No. S1-GS-

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

APPLICATION RECORD
(On behalf of the Applicant)

Meaghan S. Hughes
Justice and Public Safety
Legal Services Section
95 Rochford Street
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Solicitor for the Applicant

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* This Document has been filed Electronically in accordance with Practice Direction 46

S1-GS 28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on a date to be fixed, at the **Law Courts Building, 42 Water Street, Charlottetown, Prince Edward Island.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any document in the application, you or a Prince Edward Island lawyer acting for you must forthwith prepare a notice of appearance in Form 38A and a designation of address for service (Form 16A.1) prescribed by the Rules of Civil Procedure, serve it on the applicant lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant and file it with proof of service in the court office where the application is to be heard, not later than noon on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 26, 2020

Roxanne Snow
Registrar

Law Court Building
42 Water Street
Charlottetown, PE

TO: [*ex parte*]

APPLICATION

1. The applicant makes application for:

    a. An order suspending, for the duration of the suspension of regular court operations by the Chief Justice when the Court is only hearing urgent and emergency matters, evictions of residents from their homes, pursuant to eviction orders issued by the Director of Residential Rental Property or writs of possession, unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions;

    b. An order granting leave to bring this application ex parte without service of the notice of application on parties to eviction orders;

    c. An order that this order be served on the public by posting notice of it on the websites of the Department of Justice and Public Safety; and

    d. Such further order as the Honourable Court deems just.

2. The grounds for the application are:

    a. These orders are requested to protect the health and safety of persons to be evicted from their residences, to protect the health and safety of sheriffs whose responsibilities include enforcing eviction orders and executing writs of possession, and to help contain and prevent the spread of the 2019 novel coronavirus (COVID-19).

    b. Rule 60.11 of the Rules of Civil Procedure authorizes the issuance of a writ of possession with leave of the court.

    c. Sheriffs' duties include enforcement of writs of possession under s. 8(d)(3) of the *Rental of Residential Rental Properties Act*, RSPEI 1988, c R-13.1.

    d. Eviction orders and issued writs of possession have been delivered to sheriffs for enforcement to deliver vacant possession.

    e. A sheriff has no discretion to refuse to execute a writ of possession.

    f. Given the urgent need to prevent the spread of COVID-19, it is impracticable to serve advance notice on all parties to eviction proceedings and bring individual motions in each proceeding – Rule 16.04 of the Rules of Civil Procedure.

    g. Rule 14.05(3)(i) of the Rules of Civil Procedure and the inherent jurisdiction of the Supreme Court.

3. The following documentary evidence will be used at the hearing of the application:

    i. The Affidavit of Clare Henderson, the Director of Court Services, Prince Edward Island, and the exhibits thereto.

    ii. Such other material as counsel may advise.

March 26, 2020

Meaghan Hughes
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Solicitor for the Applicant

A.G. of Prince Edward Island	No. S1-
	SUPREME COURT OF PRINCE EDWARD ISLAND PROCEEDING COMMENCED AT CHARLOTTETOWN, PE
	NOTICE OF APPLICATION
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TAB

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PART I - IDENTIFYING STATEMENT AND FACTS

1. The facts as they relate to this Application are set out in the affidavit of Clare Henderson sworn March 27, 2020.

PART II – ISSUES

2. The Applicant is seeking an order that would suspend the enforcement of eviction orders issued by the Director of Residential Rental Property or the Island Regulatory and Appeals Commission ("Commission") under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 ("*Act*") and also the suspension of writs of possession issued under Rule 60.11, unless otherwise ordered by the court.

3. The Applicant requests that this order be effective for the duration of the period in which the Court is only hearing urgent and emergency matters.

4. The Applicant further requests that leave be granted to bring this Application *ex parte* without service on parties who are presently subject to eviction orders or writs of possession and any persons who may be affected by such orders or writs while this Order remains in effect.

5. Finally, the Applicant requests that an order be issued to permit the Applicant to serve notice or the order to the public by posting on the Department of Justice and Public Safety website and the COVID-19 Government webpage.

PART III - LAW

Orders of the Director of Rental of Residential Property and Commission

6. Under the *Act*, a lessor ("landlord") may serve on a lessee ("tenant") a notice of termination of lease ("eviction notice") if the tenant is more than one day late in the payment of rent,

Where a lessee fails to pay rent in accordance with the rental

> agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.

7. The tenant then has 20 days to vacate the property. If within 10 days of being served the eviction notice, the tenant pays rent in full, then the eviction notice is void.[1] Where a tenant has persistently been late in paying rent a landlord can apply to the Director of Residential Rental Property ("Director") for an order terminating the rental agreement, even if the tenant pays rent in full.[2]

8. If a tenant receives an eviction notice for failure to pay rent they can apply to the Director to have the notice set aside[3]. The tenant must do this within 10 days of being given the notice.[4] The Director will then issue an order. This order may include that the tenant must pay any amount owed and/or that the premises be surrendered by the tenant to the landlord and may direct the sheriff to put the landlord in possession of the property ("eviction order").[5]

9. Any order of the Director may be appealed to the Island Regulatory and Appeals Commission ("Commission") within 20 days of the order of the Director.[6] A hearing shall be held by the Commission within 30 days of the receipt of the appeal.[7] The Commission has the same authority as the Director in issuing an order.[8]

10. An order of either the Director or the Commission may be filed with the Supreme Court and may be enforced as if it were an order of the court.[9]

Sheriff Services

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[1] *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 at s. 13(2) [RRPA].
[2] RRPA at s. 13(3)
[3] RRPA at s 16(1).
[4] RRPA at s 16(2).
[5] RRPA at s 8(d.2-d.3).
[6] RRPA at s 25(1).
[7] RRPA at s 25(2).
[8] RRPA at s 26(1).
[9] RRPA at ss. 8.1 & 26(4)-(5).

11. Sheriffs in the Applicant of Prince Edward Island are officers of the court and appointed under the *Sheriffs Act*, RSPEI 1988, c S-4.1.

12. Pursuant to section 4(1) of the *Sheriffs Act* a sheriff shall,

> 4(1)(a) serve any process for the purposes of a proceeding before the courts;
>
> (b) execute any order of the court and attach or seize any property pursuant to such order;
>
> (c) where so appointed under the Court Security Act R.S.P.E.I. 1988, Cap. C-27.1, act as a security officer;
>
> (d) perform such other functions as the Registrar may direct.[10]
>
> [emphasis added]

13. Sheriffs are required to execute orders including seizing property when so ordered by the court, including situations where a landlord files an order of the Director or Commission with the court and requests a writ of possession be issued by the court under Rule 60.11.

14. There are additional provincial and federal statutes which provide certain enforcement activities be undertaken by a sheriff. The delivery of vacant possession of a property pursuant to an order of the Director of Commission would be one example.

15. A recent case of the Ontario Superior Court of Justice confirmed that without a court order the Sheriff does not have the discretion to decide not to enforce eviction orders. In *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469, an order was issued pursuant to the *Residential Tenancies Act*, 2006, SO 2006, c. 17 for the sheriff to enforce an eviction order. Due to a number of circumstances the sheriff was not able to enforce the order. The landlord brought an Application of *mandamus* to have the court compel the sheriff to enforce the eviction order.' After going through the eight part test, the court found that the requirements for *mandamus* were met and that an order requiring the Sheriff to enforce the eviction

[10] *Sheriffs Act*, RSPEI 1988, c S-4.1 at s. 4(1).

order was necessary the sheriff did not have the authority to not enforce the order.[11]

16. Further, in *Central Guaranty Trust Co. v. McRae* (1993), 1993 CanLII 8542, the Superior Court held that the Sheriff has a duty to enforce validly made writs of discretion and no discretion not to do so.[12]

17. The Chief Public Health Officer for the Applicant of Prince Edward Island, Dr. Heather Morrison, ("CPHO") has recommended social distancing in an effort to reduce the spread of COVID-19, a deadly communicable disease.

18. The Applicant submits that Sheriffs are unable to effectively execute writs of possession or orders of the Director or Commission for possession of a property while maintaining the social distancing practice recommended by the CPHO.

19. Further, the court has issued a directive suspending all hearings other than those that are urgent or an emergency. The Applicant submits that while this does not suspend the enforcement of orders by the sheriff that this is a unique position where a public health state of emergency has been issued and it would cause occupational health and safety concerns for sheriffs to be enforcing such orders.

Ex Parte

20. The Applicant submits that given the current circumstances of the global pandemic and recommendations of the CPHO that is it impractical to serve advance notice on all parties who may be subject to eviction orders and bring individual proceeding for each.

21. The Applicant submits that for the protection of the health and safety of sheriffs as well as the general public that this is a time by very definition of an emergency.[13] The Applicant submits that it is appropriate to grant this order ex parte as there is not time

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[11] *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469 at para. 70.
[12] *Central Guaranty Trust Co. v. McRae (1993),* 1993 CanLII 8542, at para. 12.
[13] Practice note 17.

to provide notice to all affected parties.[14]

Posting of Order Online

22. The Applicant submits that the court can exercise its inherent jurisdiction to order the Applicant to post any order issued as a result of this Application online as an alternative method of service and notice of the order. This shall allow anyone who is currently, or may become, subject to an eviction order notice or writ of possession that the enforcement of such orders has been suspended.

PART IV- ORDER SOUGHT

23. The Applicant seeks an ex parte order for the suspension of the enforcement by sheriffs of orders of the Director of Residential Rental Property and Commission as well as the suspension of enforcement of writs of possession for the duration of the period of time where the court is only hearing urgent or emergency matters.

24. The Applicant seeks an order that this order be served on the public by posting notice of it on the websites of the Department of Justice and Public Safety and the COVID-19 webpage.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of March, 2020

Meaghan S. Hughes
Legal Services Section Justice and Public Safety
4th Floor Shaw Building South, 95 Rochford St
Charlottetown, PE C1A 7N8
Counsel for the Attorney General of Prince Edward Island

[14] *Sprott Resource Lending Corp.*, Re, 2013 ONSC 4350 at para. 9.

SCHEDULE A- CASE LAW

1. *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469.

2. *Central Guaranty Trust Co. v. McRae (1993),* 1993 CanLII 8542.

3. *Sprott Resource Lending Corp.,* Re, 2013 ONSC 4350.

SCHEDULE B- LEGISLATION

1. *Rental of Residential Properties Act, RSPEI 1988, c R-13.1.*
2. *Sheriffs Act, RSPEI 1988, c S-4.1.*
3. *Rules of Civil Procedure for Prince Edward Island.*
4. *Practice Note 17.*

TAB

3

No. S1-GS-28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

Affidavit

I, Clare Henderson, of the Charlottetown, in the Province of Prince Edward Island,

MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as the Director of Family Law and Court Services for the Province of Prince Edward Island within the Department of Justice and Public Safety. I have held this position since August 14, 2017. Court Services is responsible for providing legal and policy advice and support on court operations to staff, managers and senior management in the criminal, family and civil courts, including enforcement offices.

2. Orders arising out of a civil court proceeding, and enforceable in Prince Edward Island, may be directed to a Sheriff for enforcement under s. 4(1) of the *Sheriffs Act.* In addition, various provincial and federal statutes provide that certain enforcement activities be directed to a sheriff. For example, under section 8(d.3) of the *Rental of Residential Properties Act*, RSPEI 1988, c R-13.1, sheriffs may be directed to enforce

an order for surrender of a residential premises ("eviction order"). Further, under sections 8.1(2) and 26(5) of the *Rental of Residential Property Act*, orders of the Director of Residential Rental Property or the Commission may be filed in the Supreme Court and are deemed to be an order of that court and enforceable as such.

3. Pursuant to section 2(1) of the *Sheriffs Act*, sheriffs are appointed pursuant to the *Civil Service Act* and are employees of the Department of Justice and Public Safety.

4. Sheriffs are impartial officers of the court with a duty to act within the confines of the law and at the direction of the court.

5. Typical enforcement activities conducted by sheriffs include: the reading and posting of injunctions, seizure and sale of assets, executing writs of possession pursuant to mortgage enforcement proceedings, evictions and restoration to premises orders, and the service of court documents. They carry out the enforcement of civil orders under the direction and supervision of management in Court Services. Where a question arises in relation to the measures to be taken by a sheriff in carrying out an order, direction from the court is sought by the sheriff or any interested person under Rule 60.18 of the *Rules of Civil Procedure.*

6. It is the Department's policy that sheriffs adhere to safety and prevention principles to ensure the safety of themselves and others while undertaking to perform their assigned duties, including taking all reasonable precautions to minimize the possibility of jeopardizing their health and safety or the health and safety of others.

