

Part 36 Extraordinary Remedies

Replevin

Recovery of personal property

427 In any action brought for the recovery of any personal property and claiming that the property was unlawfully taken or is unlawfully detained, the plaintiff may, if he desires to replevy the property, obtain an order of replevin for the delivery of the property to him.

AR 390/68 s427

Procedure

428 An order of replevin may be obtained

- (a) from the clerk on praecipe if the plaintiff, his servant or agent make an affidavit giving the description and value of the property claimed and stating
 - (i) that the plaintiff is the owner or lawfully entitled to the possession thereof, and
 - (ii) that the property was wrongfully taken out of the possession of the plaintiff or fraudulently got out of his possession within two months next before making the affidavit; or, if the property was distrained for rent or damage feasant, as the case may be, within that period of two months.
- (b) in other cases, from the court, on application therefor, on an affidavit by the plaintiff or some other person showing the fact of the wrongful taking or detention complained of, the value and description of the property, and that the plaintiff is the rightful owner thereof or is lawfully entitled to the possession thereof, as the case may be.

AR 390/68 s428

Description and value

429 The order shall state the description and value of the property to be replevied.

AR 390/68 s429

Powers of court

430 The court may grant the order ex parte or may direct notice to be served on the defendant and may in either case

- (a) direct the plaintiff to post with the clerk a bond or other security in the form and in an amount that the court considers appropriate, or

- (b) direct a civil enforcement agency in addition to or without taking a bond to take and detain the property until further order, instead of at once restoring it to the plaintiff, or
 - (c) order that the plaintiff instead of giving a bond be at liberty to pay into court to the credit of the action such sum as may be proper (to be named in the order), to stand as security to the defendant in the same manner and to the same extent as any bond which the plaintiff would otherwise be required to give to a civil enforcement agency, or
 - (d) impose any terms or conditions in granting or refusing the order.
- (2) Money, when paid into court, shall remain in court as security as aforesaid, subject to further order.

AR 390/68 s430;277/95

Defendant may apply for relief

431 The defendant may apply to the court to discharge, vary or modify the order, or to stay proceedings thereunder, or for any other relief with respect to the return, safety or sale of the property or any part thereof or otherwise.

AR 390/68 s431

Bond

432(1) Except where

- (a) an order provides for payment of money into court, or
 - (b) the court directs the taking of property without a bond or other security,
- a civil enforcement agency shall not act on the order until the plaintiff provides to the clerk a bond or other security that is satisfactory to the court and that
- (c) is in favour of the defendant, and
 - (d) unless the court otherwise provides, is in an amount that is double the value of the property as stated in the order of replevin.

(1.1) The bond or other security provided under subrule (1)

- (a) must be held by the clerk, and
- (b) may be released by the clerk to the defendant only with the leave of the court.

(1.2) A replevin bond shall be in Form J of Schedule A.

(2) The bond may be assigned to the defendant by leave of the court.

(3) Where money is paid into court, instead of a bond or other security being given, a civil enforcement agency may, subject to any provisions in the order, act on the order upon a certificate of the clerk being delivered to the civil enforcement agency that the money required to be paid into court has been paid in pursuant to the order.

AR 390/68 s432;277/95

Condition of bond

433(1) The condition of the replevin bond shall be that the plaintiff shall prosecute the action to a conclusion and without delay and will return the property to the defendant if ordered so to do and pay such damages, costs and expenses as the defendant sustains by reason of the issue of the replevin order if the plaintiff fails to recover judgment.

(2) The bond and the assignment thereof shall be in the forms or to the effect of Forms I and J in the Schedule.

AR 390/68 s433

Civil enforcement agency to retain property

434 Where the order is issued by the clerk on praecipe, a civil enforcement agency shall take and detain the property and shall not deliver it to the plaintiff without the order of the court but shall, after 15 days from the time of taking it, redeliver it to the defendant unless in the meantime the plaintiff obtains and serves on the civil enforcement agency an order directing a different disposition of the property.

AR 390/68 s434;277/95

Return order and statement

435 The civil enforcement agency shall return the order to the clerk on or before the 10th day after the service thereof and shall transmit, annexed thereto, a statement specifying

- (a) the names of the sureties in and the amount of the replevin bond and the names or name of the witnesses thereto,
- (b) the place of residence and occupation of the sureties, and
- (c) the number, quantity and quality of the articles of property of which the civil enforcement agency has taken possession, and, where the civil enforcement agency has taken possession of only a portion of the property and cannot take possession of the residue, the articles of which the civil enforcement agency cannot take possession and the reason therefor.

