judgment.
- (3) A builder may obtain a default judgment instead of remedies under the *Builders' Lien Act*, in accordance with this Rule.

### **67.02 - All Rules apply**

- (1) These Rules, except a Rule that is inconsistent with a provision of the *Builders' Lien Act*, apply to an action started by filing a statement of claim under the *Builders' Lien Act*.
- (2) In a proceeding to enforce a builder's lien, the statement of claim is the originating document referred to in Rule 82.14(2), of Rule 82 - Administration of Civil Proceedings.

### **67.03 - Builders' alternative claim for judgment**

- (1) A builder who starts an action to enforce a builders' lien, and claims that a defendant is personally liable to pay the amount secured by the lien, may file a notice of alternative claim in debt.
- (2) The notice of alternative claim in debt must conform with the requirements for a notice of action under Rule 4 - Action, except for the following differences:
  - (a) it must include the same court number as is assigned to the builders' lien statement of claim by which the action is started;
  - (b) it must be entitled "Notice of Alternative Claim";
  - (c) it must state that an action has been started by filing the *Builders' Lien Act* statement of claim, that an alternate claim is made for a money judgment for the entire amount due to the builder, and that it is made by filing the notice;
  - (d) there is no need for a statement of whether the claim is under \$100,000;
  - (e) the prothonotary need not certify the date of filing on the original notice.
- (3) A notice of alternative claim may be in Form 67.03.

#### **Forms**

Notice of Alternative Claim(67.03).

**67.04 - Notice**

Notice of the alternative claim must be given to the defendant in accordance with the provisions for giving notice of a proceeding to a party, in Rule 31 - Notice, as if the notice of alternative claim were an originating document.

**67.05 - Default judgment**

- (1) A builder may make a motion for judgment alternative to a claim to enforce a builders' lien by filing a notice of withdrawal, under Rule 9 - Discontinuance, withdrawing the claim to enforce the lien and by complying with Rule 8 - Default Judgment.
- (2) Subject to Rule 67.05(1), Rule 8 - Default Judgment applies to an alternative claim as if the notice of alternative claim were a notice of action for debt under Rule 4 - Action.

## **Rule 68 - Class Proceeding**

### **Educational Notes**

#### **68.01 - Scope of Rule 68**

- (1) This Rule provides for all of the following:
  - (a) procedures that augment those in the *Class Proceedings Act* ;
  - (b) a simplified representative proceeding for circumstances in which the expense or complexity of a class proceeding is not warranted because all members of a class are identified as members of an organization;
  - (c) enforcement in Nova Scotia of an award in a class proceeding, or similar proceeding, made by a court in another jurisdiction.
- (2) The Rules outside this Rule apply to a class proceeding to the extent they are consistent with this Rule and the *Class Proceedings Act*.

#### **68.02 - Statement that proceeding is under Act**

The statement required by subsection 4(2) of the *Class Proceedings Act*, that a class proceeding is brought under the Act, may be provided in the statement of claim included in a notice of action or in the grounds in a notice of application.

#### **68.03 - National and Provincial Registration**

- (1) A party who starts a class proceeding, and a defendant or respondent who makes a motion for a certification order in a proceeding not started as a class proceeding, must deliver to the Canadian Bar Association and to the Executive Office of the Nova Scotia Judiciary registration documents and copies of the notice of action, notice of application, or notice of motion.
- (2) The registration document to be delivered to the Canadian Bar Association must be a completed National Class Action Database registration form as provided by the Association, and the registration document to be provided to the executive office must be completed in the form provided by the office on the Nova Scotia courts' website.
- (3) The registration documents and the copy of the notice must be delivered no more than ten days after the day the proceeding is started, or the day the notice of motion is filed.
- (4) The registration documents and the copy of the notice must be delivered electronically to the address respectively provided by the Canadian Bar Association and the Executive Office of the Nova Scotia Judiciary.
- (5) This Rule 68.03 ceases to have effect with respect to the registration with the National Class Action Database when the Canadian Bar Association ceases to provide a national database for class proceedings.

*N.S. Gaz. Pt. 1, [05/16/2012](#)*

#### **68.04 - Amendment of pleading**

A statement of claim, or a statement of grounds, in a class proceeding may not be amended under either Rule 38 - Pleading or Rule 83 - Amendments, after a certification order is granted, unless a judge permits the amendment.

#### **68.05 - Counterclaim, crossclaim, and third party claim**

A defendant in a class proceeding may not counterclaim, crossclaim, or make a third party claim, unless the representative party agrees or a judge permits.

#### **68.06 - Discovery**

- (1) A party to a class proceeding may not obtain a subpoena under Rule 18 - Discovery, to compel a person to attend a discovery before the certification hearing, unless the discovery examination is allowed under Section 21 of the *Class Proceedings Act*.
- (2) A party who wishes to obtain a discovery subpoena to examine a witness at a discovery allowed by subsection 21(1) of the *Class Proceedings Act* must include, with the representations required by Rule 18 - Discovery, both of the following:
  - (a) a representation that the witness is a party or provided an affidavit on the motion for certification, or that the party has permission of a judge under subsection 21(1) of the Act;
  - (b) an undertaking to confine the questioning to subjects relevant to certification.
- (3) Evidence given by a member of a class, or an officer or employee on behalf of a corporate member of a class, at a discovery may be used for any purpose by an adverse party.

*N.S. Gaz. Pt. 1, 11/10/2010, 06/29/2011*

#### **68.07 - Settlement involving child or person unable to manage affairs**

- (1) A judge may appoint a lawyer to represent the interests of members of a class or subclass who are children, who cannot manage their own affairs, or who are unascertainable on a motion to approve a settlement of a class proceeding, or a settlement of issues common to a subclass.
- (2) The judge may provide for payment of the lawyer by a party or out of the proceeds of a settlement.

#### **68.08 - Simple representative proceeding**

- (1) A judge who is satisfied on all of the following may appoint a member of an organization to start a proceeding as plaintiff or applicant on behalf of all members of the organization:
  - (a) the organization is not incorporated and cannot otherwise assert a right in court;
  - (b) the members of the organization are identified;

## Rule 68 - Class Proceeding

- (c) all members agree with the appointment, or the appointment is in the interest of the members as a whole;
  - (d) members have been given sufficient notice of the application for the appointment;
  - (e) the claim to be made is not appropriate to the expense or complexity of procedures under the *Class Proceedings Act* ;
  - (f) it would not be in the interests of justice to require members to proceed individually.
- (2) A party, an interested person who is not a party, the prothonotary, or a judge on the judge's own motion, may make a motion to appoint a representative in an action or application that meets the criteria in Rule 68.08(1) but was started without an appointment.
- (3) An order made in a representative proceeding binds all members who are given notice of the application, or of the motion, for the appointment of a representative.

*N.S. Gaz. Pt. 1, 11/10/2010*

### **68.09 - Communication and cooperation with other court**

A class proceeding may be coordinated with a similar proceeding for collective redress in another jurisdiction under Rule 86 – Judicial Communications Across Borders.

*N.S. Gaz. Pt. 1, 12/16/2009*

### **68.10 - Recognition of class proceeding before another court**

- (1) A party to a proceeding for collective redress, such as a class action, in another jurisdiction may start a proceeding under Rule 5 - Application, for an order making a declaration about the effect that may be given in Nova Scotia to a remedy or finding in the proceeding for collective redress.
- (2) A judge may make a declaration on any of the following subjects about a proceeding for collective redress before another court:
- (a) whether relief claimed or granted in the proceeding is enforceable in Nova Scotia;
  - (b) whether a finding that is essential to the determination of the proceeding is, or will be, binding on a respondent in the Nova Scotia application;
  - (c) whether a respondent in the Nova Scotia application is, or will be, precluded by law from seeking in a Nova Scotia proceeding a finding contradictory to an essential finding made in the proceeding before the other court.
- (3) The declaration only binds persons who are named as parties in the Nova Scotia application, unless legislation provides otherwise.
- (4) A respondent to the Nova Scotia application may be notified of the application in accordance with Rule 35 - Parties, or in a manner directed by a judge.
- (5) A party who obtains a declaration about a proceeding for collective redress may apply for a similar declaration against a person not bound by the first declaration.
- (6) A judge who cannot determine an issue on an application for a declaration until after a step is taken in the proceeding for collective redress may adjourn the hearing of the application.

## **Rule 69 - Controverted Election**

### **69.01 - Scope of Rule 69**

- (1) This Rule is made under Section 66 of the Controverted Elections Act.
- (2) The Rules outside this Rule apply to a proceeding under the Controverted Elections Act, except the Act and this Rule prevail over a Rule that is inconsistent with the Act or this Rule.
- (3) A person who is permitted by the Controverted Elections Act to contest a return or complain of an unlawful act of a candidate may start a proceeding under that Act and have it determined, in accordance with this Rule.