7. On March 11, 2020, the World Health Organization (WHO) declared their assessment of COVID-19 as a pandemic, urging countries to take a comprehensive strategy to prevent infections, save lives and minimize impact. Attached hereto and marked as Exhibit "A" to my Affidavit is a copy of the WHO Director-General's opening remarks at the media briefing on COVID-19 of March 11, 2020, from the WHO's website.

8. The Chief Justice of the Supreme Court of Prince Edward Island issued a notice suspending all court matters other than those deemed as urgent or an emergency effective Tuesday, March 17, 2020, until further notice, to help contain the spread of the 2019 coronavirus (COVID-19). A copy of the notice is hereto attached as Exhibit "B".

9. The notice does not address the suspension of the enforcement of court orders or tribunal orders with enforcement direction provided to the sheriff. I believe that COVID-19 poses a unique issue in terms of occupational health and safety issues for sheriffs, as well as the health of the general public, particularly around executing evictions and writs of possession. Sheriffs do not have the training or access to information or testing resources that could enable them to determine with any certainty whether a person subject to eviction or a writ of possession from their residence is infected with COVID-19.

10. Eviction orders or writs of possession also do not allow for consideration of whether the individuals subject to eviction are subject to mandatory self-isolation or quarantine orders by PEI's Chief Public Health Officer ("CPHO").

11. As of March 15, 2020, CPHO recommended the closure of some provincial parks, schools and daycares to help prevent the spread of COVID-19. A copy of the news release is hereto attached as Exhibit "C".

12. As of March 16, 2020, CPHO recommended the closure of public libraries to help prevent the spread of COVID-19. A copy of the news release is hereto attached as Exhibit "D".

13. On March 16, 2020, a public health state of emergency was declared by the Premier of Prince Edward Island. A copy of the Order in Council is hereto attached as Exhibit "E".

14. On March 21, 2020, the CPHO issued a Public Health Order requiring that anyone is entering the province to self-isolate for a period of 14 days. A copy of that Order is hereto attached as Exhibit "F".

15. There have been significant closures and reductions in non-essential government services as well as impacts to other private businesses. A list of sectors impacted as of March 25, 2020 is hereto attached as Exhibit "G".

16. The CPHO has recommended that the public to stay home and limit group gatherings. She advises that there may soon be indications of community transmission.

17. I believe that an appropriate mitigation strategy for the health and safety of sheriffs, and to avoid adding further risk of community transmission in the province, is to stay the enforcement of evictions and writs of possession effective immediately and until regular

court operations are directed by the Chief Justice to resume.

18. I make this affidavit in support of the application for a stay of civil enforcement activity of writs of possession of and evictions, and for no other or improper purpose.

SWORN before me at Charlottetown, in the County of Queens, Province of Prince Edward Island, this 27th day of March, 2020.

Commissioner for taking Oaths and Affidavits in the Supreme Court of Prince Edward Island

Clare Henderson

TAB

A

World Health Organization

WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020

11 March 2020

Good afternoon.

In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled.

There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives.

Thousands more are fighting for their lives in hospitals.

In the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher.

WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction.

We have therefore made the assessment that COVID-19 can be characterized as a pandemic.

Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.

Describing the situation as a pandemic does not change WHO's assessment of the threat posed by

this virus. It doesn't change what WHO is doing, and it doesn't change what countries should do.

We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.

And we have never before seen a pandemic that can be controlled, at the same time.

WHO has been in full response mode since we were notified of the first cases.

And we have called every day for countries to take urgent and aggressive action.

We have rung the alarm bell loud and clear.

===

As I said on Monday, just looking at the number of cases and the number of countries affected does not tell the full story.

Of the 118,000 cases reported globally in 114 countries, more than 90 percent of cases are in just four countries, and two of those – China and the Republic of Korea - have significantly declining epidemics.

81 countries have not reported any cases, and 57 countries have reported 10 cases or less.

We cannot say this loudly enough, or clearly enough, or often enough: all countries can still change the course of this pandemic.

If countries detect, test, treat, isolate, trace, and mobilize their people in the response, those with a handful of cases can prevent those cases becoming clusters, and those clusters becoming community transmission.

Even those countries with community transmission or large clusters can turn the tide on this virus.

Several countries have demonstrated that this virus can be suppressed and controlled.

The challenge for many countries who are now dealing with large clusters or community transmission is not whether they can do the same – it's whether they **will**.

Some countries are struggling with a lack of capacity.

Some countries are struggling with a lack of resources.

Some countries are struggling with a lack of resolve.

We are grateful for the measures being taken in Iran, Italy and the Republic of Korea to slow the virus and control their epidemics.

We know that these measures are taking a heavy toll on societies and economies, just as they did in China.

All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

WHO's mandate is public health. But we're working with many partners across all sectors to mitigate the social and economic consequences of this pandemic.

This is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight.

I have said from the beginning that countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact.

Let me summarize it in four key areas.

First, prepare and be ready.

Second, detect, protect and treat.

Third, reduce transmission.

Fourth, innovate and learn.

I remind all countries that we are calling on you to activate and scale up your emergency response mechanisms;

Communicate with your people about the risks and how they can protect themselves – this is everybody's business;

Find, isolate, test and treat every case and trace every contact;

Ready your hospitals;

Protect and train your health workers.

And let's all look out for each other, because we need each other.

===

There's been so much attention on one word.

Let me give you some other words that matter much more, and that are much more actionable.

Prevention.

Preparedness.

Public health.

Political leadership.

And most of all, people.

We're in this together, to do the right things with calm and protect the citizens of the world. It's doable.

I thank you.

TAB

B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF Clare Henderson SWORN BEFORE ME THIS 27 DAY OF March 2020

A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

Notice to the Profession, the Public and the Media regarding Criminal, Civil and Family Proceedings

Prince Edward Island Court of Appeal, Supreme Court and Provincial Court

March 16, 2020

In order to protect the health and safety of all court users and to help contain the spread of the 2019 novel coronavirus (COVID-19), the Prince Edward Island courts are taking immediate steps. Essential public service is being maintained.

Measures applicable to all courts

All members of the public are expected to follow the recommendations and advisories of the Chief Public Health Office. Members of the public subject to self-isolation, or those experiencing possible coronavirus/COVID-19 symptoms are not to personally attend any courthouse.

Individuals with matters scheduled before the courts should contact their counsel or, if they do not have counsel, contact court staff to seek directions **prior to attending court facilities**.

Measures applicable to the Supreme Court and Court of Appeal

All in-person court appearances and matters, other than for urgent or emergency matters, are suspended until further notice.

Urgent matters will continue to be heard, in a manner and forum to be determined by the court (including for example the potential of hearings by way of telephone or video appearances).

The current telephone case management structure will continue namely, case management conference calls will continue as scheduled.

Previously scheduled in-person motions, pre-motion conferences, settlement conferences and pre-trial conferences will not proceed with in-person attendances. Where appropriate and where feasible, motions, pre-motion conferences, settlement conferences and pre-trial conferences will proceed by alternative means, most likely by telephone.

At this stage, parties may continue to file documents at the courthouses. Options are also being explored for alternative means for filing documents. Arrangements are in place to ensure compliance with the recommendations and advisories of the Chief Public Health Office regarding social distancing.

Individuals who have questions about court appearances or court filings should first contact their legal counsel. If individuals do not have legal counsel, or if further information is required, they should contact the following:

Prince Edward Island Court of Appeal: 902-368-6024
Supreme Court of Prince Edward Island: 902-368-6023

Measures applicable to the Provincial Court

Provincial Courts in the province will remain open and will operate in a manner which complies with the social distancing practices recommended by the Chief Public Health Office.

Access to the courts will be limited to only those who need to be present in the courthouse. Any person exhibiting signs of illness or who is required to self-isolate should advise their lawyer or court staff for direction on how to proceed.

The protocols in Provincial Courts could vary from court to court and from day to day depending on circumstances. Please call the following numbers with any questions:

Provincial Court – Charlottetown 902-368-6693

Provincial Court – Summerside 902-888-8190

Provincial Court – Georgetown 902-652-8990

We appreciate the patience, cooperation and flexibility of all as we navigate these rapidly changing times.

Chief Justice David H. Jenkins
Prince Edward Island Court of Appeal

Chief Justice Tracey L. Clements
Supreme Court of Prince Edward Island

Chief Judge Nancy K. Orr
Provincial Court of Prince Edward Island

TAB

C

Province announces COVID-19 related closures

Chief Public Health Officer, Dr. Heather Morrison, announces additional provincial measures to protect the health and safety of Islanders as the COVID-19 situation continues.

Effective March 17, 2020, all public licensed child care centres will be closed until further notice and all public schools will be closed for two weeks following March Break (March 23 to April 3) and will be reassessed.

"School and licensed child care centre closures will assist in our efforts to minimize the spread of COVID-19 and keep all Islanders, especially our most vulnerable citizens, safe," said Chief Public Health Officer, Dr. Heather Morrison. "This is a rapidly evolving situation and we continue to make decisions in the public interest as new information becomes available."

Additional measures include the immediate closure of Mark Arendz Provincial Ski Park at Brookvale, and all provincially run visitor information centres.

The first positive case of COVID-19 was confirmed in Prince Edward Island on March 14, 2020. The Chief Public Health Office has been in contact with the patient and those who been in close contact with her, and further contact tracing is currently underway.

"Closing daycares and schools are measures we can take to help flatten the curve," said Brad Trivers, Minister of Education and Lifelong Learning. "Under the leadership of Prince Edward Island's Chief Public Health Officer, Dr. Heather Morrison, we must all do our part to and we will get through this together as a province."

Islanders with questions about COVID-19 should call PEI's toll-free information line at 1-800-958-6400. The information line is taking messages 24-hours a day, 7 days a week.

Islanders experiencing symptoms (cough, fever, or shortness of breath) within 14 days after international travel should call 8-1-1 to be screened and, if necessary, directed for testing.

Those requiring immediate medical attention should call 9-1-1.

Get the latest information on COVID-19.

THIS IS EXHIBIT" C "REFERRED TO IN THE AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF March 20 20
A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

Backgrounder:

The Chief Public Health Office continues to work closely with the federal government, provincial and territorial counterparts, government departments and Health PEI to continue to monitor the situation globally, nationally and

locally. The public health risk of COVID-19 is continually reassessed and Islanders will be updated as new information becomes available.

Government's special situation response group also continues to work collaboratively with the Chief Public Health Office, stakeholders and community partners in preparing for all impacts related to COVID-19 to the province, including health, social and economic.

Everyone is encouraged to follow routine prevention measures:

- Washing hands frequently with soap and water
- Cough and sneeze into your elbow or a tissue
- If ill with acnte respiratory symptoms, stay home if possible
- Limit touching your eyes, nose and mouth
- Don't share items like drinking glasses and water bottles
- Frequently clean surfaces like taps, doorknobs and countertops

Media Contact:
Samantha Hughes
Health and Wellness
(902) 368-5610
shughes@gov.pe.ca (link sends e-mail)

TAB

D

Chief Public Health Officer provides update on COVID-19

Prince Edward Island's Chief Public Health Officer, Dr. Heather Morrison, is asking all Islanders, businesses and community organizations, to closely look at what activities are essential and non-essential in efforts to reduce the spread of COVID-19.

She reiterated that for those self-isolating, they should do so at home. More information on self-isolation can be found at www.princeedwardisland.ca/covid19.

For Islanders who have not travelled and are feeling well, they should practice social distancing, and maintain a 2 meter distance from others.

Islanders who require government services and have travelled internationally, or are showing symptoms, are asked to interact with government by phone or online options, where applicable.

All library programs and events Island-wide have been cancelled in an effort to help limit the spread of COVID-19. Due to the closures of local community centres, the following libraries will be closed until further notice: Montague Rotary Library, Murray Harbour Public Library, Georgetown Genevieve Soloman Memorial Library, and O'Leary Public Library.

Prince Edward Island currently has one confirmed positive case of COVID-19 in the province.

Islanders with questions about COVID-19 should call PEI's toll-free information line at 1-800-958-6400. The information line is taking messages 24-hours a day, 7 days a week and Islanders who leave messages will receive a call back from the Chief Public Health Office.

Islanders experiencing symptoms (cough, fever, or shortness of breath) within 14 days after international travel should call 8-1-1 to be screened and, if necessary, directed for testing.

Those requiring immediate medical attention should call 9-1-1.

THIS IS EXHIBIT" D "REFERRED TO IN THE AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF March 20 20
Carly Chn
A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

Backgrounder:

The Chief Public Health Office continues to work closely with the federal government, provincial and territorial counterparts, government departments and Health PEI to continue to monitor the situation globally, nationally and locally. The public health risk of COVID-19 is continually reassessed and Islanders will be updated as new information becomes available.