AR 390/68 s435;277/95

Default judgment

436 Where the plaintiff is entitled to sign judgment by default in a replevin action he may sign final judgment for \$10 and costs in respect of any claim for damages, but is not entitled to recover a larger sum as damages except

upon an assessment by the court or upon filing the written consent of the defendant or his solicitor and an affidavit verifying the signature to the consent, if the consent is signed by the defendant.

AR 390/68 s436

Mandamus

Judgment or order

437 A writ of mandamus shall not issue but a mandamus may be granted by judgment or order on motion and the judgment or order has the same effect as a writ of mandamus formerly had.

AR 390/68 s437

Claim in statement of claim

438 The plaintiff may claim a mandamus in his statement of claim, either alone or together with any other relief.

AR 390/68 s438

Power of Court

439 The court may by judgment command the defendant either forthwith or on the expiration of such time and upon such terms as the court may direct, to perform the duty in question.

AR 390/68 s439

Injunction

Judgment or order

440 A writ of injunction shall not be issued but an injunction may be granted by judgment or order and the judgment or order has the same effect as a writ of injunction formerly had.

AR 390/68 s440

Restraining orders

440.1(1) In this Rule, “restraining order” means a restraining order that is being sought in respect of a matrimonial, domestic or family matter or any other inter-personal matter between individuals.

(2) Where an application is made for a restraining order, the applicant may proceed under Part 30 but, instead of using an affidavit, a completed questionnaire as specified by the Court and verified under oath or by statutory declaration may be used.

(3) For the purposes of Part 30, a completed questionnaire referred to in subrule (2) is considered to be an affidavit.

AR 269/97 s8

Prohibition

Judgment or order

441 A writ of prohibition shall not be issued but prohibition may be granted by judgment or order and the judgment or order has the same effect as a writ of prohibition formerly had.

AR 390/68 s441

Interpleader

Definitions

442 In Rules 443 to 460,

- (a) “claimant” means
 - (i) a person referred to in Rule 443(1) who is making or is expected to make an adverse claim against property, or
 - (ii) a person referred to in Rule 443(2) who makes a claim;
- (b) “instructing creditor” means the instructing creditor as defined in section 1(1)(x) of the *Civil Enforcement Act*;
- (c) “property” means property as defined in section 1(1)(ll) of the *Civil Enforcement Act*;
- (d) “related writ” means a related writ as defined in section 1(1)(mm) of the *Civil Enforcement Act*.

AR 277/95 s26;251/2001

Application

443(1) Where a person is under liability for any property in respect of which that person is or expects to be sued by 2 or more persons making adverse claims to that property, that person may apply by a notice of motion to the Court for relief by way of interpleader.

(2) Where a civil enforcement agency or other person charged with carrying out writ proceedings or acting under the authority of the Court receives from one or more persons a claim, other than an objection under the *Civil Enforcement Act*, with respect to property under seizure pursuant to the *Civil Enforcement Act*, the civil enforcement agency or that other interested person may apply by a notice of motion to the Court for relief by way of interpleader.

(3) Where a civil enforcement agency receives a claim for which the civil enforcement agency may apply under subrule (2) for relief by way of interpleader, the civil enforcement agency may instead of initially proceeding under subrule (2) do the following:

- (a) the civil enforcement agency may by written notice served on the instructing creditor direct the instructing creditor to apply in respect of the claim for an order determining the rights of the various claimants;
 - (b) if an instructing creditor on whom a written notice is served under clause (a) fails to apply for an order determining the rights of the various claimants, the civil enforcement agency may by written notice served on the holders of related writs direct the holders of the related writs to apply in respect of the claim for an order determining the rights of the various claimants;
 - (c) if the instructing creditor or the holders of the related writs on whom a notice is served under this subrule fail to apply for or obtain an order determining the rights of the various claimants, the civil enforcement agency may either
 - (i) apply under subrule (2) for relief by way of interpleader, or
 - (ii) release the property from seizure.
- (4)** Where directed under subrule (3) to apply for relief by way of interpleader, an instructing creditor or a holder of a related writ, as the case may be, may apply by a notice of motion to the Court for relief by way of interpleader.
- (5)** A notice of motion for relief by way of interpleader or for an order determining the rights of the various claimants must be served on all the claimants and direct that those claimants
- (a) appear before the Court, and
 - (b) state the nature and particulars of their claims.
- (6)** A notice of motion served under subrule (5) must
- (a) set out an address for service of the applicant, and
 - (b) set out or have endorsed on the back of the notice of motion the following notification:
- You are a Respondent to this Application. If neither you nor your lawyer appear before the Court at the time and place mentioned in this notice and produce an affidavit or other evidence verifying your claim, an order may be made by the Court declaring your claim to be barred as against the applicant and all persons claiming under the applicant.