### **69.02 - Election petition**

- (1) An election petition must contain a standard heading written in accordance with Rule 82 - Administration of Civil Proceedings, be entitled "Election Petition", and include all of the following:
  - (a) a statement indicating the date of the election, the electoral district, and the petitioner's status as a candidate or a person who had a right to vote in the election;
  - (b) a statement indicating which of the claims referred to in Section 5 of the Controverted Elections Act is made by the petitioner and providing the return date under the election writ, or the date of an alleged corrupt practice;
  - (c) a concise statement of the grounds for the claim, including, as applicable, a list of votes to which the petitioner objects in a claim that a different candidate be returned, a list of objections pertaining to a claim of an undue return, and the particulars of the persons involved and time, date, and place of an alleged corrupt practice;
  - (d) the petitioner's request for relief, such as that a person be declared duly returned, the election be declared void, or a return be enforced;
  - (e) a notice of the time, date, and place when and where the petitioner will make a motion to a judge for the appointment of a trial date and to give other directions;
  - (f) a notice that the judge may proceed in the absence of the respondent, if the respondent or counsel does not attend the hearing of the motion;
  - (g) a notice that the respondent is required to file a designation of address for delivery in accordance with Rule 31.18, of Rule 31 - Notice;
  - (h) if there is only one petitioner, the address for delivery of documents to the petitioner, and if there is more than one petitioner, one address for all petitioners or a separate address for each petitioner.
- (2) Counsel who represents a petitioner may sign the election petition in addition to the signature of the petitioner.
- (3) The election petition may be in Form 69.02.

#### **Forms**

Election Petition(69.02).

### **69.03 - Notice to respondent**

The petitioner must cause each respondent to be notified of the proceeding, in accordance with Rule 31 - Notice, no less than ten days before the date the motion is to be heard.

### **69.04 - Petition as application**

- (1) The provisions of Rule 5 - Application, apply to a proceeding under the Controverted Elections Act as if the election petition were a notice of application in court, unless a judge orders otherwise.
- (2) The trial of an election petition must be conducted in the same manner as the hearing of an application in court, unless a judge orders otherwise.

### **69.05 - Directions and date for hearing**

- (1) A judge who hears a motion provided for in an election petition may do anything a judge may do under Rule 5.09, of Rule 5 - Application, except the provisions about a notice of application or notice of contest do not apply and the date for the hearing must be on or before the deadline in subsection 28(1) of the Controverted Elections Act.
- (2) The judge may also ascertain whether the particulars of the petitioner's claim are complete and, if they are not complete, order the petitioner to file a statement of particulars and set a deadline for the filing.
- (3) The judge may adjourn the hearing of the motion to give further directions or to appoint a time, date, and place for the trial.
- (4) The prothonotary must, within the time required by subsection 27(3) of the Controverted Elections Act, cause a notice of the time, date, and place of the hearing to be delivered to the address for delivery of each party who is entitled to notice, to the returning officer, and to any other person as directed by the judge.

### **69.06 - Election document as evidence**

- (1) A Returning Officer or Chief Electoral Officer who has control of an election document for an election to which a petition relates must deliver the document to the prothonotary no less than ten days before the day the petition is to be heard.
- (2) A judge who is satisfied that a copy of an election document is sufficient for trial may order that the Returning Officer or Chief Electoral Officer keep custody of the original and give a copy certified by the officer to the prothonotary no less than ten days before the day the petition is to be heard.
- (3) The prothonotary must, when delivering the certificate referred to in Section 79 of the Controverted Elections Act, do as follows with an original election document:
  - (a) return to the Chief Electoral Officer all original documents delivered by that officer to the prothonotary, whether or not the document has been marked as an exhibit, to be held under Section 173 of the Elections Act;
  - (b) return to the Returning Officer a poll book, whether or not it has been marked as an exhibit, to be dealt with in accordance with Sections 169 and 173 of the Elections Act;

## Rule 69 - Controverted Election

- (c) return an original document delivered by the Chief Electoral Officer or the Returning Officer that has not been marked as an exhibit.

### **69.07 - Substitute parties**

- (1) A person who wishes to be substituted for a deceased petitioner under Section 62 of the Controverted Elections Act may make a motion in accordance with Rule 23 - Chambers Motion, or by such other manner of making a motion, under Part 6 - Motions, as a judge permits.
- (2) A person may be joined as a respondent or an intervenor in accordance with Rule 35 - Parties, as if the petition were a notice of action.
- (3) In a proceeding to which Section 63 of the Controverted Elections Act applies, a judge may give directions on each of the following:
  - (a) how the returning officer is to give notice to potential respondents;
  - (b) the content of the notice;
  - (c) the time for an eligible person to make a motion to be joined as a respondent.

## **Rule 70 - Assessment of Damages**

### **Educational Notes**

#### **70.01 - Scope of Rule 70**

- (1) A prothonotary makes an assessment of damages under Rule 8 - Default Judgment, and a judge or jury makes an assessment under this Rule.
- (2) A party who does not obtain an assessment by the prothonotary may obtain an assessment of damages due to the party, or make a motion for an interim payment of damages, in accordance with this Rule.

#### **70.02 - When assessment made**

- (1) A judge or jury who tries a claim for damages, and a judge who hears an application in which damages are claimed, must assess the damages, unless the assessment is to be made separately under Rule 37 - Consolidation and Separation.
- (2) A party who is entitled to an assessment of damages under Rule 8 - Default Judgment, or to an order made under Rule 13 - Summary Judgment, may make a motion for a judge to assess the damages or for an assessment of damages by reference and report under Rule 11 - Reference.
- (3) Rules applicable to an assessment of damages apply to an assessment of the value of moveables or other things.

#### **70.03 - Obtaining date for assessment**

- (1) A party to a defended action or a contested application may have damages assessed at the trial or hearing.
- (2) A party who is entitled to have damages assessed in any other circumstances may request that the prothonotary appoint a time, date, and place for the assessment.
- (3) A prothonotary who receives a request for an appointment to assess damages may do either of the following:
  - (a) appoint a time, date, and place for the assessment to be heard as a motion;
  - (b) refer the request to a judge.
- (4) A judge may provide for an assessment of damages in any of the following ways:
  - (a) appointing a time, date, and place for the assessment to be heard as a motion;
  - (b) directing that the assessment proceed as an application and providing for a motion for further directions under Rule 5.09, of Rule 5 - Application;
  - (c) directing that the assessment proceed to trial and providing further directions or ordering that Rules 4.13 to 4.17, of Rule 4 - Action, apply.

#### **70.04 - Assessment heard as motion**

- (1) A party who receives an appointment for the assessment of damages on motion must, unless a judge directs otherwise, file a notice of motion to be heard at the appointed time, date, and place.
- (2) A copy of the notice of motion must be delivered to the other party, unless either of the following apply:
  - (a) the proceeding is started by notice of action for debt, the claim is only for a debt and interest as permitted by Rule 4.03, of Rule 4 - Action, and the other party is disentitled to notice;
  - (b) the pleadings are clearly within the provisions about liquidated claims in Rules 8.06(a) or (b), of Rule 8 - Default Judgment, and the other party is disentitled to notice.
- (3) A notice of motion for an assessment of damages may be delivered by registered mail to the last known address of the party against whom damages are claimed, unless the party designated an address for delivery or a judge orders otherwise.
- (4) The notice must be delivered no less than ten days before the day of the assessment, unless a judge orders otherwise.

#### **70.05 - Damages assessed to date of assessment**

Damages for a continuing cause of action are assessed to the date of assessment.

#### **70.06 - Discount rates**

- (1) Subject to the Insurance Act, the discount rate to be used in calculating the difference between estimated investment and price inflation rates for capitalizing the value of future pecuniary damages, other than damages for loss of business income, is two and one-half percent per annum.
- (2) A party may prove a discount rate to be used in calculating the difference between estimated investment and price inflation rates for calculating the value of damages for future loss of business income.

*N.S. Gaz. Pt. 1, [12/10/08](#), [07/09/2014](#)*

#### **70.07 - Prejudgment interest on liquidated claims**

The rate and calculation to be used for prejudgment interest on a liquidated claim is five percent a year calculated simply, unless a party satisfies a judge that the rate or calculation should be otherwise.