Government's special situation response group also continues to work collaboratively with the Chief Public Health Office, stakeholders and community partners in preparing for all impacts related to COVID-19 to the province, including health, social and economic.

Everyone is encouraged to follow routine prevention measures:

- Washing hands frequently with soap and water
- Cough and sneeze into your elbow or a tissue
- If ill with acute respiratory symptoms, stay home if possible
- Limit touching your eyes, nose and mouth
- Don't share items like drinking glasses and water bottles
- Frequently clean surfaces like taps, doorknobs and countertops

Media Contact:
Samantha Hughes
Health and Wellness
(902) 368-5610
shughes@gov.pe.ca (link sends e-mail)

TAB

E

EXECUTIVE COUNCIL _____ 16 MARCH 2020

EC2020-174

PUBLIC HEALTH ACT
DECLARATION
STATE OF PUBLIC HEALTH EMERGENCY

Pursuant to subsection 49(1) of the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1 Council has determined, on the advice of the Chief Public Health Officer, that a public health emergency exists or is imminent and prompt coordination of action or special measures are required in order to protect the public health; therefore, Council declares a state of public health emergency with respect to all of the Province of Prince Edward Island effective immediately until the expiry of thirty (30) days, unless it is sooner terminated or continued by Council.

THIS IS EXHIBIT" E "REFERRED TO IN THE
AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF
March 2020
Cathy Chow
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

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THIS IS EXHIBIT" F "REFERRED TO IN THE
AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF
March 20 20
Cathy Chow
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

IN THE MATTER OF the *Public Health Act*, RSPEI 1988, c P-30.1 (herein referred to as the "Act"), sections 39 and 49.

PUBLIC HEALTH ORDER

WHEREAS a state of public health emergency was declared in the province on March 16th, 2020 pursuant to Order in Council EC2020-174;

AND WHEREAS pursuant to subsection 39(2) of the *Public Health Act*, the Chief Public Health Officer believes on reasonable and probable grounds that as a result of COVID-19:

(a) a communicable disease exists in the province;
(b) the communicable disease presents a risk to the health of persons in the province; and
(c) the requirements specified in the order are necessary to prevent, decrease or eliminate the risk to health presented by the communicable disease.

AND WHEREAS pursuant to the *Public Health Act*, the Chief Public Health Officer may require a person to take or refrain from taking any action that is specified in the order in respect of a communicable disease, as set out in subsection 39(1);

AND WHEREAS pursuant to subsection 49(3) of the *Public Health Act*, the Chief Public Health Officer reasonably believes that the population is not protected against COVID-19, and certain preventative measures are necessary to protect the population;

AND WHEREAS the Chief Public Health Officer believes that it is appropriate for certain asymptomatic workers and certain asymptomatic individuals to be exempted from the requirement to self-isolate for 14 days, or for the duration of their stay (if shorter than 14 days), when arriving in Prince Edward Island from another province or territory in Canada during the state of public health emergency while still maintaining measures to protect the health of the population;

NOW THEREFORE pursuant to my authority under subsections 39(1) and 49(3) of the *Act*, the following order is made:

1. Subject to subsection 2, as of March 21, 2020 at 2:00 p.m., all persons entering the province, including those arriving from other provinces and territories in Canada, are required to self-isolate for 14 days or for the duration of their stay in the province (if shorter than 14 days). For detailed information on self-isolation, please see: https://www.princeedwardisland.ca/en/information/health-and-wellness/covid-19-self-isolation.
2. The following persons are exempt from the requirement to self-isolate:
    a. Asymptomatic workers engaged in providing services in the trade,

transportation, construction, agriculture, fisheries, aquaculture and livestock sectors including truck drivers and crew on any plane, helicopter or marine vessels arriving in Prince Edward Island from another province or territory in Canada.

b. Asymptomatic workers essential to the critical maintenance of the province's infrastructure in the trade and transportation sectors.
c. Asymptomatic workers engaged in providing essential services to PEI, including but not limited to, health and social service providers, postal service workers, members of a police service and others employed for the preservation of the peace and emergency responders, except those workers who have travelled internationally since March 8, 2020 and have not yet completed 14 days of self-isolation upon return.
d. Persons travelling for emergency medical purposes, including patients and persons necessary to travel with patients, and persons accompanying animals for emergency services at the Atlantic Veterinary College.
e. Such other persons as may be otherwise exempted under exceptional circumstances by the Chief Public Health Officer.

3. Exempted individuals who enter the province are required to practice appropriate social distancing, closely self-monitor for symptoms of COVID-19, and self-isolate should symptoms develop.

THIS ORDER is effective March 21, 2020 as of 2:00 p.m. and is in effect for a period of 14 days, unless it is sooner terminated or continued by the Chief Public Health Officer.

TAKE NOTICE THAT failure to comply with this Order is an offence for which you may be liable on summary conviction in accordance with section 66 of the *Public Health Act.*

DATED at Charlottetown in Queens County, Province of Prince Edward Island this 22 day of March, 2020.

Dr. Heather Morrison
Chief Public Health Officer

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Closures Due to COVID-19 | Government of Prince Edward Island

Public health risk continues to be reassessed and updated as new information becomes available.

> The best way for Islanders to come together right now, is to stay apart.

Public access to provincial buildings and services

All non-essential provincial government services have been halted, in most cases for a period of two weeks, with an update to be provided at a later date. Many provincial offices and buildings are closed to the public. If you require government services, use online services and phone services where applicable.

Provincial offices are currently closed to public

- Access PEI service counters closed to the public with staff are on-site to allow for registry access and essential services that operate in Access PEI buildings. NOTE: With Access PEI closed, there will be a 60 day grace period on vehicle registration and drivers' licence renewals. Police partners have been informed of this grace period (see Late fees and licence suspensions below).
- PEI Liquor Control Commission government-operated retail locations.
  - Note: Starting March 25, Oak Tree Place outlet will be open with limited hours of 11 am to 6 pm, Monday to Saturday, with the hours of 10 am to 11 am reserved for seniors.
  - Note - Agency stores licensed to sell liquor and breweries will continue to operate. We will monitor the situation at agency stores, in partnership with Dr. Morrison to ensure operations are done safely.
- PEI Cannabis retail stores. Online delivery will continue.
- Island Waste Management Corporation (link is external)will continue to collect curbside and disposal facilities remain open for essential disposal from businesses, institutions and contract haulers only. IIWMC offices and contact centres are closed to the public and free Saturday blue-bag drop-off is suspended until further notice.
- Family Law, Legal Aid, Victim Services, Community and Correctional Services and Sheriff Services (see below) are operational with limited public access. Call ahead for direction on how to access these services.

Other provincial government buildings closed to public

- Agriculture and Land offices, including Inspection Services at Gordon

Drive. Dairy samples will continue to be delivered
- Agriculture Insurance Corporation
- Aubin Arsenault Building
- Courts (see below)
- Efficiency PEI
- Finance PEI
- Forest, Fish and Wildlife offices in Southampton, Charlottetown and Wellington
- Government House
- Health PEI (see below)
- Human Rights Commission
- Innovation PEI
- IRAC
- Labour and Industrial Relations
- Mark Arendz Provincial Ski Park at Brookvale
- Museum and Heritage Foundation sites
- Office of Immigration
- Parliamentary Precinct (Coles Building, J. Angus McLean, and St. Paul's Rectory)
- PEI Analytical Lab
- PEI Libraries across the province
- Provincial Firearms Office and Conservation Offices
- Provincial offices at the Atlantic Technology Centre
- Provincial Tax Office (see below)
- Skills PEI offices
- Visitor information Centres
- Worker's Compensation Board - Visit wcb.pe.ca for workplace safety information (link is external)

Courts

Courts remain open for urgent and emergency matters.

Fine payments will continue to be accepted by cheque or over the phone by credit card. Fine payments will not be accepted in person, so do not visit any court location to make a fine payment.

If you have recently received a ticket and you do not wish to dispute it, you must contact the Provincial Court in Charlottetown by telephone at 902-368-6693 or Summerside at 902-888-8187 **BEFORE the due date** indicated on the ticket to enter the guilty plea and arrange payment.

If you have recently received a ticket and you wish to dispute it, you must contact the Provincial Court in Charlottetown by telephone at 902-368-6693 or Summerside at 902-888-8187 **BEFORE the due date** indicated on the ticket. The Justice of the Peace will take your not guilty plea by telephone and set a date for your trial.

Late fees and licence suspensions

As a result of the provincial responses to mitigating risk of transmission of

COVID-19, for the next two weeks late fees and license suspension actions will not be taken due to these restrictions and the Province of Prince Edward Island will not be enforcing the collection of fine payments for a period of two weeks from today. Further measures may be announced.

Provincial Tax Office

Due to precautions being taken to avoid the spread of COVID-19, the Provincial Tax Office will be relaxing enforcement on late tax payments for April. Remittances and returns which may be delayed this month will be allowed a grace period.

Sheriff Services

As a result of the Provincial measures to mitigate risk of transmission of COVID-19, Sheriff Services is advising anyone required to make a payment to contact the Sheriff's office to facilitate payment by credit card, mailing in cheque, or setting up direct deposit. Please do not attend in person at Sheriff Services to make a payment.

Call Sheriff Services at 902-620-3573

There will be limited points of entry for other provincial government buildings. Signs will be posted.

Health PEI Facilities

- All Health PEI facilities, including hospitals, closed to visitors.
- Long-term care facilities closed to visitors.

Exceptions apply for palliative patients, intensive care, neonatal intensive care, obstetric and pediatric units. In these units, only ONE designated visitor is permitted - a member of the patient's immediate family OR their care partner within the hospital.

Anyone who has traveled outside of Prince Edward Island and has returned since March 8 is restricted from visiting patients for 14 days following their return.

The following Health PEI offices are also closed to the public:

PEI Medicare Offices
126 Douses Road
Montague, PE C0A 1R0

Home Care Offices in Summerside
310 Brophy Avenue
Summerside, PE

Health PEI Administrative Offices
16 Garfield Street

Charlottetown, PE .

Emergency child care services will be available to essential workers who have no alternatives during this pandemic. If this applies to you, complete the Emergency Child Care Services online form.

Early learning and education

- PEI schools - All public schools closed with March break extended by an additional two weeks
- PEI early years centres and licensed childcare centres closed for an indefinite period of time.
- Education offices, Public Schools Branch offices and FLSB offices

Policing Services

Front counter service for all police agencies in Prince Edward Island are being scaled back. Until further notice, the following services are suspended:

- Elective fingerprinting;
- Criminal records checks; and
- Vulnerable sector checks.

For full details, read the Prince Edward Island policing amid COVID-19 release

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The following is a list of closure recommendations of the PEI Chief Public Health Officer:

Community and Businesses

- In-room dining at restaurants closed effective immediately; pick-up, delivery and drive-thru only.
- Bars closed until further notice.
- All indoor play areas closed.
- All theatres, including movie theatres, closed.

Community Health Services

- **Dentist:** Dental clinics closed effective today for the next 14 days; emergencies will be handled on a case-by-case basis.
- **Optometrist:** The National Optometry Association has provided guidance to its members to only take emergency appointments until further notice.

Reminder: Call ahead if you have a health-related appointment booked. If it is not essential, it may be postponed.

Funerals and Wakes

Effective March 17, wakes at funeral homes will be for family only, with no more than 20 people present. Online condolences and online donations will be available.

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S1-GS-28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

DRAFT ORDER

THIS APPLICATION made by the Attorney General of Prince Edward Island, for an order suspending the execution of all writs of possession and orders to evict persons from their residences during the 2019 coronavirus (COVID-19) pandemic, made without notice, was heard this ___day at the Sir Louis Henry Davies Law Courts, 42 Water Street, Charlottetown, Prince Edward Island in the presence of Meaghan Hughes, counsel for the Attorney General of Prince Edward Island;

ON READING the notice of application and the affidavit of Clare Henderson, affirmed March 27, 2020,

1. THIS COURT grants leave to bring this application *ex parte* without service of the notice of application on parties to residential eviction orders, pursuant to Practice Note 17 of the Supreme Court of Prince Edward Island;

2. THIS COURT ORDERS that, during the suspension of regular court operations by the Chief Justice during which time the Court is only hearing urgent and emergency matters, the eviction of persons from their residences, pursuant to eviction orders issued by the Director of Residential Rental Property or the Island Regulatory and Appeals Commission or writs of possession, are suspended unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions.

3. THIS COURT ORDERS that this order be served on the public by posting a notice of it on the website of the Department of Justice and Public Safety and COVID-19 Government webpage.