(7) An application for relief by way of interpleader for an order determining the rights of the various claimants may be made notwithstanding that the person who has authorized the proceedings has provided security to or indemnified the applicant.

AR 390/68 ss442,446;277/95;243/96

Title in dispute

444 An applicant for relief under Rule 443 is not disentitled to relief by reason only that the titles of the claimants do not have a common origin but are adverse to and independent of one another.

AR 390/68 s444;277/95

Application by a defendant

445 Where the applicant for relief under Rule 443 is a defendant in an action, the application under Rule 443 may be made at any time after service of the statement of claim, and the Court may stay all further proceedings in the action.

AR 390/68 s445;277/95

Powers of Court

446(1) On application for relief by interpleader the Court may, subject to subrule (2), by order do one or more of the following:

- (a) summarily determine any issue on the basis of oral or affidavit evidence;
- (b) direct the trial of an issue,
 - (i) specifying which party will be the plaintiff and which party will be the defendant, and
 - (ii) imposing time limits, if any, respecting the filing of pleadings;
- (c) declare any party to be the owner of the property;
- (d) direct or otherwise provide for the satisfaction or payment of any lien or charges of the applicant;
- (e) award or otherwise provide for costs;
- (f) notwithstanding clauses (a) to (e), give any directions or make any order that the Court considers appropriate in the circumstances.

(2) Before making an order under subrule (1), the Court must be satisfied that the applicant

- (a) is not claiming any interest in the subject-matter of the dispute, other than in respect of a lien or for charges or costs, and

- (b) has not colluded with any of the claimants in respect of any matters for which the application is being made.

AR 390/68 ss443,449,453;277/95

Default by claimant

447(1) Where a claimant

- (a) does not appear on the motion after having been served with a notice of motion calling on the claimant to appear, or
- (b) having appeared, neglects or refuses to comply with any order made thereafter,

an order may be made by the Court declaring the claimant and all persons claiming under the claimant to be barred as against the applicant and all persons claiming under the applicant.

- (2)** An order made under subrule (1) does not affect the rights of the claimants as between themselves.

AR 390/68 s447;277/95

Repealed

448 to 453 Repealed AR 277/95 s26.

Additional Interpleader Rules for Civil Enforcement Agencies and Others

Repealed

454 Repealed AR 209/74 s5.

Several claims combined

455 Where a civil enforcement agency or other person charged with carrying out writ proceedings or acting under the authority of the Court intends to commence interpleader proceedings in respect of personal property against which there is more than one claim, the civil enforcement agency or that other person must, unless the Court otherwise directs,

- (a) make only one application in respect of all the claims, and
- (b) make all the judgment creditors parties to the proceeding.

AR 390/68 s455;277/95

Execution from different courts

456 Where there are writs arising out of judgments or orders from more than one court against the same property, whether on behalf of the same or different plaintiffs,

- (a) any application for interpleader must be made to the Court, and
- (b) the Court, on the application's being made, must dispose of the whole matter as if all of the writs against the property had been issued from the Court.

AR 390/68 s456;338/83;277/95

Claims by third party

457 Where a third party, other than a judgment debtor or a judgment creditor of a judgment debtor, makes a claim to personal property that is seized by a civil enforcement agency pursuant to civil enforcement proceedings, the third party must serve on the civil enforcement agency a written notice setting out

- (a) the claim being made by the third party, and
- (b) an address for service for the third party.

AR 390/68 s457;277/95

Notice by civil enforcement agency

458(1) On service of a notice of a claim under Rule 457, a civil enforcement agency must forthwith serve written notice of the claim on the person who instructed that proceedings be taken and on all other holders of related writs, as defined in the *Civil Enforcement Act*.

- (2)** Where a person who has been served with a notice of a claim wishes to
- (a) dispute the claim, or
 - (b) assert priority over the claim,

that person must, within 15 days from the day of being served with notice of the claim, serve on the civil enforcement agency a written notice disputing the claim or asserting priority over it.

(3) A person on whom a notice of a claim is served under subrule (1) may admit or not dispute the claim by serving on the civil enforcement agency a written notice stating that the person admits or does not dispute the claim.