#### **Annotations**

The plaintiff successfully proved their claim and defeated the defendants' \$1.3 million counterclaim. The individual defendant was found jointly liable for about \$450,000 of the \$1.7 million award (the amount attributed to his fraudulent misrepresentation). In part, prejudgment interest was in issue. The parties agreed on the rate (five percent), but the plaintiffs sought it from the date of the action onward, while the defendants argued

for a later date based on what they felt was the plaintiffs' delay in bringing the matter to trial. *Held*, prejudgment interest awarded from the date the action was started onward. Rule 70.07 presumes interest will be awarded from the day of the action onward. The party seeking to prove otherwise must satisfy the court that the calculation should be otherwise. Here, the defendants failed to prove the plaintiffs caused significant delay in getting the matter to trial. Both parties made and were the subject of several pre-trial motions, including those concerning each other's conduct. Both were responsible for the time it took to finally get to trial.

*Geophysical Services Inc. v. Sable Mary Services Inc. et al.* , [2010 NSSC 357](#)

The plaintiff brought an action in 2004. The trial was set for 2008 but later rescheduled to May, 2009. The defendants accepted the plaintiff's 2007 Offer to Settle on the eve of trial. One of the issues before the court was prejudgment interest and whether the old or new *Civil Procedure Rules* applied. The plaintiff argued the new Rule 70.07 applied, and provided authority for an award of five percent per year in prejudgment interest. *Held*, the new Rule 70.07 does not apply, as the plaintiff's action included unliquidated claims. Rule 70.07 deals with liquidated claims. Regardless, on the facts the old *Rules (1972)* and Practice Memorandum 7 apply.

*Awan v. Cumberland Health Authority et al.* , [2009 NSSC 295](#)

### **70.08 - Interim payment**

- (1) A party who claims damages may make a motion for an interim payment when the other party admits liability or the party who makes the motion is entitled to have the damages assessed in accordance with Rule 8 - Default Judgment, or in accordance with an order made under Rule 13 - Summary Judgment.
- (2) The order for an interim payment must grant judgment in the interim amount with the balance to be assessed.
- (3) The order for an interim payment must provide for a reasonable contribution towards damages that the person making the claim is likely to recover, less any deduction to which the other party is likely to be entitled.
- (4) The party who makes a motion for an interim payment must file the party's undertaking to repay the difference if the interim payment is greater than the amount allowed on assessment.

### **Annotations**

The defendants admitted liability in what was an action stemming from a motor vehicle accident. They contested the plaintiffs' claims for damages, arguing the accident did not cause the injuries. Both plaintiffs had pre-existing medical conditions. The plaintiffs brought a motion for summary judgment under Rule 13.04 and sought an interim payment of damages (based on loss of past income and for pain and suffering) under Rule 70.08. There was very little medical or other evidence filed, and discoveries had not yet taken place. *Held*, motion for summary judgment granted. Motion for interim payments dismissed. While the wording of the new rule differs from the old rule ( *Civil Procedure Rules (1972)*, Rule 33.01(A)), the old case-law applies. To award an interim payment, the court must be able to form an opinion of what damages are likely to be recovered. It is not enough to show that some damages will be awarded at the end of the day. The court continues to retain discretion to grant or dismiss a motion for an interim payment once liability is established, notwithstanding the reference to "must" in Rule 70.08 (2). Cases involving pre-existing medical conditions do not lend themselves to interim payments when the issue of causation is seriously in question. There are

## Rule 70 - Assessment of Damages

too many variables; findings of fact and credibility will have to be made to arrive at an assessment of the level of damages likely to be recovered.

*Wajji v. Boudreau et al.* , [2009 NSSC 349](#)

### **70.09 - Periodic payments**

- (1) A party who seeks periodic payment of damages under Section 35B of the *Judicature Act* may make a motion in the proceeding in which the damages are claimed for assessment of the amount and setting the dates the payments are due.
- (2) An order for periodic payment of money may be enforced by periodic execution under Rules 79.18 and 79.19, of Rule 79 - Enforcement by Execution Order.

## **Rule 71 - Guardianship**

### **Educational Notes**

#### **71.01 - Scope of Rule 71**

- (1) A person may seek any of the following, in accordance with this Rule:
  - (a) appointment of a guardian under the Guardianship Act for a child;
  - (b) appointment of a guardian under the Incompetent Persons Act for a person who is not capable of managing their affairs;
  - (c) disposal of property owned by a person who is not capable of managing their affairs;
  - (d) approval of a contract on behalf of a child without a guardian.
- (2) A person becomes a litigation guardian in accordance with Rule 36 - Representative Party, and is not appointed under this Rule.
- (3) A trustee appointed under Rule 36.14, of Rule 36 - Representative Party, may also be appointed guardian in accordance with this Rule.

#### **71.02 - Application**

A person who seeks the appointment of a guardian under the Guardianship Act or the Incompetent Persons Act may file a notice of application in chambers under Rule 5 - Application.

#### **71.03 - Notice to person who is subject of application**

- (1) A child must be notified of an application under the Guardianship Act, in accordance with Rule 31 - Notice.
- (2) A child who is twelve years of age or older must be informed about each step in the proceeding, unless a judge directs otherwise.
- (3) A notice under subsection 3(2) of the Incompetent Persons Act may be given in accordance with the provisions for giving notice in Rule 31 - Notice.
- (4) A person who is notified of an application under the Incompetent Persons Act, who is found to be incapable of taking care of themselves, and whose condition does not materially improve after the finding is made need not be given further notice in the proceeding.
- (5) In particular, a person referred to in Rule 71.04(2) need not be notified of a motion for power to sell property, replace the guardian, or approve the guardian's accounts.

#### **71.04 - Notice to other persons**

- (1) A copy of a notice of application to appoint a guardian for a child must be delivered to each of the following persons, unless a judge directs otherwise:

## Rule 71 - Guardianship

- (a) each parent of the child other than the applicant or, if the child has no parent who is not an applicant, the child's next of kin other than the applicant;
  - (b) a person, other than the applicant, who has custody of the child under an agreement or order.
- (2) A copy of a notice of application to appoint a guardian for a person who is not capable of managing their affairs must be delivered to each of the following persons, unless a judge directs otherwise:
    - (a) a parent, spouse, and adult child of the person other than the applicant, or, if the person has no living parent, no spouse, or adult child other than the applicant, the person's next of kin other than the applicant;
    - (b) if the person resides in a place where care is provided, the manager of the residence.
  - (3) A judge may direct that another person be notified of an application to appoint a guardian.
  - (4) The parent of a child, and a person who has custody of a child, for whom a guardian is sought to be appointed must be notified of the proceeding in accordance with Rule 31 - Notice.
  - (5) Despite Rule 31 - Notice, each other person who must be notified of an application to appoint a guardian may, unless a judge directs otherwise, be notified by delivery, by mail or hand, of a certified copy of the notice of application to the person's last known address.

N.S. Gaz. Pt. 1, [12/10/08](#)

### 71.05 - Affidavits

- (1) The applicant must file an applicant's affidavit, an affidavit proving notice, and a draft order no less than ten days before the day the application is to be heard.
- (2) Affidavit evidence in support of an application for the appointment of a guardian of a child must include all of the following, unless a judge directs otherwise:
  - (a) proof of the child's date of birth by birth certificate, or by other means if a birth certificate cannot be obtained;
  - (b) if the child is over twelve years of age but less than sixteen, the child's position on the proposed appointment;
  - (c) if the child is sixteen years of age or more, whether the child consents to the proposed appointment and, if not, the reasons for going against the child's wishes.
- (3) An application for an order under the Incompetent Persons Act must also be supported by affidavits of two medical practitioners giving evidence of the present state of health of the person alleged to be incapable of managing their affairs.
- (4) An applicant may make an *ex parte* motion for an order giving a medical practitioner permission to include relevant confidential information in an affidavit.

### Annotations

The respondent opposed this application to have him declared incompetent. His lawyer, in part, argued the requirements in Rule 75.05(3) were not met because one of the affidavits filed in support of the application was submitted by a doctor who had not seen the respondent for almost a year. The affidavit outlined the doctor's assessment, made the previous year, which found the respondent suffers from various disorders,

is developmentally and cognitively delayed, and is incapable of caring for himself. The doctor made attempts to reassess, but the respondent refused to participate. At issue was whether the affidavit dealt with the respondent's "present state of health" as required by the Rule. *Held*, in this case, the opinions in the affidavit reflect the respondent's present state of health. They establish that he is developmentally delayed as opposed to having a physical or mental condition that may change.