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CITATION: Sunrise North Senior Living Ltd. v. The Sheriff (Regional Municipality of York), 2020 ONSC 469
DIVISIONAL COURT FILE NO.: 257/19
DATE: 20200123

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

M.G.J. Quigley, Conway and Favreau JJ.

B E T W E E N:	
SUNRISE NORTH SENIOR LIVING LTD. (C.O.B. SUNRISE OF RICHMOND HILL)	*Robyn Grant* for the Applicant
Applicant	
– and –	
THE SHERIFF OF THE REGIONAL MUNICIPALITY OF YORK, ENFORCEMENT OFFICE OF THE SUPERIOR COURT OF JUSTICE (NEWMARKET) AND ROHAN SALMON	*Robert B. Lawson* and *Chantelle Blom* for the Respondent The Sheriff of the Regional Municipality of York *Melissa Miller* for the Respondent Rohan Salmon
Respondents	
	HEARD: July 2, 2019 and January 14, 2020

BY THE COURT:

Introduction

[1] The applicant, Sunrise North Senior Living Ltd ("Sunrise"), seeks an order in the nature of *mandamus* compelling the Sheriff of the Regional Municipality of York (the "Sheriff") to comply with an order requiring the eviction of the respondent Rohan Salmon from a unit in a retirement home operated by Sunrise.

[2] In November 2017, the Landlord and Tenant Board (the "Board") made an eviction order that was to take effect on May 31, 2018. To date, Mr. Salmon has not moved out and the Sheriff has refused to enforce the eviction order because of health and safety concerns.

[3] For the reasons below, we grant an order in the nature of *mandamus* requiring the Sheriff to deliver vacant possession to Sunrise of the unit occupied by Mr. Salmon. However, given the unique circumstances of this case, the Sheriff is given until March 31, 2020 to comply with the order.

Background facts and procedural history

The parties

[4] Sunrise operates a retirement home located in Richmond Hill. Retirement homes in Ontario are governed by the *Retirement Homes Act*, 2010, S.O. 2010, c. 11.

[5] Mr. Salmon is 50 years old. Mr. Salmon has been living at the Sunrise retirement home for over 15 years. He was seriously injured in a car accident over 16 years ago. There is some dispute in the evidence over whether he is paraplegic or quadriplegic, but there is no dispute that the accident has left him with significant physical impairments. Mr. Salmon is also morbidly obese. He requires extensive care and assistance in his daily life, including a lift for his transfers, personal support workers for his personal care and hygiene needs, and assistance with all household tasks. There is no issue about Mr. Salmon's capacity to make decisions about his own care; he is capable and has no difficulties communicating verbally and in writing.

[6] As detailed below, the Sheriff is responsible for enforcing eviction orders made under the *Residential Tenancies Act, 2006,* S.O. 2006, c. 17. As explained in the Sheriff's evidence on this application, in Ontario the Sheriff is no longer a specific person. Instead, duties assigned to the "Sheriff" in various statutes are performed by authorized Enforcement Officers within Court Enforcement Offices of the Ministry of the Attorney General.

Proceedings before the Landlord and Tenant Board

[7] In July 2017, Sunrise applied to the Board to terminate Mr. Salmon's tenancy due to the non-payment of rent. According to Sunrise, up to that point Mr. Salmon had a long history of not paying his rent and Sunrise made the application to the Board as a "last resort" after years of attempting to negotiate a resolution.

[8] Mr. Salmon was represented by counsel throughout the Board proceedings and these proceedings.

[9] Before the matter went to a hearing before the Board, Mr. Salmon and Sunrise reached a settlement. On November 3, 2017, the Board issued a consent order reflecting the terms of the settlement, which were as follows:

a. The tenancy between Sunrise and Mr. Salmon was terminated;

b. Mr. Salmon was to move out of his unit by May 31, 2018;

c. Sunrise would not seek payment of Mr. Salmon's unpaid arrears, which at that point exceeded $18,000;

d. Mr. Salmon was to pay a daily rate of $202.96 for the remainder of the tenancy on the 15th of every month. If Mr. Salmon failed to make these payments, Sunrise could move without notice to the Board for an earlier eviction;

e. The Sheriff was to give vacant possession of the unit to Sunrise on or after June 1, 2018;

f. If the unit was not vacated on or before May 31, 2018, starting on June 1, 2018, Sunrise could file the Board's order with the Sheriff for enforcement; and

g. Sunrise was to undertake good faith efforts to assist Mr. Salmon in identifying adequate alternative housing.

[10] It appears that Mr. Salmon did not initially pay the daily rate agreed to under the Board's consent order. In December 2017, Sunrise applied to the Board for relief. On March 7, 2018, the Board issued an order in which it found that Mr. Salmon did not meet his payment obligations and required him to move out on April 23, 2018.

[11] Mr. Salmon and Sunrise then reached an agreement to reinstate the consent order that required Mr. Salmon to move out of his unit by May 31, 2018. The Board issued an order on April 23, 2018, that reflects this agreement.

[12] Mr. Salmon never appealed the Board's eviction order.

[13] Mr. Salmon did not move out of his unit at Sunrise on May 31, 2018, as required under the eviction order.

Sunrise's efforts to enforce the eviction order and the Sheriff's response

[14] Given that Mr. Salmon did not move out of the unit, on June 11, 2018, Sunrise filed the Board's eviction order with the Newmarket Court Enforcement Office for enforcement by the Sheriff. As part of the process, Sunrise was required to provide information about any special circumstances relevant to the eviction. Sunrise advised the Court Enforcement Office about Mr. Salmon's health circumstances, including that he is a paraplegic with severe obesity, that he requires a mechanical lift to be transferred from his bed, and that he requires the ongoing care of service providers.

[15] Following Sunrise's filing of the eviction order with the Court Enforcement Office, Enforcement Officers took a number of steps to assess how they would conduct the eviction. They attended Mr. Salmon's unit to serve him with the eviction order. At that time, Mr. Salmon advised that he would not willingly leave his unit and that he had no place to go. Enforcement Officers also met with the York Regional Police who advised that their role "would be limited to keeping the peace, and that they would not forcibly remove or apprehend Mr. Salmon ... if he refused to leave". Based on these consultations with the police and its own internal assessment, the Court Enforcement Office concluded that "there was no safe place for Mr. Salmon to be moved in light of his underlying physical challenges and associated daily care needs".

[16] In the circumstances, the Court Enforcement Office requested that Sunrise apply to the Superior Court of Justice to obtain directions on how to carry out the eviction pursuant to Rule 60.17 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Justice Bale's decisions

[17] Sunrise brought an application for directions to the Superior Court in Newmarket on September 21, 2018. The application was before Bale J. The Sheriff and Mr. Salmon were respondents on the application.

[18] On September 21, 2018, the application judge made an order based on the consent of the parties that included the following terms:

a. The Sheriff "is authorized to take such steps as are reasonably required to evict" Mr. Salmon "and provide vacant possession" of the unit to Sunrise on November 30, 2018.

b. The parties could re-apply to the application judge if they required further directions on four days notice.

c. The March of Dimes, Centre for Independent Living and A Place for Mom were to provide information to Mr. Salmon's lawyer about when Mr. Salmon placed his name on their waiting lists and when he could reasonably expect to be accommodated. This information was then to be provided to Sunrise and the Sheriff.

d. The Local Health Integration Network (the "LHIN") was to provide Mr. Salmon with "information relating to the options available for patients with the needs of Mr. Salmon", and that information was to be shared with Sunrise and the Sheriff.

[19] In his brief endorsement, the application judge also stated that "it is the expectation of the court that Mr. Salmon, through counsel, will pursue alternate accommodations, over and above that available through the organizations" listed in the order.

[20] Despite this order, Mr. Salmon did not identify a place where he was to be moved to and the Sheriff did not enforce the eviction order by November 30, 2018.

[21] On January 8, 2019, Bale J. issued a further endorsement in this matter based on the written submissions of the parties. In his decision, he found that he did not have jurisdiction to make the order sought by Sunrise because Rule 60.17 of the *Rules of Civil Procedure* does not contemplate a freestanding application for directions but, rather, a "motion" for directions in the proceeding in which the order was originally made. He also held that a motion for directions was not the appropriate procedure for Sunrise to seek the enforcement of the eviction order.

[22] Despite finding that he did not have jurisdiction over this matter, the motion judge made findings in relation to the efforts made by Mr. Salmon to comply with the September 21, 2018 order to find alternative housing:

> [11] In response to my request for further submissions, Ms. Miller, on behalf of Mr. Salmon, advised that she had been informed by each facility to which he has applied that they are unable to provide information with respect to his place on their list. They have no way of knowing when a place will become available, and when one does, they have to interview the next person on the list to determine whether the placement is appropriate. Ms. Miller also advised that she had spoken with the Central LHIN manager and had been told that they could not provide any information as to what facilities may be available and appropriate for Mr. Salmon, because he has not applied for long-term care. The reason that he has not applied is that he believes long-term care facilities to be inappropriate for him, given his relative youth, and mental acuity. She reports that Mr. Salmon is frustrated and depressed at his inability to find an appropriate placement.

[23] The motion judge went on to describe the Sheriff's responsibilities:

> [20] The law applying in this case is clear. Sunrise is entitled to possession of the rental unit, and has been so entitled since June 1, 2018. Pursuant to s. 141(1) of the *Courts of Justice Act* and s. 85 of the *Residential Tenancies Act, 2006*, the sheriff is required to enforce the eviction order, in the same manner as a writ of possession, and has been required to do so since the order was filed with her on June 11, 2018.
>
> [21] With absolutely no disrespect to Mr. Salmon, and while I have sympathy for the position in which he finds himself, having no right to remain at Sunrise and nowhere to go (he says), he is, in effect, a homeless paraplegic. I am confident that in Ontario in 2018 (and now 2019) there is some place, or places, to which the sheriff may safely take such a person, upon carrying out an eviction order. It is, in my view, the public duty of the sheriff to determine what that place or places are, and to carry out the eviction.

[24] Finally, the motion judge held that an application to enforce the eviction order should be brought to the Divisional Court by way of an application for judicial review:

> [22] Sunrise has not asked the court to order the sheriff to fulfill her public duty by enforcing the eviction order, and in any event, my view is that such an order is not available on a motion for directions under rule 60.17. If the sheriff continues to delay in enforcing the order, Sunrise's remedy would be an application to the Divisional Court for judicial review, pursuant to s. 2 of the *Judicial Review Procedure Act*. However, it is my expectation that the sheriff will now proceed to enforce the eviction order, without requiring the applicant to engage in further, and unnecessary, litigation.

Justice Charney's decision

[25] Following Bale J.'s January 8, 2019 decision, the Court Enforcement Office took additional steps to find a suitable place to which Mr. Salmon could be taken upon his eviction. They contacted a number of organizations and shelters in the York Region and the Greater Toronto Area, and concluded that there was nowhere they could take him because Mr. Salmon's

consent would be needed for admission or because the places they had contacted were not able to accommodate Mr. Salmon's medical needs.

[26] The Court Enforcement Office also contacted the LHIN, which informed them that it could facilitate Mr. Salmon's admission to a long-term care home, even on a temporary or urgent basis, but that Mr. Salmon's consent would be required for admission. In addition, the Enforcement Office identified a number of retirement homes that had vacancies and that could accommodate Mr. Salmon. Again, admission to a retirement home would require Mr. Salmon's consent.

[27] The Enforcement Office shared the information it obtained about the availability of long-term care homes and retirement homes with Mr. Salmon. In response, his counsel advised that Mr. Salmon would never consent to placement in a long-term care home and that the retirement homes identified were "not appropriate".

[28] On March 12, 2019, the Enforcement Office ultimately advised Sunrise that they would not carry out the eviction unless Mr. Salmon consented to be moved to alternative accommodations. The Sheriff also raised an issue about the eviction order expiring on the one-year anniversary of its being filed with the Court, which was June 11, 2018.

[29] Sunrise then brought an urgent application for judicial review before a single judge in Newmarket. The application was heard by Charney J. on April 26, 2019.

[30] In a decision released on April 29, 2019, Charney J. granted a one-year extension of the eviction order, starting from the date of his decision. The extension was without prejudice to Sunrise's ability at a later date to argue that the order does not expire. Having renewed the eviction order, the application judge went on to find that the matter was no longer urgent, and that it should be heard by a full panel of the Divisional Court. The matter was transferred to Toronto so that it could be heard more expeditiously.

Adjournment of July 2, 2019 hearing

[31] The application for judicial review came before this panel on July 2, 2019.