(4) Notwithstanding subrule (3), a person on whom a notice of a claim is served under subrule (1) is considered to have admitted the claim if that person does not, within 15 days from the day of being served with the notice of the claim, serve on the civil enforcement agency a written notice disputing the claim.

(5) Where a civil enforcement agency has served a notice of a claim under subrule (1) and is satisfied that none of the persons on whom the notice was served is disputing the claim, the civil enforcement agency may release from seizure the property in respect of which the claim was made.

(6) If the person who instructed that the proceedings be taken does not

dispute the claim but another person on whom a notice of a claim was served under subrule (1) disputes the claim, that other person may instruct the civil enforcement agency to continue seizure of the property.

(7) On receiving instructions from another person under subrule (6) to continue a seizure, the civil enforcement agency shall continue the seizure if that other person pays the appropriate fees, if any, and meets any other conditions that may be imposed by a civil enforcement agency on a person who is an instructing creditor.

AR 390/68 s458;277/95;243/96

Security interest

459 Where a person claims to have a security interest in personal property that has been seized pursuant to civil enforcement proceedings, the Court may by order do one or more of the following:

- (a) direct that the property be sold and the proceeds of the sale be applied to the discharge of the amount due to the claimant if the sale and application of the proceeds of the sale are not disputed;
- (b) direct that sufficient money to answer the claim be paid into Court pending trial of the claim;
- (c) give any other directions that the Court considers appropriate in the circumstances.

AR 390/68 s459;277/95

Expeditious sale

460 At any stage of interpleader proceedings, the Court on application may direct

- (a) that a civil enforcement agency effect an expeditious sale or disposal of the personal property where the Court is of the opinion that it is appropriate to sell or dispose of the property in an expeditious manner, and
- (b) that the proceeds of the sale or disposal of the property, less any reasonable costs of the sale or disposal, take the place of the property that was sold or disposed of.

AR 390/68 s460;277/95

Examination of debtor

460.1(1) A person who is a secured party under the *Personal Property Security Act*, on service of a written notice on the debtor, may require the debtor to attend an examination and be examined under oath by the secured party with respect to the location of the collateral that is the subject of the security interest.

(2) A court order is not necessary to obtain an examination under subrule (1) but the notice must be served on the debtor at least 7 days before the day that the debtor is required to attend the examination for which the notice is served.

(3) Except as otherwise provided in this Rule, the Rules relating to an examination for discovery apply, with any necessary modifications, to an examination under this Rule.

AR 52/2001 s6

Repealed

461, 462 Repealed AR 277/95 s28.

Receiver

Bond

463(1) Where an order is made directing the appointment of a receiver, the person appointed shall, unless the court otherwise orders before acting give security to be approved by the court to account for what he shall receive and to pay it as the court shall direct.

(2) A receiver shall, unless the court otherwise orders be allowed compensation.

AR 390/68 s463;277/95

Passing accounts

464(1) A receiver shall file his accounts with and pass them before the clerk of the court annually or at such other intervals as the court may direct.

(2) Thereafter within a reasonable period, the balance due on the accounts shall be paid by the receiver.

(3) The court, on application or on its own motion, may give such directions as may be proper and may require the receiver or the parties, or any of them, to attend before the court to show cause why accounts have not been filed or passed or other proper proceedings taken and may order a receiver to pay interest on any sum or may disallow the salary of a receiver or part thereof.

AR 390/68 s464

Repealed

465, 466 Repealed AR 277/95 s30.

Preservation and Inspection of Property

Interim custody of property

467 Where there is a dispute respecting the title to any property, the court may make an order for the preservation or interim custody of the property or may order the amount in dispute be brought into court or otherwise secured or may order the sale of the property and the payment of the proceeds into court.

AR 390/68 s467

Detention and inspection

468 The court may, upon the application of any party and on notice to any person to be affected, whether a party to the proceedings or not, upon such terms as seem just,

- (a) make any order for the detention or preservation of any property being the subject of the action or which may be evidence on any issue arising therein, and
- (b) make any order for the inspection of any property, the inspection of which is necessary for the proper determination of the question in dispute,

and for all or any of these purposes,

- (c) authorize any person or persons to enter upon or into any land or building, and
- (d) authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence,

but no order shall be made unless the person who is to be affected is protected for any loss or damage which may be occasioned to that person.