*W. (B.I.) v. W. (L.B.)*, [2010 NSSC 485](#)

### **71.06 - Order appointing guardian**

The order appointing a guardian must provide for all of the following:

- (a) the appointment of the guardian;
- (b) the filing of a bond, unless the guardian is the Public Trustee, in compliance with the Guardianship Act or the Incompetent Persons Act;
- (c) the amount of the bond, calculated at one and a quarter times the value of the property to be administered by the guardian, excluding real property;
- (d) a requirement for the bond to be filed no later than thirty days after the date of the order, or such other time the applicant seeks to be set by the judge who hears the application;
- (e) a requirement that the guardian file an inventory of all property of the person who is the subject of the order and a deadline for doing so;
- (f) a requirement for the guardian to account as directed by a judge;
- (g) a requirement for the guardian of a child to account to the child, and file the accounts, by a deadline after the child's nineteenth birthday;
- (h) a requirement that the guardian produce a copy of the inventory or accounting to an interested person who demands the production;
- (i) termination of the guardianship of a child on the child's nineteenth birthday;
- (j) the powers and other obligations of the guardian.

*N.S. Gaz. Pt. 1*, [07/03/2013](#)

### **71.07 - Bond**

- (1) The bond may be executed by a recognized surety company, or the applicant.
- (2) An applicant's bond must be supported by two sureties and affidavits of justification showing that the sureties have assets, worth at least the amount of the bond, available for realization on a judgment.

### **71.08 - Inventory**

The inventory must include a concise description of each item of property, a concise description of the basis on which it was valued, the valuation amount, and a total.

### **71.09 - Material improvement in medical condition**

- (1) A guardian who is appointed under the Incompetent Persons Act and who becomes aware that the condition of the person who is the subject of the guardianship materially improves, must inform the person of the provisions of Section 14 of that Act.
- (2) A person who is the subject of an order under the Incompetent Persons Act and who wishes to petition for an order removing the guardian under Section 14 may make the petition by filing a notice of motion in the proceeding under which the guardian is appointed.

### **71.10 - Motion or application for disposition of property**

A guardian may make a motion for an order for the sale, mortgage, lease, or other disposition of property in the proceeding in which the guardian is appointed.

#### **Annotations**

The Minister of Health and Wellness obtained a court order declaring IW an adult in need of protection, pursuant to the *Adult Protection Act* ( *Act* ), after which IW was taken into care. The Public Trustee assumed management of IW's estate, pursuant to s. 13(2) of the *Act*. IW and her estranged husband jointly owned real property, which the husband wished to sell. The Public Trustee applied to the Court to sell the real property. *Held*, application dismissed. The *Act* confers on the Public Trustee no express or implied power to sell real property. The Public Trustee's role under s. 13(2) is a limited one, custodial and relatively short-term in nature. It is distinct from the role of the guardian as set out in the *Incompetent Persons Act*, s. 12 of which expressly grants the authority to sell real property. The legislature did not intend to create an informal guardianship procedure with a power of sale when it enacted s. 13 of the *Adult Protection Act*. Rule 71.10 applies to guardians only and cannot be extended to the Public Trustee acting under the management authority given by the *Adult Protection Act*.

*Nova Scotia (Public Trustee) v. W. (I.)*, [2013 NSSC 134](#)

### **71.11 - Disposition of proceeds**

- (1) A judge who grants an order for disposition of property, such as a license to sell real property, of a child or a person who is not capable of managing their affairs may provide for payment of the proceeds in any of the following ways:
  - (a) to pay the expenses of the motion or application, and of the sale, to a maximum amount approved in the order or an amount to be approved by a judge;
  - (b) to cover an expense paid, or to be incurred, in the interest of the child or the person who is not capable of managing their affairs;
  - (c) to pay the balance into a trust.
- (2) An order for disposition of property that provides for a payment into trust must also provide the terms of the trust and include all of the following kinds of terms:
  - (a) appointment of the guardian, or some other fit person, as trustee;
  - (b) payment of the trustee's fees and expenses;

## Rule 71 - Guardianship

- (c) payments for the benefit of the child or person who is not capable of managing their affairs, including a specific description of the kinds of payments that may be made;
  - (d) safe investment of trust funds, or provisions for the safekeeping of other property;
  - (e) variation of the trust on motion of an interested person;
  - (f) termination of the trust and distribution to a child who turns nineteen, or a person who becomes capable of managing their affairs and whose guardian is discharged;
  - (g) extension to the trust of the accounting requirements in the order appointing the guardian;
  - (h) the filing of a further bond, if the bond filed as a result of the order appointing the guardian is inadequate or a person other than the guardian is appointed trustee.
- (3) The person who makes the motion for disposal of property must obtain approval of the payment of the expenses of the motion or application, and the sale, in either of the following ways:
- (a) approval of a maximum amount for the expenses of the sale except counsel's fees and disbursements and a separate maximum amount for counsel's fees and disbursements;
  - (b) if no maximum amount is approved or it is exceeded, approval of the actual payments by a judge after the sale.

### **71.12 - Report on disposal**

A party who obtains an order for disposition of property must file a report on the sale no more than twenty-five days after the day it is completed.

### **71.13 - Approval of contract to be made by child**

- (1) A child, or a person who has custody of a child, may make an application, under Rule 5 - Application, for an order approving a contract to be made by the child.
- (2) A child who applies for approval of a contract must join as respondents the other party to the proposed contract, and, unless the person is the child's litigation guardian, each person who has custody of the child.
- (3) A person who has custody of a child, and applies for approval of a contract, must join as respondents the other party to the proposed contract, the child, and any other person who has custody of the child.

## **Rule 72 - Mortgages**

### **72.01 - Scope of Rule 72**

- (1) This Rule establishes procedures for the remedy of foreclosure, sale and possession, and it recognizes other foreclosure remedies and the remedy of redemption.
- (2) A party may obtain foreclosure, sale, and possession, including a deficiency judgment or distribution of a surplus, in accordance with this Rule.

### **72.02 - Claiming foreclosure, sale, and possession**

A mortgagee may claim foreclosure, sale, and possession by filing a notice of action or application.

N.S. Gaz. Pt. 1, [02/10/2010](#)

### **72.03 - Parties**

- (1) The owner of the equity of redemption, including a trustee in bankruptcy or a person to whom the mortgagor conveys the equity, must be a defendant or respondent.
- (2) An executor of a deceased's owner's estate or an administrator of the deceased's estate must be a defendant or respondent, or the mortgagee must make a motion for the appointment of a representative of the estate under Rule 36 - Representative Party.
- (3) A subsequent encumbrancer may become bound by an order for foreclosure, sale, and possession, in accordance with Rule 35.12, of Rule 35 - Parties.
- (4) A mortgagee may exclude from the claim a subsequent encumbrancer to whom the mortgagee has subordinated its interest, such as a subordination made to enhance the value of the mortgaged property by preserving a mutual right of way or a valuable tenancy.
- (5) The mortgagee who subordinates its interest may not join the encumbrancer as a party and the encumbrancer's interest is not foreclosed by the sale.
- (6) The mortgagee may not name in the heading, or claim costs or a deficiency judgment against, a subsequent encumbrancer who is joined only for the purpose of foreclosing interests in the equity, unless a judge permits otherwise.

N.S. Gaz. Pt. 1, [02/10/2010](#)

### **72.04 - Consent of first mortgagee**

A subsequent mortgagee who makes a motion for an order of foreclosure, sale, and possession must file the written consent of the prior mortgagee, unless a judge permits otherwise.

### **72.05 - Evidence for order**

- (1) A motion or an application for an order for foreclosure, sale, and possession must be supported by affidavits providing all of the following evidence:
  - (a) proof that the defendant or respondent has been notified in accordance with Rule 31 - Notice;
  - (b) proof of the mortgage instrument;
  - (c) a certificate of a lawyer abstracting the registered and recorded instruments affecting title to the mortgaged property starting with a warranty deed into the mortgagor or, if the conveyance to the mortgagor is not by warranty deed, the most recent deed or other conveyance to a predecessor in title of the mortgagor;
  - (d) the evidence of the mortgagee, or an agent of the mortgagee, including that the grounds stated in the statement of claim or notice of application are true;
  - (e) a statement of account and the evidence of the mortgagee, or agent of the mortgagee, that the statement is true;
  - (f) a summary of the statement of account that accurately states the total of the charges and credits on the statement and shows a total that reconciles with the amount claimed.
- (2) The statement of account must establish, and show the calculation of, the amount of the mortgage debt, and it must include details of all payments made since the most recent of the following dates:
  - (a) the date of the mortgage;
  - (b) the date of the last renewal or assumption agreement;
  - (c) the date of an agreement, or acknowledgement, signed by the mortgagor and any surety, settling, or acknowledging, the balance of the mortgage debt.
- (3) Notice of the proceeding must be given as provided by Rule 31 - Notice.  
*N.S. Gaz. Pt. 1, [02/10/2010](#)*

### **72.06 - Contested application for foreclosure, sale, and possession**

A judge may do any of the following on an application for an order for foreclosure, sale, and possession that a respondent contests by filing a notice of contest:

- (a) determine the issues in contest;
- (b) direct the application proceed as an application in court, set a time and date for the application to be heard, and give directions;
- (c) set a time and date for a motion under Rule 5.09, of Rule 5 - Application;
- (d) make an order converting the application to an action.