[32] At the beginning of the hearing, the panel heard initial submissions from Ms. Miller, counsel for Mr. Salmon, and from Sunrise. However, rather than continuing with the full hearing of the application, the panel then encouraged the parties to try to resolve the matter. The parties were then able to reach agreement on a process that was meant to lead Mr. Salmon to identify and move to suitable alternative accommodations, failing which the matter was to come back for a hearing before the panel at a later date. The agreement of the parties was reflected in an order of this Court, which included the following terms:

a. By July 16, 2019, Mr. Salmon was to provide consent to Sunrise and the Sheriff disclosing his personal health information for purposes of inquiring into potential new accommodations on his behalf.

b. By July 16, 2019, Mr. Salmon was to provide Sunrise and the Sheriff with copies of his applications to The March of Dimes, Centre for Independent Living and A Place for Mom.

c. By July 16, 2019, Mr. Salmon was to serve Sunrise and the Sheriff with the medical records relevant to his search for new accommodations.

d. By July 16, 2019, Mr. Salmon was to advise the parties of the parameters he was using to identify potential new accommodations.

e. By July 16, 2019, Mr. Salmon was to provide the list of parameters to his LHIN caseworker. Mr. Salmon was to ask his LHIN caseworker to inquire into all long-term care homes that can reasonably accommodate his parameters. If a long-term care home could not meet his parameters, Mr. Salmon was to ask his LHIN caseworker to advise which long-term care homes, if any, can come closest to accommodating his parameters.

f. By July 30, 2019, the Sheriff and Sunrise were to provide Mr. Salmon with a list of potential new accommodations. Sunrise and the Sheriff were permitted to update the list from time to time.

g. Mr. Salmon was to continue reasonable efforts, independent of Sunrise and the Sheriff, to identify and pursue potential new accommodations.

[33] In addition to the terms above, the order also required Mr. Salmon to report regularly on his communications with potential new accommodations, to provide details about why he found potential new accommodations not suitable and to report on his communications with his LHIN caseworker about potential accommodations in a long-term care home.

[34] Paragraph 10 of the order also provided that:

> If Mr. Salmon maintains that long-term care home is not a suitable destination, he is to complete a medical assessment and to serve the report of the medical assessor regarding his eligibility for admission to a long-term care home by no later than 30 days after the assessment.

[35] Finally, Mr. Salmon was to advise the Sheriff where he was to be moved by November 30, 2019. In the event Mr. Salmon failed to do so, the matter was to come back before this panel on a date to be arranged with the Court for early 2020, and a schedule was set for the parties to deliver their materials. Mr. Salmon's materials were due on December 17, 2019.

Events since July 2, 2019

[36] Unfortunately, following the July 2, 2019 order, Mr. Salmon did not identify a place where he was to be moved, and the matter came back before the panel on January 14, 2020.

[37] In advance of the hearing, Sunrise and the Sheriff filed supplementary materials, outlining what has occurred since July 2, 2019. Mr. Salmon did not file additional materials.

[38] Based on the evidence filed by the parties, it appears that Sunrise and the Sheriff met their obligations under the order made July 2, 2019. Mr. Salmon met some, but not all, of his obligations.

[39] Mr. Salmon did provide a list of parameters he is using to search for new accommodations. He is seeking a 500 square feet suite or a space with a layout that can accommodate specified equipment. Counsel for Sunrise points out that the list includes some equipment that Mr. Salmon does not currently have in his unit and that he did not include his budget as part of his parameters.

[40] While Mr. Salmon provided a copy of his application to The March of Dimes, he did not provide copies of his applications to either the Centre for Independent Living or A Place for Mom.

[41] With respect to the option of moving to a long-term care home, it appears that Mr. Salmon maintained his objection to this option throughout most of the time leading to this hearing despite the requirement in the July 2, 2019 order that he explore this option with the LHIN:

a. In a letter dated July 15, 2019, counsel for Sunrise asked counsel for Mr. Salmon to advise of his inquiries with his LHIN caseworker about the long-term care homes that could accommodate his parameters. In response, in correspondence of the same date, Mr. Salmon's lawyer stated:

> I'm not sure how many other ways I can say that there is no discussion of LTC facilities if there is no consent for same. That's how it works. So no specific options were discussed. That part of the order is now satisfied in my view. Further compliance is not possible as long as my client has not provided his consent to be placed in LTC.

b. In a letter dated July 15, 2019, the LHIN described a meeting it had with Mr. Salmon. In the letter, the LHIN indicated that Mr. Salmon's caseworker could assist him with the admission process to a long-term care home, but that "Mr. Salmon declined to apply for admission…"

c. On August 21, 2019, the LHIN provided Mr. Salmon with a list of 14 long-term care homes that may be able to accommodate him, and encouraged him to take a virtual tour of the facilities. In the same correspondence, the LHIN indicated that it could not assess Mr. Salmon's suitability for the homes without his consent.

d. In correspondence dated August 29, 2019, Mr. Salmon's lawyer again advised Sunrise's lawyer that Mr. Salmon was not consenting to be placed on a long-term care home list, and that the assessment process could therefore not begin.

e. In October 2019, Sunrise's counsel and the Sheriff's counsel contacted this panel, seeking direction on the basis that Mr. Salmon was not meeting his obligations under our order of July 2, 2019. On October 18, 2019, the panel made a written direction

that included a requirement that Mr. Salmon was expected to comply with all of the terms of the order in good faith.

f. On November 5, 2019, Mr. Salmon's lawyer wrote to the panel with the following information:

> I can further advise that my client has now made an application with the CLHIN for the sole purpose of inquiring about long-term care options to comply with the Order. His intention remains clear that he does not wish to be placed into long-term care, but he will advise what options exist. This confirms the advice of the CHLIN that an application to long-term care does not equate to admission to long-term care, which still requires his consent.

g. Finally, on November 25, 2019, Mr. Salmon's lawyer advised counsel for Sunrise and the Sheriff that her client advised her "that he did formally apply for long-term care and is waiting to hear back on suitable accommodation". She also advised that Mr. Salmon was on his way to the hospital due to an infection and that he would not be able to meet the November 30th deadline.

[42] With respect to the option of moving to another retirement home, both Sunrise and the Sheriff provided Mr. Salmon's lawyer with lists of retirement homes that appeared to meet Mr. Salmon's needs and that had vacancies or upcoming vacancies. Mr. Salmon's lawyer provided some emails her client had sent to a number of retirement homes, including some of the retirement homes identified by Sunrise and the Sheriff. However, it is hard to accept that these emails represent a serious effort to find a suitable place. For example:

a. The criteria identified in the emails are higher than what Mr. Salmon has in his current unit. For instance, his email makes reference to three lifts, when he currently only has one, and to needing space for items he currently does not have, such as a power wheelchair and rehab arm-bike.

b. Mr. Salmon's budget is unclear, arguably making it sound like he has a lower budget than he has. At Sunrise, his rent is $6,000 per month and he pays separately for support workers. However, his emails to retirement homes suggest that he has a ceiling of $6,000 per month for his rent and for his support workers.

c. There is no evidence of follow up. For example, one retirement home said that they may be able to accommodate his needs, but there is no follow up correspondence from Mr. Salmon.

[43] Mr. Salmon also did not comply with the requirement that he undergo a medical examination to determine his suitability for a long-term care home. As reviewed above, the July 2, 2019 order required him to undergo a medical examination if he maintained his position that long-term care was not suitable for him. In its October 2019 correspondence, Sunrise advised that Mr. Salmon had still not undergone a medical assessment. In our subsequent direction, the panel required that Mr. Salmon undergo a medical assessment by no later than November 15, 2019, and as stated above that he "comply with the terms of the Order in good faith". Despite

this direction, it appears that Mr. Salmon did not undergo a medical examination. Instead, at the hearing before us, his counsel argued that he was not required to undergo the medical examination because he had applied for long-term care. Up until the November 5th communication from Mr. Salmon's counsel, Mr. Salmon had made it clear to Sunrise and the Sheriff that he was only applying for long-term care to comply with the order. However, since it is plain that he had no intention of actually consenting to a placement, it is hard to see that Mr. Salmon's refusal to undergo a medical assessment to determine his suitability for long-term care was made in good in faith.

[44] Finally, and most significantly, Mr. Salmon did not advise where he was to be moved by the November 30, 2019 deadline. As indicated above, his lawyer did advise Sunrise and the Sheriff that he would not be able to comply with this term of the order due to his hospital admission in late November. However, Mr. Salmon returned to the Sunrise retirement home in early December, and nevertheless did not comply with this aspect of the order after that date nor did he provide an explanation for not doing so.

[45] Besides Mr. Salmon's failure to comply with the July 2nd order, Sunrise's evidence is that Mr. Salmon has not paid the full amount of rent owed since that time. Mr. Salmon maintains that three of the cheques he provided to Sunrise were misplaced. Even if this were true, it could be easily remedied with replacement cheques, which he has not provided. In addition, without going into detail or deciding who is in the wrong, it is evident from Sunrise's evidence that relations between Mr. Salmon and Sunrise's staff continue to deteriorate. There are significant disagreements over the scope of services Mr. Salmon is to receive while he is still at Sunrise, and Sunrise's staff have complained that Mr. Salmon is rude and has threatened them.

Adjournment request

[46] At the beginning of the hearing on January 14, 2020, Mr. Salmon's lawyer requested an adjournment. She advised that Mr. Salmon was in the hospital and that she had not been able to get instructions from him over the past seven weeks. She indicated that the latest medical information she had received was from Mr. Salmon's sister on the Friday before the hearing, who indicated that Mr. Salmon was in the hospital due to internal bleeding. Mr. Salmon's lawyer indicated that she was unable to serve responding materials because of Mr. Salmon's unavailability due to medical issues.

[47] Both Sunrise and the Sheriff opposed the adjournment. Sunrise provided an affidavit that indicated that Mr. Salmon was hospitalized between November 25 and December 3, 2019, and again since December 31, 2019. This suggests that Mr. Salmon was at home for most of December and, yet, in that time period, he took no steps to comply with the requirement that he advise where he was to be moved nor with the deadline for providing responding materials by December 14, 2019.

[48] After hearing submissions from the parties, we denied the request for an adjournment. For the sake of completeness, we take the opportunity to explain here the reasons for denying the adjournment.

No. S1-GS-

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

APPLICATION RECORD
(On behalf of the Applicant)

Meaghan S. Hughes
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95 Rochford Street
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Telephone: (902) 368-6522
Facsimile: (902) 368-4563
Solicitor for the Applicant

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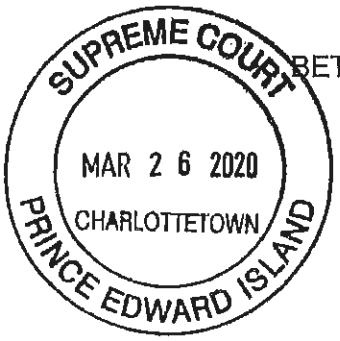
* This Document has been filed Electronically in accordance with Practice Direction 46

S1-GS 28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)



BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

NOTICE OF APPLICATION

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following pages.

THIS APPLICATION will come on for a hearing on a date to be fixed, at the **Law Courts Building, 42 Water Street, Charlottetown, Prince Edward Island.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any document in the application, you or a Prince Edward Island lawyer acting for you must forthwith prepare a notice of appearance in Form 38A and a designation of address for service (Form 16A.1) prescribed by the Rules of Civil Procedure, serve it on the applicant lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant and file it with proof of service in the court office where the application is to be heard, not later than noon on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

March 26, 2020

Roxanne Snow
Registrar

Law Court Building
42 Water Street
Charlottetown, PE

TO: [*ex parte*]

APPLICATION

1. The applicant makes application for:

    a. An order suspending, for the duration of the suspension of regular court operations by the Chief Justice when the Court is only hearing urgent and emergency matters, evictions of residents from their homes, pursuant to eviction orders issued by the Director of Residential Rental Property or writs of possession, unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions;

    b. An order granting leave to bring this application ex parte without service of the notice of application on parties to eviction orders;

    c. An order that this order be served on the public by posting notice of it on the websites of the Department of Justice and Public Safety; and

    d. Such further order as the Honourable Court deems just.

2. The grounds for the application are:

    a. These orders are requested to protect the health and safety of persons to be evicted from their residences, to protect the health and safety of sheriffs whose responsibilities include enforcing eviction orders and executing writs of possession, and to help contain and prevent the spread of the 2019 novel coronavirus (COVID-19).

    b. Rule 60.11 of the Rules of Civil Procedure authorizes the issuance of a writ of possession with leave of the court.

    c. Sheriffs' duties include enforcement of writs of possession under s. 8(d)(3) of the *Rental of Residential Rental Properties Act*, RSPEI 1988, c R-13.1.

    d. Eviction orders and issued writs of possession have been delivered to sheriffs for enforcement to deliver vacant possession.

    e. A sheriff has no discretion to refuse to execute a writ of possession.

    f. Given the urgent need to prevent the spread of COVID-19, it is impracticable to serve advance notice on all parties to eviction proceedings and bring individual motions in each proceeding – Rule 16.04 of the Rules of Civil Procedure.

    g. Rule 14.05(3)(i) of the Rules of Civil Procedure and the inherent jurisdiction of the Supreme Court.