AR 390/68 s468

Payment into Court

469 Where any personal property is sought to be retained or attached by virtue only of a lien or otherwise as security for money, the court may, upon motion, order that the person otherwise entitled to possession of the property be given possession upon payment into court, to abide the event of action or proceedings commenced or to be commenced, of the amount of the lien or security claimed, plus such further sum, if any, for interest and costs as may be just.

AR 390/68 s469

Garnishee Rules

Definitions

470(1) In this Rule and Rules 471 to 481,

- (a) “amount of all relevant claims” means the total of
 - (i) the amount outstanding on all related writs that are in force against the debtor, and
 - (ii) where a garnishee summons is authorized by an attachment order, the amount authorized to be attached in respect of the prejudgment claimant’s claim;
- (b) “creditor” means an enforcement creditor or a prejudgment claimant;
- (c) “debtor” means an enforcement debtor or a defendant in respect of whom an attachment order has been granted;

- (d) “expiry date”, with respect to a garnishee summons, means the expiry date indicated in the garnishee summons or in the latest renewal statement served on the garnishee in accordance with Rule 479;
- (e) “prejudgment claimant” means a claimant who has obtained an attachment order authorizing the clerk to issue a garnishee summons before judgment.

(2) Any term used in this Rule and Rules 471 to 481 that is defined in the *Civil Enforcement Act* has the meaning given to it by that Act.

AR 277/95 s31

Amounts outstanding

471 The amount outstanding at any relevant time

- (a) on a garnishee summons in respect of which no renewal statement or adjustment notice has been served on the garnishee is
 - (i) the amount for which the garnishee summons was issued,
 - less
 - (ii) any amount paid by the garnishee to the clerk on account of the garnishee summons;
- (b) on a garnishee summons in respect of which one or more renewal statements or adjustment notices have been served on the garnishee is
 - (i) the amount of all relevant claims as set out in the latest renewal statement or adjustment notice served on the garnishee,
 - less
 - (ii) any amount paid by the garnishee to the clerk after service of the latest renewal statement or adjustment notice.

AR 390/68 s471;166/94;277/95

Issuing of garnishee summons

472(1) A creditor may require the clerk to issue a garnishee summons by

- (a) filing with the clerk
 - (i) an affidavit in support of the garnishee summons, and
 - (ii) in the case of a prejudgment claimant, a copy of the attachment order authorizing the clerk to issue a garnishee summons,

and

- (b) providing the clerk with any other information that the clerk requires in order to issue the garnishee summons.
- (2) Where the Workers' Compensation Board requests the clerk to issue a garnishee summons, the Workers' Compensation Board must, in addition to filing an affidavit under subrule (1), also file with the clerk a certificate in the form set out in Form K of Schedule A prior to the issuing of the garnishee summons.
- (3) When the creditor has complied with this Rule, the clerk shall issue a garnishee summons in Form L of Schedule A for the amount of all relevant claims.
- (4) A garnishee summons is deemed to be issued against any current obligation or future obligation of the type indicated in the garnishee summons as being owed by the garnishee to the debtor.
- (5) A garnishee summons shall not be set aside for an irregularity unless in the opinion of the Court the irregularity has prejudiced the debtor or garnishee.

AR 390/68 s470;277/95

Service

473(1) In order for a garnishee summons to attach an obligation, the garnishee summons must

- (a) be served in triplicate on the garnishee in accordance with Rule 353, and
- (b) be accompanied by a garnishee's compensation fee in the amount of \$25.
- (2) Repealed AR 243/96 s17.
- (3) For the purposes of garnishment, an obligation is owed to the debtor even though it has been assigned, charged or encumbered by the debtor, if the assignment, charge or encumbrance is fraudulent as against the creditor.
- (4) An obligation that is owed to an enforcement debtor by a partnership carrying on business within Alberta may be attached if the garnishee summons is served on the partnership within Alberta, notwithstanding that one or more members of the partnership are resident outside of Alberta.

AR 390/68 ss471,473,474;277/95;243/96

Duties of garnishee

474(1) This Rule does not apply to a garnishee summons that attaches employment earnings.