### **72.07 - Default judgment or uncontested application**

- (1) A judge who hears a motion on default of defence or an application for an order for foreclosure, sale, and possession that is uncontested, or a motion for the order after issues in contest have been determined, may grant the order on such terms as are just.
- (2) The judge must settle the amount of the mortgage debt by taking the accounts or referring the taking of accounts to a referee.

## Rule 72 - Mortgages

- (3) The judge may require better proof of the mortgage debt, or refer the taking of accounts, to a person who is not a party.
- (4) The judge who refers the taking of accounts because of the applicant's failure to provide a reliable statement of account, or a reliable summary, may order the applicant to pay the cost of the reference and not charge it to the mortgage debt.
- (5) The order for foreclosure, sale, and possession must provide for each of the following:
  - (a) the amount settled;
  - (b) foreclosure of the equity of redemption on sale;
  - (c) notice to each subsequent encumbrancer in accordance with Rule 35.12, of Rule 35 – Parties and notice of the sale to each defendant or respondent;
  - (d) terms for the advertisement of the sale, unless the sale is by agreement approved under Rule 72.08(2);
  - (e) an approved description of the mortgaged property for insertion in the advertisement;
  - (f) instructions for carrying out the sale;
  - (g) execution by the sheriff, the sheriff's nominee, or another person appointed by the court of a deed to the purchaser;
  - (h) payment of the proceeds of the sale to cover the expenses of the sale, with the balance paid to the applicant and any surplus to the prothonotary.
- (6) The order may provide for a default deficiency judgment under Rules 72.11 to 72.13.
- (7) An order for foreclosure, sale, and possession does not preclude any of the following:
  - (a) further accounts;
  - (b) an award of costs, including the amount or a referral for taxation;
  - (c) redemption before the equity of redemption is foreclosed by the sale;
  - (d) further remedies, such as a deficiency judgment.

*N.S. Gaz. Pt. 1, [02/10/2010](#)*

### **72.08 - Sale**

- (1) An order for foreclosure, sale, and possession must provide for sale by public auction, unless a judge is satisfied on all of the following:
  - (a) a person has made an offer to the mortgagee to purchase the property;
  - (b) the offer is subject to the mortgagee obtaining an order that approves the sale and provides that the sale forecloses the equity of redemption in the mortgaged property;
  - (c) the statement of claim or notice of application claims an order for sale of the mortgaged property by approved private sale and the notice and affidavit provide sufficient information by which a defendant or a respondent is able to assess whether to defend or contest the proceeding on the ground that sale should be by public auction;
  - (d) each subsequent encumbrancer is a defendant or respondent or the offer provides for termination of the agreement if a subsequent encumbrancer who is notified in accordance with Rule 35.12, of Rule 35 - Parties, successfully defends or contests the sale.

## Rule 72 - Mortgages

- (2) A judge may approve the acceptance of an offer referred to in this Rule 72.08 and grant an order for foreclosure, sale, and possession based on the agreement.
- (3) The sheriff, the sheriff's nominee, or another person appointed by a judge to conduct a sale by public auction or to complete a sale by approved agreement must do so in accordance with the terms of the order, the court's instructions or directions, and the advertisement of a sale by auction or the terms of an approved agreement.
- (4) A mortgagee who acts on its own must retain a lawyer to supervise conduct or completion of a sale, and to assist the sheriff, nominee, or other person conducting or completing the sale.
- (5) The sheriff, nominee, or person appointed by a judge must sign and file a report of the sale.

*N.S. Gaz. Pt. 1, [02/10/2010](#)*

### Annotations

To reduce the sale costs payable by the defendant mortgagor, the plaintiff bank asked the court to appoint a non-sheriff to conduct a foreclosure sale. *Held*, the proposed auctioneer is appointed, resulting in a savings of \$1,800. The default position should be sale by sheriff. However, where there is an appropriate reason, the court may exercise its jurisdiction to appoint a non-sheriff to conduct the sale. The court must be satisfied that the appointee meets the standards for experience, ethics and impartiality and that the sale procedures to be followed conform to those used by the sheriffs. In the instant case, the proposed auctioneer had extensive experience with foreclosure sales plus high ethical standards and impartiality, and the savings to the defendants justified his appointment.

*Royal Bank of Canada v. Moffat et al. , [2013 NSSC 111](#)*

### 72.09 - Possession

A judge may grant an order further to an order for foreclosure, sale, and possession providing for the purchaser to be put in possession, such as an order for the removal of a person who does not leave the property in compliance with the order for foreclosure, sale, and possession.

### 72.10 - Order confirming sale

- (1) The mortgagee or a purchaser may make a motion to the prothonotary for an order confirming a sale made by public auction.
- (2) The person who makes a motion for an order confirming sale must satisfy the prothonotary that the order for foreclosure, sale, and possession, the court's instructions, and the terms of the advertisement of sale have been complied with.
- (3) A motion for an order confirming a sale made by approved agreement may be made to a judge.

*N.S. Gaz. Pt. 1, [03/04/09](#)*

### 72.11 - Deficiency judgment

- (1) A statement of claim or notice of application for foreclosure, sale, and possession may include a claim against a person who is liable for the amount, if any, by which the mortgage debt exceeds the amount realized from the sale.
- (2) A mortgagee who claims a deficiency judgment may have default judgment for the deficiency against the party claimed to be liable for the mortgage debt, unless the party claimed against files a notice of defence or contest, or attends at the hearing of the application for an order for foreclosure, sale, and possession and obtains permission to contest the claim.
- (3) The effective date of the default judgment is fifteen days after the applicable of the following dates:
  - (a) the date of a sale by public auction, if the mortgagee purchases the property;
  - (b) the day the balance of the purchase price is paid to the sheriff or other person conducting a sale by public auction, if a person other than the mortgagee purchases the property;
  - (c) the date of closing, if the sale is by approved agreement.
- (4) The amount of the default judgment must be assessed by a judge.
- (5) Interest is calculated in accordance with the mortgage until the effective date of judgment and in accordance with the *Interest on Judgments Act* afterwards.
- (6) The judgment extinguishes six months after its effective date, unless a notice of motion for an assessment of the amount of the deficiency is filed.

*N.S. Gaz. Pt. 1, 02/10/2010*

### Annotations

The court was asked to interpret Rule 94.02(1) to ascertain whether Saturdays and Sundays are included when calculating the 15-day period under Rule 72.11(3) and to determine if the notice of motion was filed in time (i.e., within six months of the effective date of the default judgment, as per Rule 72.12(1)(a)). *Held*, on the facts, the notice of motion was filed in time. Rule 94.02(1) provides that any rules that "permit or require" something to be done in a certain "number of days" are to be calculated without including Saturdays, Sundays or a weekday the Prothonotary's office is closed. Rule 72.11(3) doesn't permit or require something to be done in a number of days and Saturdays, Sundays and holidays are thus included in the calculation of the 15 day period. While there may be case law that suggests courts have done otherwise in the past, none of those cases specifically addressed this issue and so this court is not bound by them. Six months from the date of judgment (the filing deadline for the notice of motion) was a Sunday and the following day was Easter Monday. The *Interpretation Act*, s. 19(k), provides that where a time limit falls on a Saturday or holiday (including Sundays), the time limit is extended to the next business day. While that Act doesn't specifically reference Easter Monday, the court accepts this was a holiday within the meaning of the Act. The notice of motion, having been filed the day after the holiday, was filed in time.

*Scotia Mortgage Corp. v. Chalmers*, [2011 NSSC 339](#)

The bank was unable to serve the mortgagor wife, but successfully obtained a deficiency judgment against the mortgagor husband. Shortly thereafter, the property was sold to a third party for a lower price than the bank paid at the sheriff's sale. The bank eventually brought a second motion in the hopes of securing a deficiency judgment against the wife alone for a larger amount than originally obtained against

the husband. *Held*, motion dismissed. As a matter of contract, the bank is limited to one deficiency judgment calculation only in this case because the mortgagors are jointly and severally liable under the mortgage contract. A proper interpretation of the *Rules*, the practice memorandum and existing case law leads the court to conclude recovery is limited to one deficiency judgment calculation per foreclosure. Even if this isn't the case, the court would invoke its equitable jurisdiction under the doctrines of issue estoppel and/or abuse of process to prevent such an outcome.