3. The following documentary evidence will be used at the hearing of the application:

    i. The Affidavit of Clare Henderson, the Director of Court Services, Prince Edward Island, and the exhibits thereto.

    ii. Such other material as counsel may advise.

March 26, 2020

Meaghan Hughes
Justice and Public Safety
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Solicitor for the Applicant

A.G. of Prince Edward Island	No. S1-
	SUPREME COURT OF PRINCE EDWARD ISLAND PROCEEDING COMMENCED AT CHARLOTTETOWN, PE
	NOTICE OF APPLICATION
	MEAGHAN HUGHES Justice and Public Safety Legal Services Section 95 Rochford Street Shaw Building South, 4th Floor Charlottetown, PE Telephone: (902) 368-4851 Facsimile: (902) 368-4563 Solicitor for the Applicant

TAB

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PART I - IDENTIFYING STATEMENT AND FACTS

1. The facts as they relate to this Application are set out in the affidavit of Clare Henderson sworn March 27, 2020.

PART II – ISSUES

2. The Applicant is seeking an order that would suspend the enforcement of eviction orders issued by the Director of Residential Rental Property or the Island Regulatory and Appeals Commission ("Commission") under the *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 ("*Act*") and also the suspension of writs of possession issued under Rule 60.11, unless otherwise ordered by the court.

3. The Applicant requests that this order be effective for the duration of the period in which the Court is only hearing urgent and emergency matters.

4. The Applicant further requests that leave be granted to bring this Application *ex parte* without service on parties who are presently subject to eviction orders or writs of possession and any persons who may be affected by such orders or writs while this Order remains in effect.

5. Finally, the Applicant requests that an order be issued to permit the Applicant to serve notice or the order to the public by posting on the Department of Justice and Public Safety website and the COVID-19 Government webpage.

PART III - LAW

Orders of the Director of Rental of Residential Property and Commission

6. Under the *Act*, a lessor ("landlord") may serve on a lessee ("tenant") a notice of termination of lease ("eviction notice") if the tenant is more than one day late in the payment of rent,

Where a lessee fails to pay rent in accordance with the rental

> agreement, the lessor may, on any day following the day the rent was due, serve the lessee with a notice of termination to be effective not earlier than twenty days after the date it is served.

7. The tenant then has 20 days to vacate the property. If within 10 days of being served the eviction notice, the tenant pays rent in full, then the eviction notice is void.[1] Where a tenant has persistently been late in paying rent a landlord can apply to the Director of Residential Rental Property ("Director") for an order terminating the rental agreement, even if the tenant pays rent in full.[2]

8. If a tenant receives an eviction notice for failure to pay rent they can apply to the Director to have the notice set aside[3]. The tenant must do this within 10 days of being given the notice.[4] The Director will then issue an order. This order may include that the tenant must pay any amount owed and/or that the premises be surrendered by the tenant to the landlord and may direct the sheriff to put the landlord in possession of the property ("eviction order").[5]

9. Any order of the Director may be appealed to the Island Regulatory and Appeals Commission ("Commission") within 20 days of the order of the Director.[6] A hearing shall be held by the Commission within 30 days of the receipt of the appeal.[7] The Commission has the same authority as the Director in issuing an order.[8]

10. An order of either the Director or the Commission may be filed with the Supreme Court and may be enforced as if it were an order of the court.[9]

Sheriff Services

---

[1] *Rental of Residential Property Act*, RSPEI 1988, c R-13.1 at s. 13(2) [RRPA].
[2] RRPA at s. 13(3)
[3] RRPA at s 16(1).
[4] RRPA at s 16(2).
[5] RRPA at s 8(d.2-d.3).
[6] RRPA at s 25(1).
[7] RRPA at s 25(2).
[8] RRPA at s 26(1).
[9] RRPA at ss. 8.1 & 26(4)-(5).

11. Sheriffs in the Applicant of Prince Edward Island are officers of the court and appointed under the *Sheriffs Act*, RSPEI 1988, c S-4.1.

12. Pursuant to section 4(1) of the *Sheriffs Act* a sheriff shall,

> 4(1)(a) serve any process for the purposes of a proceeding before the courts;
>
> (b) execute any order of the court and attach or seize any property pursuant to such order;
>
> (c) where so appointed under the Court Security Act R.S.P.E.I. 1988, Cap. C-27.1, act as a security officer;
>
> (d) perform such other functions as the Registrar may direct.[10]
>
> [emphasis added]

13. Sheriffs are required to execute orders including seizing property when so ordered by the court, including situations where a landlord files an order of the Director or Commission with the court and requests a writ of possession be issued by the court under Rule 60.11.

14. There are additional provincial and federal statutes which provide certain enforcement activities be undertaken by a sheriff. The delivery of vacant possession of a property pursuant to an order of the Director of Commission would be one example.

15. A recent case of the Ontario Superior Court of Justice confirmed that without a court order the Sheriff does not have the discretion to decide not to enforce eviction orders. In *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469, an order was issued pursuant to the *Residential Tenancies Act*, 2006, SO 2006, c. 17 for the sheriff to enforce an eviction order. Due to a number of circumstances the sheriff was not able to enforce the order. The landlord brought an Application of *mandamus* to have the court compel the sheriff to enforce the eviction order. After going through the eight part test, the court found that the requirements for *mandamus* were met and that an order requiring the Sheriff to enforce the eviction

[10] *Sheriffs Act*, RSPEI 1988, c S-4.1 at s. 4(1).

order was necessary the sheriff did not have the authority to not enforce the order.[11]

16. Further, in *Central Guaranty Trust Co. v. McRae* (1993), 1993 CanLII 8542, the Superior Court held that the Sheriff has a duty to enforce validly made writs of discretion and no discretion not to do so.[12]

17. The Chief Public Health Officer for the Applicant of Prince Edward Island, Dr. Heather Morrison, ("CPHO") has recommended social distancing in an effort to reduce the spread of COVID-19, a deadly communicable disease.

18. The Applicant submits that Sheriffs are unable to effectively execute writs of possession or orders of the Director or Commission for possession of a property while maintaining the social distancing practice recommended by the CPHO.

19. Further, the court has issued a directive suspending all hearings other than those that are urgent or an emergency. The Applicant submits that while this does not suspend the enforcement of orders by the sheriff that this is a unique position where a public health state of emergency has been issued and it would cause occupational health and safety concerns for sheriffs to be enforcing such orders.

Ex Parte

20. The Applicant submits that given the current circumstances of the global pandemic and recommendations of the CPHO that is it impractical to serve advance notice on all parties who may be subject to eviction orders and bring individual proceeding for each.

21. The Applicant submits that for the protection of the health and safety of sheriffs as well as the general public that this is a time by very definition of an emergency.[13] The Applicant submits that it is appropriate to grant this order ex parte as there is not time

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[11] *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469 at para. 70.
[12] *Central Guaranty Trust Co. v. McRae (1993),* 1993 CanLII 8542, at para. 12.
[13] Practice note 17.

to provide notice to all affected parties.[14]

Posting of Order Online

22. The Applicant submits that the court can exercise its inherent jurisdiction to order the Applicant to post any order issued as a result of this Application online as an alternative method of service and notice of the order. This shall allow anyone who is currently, or may become, subject to an eviction order notice or writ of possession that the enforcement of such orders has been suspended.

PART IV- ORDER SOUGHT

23. The Applicant seeks an ex parte order for the suspension of the enforcement by sheriffs of orders of the Director of Residential Rental Property and Commission as well as the suspension of enforcement of writs of possession for the duration of the period of time where the court is only hearing urgent or emergency matters.

24. The Applicant seeks an order that this order be served on the public by posting notice of it on the websites of the Department of Justice and Public Safety and the COVID-19 webpage.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 27th day of March, 2020

Meaghan S. Hughes
Legal Services Section Justice and Public Safety
4th Floor Shaw Building South, 95 Rochford St
Charlottetown, PE C1A 7N8
Counsel for the Attorney General of Prince Edward Island

[14] *Sprott Resource Lending Corp.*, Re, 2013 ONSC 4350 at para. 9.

SCHEDULE A- CASE LAW

1. *Sunrise North Senior Living Ltd. v The Sheriff (Regional Municipality of York),* 2020 ONSC 469.

2. *Central Guaranty Trust Co. v. McRae (1993),* 1993 CanLII 8542.

3. *Sprott Resource Lending Corp.,* Re, 2013 ONSC 4350.

SCHEDULE B- LEGISLATION

1. *Rental of Residential Properties Act, RSPEI 1988, c R-13.1.*
2. *Sheriffs Act, RSPEI 1988, c S-4.1.*
3. *Rules of Civil Procedure for Prince Edward Island.*
4. *Practice Note 17.*

TAB

3

No. S1-GS-28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

Affidavit

I, Clare Henderson, of the Charlottetown, in the Province of Prince Edward Island,

MAKE OATH AND SAY AS FOLLOWS:

1. I am employed as the Director of Family Law and Court Services for the Province of Prince Edward Island within the Department of Justice and Public Safety. I have held this position since August 14, 2017. Court Services is responsible for providing legal and policy advice and support on court operations to staff, managers and senior management in the criminal, family and civil courts, including enforcement offices.

2. Orders arising out of a civil court proceeding, and enforceable in Prince Edward Island, may be directed to a Sheriff for enforcement under s. 4(1) of the *Sheriffs Act.* In addition, various provincial and federal statutes provide that certain enforcement activities be directed to a sheriff. For example, under section 8(d.3) of the *Rental of Residential Properties Act*, RSPEI 1988, c R-13.1, sheriffs may be directed to enforce

an order for surrender of a residential premises ("eviction order"). Further, under sections 8.1(2) and 26(5) of the *Rental of Residential Property Act*, orders of the Director of Residential Rental Property or the Commission may be filed in the Supreme Court and are deemed to be an order of that court and enforceable as such.

3. Pursuant to section 2(1) of the *Sheriffs Act*, sheriffs are appointed pursuant to the *Civil Service Act* and are employees of the Department of Justice and Public Safety.

4. Sheriffs are impartial officers of the court with a duty to act within the confines of the law and at the direction of the court.

5. Typical enforcement activities conducted by sheriffs include: the reading and posting of injunctions, seizure and sale of assets, executing writs of possession pursuant to mortgage enforcement proceedings, evictions and restoration to premises orders, and the service of court documents. They carry out the enforcement of civil orders under the direction and supervision of management in Court Services. Where a question arises in relation to the measures to be taken by a sheriff in carrying out an order, direction from the court is sought by the sheriff or any interested person under Rule 60.18 of the *Rules of Civil Procedure.*

6. It is the Department's policy that sheriffs adhere to safety and prevention principles to ensure the safety of themselves and others while undertaking to perform their assigned duties, including taking all reasonable precautions to minimize the possibility of jeopardizing their health and safety or the health and safety of others.

7. On March 11, 2020, the World Health Organization (WHO) declared their assessment of COVID-19 as a pandemic, urging countries to take a comprehensive strategy to prevent infections, save lives and minimize impact. Attached hereto and marked as Exhibit "A" to my Affidavit is a copy of the WHO Director-General's opening remarks at the media briefing on COVID-19 of March 11, 2020, from the WHO's website.

8. The Chief Justice of the Supreme Court of Prince Edward Island issued a notice suspending all court matters other than those deemed as urgent or an emergency effective Tuesday, March 17, 2020, until further notice, to help contain the spread of the 2019 coronavirus (COVID-19). A copy of the notice is hereto attached as Exhibit "B".

9. The notice does not address the suspension of the enforcement of court orders or tribunal orders with enforcement direction provided to the sheriff. I believe that COVID-19 poses a unique issue in terms of occupational health and safety issues for sheriffs, as well as the health of the general public, particularly around executing evictions and writs of possession. Sheriffs do not have the training or access to information or testing resources that could enable them to determine with any certainty whether a person subject to eviction or a writ of possession from their residence is infected with COVID-19.

10. Eviction orders or writs of possession also do not allow for consideration of whether the individuals subject to eviction are subject to mandatory self-isolation or quarantine orders by PEI's Chief Public Health Officer ("CPHO").

11. As of March 15, 2020, CPHO recommended the closure of some provincial parks, schools and daycares to help prevent the spread of COVID-19. A copy of the news release is hereto attached as Exhibit "C".