- (2) Within 15 days from the day of being served with a garnishee summons, a garnishee must do the following:

- (a) if able to do so, serve a copy of the garnishee summons on the debtor
 - (i) in accordance with Rule 353, or
 - (ii) by mailing a copy of the garnishee summons to the debtor by ordinary mail addressed to the current address of the debtor, as shown on the records of the garnishee;
 - (b) deliver to the clerk the garnishee's response referred to in subrule (5);
 - (c) pay to the clerk the lesser of
 - (i) the amount outstanding on the garnishee summons, and
 - (ii) the amount payable to the debtor in respect of any current obligation attached by the garnishee summons,less the garnishee's compensation in the amount of \$10.
- (3)** When a future obligation that has been attached by a garnishee summons becomes payable, the garnishee must immediately
- (a) deliver to the clerk the garnishee's response setting out
 - (i) the amount of the future obligation that is now payable, and
 - (ii) the amount that is being paid by the garnishee to the clerk on account of the garnishee summons, and
 - (b) pay to the clerk the lesser of
 - (i) the amount outstanding on the garnishee summons, and
 - (ii) the amount of the future obligation that has become payable to the debtor,less the garnishee's compensation in the amount of \$10.
- (4)** For the purposes of subrules (2)(c) and (3)(b), the amount payable by the garnishee to the clerk in respect of a joint entitlement must, unless otherwise ordered by the Court, be calculated on the assumption that an equal portion of the joint entitlement is payable to each joint obligee.
- (5)** For the purposes of subrule (2)(b), the garnishee's response must contain as much of the following as is applicable:
- (a) either

- (i) a certificate stating that the garnishee has delivered a copy of the garnishee summons to the debtor, or
- (ii) a statement setting out the reason why the garnishee has been unable to deliver the garnishee summons to the debtor;
- (b) the amount of any current obligation attached by the garnishee summons;
- (c) the amount that is being paid by the garnishee to the clerk on account of the garnishee summons;
- (d) where the garnishee summons has attached a future obligation, the following, if known:
 - (i) the date or dates on which the future obligation, or any portion of it, is expected to become payable;
 - (ii) the amount that is expected to be payable on each date referred to in subclause (i);
 - (iii) the nature of any contingencies that must be satisfied before the future obligation will become payable;
- (e) where the garnishee summons has attached a joint entitlement,
 - (i) the name of each joint obligee other than the debtor, and
 - (ii) either
 - (A) the address of each joint obligee other than the debtor, or
 - (B) in the case of the circumstances referred to in section 82(c) of the *Civil Enforcement Act*, a certificate stating that the garnishee has delivered a copy of the garnishee summons to each joint obligee other than the debtor;
- (f) if the garnishee disputes the existence of an attachable obligation, the grounds for the dispute;
- (g) if the garnishee believes that an obligation against which the garnishee summons has been issued is or may be owed to a person other than the debtor,
 - (i) the reasons for that belief, and
 - (ii) the name and address of that other person;

- (h) if another garnishee summons regarding the same obligation has previously been served on the garnishee and is still in effect,
 - (i) a statement stating that another garnishee summons regarding the same obligation is in effect, and
 - (ii) the expiry date of that other garnishee summons.
- (6) A garnishee who disputes the existence of an attachable obligation may pay the money to the clerk to be held by the clerk pending the determination of the dispute.

AR 390/68 ss475,476,477;277/95

Grace period

475(1) With respect to a garnishee summons, other than a garnishee summons that attaches employment earnings, a garnishee who pays an attached obligation to the debtor during the grace period determined in accordance with subrule (2) does not incur any liability under section 84 of the *Civil Enforcement Act* if the garnishee establishes to the satisfaction of the Court that

- (a) the garnishee attempted in good faith to identify the obligation attached by the garnishee summons and to prevent it from being paid to the enforcement debtor, and
 - (b) either
 - (i) the payment was not authorized, permitted or effected by an officer, employee or agent of the garnishee who had actual knowledge of the garnishment before the payment was made, or
 - (ii) it was not reasonably possible in the circumstances to prevent the payment from being made to the debtor.
- (2) For the purposes of subrule (1), the grace period begins when the garnishee summons is served on the garnishee and ends
- (a) at midnight on the day that the garnishee summons is served, if the garnishee summons is served on the office, branch or agent of the garnishee that is responsible for paying the attached obligation, or
 - (b) at midnight on the 7th day following the day that the garnishee summons is served on the garnishee, if service of the garnishee summons is effected otherwise than as stated under clause (a).

AR 277/95 s31

Employment earnings

476(1) Unless the Court otherwise orders, a garnishee summons does not attach a debtor's employment earnings that are ordinarily payable at the end of the pay period during which the garnishee summons is served unless the garnishee summons is served on the garnishee

- (a) at least 5 days before the end of the pay period, in the case of a pay period that is 10 days or less, and
- (b) at least 10 days before the end of the pay period, in the case of a pay period that is more than 10 days.