*Toronto-Dominion Bank v. Stevens* , [2011 NSSC 343](#)

### **72.12 - Motion for assessment of deficiency**

- (1) A mortgagee who seeks an assessment of a deficiency must file a notice of motion to assess the amount of the deficiency before one of the following deadlines:
  - (a) six months after the effective date of the default judgment, if the sale is by public auction;
  - (b) ten days after the day of the closing of a sale by approved agreement.
- (2) A mortgagee who makes a motion for a deficiency judgment against a party who has not designated an address for delivery must, unless a judge orders otherwise, give notice of the motion to the party in the same way a party is notified of a proceeding under Rule 31 – Notice, as if the notice of motion were an originating document.
- (3) The notice must be delivered no less than ten days before the day the motion is to be heard, unless a judge orders otherwise.

*N.S. Gaz. Pt. 1*, [02/10/2010](#)

### **Annotations**

The applicant moved to extend the time for filing motion for assessment of a deficiency judgment. The 60-day filing deadline was inadvertently missed because the applicant's former lawyer misread the relevant rule. The error was not caught until the limitation period had already expired. *Held*, motion dismissed. The misreading of a clearly worded rule is not a reasonable excuse for delay. Ignorance of the law does not prevent a limitation period from running. Our appeal court has held the discoverability rule doesn't apply when the facts are known but the law is not. Applying this to the limitation period for deficiency judgments makes sound policy sense.

*First National Financial Corp. v. Raynard* , [2011 NSSC 205](#)

### **72.13 - Calculation of deficiency**

- (1) A judge may calculate the deficiency by subtracting one of the following amounts from the outstanding principal, mortgage interest, judgment interest, reasonable charges authorized by the mortgage instrument, and costs:
  - (a) the balance of the sale price paid to the mortgagee, if the property is sold by public auction or approved agreement to a person other than the mortgagee;
  - (b) the amount reasonably realized on resale, if the property is sold by public auction to the mortgagee or its agent, it is resold by the mortgagee, and the resale price received by the mortgagee is both reasonable and greater than the bid;

## Rule 72 - Mortgages

- (c) the amount bid by, or on behalf of, the mortgagee, if the property is sold by public auction to the mortgagee and the resale price or the value of the property is less than the bid;
  - (d) the value of the property, in all other circumstances.
- (2) A mortgagee who claims that an expenditure is a reasonable charge authorized by the mortgage instrument must demonstrate the claim by evidence specifically set out in an affidavit of the mortgagee, or its agent, showing all of the following:
- (a) the term in the instrument authorizing the expenditure to be made and charged to the mortgage debt;
  - (b) the necessity of the expenditure for preserving or otherwise protecting the mortgaged property;
  - (c) the reasonableness of the amount of the expenditure both in its fairness for the work done or materials supplied, and its value for protecting the property.

### Annotations

At issue was whether a bank can obtain a second deficiency judgment against one joint tenant/spouse in an amount that is different/greater than the judgment already obtained against the other. *Held*, motion dismissed. A proper interpretation of the *Rules*, the practice memorandum and existing case law leads the court to conclude recovery is limited to one deficiency judgment calculation per foreclosure. Even if this isn't the case, the court would invoke its equitable jurisdiction under the doctrines of issue estoppel and/or abuse of process to prevent such an outcome in this case. As a matter of contract, the bank is limited to one deficiency judgment calculation only here because the mortgagors are jointly and severally liable under the mortgage contract.

*Toronto-Dominion Bank v. Stevens*, [2011 NSSC 343](#)

The bank appealed a decision disallowing a deficiency judgment reflecting the amount of disbursements incurred in relation to what they claimed was maintaining the property's value. *Held*, appeal allowed. The chambers judge, although owed deference on review made a reversible error when he denied this aspect of the bank's claim under Rule 72.13(2). He incorrectly placed significant weight on the fact the bank still owned the property, and acted on the mistaken belief that the expenses were designed to improve the property rather than protect it. Protective disbursements serve to protect both the bank's and mortgagor's interests by (hopefully) resulting in a better sale price and a lower shortfall. Disallowing these types of necessary expenses will serve as a disincentive to incurring them. The requirements in Rule 71.13(a), (b) and (c) safeguard against the type of windfall the chambers judge feared.

*Bank of Nova Scotia v. Allen*, [2010 NSCA 47](#)

### 72.14 - Surplus

- (1) A mortgagee who is paid in full out of the proceeds of sale under an order for foreclosure, sale, and possession must, if there is a balance remaining, notify subsequent encumbrancers or other parties of the amount of the surplus fund.
- (2) A subsequent encumbrancer or other party must be notified of the surplus funds in either of the following ways, unless there is a designated address for delivery or a judge orders otherwise:
  - (a) by sending the notice by registered mail to the last known address of the encumbrancer or party;

## Rule 72 - Mortgages

- (b) in the same way as a party is notified of a proceeding made under Rule 31 - Notice, as if the notice were an originating document.
- (3) A subsequent encumbrancer or other party may make a motion for payment of the surplus fund.
- (4) A judge may take accounts, make inquiries, tax costs, and order distribution of the surplus.

### **72.15 - Other foreclosure remedies**

This Rule 72 does not preclude a party from obtaining, in an action or on an application, an order foreclosing interests in the equity of redemption of property other than by foreclosure, sale, or possession, such as by another kind of sale by the court, by simple foreclosure, or by receivership to enforce a mortgage or other charge.

### **72.16 - Redemption**

- (1) A mortgagor or the other person entitled to redeem mortgaged property may claim a redemption order by starting an action or application, or by making the claim in an action or application brought to foreclose the equity.
- (2) A judge who determines a claim for redemption may take accounts, make inquiries, tax costs, settle the amount of the mortgage debt, order conveyances, and direct a party to take any necessary step to give effect to a conveyance.

## **Rule 73 - Receiver**

### **73.01 - Scope of Rule 73**

- (1) This Rule provides for receivership as a final remedy, such as an order appointing a receiver to liquidate mortgaged property or to sell a business as a going concern.
- (2) An interlocutory or interim receivership may be obtained under Rule 41 - Interlocutory Injunction and Receivership.
- (3) A receivership may be ordered and conducted, in accordance with this Rule.

### **73.02 - Motion for appointment of receiver**

- (1) A party who obtains a judgment for an amount of money may make a motion for the appointment of a receiver to enforce the judgment.
- (2) A party who claims for the appointment of a receiver may make a motion for an order appointing a receiver in either of the following circumstances:
  - (a) the party is entitled to the order under Rule 8 - Default Judgment, or Rule 13 - Summary Judgment;
  - (b) a judge determines, after the trial of the action or hearing of the application in which the claim is made, that the appointment should be made.

### **73.03 - Prior and subsequent encumbrancers**

- (1) A person who starts a receivership proceeding to enforce a security must, as soon as possible after the proceeding is started, deliver both of the following to a prior registered or recorded security holder:
  - (a) a copy of the notice by which the proceeding is started;
  - (b) a statement providing details of the prior security instrument.
- (2) A holder of security with priority over the interest sought to be enforced through receivership need not be joined as a party, unless it is sought to charge expenses of the receivership in priority to the interest of the prior security holder.
- (3) Rule 35.12, of Rule 35 - Parties, provides a method by which a subsequent encumbrancer may become bound by a receivership order.

### **73.04 - Powers of receiver**

An order appointing a receiver, or a subsequent order, may give the receiver any power necessary to efficiently and fairly conduct the receivership, including power to do any of the following:

- (a) take control of the property that is the subject of the receivership;
- (b) manage the property and, if also appointed manager of a corporation in receivership, carry on its business;

## Rule 73 - Receiver

- (c) do anything a sheriff may do under an execution order as provided for in Rule 79 - Enforcement by Execution Order;
- (d) protect the property or business, pay the expenses of protection, and recover the expenses from the property in priority to all other interests;
- (e) sell the property, or the going concern, in receivership in accordance with the directions of a judge;
- (f) recover expenses of the receivership from the property in receivership as a whole, or from parts of the property as allocated by order;
- (g) pay the receiver's interim account as provided for in Rule 73.09;
- (h) make a motion for directions or guidance from a judge.