12. As of March 16, 2020, CPHO recommended the closure of public libraries to help prevent the spread of COVID-19. A copy of the news release is hereto attached as Exhibit "D".

13. On March 16, 2020, a public health state of emergency was declared by the Premier of Prince Edward Island. A copy of the Order in Council is hereto attached as Exhibit "E".

14. On March 21, 2020, the CPHO issued a Public Health Order requiring that anyone is entering the province to self-isolate for a period of 14 days. A copy of that Order is hereto attached as Exhibit "F".

15. There have been significant closures and reductions in non-essential government services as well as impacts to other private businesses. A list of sectors impacted as of March 25, 2020 is hereto attached as Exhibit "G".

16. The CPHO has recommended that the public to stay home and limit group gatherings. She advises that there may soon be indications of community transmission.

17. I believe that an appropriate mitigation strategy for the health and safety of sheriffs, and to avoid adding further risk of community transmission in the province, is to stay the enforcement of evictions and writs of possession effective immediately and until regular

court operations are directed by the Chief Justice to resume.

18. I make this affidavit in support of the application for a stay of civil enforcement activity of writs of possession of and evictions, and for no other or improper purpose.

SWORN before me at Charlottetown, in the County of Queens, Province of Prince Edward Island, this 27th day of March, 2020.

Commissioner for taking Oaths and Affidavits in the Supreme Court of Prince Edward Island

Clare Henderson

TAB

A

World Health Organization

WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020

11 March 2020

Good afternoon.

In the past two weeks, the number of cases of COVID-19 outside China has increased 13-fold, and the number of affected countries has tripled.

There are now more than 118,000 cases in 114 countries, and 4,291 people have lost their lives.

Thousands more are fighting for their lives in hospitals.

In the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher.

WHO has been assessing this outbreak around the clock and we are deeply concerned both by the alarming levels of spread and severity, and by the alarming levels of inaction.

We have therefore made the assessment that COVID-19 can be characterized as a pandemic.

Pandemic is not a word to use lightly or carelessly. It is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.

Describing the situation as a pandemic does not change WHO's assessment of the threat posed by

this virus. It doesn't change what WHO is doing, and it doesn't change what countries should do.

We have never before seen a pandemic sparked by a coronavirus. This is the first pandemic caused by a coronavirus.

And we have never before seen a pandemic that can be controlled, at the same time.

WHO has been in full response mode since we were notified of the first cases.

And we have called every day for countries to take urgent and aggressive action.

We have rung the alarm bell loud and clear.

===

As I said on Monday, just looking at the number of cases and the number of countries affected does not tell the full story.

Of the 118,000 cases reported globally in 114 countries, more than 90 percent of cases are in just four countries, and two of those – China and the Republic of Korea - have significantly declining epidemics.

81 countries have not reported any cases, and 57 countries have reported 10 cases or less.

We cannot say this loudly enough, or clearly enough, or often enough: all countries can still change the course of this pandemic.

If countries detect, test, treat, isolate, trace, and mobilize their people in the response, those with a handful of cases can prevent those cases becoming clusters, and those clusters becoming community transmission.

Even those countries with community transmission or large clusters can turn the tide on this virus.

Several countries have demonstrated that this virus can be suppressed and controlled.

The challenge for many countries who are now dealing with large clusters or community transmission is not whether they can do the same – it's whether they **will**.

Some countries are struggling with a lack of capacity.

Some countries are struggling with a lack of resources.

Some countries are struggling with a lack of resolve.

We are grateful for the measures being taken in Iran, Italy and the Republic of Korea to slow the virus and control their epidemics.

We know that these measures are taking a heavy toll on societies and economies, just as they did in China.

All countries must strike a fine balance between protecting health, minimizing economic and social disruption, and respecting human rights.

WHO's mandate is public health. But we're working with many partners across all sectors to mitigate the social and economic consequences of this pandemic.

This is not just a public health crisis, it is a crisis that will touch every sector – so every sector and every individual must be involved in the fight.

I have said from the beginning that countries must take a whole-of-government, whole-of-society approach, built around a comprehensive strategy to prevent infections, save lives and minimize impact.

Let me summarize it in four key areas.

First, prepare and be ready.

Second, detect, protect and treat.

Third, reduce transmission.

Fourth, innovate and learn.

I remind all countries that we are calling on you to activate and scale up your emergency response mechanisms;

Communicate with your people about the risks and how they can protect themselves – this is everybody's business;

Find, isolate, test and treat every case and trace every contact;

Ready your hospitals;

Protect and train your health workers.

And let's all look out for each other, because we need each other.

===

There's been so much attention on one word.

Let me give you some other words that matter much more, and that are much more actionable.

Prevention.

Preparedness.

Public health.

Political leadership.

And most of all, people.

We're in this together, to do the right things with calm and protect the citizens of the world. It's doable.

I thank you.

TAB

B

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF Clare Henderson SWORN BEFORE ME THIS 27 DAY OF March 2020

A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

Notice to the Profession, the Public and the Media regarding Criminal, Civil and Family Proceedings

Prince Edward Island Court of Appeal, Supreme Court and Provincial Court

March 16, 2020

In order to protect the health and safety of all court users and to help contain the spread of the 2019 novel coronavirus (COVID-19), the Prince Edward Island courts are taking immediate steps. Essential public service is being maintained.

Measures applicable to all courts

All members of the public are expected to follow the recommendations and advisories of the Chief Public Health Office. Members of the public subject to self-isolation, or those experiencing possible coronavirus/COVID-19 symptoms are not to personally attend any courthouse.

Individuals with matters scheduled before the courts should contact their counsel or, if they do not have counsel, contact court staff to seek directions **prior to attending court facilities**.

Measures applicable to the Supreme Court and Court of Appeal

All in-person court appearances and matters, other than for urgent or emergency matters, are suspended until further notice.

Urgent matters will continue to be heard, in a manner and forum to be determined by the court (including for example the potential of hearings by way of telephone or video appearances).

The current telephone case management structure will continue namely, case management conference calls will continue as scheduled.

Previously scheduled in-person motions, pre-motion conferences, settlement conferences and pre-trial conferences will not proceed with in-person attendances. Where appropriate and where feasible, motions, pre-motion conferences, settlement conferences and pre-trial conferences will proceed by alternative means, most likely by telephone.

At this stage, parties may continue to file documents at the courthouses. Options are also being explored for alternative means for filing documents. Arrangements are in place to ensure compliance with the recommendations and advisories of the Chief Public Health Office regarding social distancing.

Individuals who have questions about court appearances or court filings should first contact their legal counsel. If individuals do not have legal counsel, or if further information is required, they should contact the following:

Prince Edward Island Court of Appeal: 902-368-6024
Supreme Court of Prince Edward Island: 902-368-6023

Measures applicable to the Provincial Court

Provincial Courts in the province will remain open and will operate in a manner which complies with the social distancing practices recommended by the Chief Public Health Office.

Access to the courts will be limited to only those who need to be present in the courthouse. Any person exhibiting signs of illness or who is required to self-isolate should advise their lawyer or court staff for direction on how to proceed.

The protocols in Provincial Courts could vary from court to court and from day to day depending on circumstances. Please call the following numbers with any questions:

Provincial Court – Charlottetown 902-368-6693

Provincial Court – Summerside 902-888-8190

Provincial Court – Georgetown 902-652-8990

We appreciate the patience, cooperation and flexibility of all as we navigate these rapidly changing times.

Chief Justice David H. Jenkins
Prince Edward Island Court of Appeal

Chief Justice Tracey L. Clements
Supreme Court of Prince Edward Island

Chief Judge Nancy K. Orr
Provincial Court of Prince Edward Island

TAB

C

Province announces COVID-19 related closures

Chief Public Health Officer, Dr. Heather Morrison, announces additional provincial measures to protect the health and safety of Islanders as the COVID-19 situation continues.

Effective March 17, 2020, all public licensed child care centres will be closed until further notice and all public schools will be closed for two weeks following March Break (March 23 to April 3) and will be reassessed.

"School and licensed child care centre closures will assist in our efforts to minimize the spread of COVID-19 and keep all Islanders, especially our most vulnerable citizens, safe," said Chief Public Health Officer, Dr. Heather Morrison. "This is a rapidly evolving situation and we continue to make decisions in the public interest as new information becomes available."

Additional measures include the immediate closure of Mark Arendz Provincial Ski Park at Brookvale, and all provincially run visitor information centres.

The first positive case of COVID-19 was confirmed in Prince Edward Island on March 14, 2020. The Chief Public Health Office has been in contact with the patient and those who been in close contact with her, and further contact tracing is currently underway.

"Closing daycares and schools are measures we can take to help flatten the curve," said Brad Trivers, Minister of Education and Lifelong Learning. "Under the leadership of Prince Edward Island's Chief Public Health Officer, Dr. Heather Morrison, we must all do our part to and we will get through this together as a province."

Islanders with questions about COVID-19 should call PEI's toll-free information line at 1-800-958-6400. The information line is taking messages 24-hours a day, 7 days a week.

Islanders experiencing symptoms (cough, fever, or shortness of breath) within 14 days after international travel should call 8-1-1 to be screened and, if necessary, directed for testing.

Those requiring immediate medical attention should call 9-1-1.

Get the latest information on COVID-19.

THIS IS EXHIBIT" C "REFERRED TO IN THE AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF March 20 20
A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

Backgrounder:

The Chief Public Health Office continues to work closely with the federal government, provincial and territorial counterparts, government departments and Health PEI to continue to monitor the situation globally, nationally and

locally. The public health risk of COVID-19 is continually reassessed and Islanders will be updated as new information becomes available.

Government's special situation response group also continues to work collaboratively with the Chief Public Health Office, stakeholders and community partners in preparing for all impacts related to COVID-19 to the province, including health, social and economic.

Everyone is encouraged to follow routine prevention measures:

- Washing hands frequently with soap and water
- Cough and sneeze into your elbow or a tissue
- If ill with acnte respiratory symptoms, stay home if possible
- Limit touching your eyes, nose and mouth
- Don't share items like drinking glasses and water bottles
- Frequently clean surfaces like taps, doorknobs and countertops

Media Contact:
Samantha Hughes
Health and Wellness
(902) 368-5610
shughes@gov.pe.ca (link sends e-mail)

TAB

D

Chief Public Health Officer provides update on COVID-19

Prince Edward Island's Chief Public Health Officer, Dr. Heather Morrison, is asking all Islanders, businesses and community organizations, to closely look at what activities are essential and non-essential in efforts to reduce the spread of COVID-19.

She reiterated that for those self-isolating, they should do so at home. More information on self-isolation can be found at www.princeedwardisland.ca/covid19.

For Islanders who have not travelled and are feeling well, they should practice social distancing, and maintain a 2 meter distance from others.

Islanders who require government services and have travelled internationally, or are showing symptoms, are asked to interact with government by phone or online options, where applicable.

All library programs and events Island-wide have been cancelled in an effort to help limit the spread of COVID-19. Due to the closures of local community centres, the following libraries will be closed until further notice: Montague Rotary Library, Murray Harbour Public Library, Georgetown Genevieve Soloman Memorial Library, and O'Leary Public Library.

Prince Edward Island currently has one confirmed positive case of COVID-19 in the province.

Islanders with questions about COVID-19 should call PEI's toll-free information line at 1-800-958-6400. The information line is taking messages 24-hours a day, 7 days a week and Islanders who leave messages will receive a call back from the Chief Public Health Office.

Islanders experiencing symptoms (cough, fever, or shortness of breath) within 14 days after international travel should call 8-1-1 to be screened and, if necessary, directed for testing.

Those requiring immediate medical attention should call 9-1-1.

THIS IS EXHIBIT" D "REFERRED TO IN THE AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF March 20 20
Carly Chn
A COMMISSIONER OF THE SUPREME COURT OF PRINCE EDWARD ISLAND

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- If ill with acute respiratory symptoms, stay home if possible
- Limit touching your eyes, nose and mouth
- Don't share items like drinking glasses and water bottles
- Frequently clean surfaces like taps, doorknobs and countertops

Media Contact:

Samantha Hughes
Health and Wellness
(902) 368-5610
shughes@gov.pe.ca (link sends e-mail)

TAB

E

EXECUTIVE COUNCIL _____ 16 MARCH 2020

EC2020-174

PUBLIC HEALTH ACT
DECLARATION
STATE OF PUBLIC HEALTH EMERGENCY

Pursuant to subsection 49(1) of the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1 Council has determined, on the advice of the Chief Public Health Officer, that a public health emergency exists or is imminent and prompt coordination of action or special measures are required in order to protect the public health; therefore, Council declares a state of public health emergency with respect to all of the Province of Prince Edward Island effective immediately until the expiry of thirty (30) days, unless it is sooner terminated or continued by Council.