(2) Subrule (1) does not apply to any amount that the garnishee does in fact pay to the clerk under a garnishee summons.

(3) Within 15 days from the day of service of the garnishee summons on a garnishee for the purpose of attaching employment earnings, the garnishee must,

- (a) if able to do so, serve a copy of the garnishee summons on the debtor
 - (i) in accordance with Rule 353, or
 - (ii) by mailing a copy of the garnishee summons to the debtor by ordinary mail addressed to the current address of the debtor, as shown on the records of the garnishee,

and

- (b) deliver to the clerk a written response containing as much of the following as is applicable:
 - (i) a statement acknowledging or denying that the debtor is employed by the garnishee;
 - (ii) a statement indicating the frequency with which the debtor's employment earnings are paid to the debtor;
 - (iii) either
 - (A) a certificate stating that the garnishee has delivered a copy of the garnishee summons to the debtor, or
 - (B) a statement setting out the reasons why the garnishee has been unable to deliver the garnishee summons to the debtor;
 - (iv) if another garnishee summons against the debtor's employment earnings has previously been served on the garnishee and is still in effect,
 - (A) a statement stating that another garnishee summons against the debtor's employment earnings is in effect, and

(B) the expiry date of that other garnishee summons.

(4) Within 5 days after the end of the debtor's last pay period in any month during which a garnishee summons is in effect, the garnishee must

- (a) pay to the clerk the amount of the debtor's employment earnings for the month that are attached by the garnishee summons, less the garnishee's compensation in the amount of \$10, and
- (b) deliver to the clerk the statement required under section 81(1)(c) of the *Civil Enforcement Act*.

(5) Notwithstanding subrule (4), where a debtor's employment earnings are paid more frequently than monthly, the garnishee may elect to comply with subrule (4) at the end of each pay period, rather than at the end of the last pay period in each month.

(6) If a garnishee elects under subrule (5) to comply with subrule (4) at the end of each pay period, the debtor's minimum and maximum employment earnings exemption for each pay period is determined by multiplying the monthly exemption by the number of days in the pay period and dividing the product by 30.

(7) Section 78(d) of the *Civil Enforcement Act* does not apply to a subsequent garnishee summons where the garnishee summons that is already in effect was issued pursuant to the *Maintenance Enforcement Act*.

AR 277/95 s31

Service by enforcement creditor

477(1) Instead of relying on a garnishee to serve a garnishee summons on an enforcement debtor, an enforcement creditor may at any time serve the garnishee summons on the enforcement debtor.

(2) If an enforcement creditor serves a garnishee summons on an enforcement debtor,

- (a) that service of the garnishee summons has the same effect as if the garnishee summons had been served on the enforcement debtor by the garnishee, and
- (b) the enforcement creditor must complete the certificate referred to in Rule 474(5)(a)(i).

(3) Nothing in this Rule shall be construed so as to remove from a garnishee any obligation to serve the garnishee summons on the enforcement debtor.

AR 277/95 s31

Money attached by prejudgment garnishee summons

478(1) The clerk shall pay out money that is paid into Court pursuant to a prejudgment garnishee summons only as directed by the Court or as provided

by this Rule.

(2) Except as otherwise ordered by the Court, the money or the portion of the money referred to in subrule (1) necessary to satisfy any related writ that is in force against the debtor constitutes a distributable fund for the purposes of Part 11 of the *Civil Enforcement Act* when

- (a) the clerk is satisfied that there is a related writ in force against the debtor, and
- (b) the period referred to in Rule 481(1) has expired.

(3) Except as otherwise ordered by the Court, if

- (a) a discontinuance of the claimant's action has been filed or a judgment dismissing the claimant's action has been entered with the clerk, and
- (b) there are no related writs in force against the debtor,

the clerk must pay the money referred to in subsection (1) to the debtor on the debtor's written request to do so.

AR 277/95 s31

Renewal

479(1) This Rule applies to any garnishee summons except a garnishee summons that has been issued against a deposit account or a joint account.

(2) At any time within 60 days before the expiry date of a garnishee summons, the instructing creditor may require the clerk to issue a renewal statement, by providing to the clerk a completed renewal statement in Form M of Schedule A, in respect of the garnishee summons stating the amount outstanding on all related writs in force against the debtor.

(3) When a renewal statement is served on the garnishee on or before the expiry date of the expiring garnishee summons,

- (a) the garnishee summons is renewed for a period of one year from its current expiry date, and
- (b) the garnishee must, within 15 days from the day of being served with the renewal statement, update the status of any contingency referred to in the garnishee's response delivered to the clerk under Rule 474(2)(b).