### **73.05 - Injunction**

- (1) A judge may, in the order appointing the receiver or a subsequent order, provide an injunction against a party, a person who is not a party, or unnamed persons, to protect the property in receivership, including documents and electronic information of a party in receivership, and to require delivery of the property to the receiver.
- (2) A person to whom all of the following apply may require a rehearing under Rule 22.06, of Rule 22 - General Provisions for Motions:
  - (a) the person is affected by an injunction in aid of a receivership;
  - (b) the person was not given notice, or sufficient notice, of the motion for the injunction;
  - (c) the person is a party entitled to notice under Rule 31 - Notice, or the person is not a named party.

### **73.06 - Duties of a receiver**

In addition to the duties prescribed by Section 78 of the *Companies Act*, Section 65 of the *Personal Property Security Act*, the order appointing a receiver, or a subsequent order, the receiver has a duty to do each of the following:

- (a) retain a lawyer;
- (b) report to the court at times prescribed by the order and, in any case, at the conclusion of the receivership;
- (c) include in the final report an account of all receipts and disbursements.

### **73.07 - Security**

A judge who appoints a receiver must require the receiver to file security in an amount and on terms set by the judge, unless the party who makes the motion satisfies the judge of either of the following:

- (a) the receiver is a member of the Canadian Association of Insolvency and Restructuring Professionals and carries professional liability insurance;
- (b) a party has filed an undertaking to pay for damages that may be caused by the receiver and the terms of the undertaking and the capacity of the party to pay the damages are clearly sufficient.

### **73.08 - Motions for directions and other assistance**

- (1) A receiver, or a person who has an interest that may be affected by a receivership, may make a motion for a judge to direct or give guidance to the receiver.
- (2) In addition to a motion for directions or guidance, a receiver may make a motion for any of the following:
  - (a) production of a document, electronic information, or other thing by a party or a person who is not a party;
  - (b) examination of a witness conducted as provided in Rule 18 - Discovery, or as otherwise provided in the order;
  - (c) interpleader under Rule 76 - Interpleader;
  - (d) an order under Rule 42 - Preservation Order, as if the receiver were a party;
  - (e) any other order that aids the receivership.

### **73.09 - Payment of fees and disbursements**

- (1) A receiver's final account for fees and disbursements may not be paid from the proceeds of the receivership until the account is approved by a judge.
- (2) The interim account of a receiver who files the following documents may be paid from the proceeds of the receivership, unless the proceeds are required for the administration of the receivership:
  - (a) a copy of the interim account;
  - (b) an undertaking to repay any amount not approved by a judge.

### **73.10 - Replacing receiver**

A judge may remove a receiver and appoint a replacement.

### **73.11 - Passing accounts and discharge**

- (1) A receiver who completes the tasks for which the receivership order was granted must make a motion for an order passing the receiver's accounts, approving fees and expenses not yet approved, and discharging the receiver.
- (2) A judge who hears a motion for a discharge may do any of the following:
  - (a) pass the accounts or order repayment of an expense not approved;
  - (b) approve the receiver's fees and disbursements and allow payment of them or, if advances exceed the amount approved, order repayment;
  - (c) discharge the receiver wholly, or on conditions.
- (3) A judge who is satisfied that a receiver delays in bringing a receivership to conclusion or in making a motion to pass accounts, set remuneration, and be discharged may do any of the following:
  - (a) replace the receiver;
  - (b) refuse some or all remuneration;

- (c) order the receiver to pay expenses caused by the delay.

### **73.12 - Receivership jointly with another court**

- (1) A judge who is satisfied on all of the following may order that a receivership in Nova Scotia be directed by a judge in consultation with a judge of a court in another jurisdiction that has power to appoint a receiver:
  - (a) both courts have appointed, or are about to appoint, the same person to be receiver;
  - (b) the subject of the receivership is substantially connected to both jurisdictions;
  - (c) the other court has accepted, or is likely to accept, the consultation.
- (2) Rule 86 - Judicial Communication Across Borders, provides for a receivership directed in consultation with a judge in another jurisdiction.

### **73.13 - Auxiliary receivership**

- (1) A judge may, in a proceeding started under Rule 5 - Application, appoint as an auxiliary receiver a person, or an agent of a person, who is appointed as receiver by a court outside Nova Scotia, if the judge is satisfied on both of the following:
  - (a) the order of the other court is final, rather than interim or interlocutory;
  - (b) the Nova Scotia order will aid the order of the other court.
- (2) An order appointing an auxiliary receiver must provide for the receivership of assets in Nova Scotia and require approval by the Supreme Court of Nova Scotia of the sale of property in Nova Scotia.
- (3) The order may otherwise leave control of the receivership with the other court, including control of any of the following:
  - (a) marketing the property in receivership;
  - (b) passing accounts;
  - (c) fixing or approving remuneration;
  - (d) discharging the receiver.
- (4) The auxiliary receiver must report to the court at a time prescribed by the order and at the conclusion of the auxiliary receivership.

### **73.14 - Auxiliary interlocutory receivership**

A person who seeks the appointment of a receiver auxiliary to an interlocutory or interim receivership in another jurisdiction may start a proceeding under Rule 5 - Application, and make a motion under Rule 41 - Interlocutory Injunction and Receivership.

## **Rule 74 - Other Sales by the Court**

### **74.01 - Scope of Rule 74**

- (1) This Rule provides for sale of property as a final remedy and for setting terms for the conduct of a sale by interlocutory order under Rule 42.09, of Rule 42 - Preservation Order.
- (2) A party may seek an order for sale or other disposition of property, in accordance with this Rule.

### **74.02 - Order for sale or possession**

- (1) In a proceeding relating to property, a judge may order that the property, or part of it, be sold, mortgaged, exchanged, or partitioned.
- (2) A judge who makes an order for the sale, mortgage, exchange, or partition of property may order a party to deliver possession of the property or rents and profits of the property to a purchaser, mortgagee, or other person.

### **74.03 - Conveying interest of party**

- (1) A judge may order a party who has an interest in property ordered to be sold to execute and deliver an instrument transferring the interest.
- (2) A judge may order that an interest of a party in property ordered to be sold is transferred as if the party had executed and delivered an instrument, and the interest transfers as the order provides.

### **74.04 - Method of sale**

- (1) A judge who orders a sale may order that the sale be conducted by whatever method the judge is satisfied is likely to produce the greatest proceeds.
- (2) The following are examples of methods of sale that may be considered:
  - (a) marketing by a qualified person with power to conclude an agreement subject to approval by a judge;
  - (b) marketing by a qualified person with power to conclude an agreement without further approval;
  - (c) public auction conducted by the sheriff or another qualified person;
  - (d) tender conducted by the sheriff or another qualified person.

### **74.05 - Other terms for conduct of sale**

A judge who orders a sale must appoint the person to conduct the sale and give necessary directions to that person, which may include directions on any of the following subjects:

## Rule 74 - Other Sales by the Court

- (a) marketing the property, such as advertising or a real estate listing;
- (b) entering into, and closing, a proposed agreement without marketing;
- (c) paying the person conducting the sale;
- (d) authorizing, or requiring, the person to retain a lawyer;
- (e) fixing a reserve or minimum bid, or a list price;
- (f) establishing terms required in an agreement, terms for tender, or terms binding on a party who bids at an auction.

### **74.06 - Expenses of sale**

- (1) A judge who orders a sale must provide terms for payment of the expenses of the sale, including remuneration of the person conducting the sale.
- (2) A judge may order that some or all of the costs of the proceeding are included in the expenses of the sale, including, if necessary, a valuation and a title opinion.
- (3) The judge may order that the expenses form a charge on the property and the proceeds of sale in priority to the interest of a party.

### **74.07 - Variation**

- (1) A judge may vary a term under which property is offered for sale, change instructions for the conduct of a sale, or substitute a method of sale before an agreement for sale of the property is made.
- (2) After an agreement for sale is made, a judge may vary a term or condition of the agreement with the consent of the purchaser.

### **74.08 - Report**

The person having conduct of a sale must file a report on the sale as soon as possible after the sale is concluded.

### **74.09 - Approval and discharge**

The person who conducts a sale must make a motion for an order approving the conduct of the sale and discharging the person from duties under the order for sale, unless the order for the sale provides or a judge permits otherwise.

### **74.10 - Duty to disclose defects**

A person who seeks an order for sale of property and who knows of a defect in title to the property, or any other defect that may not be apparent to a purchaser, must do both of the following:

- (a) disclose the defect to the judge who hears the motion for the order;
- (b) take reasonable steps to ensure that a potential purchaser is made aware of the defect.