(4) A renewal statement is void if it is not served on the garnishee on or before the expiry date of the expiring garnishee summons.

(5) There is no limit on the number of times that a garnishee summons may be renewed.

(6) Notwithstanding section 78(d) of the *Civil Enforcement Act*, a subsequent garnishee summons issued against a joint account is effective if

- (a) the garnishee summons already in effect did not attach any amount owing, or
- (b) the subsequent garnishee summons issued against the joint account is authorized by the Court.

AR 277/95 s31

Change in amount outstanding

480 When a garnishee summons is in effect, any creditor may serve on the garnishee an adjustment notice setting out the amount of all relevant claims.

AR 277/95 s31

Distribution of funds

481(1) Unless otherwise ordered by the Court, money paid into Court pursuant to a garnishee summons shall not be distributed under Part 11 of the *Civil Enforcement Act* until 15 days from the day that the debtor is served with the garnishee summons in accordance with Rule 474, 476 or 477, as the case may be.

(2) The clerk is not required to make a distribution where the distributable fund is less than \$100.

(3) The clerk may deduct from the funds being distributed a distribution fee in the amount set out in Schedule E.

AR 277/95 s31

Proposal to pay out

481.1 Where money has been paid into Court pursuant to a garnishee summons, the clerk may provide to a person who is shown in a Personal Property Registry search result as having a right or interest in that money a notice setting out the manner in which the clerk proposes to pay out that money.

AR 269/97 s9

Repealed

482 to 484 Repealed AR 277/95 s31.

485 to 493 Repealed AR 277/95 s32.

Stop Order

Stop order

494(1) Any person claiming to be interested in any money, stock or securities in court, or claiming to have them applied towards the satisfaction of any judgment or writ of enforcement against the person to whose credit the

money, stock or securities stand, may, upon an affidavit verifying his claim, apply ex parte for an order directing that the money, stock or securities shall not be paid out or dealt with except upon notice to him.

(2) The person obtaining the order may be ordered to pay any costs, charges and expenses occasioned thereby to any person interested in the money, stock or securities to which the order relates.

AR 390/68 s494;277/95

Part 37 Sales of Real Estate

Civil Enforcement Act

494.1 This Part is subject to the *Civil Enforcement Act* and the regulations under that Act.

AR 277/95 s34

Power of court

495 Where in any proceeding relating to any real estate it is necessary or expedient that the real estate, or any part thereof be sold, the court may order it to be sold and any party bound by the order and in possession of the real estate or in receipt of the rents and profits thereof may be compelled to deliver up the possession or receipts to the purchaser or such other person as the court directs.

AR 390/68 s495

Directions

496 In addition to any powers already existing where a sale, mortgage, partition or exchange of real estate is ordered, the court may make directions as to how it is to be carried out.

AR 390/68 s496

Sale out of court

497 If it appears that all persons interested are before the court or bound by the order, the court may order a sale, mortgage, partition or exchange of real estate to be carried out by proceedings altogether out of court, but any moneys produced thereby shall be paid into court or to trustees or otherwise dealt with as the court may order.

AR 390/68 s497

Court approval

498 Where a judgment or order is given or made directing any property to be sold, the sale shall not be made until approved by the court, and all proper parties shall join in the sale and conveyance as the court directs.

AR 390/68 s498

Part 38 Appeals from Master in Chambers or Referee

Appeal from chambers

499(1) Except in the case of interlocutory matters arising under the *Divorce Act*, a person affected by a certificate of a referee may appeal therefrom to a judge of the Court of Queen's Bench.

(2) Repealed AR 338/83 s13.

AR 390/68 s499;316/72;124/73;338/83

Procedure

500(1) An appeal from a master in chambers or from a referee shall be by motion on notice setting out the grounds of appeal.

(2) Subject to subrule (3), the notice of motion must be served within 7 days and returnable within a reasonable time, not exceeding 60 days, after the judgment or order is entered and served or the certificate is given.

(3) If the party entitled to appeal has not appeared by a solicitor or filed an address for service with the clerk, the notice of appeal must be served within 7 days and returnable within a reasonable time, not exceeding 60 days, after the judgment or order is entered.

AR 390/68 s500;338/83;243/96;172/99;68/2000

Note

PART 39 - Rules 501 - 543 - see “**Court of Appeal Rules**” tab