*N.S. Gaz. Pt. 1, [12/16/2009](#)*

**74.11 - No assurances of title**

- (1) A sale by the court is without assurances to the purchaser, except for an express assurance in the conveyancing instrument given by the person who sells on behalf of the court.
- (2) A person who determines whether to purchase property being sold by the court must rely on the person's own inquiries about the property, and the following are examples of measures the person may need to take:
  - (a) a lawyer's investigation and opinion on title, or restrictions on land use;
  - (b) a surveyor's investigation and opinion on boundary locations;
  - (c) a thorough physical inspection by the potential purchaser or an expert;
  - (d) an engineer's, builder's or mechanic's inspection and opinion on compliance with environmental requirements or standards;
  - (e) a builder's or mechanic's inspection and opinion on structural or mechanical defects.

## **Rule 75 - Injunction**

### **Educational Notes**

#### **75.01 - Scope of Rule 75**

- (1) This Rule provides for an injunction as a final remedy, such as a permanent injunction or a temporary injunction that extends beyond the conclusion of the proceeding.
- (2) An interlocutory or interim injunction may be obtained in accordance with Rule 41 - Interlocutory Injunction and Receivership.
- (3) A party may obtain a final order for an injunction, in accordance with this Rule.

*N.S. Gaz. Pt. 1, [02/10/2010](#)*

#### **75.02 - Motion for injunction**

- (1) A party who claims an injunction as a final remedy may make a motion for the injunction in either of the following circumstances:
  - (a) the party is entitled to judgment under Rule 8 - Default Judgment, or Rule 13 - Summary Judgment;
  - (b) a judge determines, after the trial of the action or hearing of the application in which the claim is made, that an injunction should be issued.
- (2) A party who obtains a judgment and finds that an injunction is required to give effect to the judgment may make a motion for the injunction.

#### **75.03 - Injunction is discretionary**

A judge who is satisfied it is just to do so, may grant a motion for an injunction.

#### **75.04 - Terms and conditions**

- (1) A judge may grant an injunction on terms and conditions.
- (2) A judge may amend the terms and conditions of an injunction in any of the following situations:
  - (a) an error requires correction under Rule 78.08, of Rule 78 - Order;
  - (b) circumstances have changed, and the terms or conditions must be amended to give effect to the intent of the injunction;
  - (c) the injunction is unenforceable, unless the amendment is made.

### **75.05 - Termination**

A judge may terminate an injunction that cannot be, or can no longer be, enforced.

### **75.06 - Injunction 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 injunction to aid the order of a court of another jurisdiction for an injunction or a remedy similar to an injunction:
  - (a) the order of the other court is made on a basis upon which a similar order may be made in Nova Scotia, or it is otherwise just to enforce the order;
  - (b) the injunction will aid the enforcement or effectiveness of the order of the other court;
  - (c) the order of the other court is final, rather than interim or interlocutory.
- (2) An order made by a superior court of another province or a territory of Canada is presumed to be made on a basis upon which a similar order may be made in Nova Scotia, unless the contrary is established.
- (3) A person who seeks an injunction in aid of an interlocutory or interim injunction, or similar remedy, issued in another jurisdiction may start a proceeding under Rule 5 - Application, and make a motion under Rule 41 - Interlocutory Injunction and Receivership.

## **Rule 76 - Interpleader**

### **76.01 - Scope of Rule 76**

- (1) This Rule provides a remedy for a person who must deliver possession of property, or pay a debt or distribute a fund, but who receives conflicting claims to the property, debt, or fund.
- (2) A person may obtain interpleader relief, in accordance with this Rule.

### **76.02 - Who may obtain interpleader**

- (1) A person may make a motion for an interpleader order if all of the following apply:
  - (a) the person has control of personal or real property or is obligated to pay money, such as to satisfy a debt or distribute a fund;
  - (b) the person is not beneficially entitled to the property or the money;
  - (c) conflicting claims are made, or are reasonably expected to be made, to the property or to payment of the money.
- (2) A sheriff, receiver, or other person acting under an order may make a motion for an interpleader order if a claim is made that a thing or money obtained by the sheriff, receiver, or other person is to be delivered or paid differently than provided in the order, such as with a claim to priority over the interest enforced by the order.

### **76.03 - How interpleader is obtained**

- (1) Each of the following persons may seek an interpleader order, in one of the following ways:
  - (a) a person who controls property or is obligated to pay money at issue in a proceeding, by making a motion in the proceeding;
  - (b) a person who controls property or is obligated to pay money not at issue in a proceeding, by starting a proceeding under Rule 5 - Application;
  - (c) a sheriff, receiver, or other person acting under an order, by making a motion in the proceeding in which the order was granted.
- (2) The affidavit in support of the application or motion must include evidence on all of the following subjects:
  - (a) the circumstances under which the thing came into the person's control, or the payment came to be due;
  - (b) the claims made, or the claims that may be made, and the circumstances that make such a claim reasonable;
  - (c) details of any other possible interests.
- (3) All claimants and, unless a judge directs otherwise, all persons with possible interests must be made respondents on the application or be notified of the motion in accordance with Rule 31 - Notice.

#### **76.04 - Interpleader order**

- (1) A judge who determines an application or motion for an interpleader order may order that the person who makes the application or motion deliver the property at issue to a person appointed by the judge or make the payment at issue into court or to a person appointed by a judge.
- (2) The judge may order that the person is discharged from liability for the property, or the obligation to make the payment, when the person makes the delivery or payment provided for in the interpleader order.
- (3) An interpleader order may include further provisions for any of the following:
  - (a) sale of property that is the subject of the order;
  - (b) a lien against the property or fund that secures reimbursement of the expenses of the application or motion to the person who obtains the order;
  - (c) permission for a person who is obliged to pay money, and who obtains the interpleader order, to deduct the expenses of the application or motion from the payment;
  - (d) an award of costs to the party who obtains the order;
  - (e) payment of the expenses of the application or motion out of money paid or realized in accordance with the order;
  - (f) the addition of a claimant, or other interested person, as a party.
- (4) A judge may order that a party is barred from starting a proceeding against the person who makes the application or motion and all persons claiming under that person.

*N.S. Gaz. Pt. 1, 06/16/2010*

#### **76.05 - Determination of claims**

- (1) The judge who grants an interpleader order in circumstances in which all of the following apply may determine the claims to the property, or to payment of money:
  - (a) the claims are appropriately determined by hearing rather than trial;
  - (b) all interested persons are parties;
  - (c) the judge is satisfied each party has sufficient notice of the hearing.
- (2) A judge who does not determine the claims when hearing the interpleader may order that the claims are to be determined by trial or by the hearing of an application in court, and the judge may order any of the following:
  - (a) addition of a necessary party;
  - (b) removal of the party who obtains the interpleader order;
  - (c) removal of, or terms for participation in the interpleader by, a sheriff, receiver, or other person who obtains interpleader when acting under an order;
  - (d) appointment of a party to have conduct of the interpleader;
  - (e) conditions under which a party who does not defend or contest the proceeding, or fails to designate an address for delivery, is disentitled to further notice;
  - (f) a statement of the issues to be determined on the hearing or trial;
  - (g) continuation of the proceeding as an action or application, or conversion from one to the other.

## Rule 76 - Interpleader

- (3) A judge who orders claims be determined by trial may do any of the following:
  - (a) unless the directions about the issues to be determined make it unnecessary, require the parties to file pleadings or specify the documents already filed that stand as the statement of claim of the party having conduct of the proceeding or the statements of defence of other parties;
  - (b) set deadlines for filing pleadings, disclosing documents and electronic information, completing discoveries, and any other procedure necessary before a date assignment conference;
  - (c) despite Rules 4.13(1) and (2), of Rule 4 - Action, permit a party to request a date assignment conference at a time, or under conditions, the judge prescribes.
- (4) A judge who orders claims be determined by hearing of an application in court may do anything a judge may do on a motion for directions under Rule 5.09(2), of Rule 5 - Application, or do all of the following:
  - (a) unless the directions about the issues to be determined make it unnecessary, specify the documents that stand as a notice of application and a notice of contest or direct the party having carriage of the proceeding to file, without starting another proceeding, a notice of application in court and the other parties to file a notice of contest;
  - (b) set deadlines for filing the notices;
  - (c) set a time, date, and place for further directions under Rule 5.09, of Rule 5 - Application.

### **76.06 - Default judgment**

- (1) A party to an interpleader who is notified in accordance with an order and fails to file a notice or pleading, or to designate an address for delivery, required by an order is taken to have admitted the claim against the party.
- (2) A party may make a motion to a judge for a default judgment against the party who fails to file a notice or pleading, or to designate an address, required by an order.
- (3) A judge may set aside the default judgment.