THIS IS EXHIBIT" E "REFERRED TO IN THE
AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF
March 2020
Cathy Chow
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

TAB

F

THIS IS EXHIBIT" F "REFERRED TO IN THE
AFFIDAVIT OF Clare Henderson
SWORN BEFORE ME THIS 27 DAY OF
March 20 20
Cathy Chow
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

IN THE MATTER OF the *Public Health Act*, RSPEI 1988, c P-30.1 (herein referred to as the "Act"), sections 39 and 49.

PUBLIC HEALTH ORDER

WHEREAS a state of public health emergency was declared in the province on March 16th, 2020 pursuant to Order in Council EC2020-174;

AND WHEREAS pursuant to subsection 39(2) of the *Public Health Act*, the Chief Public Health Officer believes on reasonable and probable grounds that as a result of COVID-19:

(a) a communicable disease exists in the province;
(b) the communicable disease presents a risk to the health of persons in the province; and
(c) the requirements specified in the order are necessary to prevent, decrease or eliminate the risk to health presented by the communicable disease.

AND WHEREAS pursuant to the *Public Health Act*, the Chief Public Health Officer may require a person to take or refrain from taking any action that is specified in the order in respect of a communicable disease, as set out in subsection 39(1);

AND WHEREAS pursuant to subsection 49(3) of the *Public Health Act*, the Chief Public Health Officer reasonably believes that the population is not protected against COVID-19, and certain preventative measures are necessary to protect the population;

AND WHEREAS the Chief Public Health Officer believes that it is appropriate for certain asymptomatic workers and certain asymptomatic individuals to be exempted from the requirement to self-isolate for 14 days, or for the duration of their stay (if shorter than 14 days), when arriving in Prince Edward Island from another province or territory in Canada during the state of public health emergency while still maintaining measures to protect the health of the population;

NOW THEREFORE pursuant to my authority under subsections 39(1) and 49(3) of the *Act*, the following order is made:

1. Subject to subsection 2, as of March 21, 2020 at 2:00 p.m., all persons entering the province, including those arriving from other provinces and territories in Canada, are required to self-isolate for 14 days or for the duration of their stay in the province (if shorter than 14 days). For detailed information on self-isolation, please see: https://www.princeedwardisland.ca/en/information/health-and-wellness/covid-19-self-isolation.
2. The following persons are exempt from the requirement to self-isolate:
    a. Asymptomatic workers engaged in providing services in the trade,

transportation, construction, agriculture, fisheries, aquaculture and livestock sectors including truck drivers and crew on any plane, helicopter or marine vessels arriving in Prince Edward Island from another province or territory in Canada.

b. Asymptomatic workers essential to the critical maintenance of the province's infrastructure in the trade and transportation sectors.
c. Asymptomatic workers engaged in providing essential services to PEI, including but not limited to, health and social service providers, postal service workers, members of a police service and others employed for the preservation of the peace and emergency responders, except those workers who have travelled internationally since March 8, 2020 and have not yet completed 14 days of self-isolation upon return.
d. Persons travelling for emergency medical purposes, including patients and persons necessary to travel with patients, and persons accompanying animals for emergency services at the Atlantic Veterinary College.
e. Such other persons as may be otherwise exempted under exceptional circumstances by the Chief Public Health Officer.

3. Exempted individuals who enter the province are required to practice appropriate social distancing, closely self-monitor for symptoms of COVID-19, and self-isolate should symptoms develop.

THIS ORDER is effective March 21, 2020 as of 2:00 p.m. and is in effect for a period of 14 days, unless it is sooner terminated or continued by the Chief Public Health Officer.

TAKE NOTICE THAT failure to comply with this Order is an offence for which you may be liable on summary conviction in accordance with section 66 of the *Public Health Act.*

DATED at Charlottetown in Queens County, Province of Prince Edward Island this 22 day of March, 2020.

Dr. Heather Morrison
Chief Public Health Officer

TAB

G

Closures Due to COVID-19 | Government of Prince Edward Island

Public health risk continues to be reassessed and updated as new information becomes available.

> The best way for Islanders to come together right now, is to stay apart.

Public access to provincial buildings and services

All non-essential provincial government services have been halted, in most cases for a period of two weeks, with an update to be provided at a later date. Many provincial offices and buildings are closed to the public. If you require government services, use online services and phone services where applicable.

Provincial offices are currently closed to public

- Access PEI service counters closed to the public with staff are on-site to allow for registry access and essential services that operate in Access PEI buildings. NOTE: With Access PEI closed, there will be a 60 day grace period on vehicle registration and drivers' licence renewals. Police partners have been informed of this grace period (see Late fees and licence suspensions below).
- PEI Liquor Control Commission government-operated retail locations.
  - Note: Starting March 25, Oak Tree Place outlet will be open with limited hours of 11 am to 6 pm, Monday to Saturday, with the hours of 10 am to 11 am reserved for seniors.
  - Note - Agency stores licensed to sell liquor and breweries will continue to operate. We will monitor the situation at agency stores, in partnership with Dr. Morrison to ensure operations are done safely.
- PEI Cannabis retail stores. Online delivery will continue.
- Island Waste Management Corporation (link is external)will continue to collect curbside and disposal facilities remain open for essential disposal from businesses, institutions and contract haulers only. IIWMC offices and contact centres are closed to the public and free Saturday blue-bag drop-off is suspended until further notice.
- Family Law, Legal Aid, Victim Services, Community and Correctional Services and Sheriff Services (see below) are operational with limited public access. Call ahead for direction on how to access these services.

Other provincial government buildings closed to public

- Agriculture and Land offices, including Inspection Services at Gordon

Drive. Dairy samples will continue to be delivered
- Agriculture Insurance Corporation
- Aubin Arsenault Building
- Courts (see below)
- Efficiency PEI
- Finance PEI
- Forest, Fish and Wildlife offices in Southampton, Charlottetown and Wellington
- Government House
- Health PEI (see below)
- Human Rights Commission
- Innovation PEI
- IRAC
- Labour and Industrial Relations
- Mark Arendz Provincial Ski Park at Brookvale
- Museum and Heritage Foundation sites
- Office of Immigration
- Parliamentary Precinct (Coles Building, J. Angus McLean, and St. Paul's Rectory)
- PEI Analytical Lab
- PEI Libraries across the province
- Provincial Firearms Office and Conservation Offices
- Provincial offices at the Atlantic Technology Centre
- Provincial Tax Office (see below)
- Skills PEI offices
- Visitor information Centres
- Worker's Compensation Board - Visit wcb.pe.ca for workplace safety information (link is external)

Courts

Courts remain open for urgent and emergency matters.

Fine payments will continue to be accepted by cheque or over the phone by credit card. Fine payments will not be accepted in person, so do not visit any court location to make a fine payment.

If you have recently received a ticket and you do not wish to dispute it, you must contact the Provincial Court in Charlottetown by telephone at 902-368-6693 or Summerside at 902-888-8187 **BEFORE the due date** indicated on the ticket to enter the guilty plea and arrange payment.

If you have recently received a ticket and you wish to dispute it, you must contact the Provincial Court in Charlottetown by telephone at 902-368-6693 or Summerside at 902-888-8187 **BEFORE the due date** indicated on the ticket. The Justice of the Peace will take your not guilty plea by telephone and set a date for your trial.

Late fees and licence suspensions

As a result of the provincial responses to mitigating risk of transmission of

COVID-19, for the next two weeks late fees and license suspension actions will not be taken due to these restrictions and the Province of Prince Edward Island will not be enforcing the collection of fine payments for a period of two weeks from today. Further measures may be announced.

Provincial Tax Office

Due to precautions being taken to avoid the spread of COVID-19, the Provincial Tax Office will be relaxing enforcement on late tax payments for April. Remittances and returns which may be delayed this month will be allowed a grace period.

Sheriff Services

As a result of the Provincial measures to mitigate risk of transmission of COVID-19, Sheriff Services is advising anyone required to make a payment to contact the Sheriff's office to facilitate payment by credit card, mailing in cheque, or setting up direct deposit. Please do not attend in person at Sheriff Services to make a payment.

Call Sheriff Services at 902-620-3573

There will be limited points of entry for other provincial government buildings. Signs will be posted.

Health PEI Facilities

- All Health PEI facilities, including hospitals, closed to visitors.
- Long-term care facilities closed to visitors.

Exceptions apply for palliative patients, intensive care, neonatal intensive care, obstetric and pediatric units. In these units, only ONE designated visitor is permitted - a member of the patient's immediate family OR their care partner within the hospital.

Anyone who has traveled outside of Prince Edward Island and has returned since March 8 is restricted from visiting patients for 14 days following their return.

The following Health PEI offices are also closed to the public:

PEI Medicare Offices
126 Douses Road
Montague, PE C0A 1R0

Home Care Offices in Summerside
310 Brophy Avenue
Summerside, PE

Health PEI Administrative Offices
16 Garfield Street

Charlottetown, PE .

Emergency child care services will be available to essential workers who have no alternatives during this pandemic. If this applies to you, complete the Emergency Child Care Services online form.

Early learning and education

- PEI schools - All public schools closed with March break extended by an additional two weeks
- PEI early years centres and licensed childcare centres closed for an indefinite period of time.
- Education offices, Public Schools Branch offices and FLSB offices

Policing Services

Front counter service for all police agencies in Prince Edward Island are being scaled back. Until further notice, the following services are suspended:

- Elective fingerprinting;
- Criminal records checks; and
- Vulnerable sector checks.

For full details, read the Prince Edward Island policing amid COVID-19 release

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The following is a list of closure recommendations of the PEI Chief Public Health Officer:

Community and Businesses

- In-room dining at restaurants closed effective immediately; pick-up, delivery and drive-thru only.
- Bars closed until further notice.
- All indoor play areas closed.
- All theatres, including movie theatres, closed.

Community Health Services

- **Dentist:** Dental clinics closed effective today for the next 14 days; emergencies will be handled on a case-by-case basis.
- **Optometrist:** The National Optometry Association has provided guidance to its members to only take emergency appointments until further notice.

Reminder: Call ahead if you have a health-related appointment booked. If it is not essential, it may be postponed.

Funerals and Wakes

Effective March 17, wakes at funeral homes will be for family only, with no more than 20 people present. Online condolences and online donations will be available.

TAB

4

S1-GS-28988

SUPREME COURT OF PRINCE EDWARD ISLAND
(General Section)

BETWEEN:

ATTORNEY GENERAL OF PRINCE EDWARD ISLAND

Applicant

-and-

PERSONS UNKNOWN

Respondents

DRAFT ORDER

THIS APPLICATION made by the Attorney General of Prince Edward Island, for an order suspending the execution of all writs of possession and orders to evict persons from their residences during the 2019 coronavirus (COVID-19) pandemic, made without notice, was heard this ___day at the Sir Louis Henry Davies Law Courts, 42 Water Street, Charlottetown, Prince Edward Island in the presence of Meaghan Hughes, counsel for the Attorney General of Prince Edward Island;

ON READING the notice of application and the affidavit of Clare Henderson, affirmed March 27, 2020,

1. THIS COURT grants leave to bring this application *ex parte* without service of the notice of application on parties to residential eviction orders, pursuant to Practice Note 17 of the Supreme Court of Prince Edward Island;

2. THIS COURT ORDERS that, during the suspension of regular court operations by the Chief Justice during which time the Court is only hearing urgent and emergency matters, the eviction of persons from their residences, pursuant to eviction orders issued by the Director of Residential Rental Property or the Island Regulatory and Appeals Commission or writs of possession, are suspended unless the court orders otherwise upon leave being granted to a party by the court pursuant to the court's procedures for urgent motions.

3. THIS COURT ORDERS that this order be served on the public by posting a notice of it on the website of the Department of Justice and Public Safety and COVID-19 Government webpage.

_____

J.

TAB

5

CITATION: Sunrise North Senior Living Ltd. v. The Sheriff (Regional Municipality of York), 2020 ONSC 469
DIVISIONAL COURT FILE NO.: 257/19
DATE: 20200123

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

M.G.J. Quigley, Conway and Favreau JJ.

B E T W E E N:	
SUNRISE NORTH SENIOR LIVING LTD. (C.O.B. SUNRISE OF RICHMOND HILL)	*Robyn Grant* for the Applicant
Applicant	
– and –	
THE SHERIFF OF THE REGIONAL MUNICIPALITY OF YORK, ENFORCEMENT OFFICE OF THE SUPERIOR COURT OF JUSTICE (NEWMARKET) AND ROHAN SALMON	*Robert B. Lawson* and *Chantelle Blom* for the Respondent The Sheriff of the Regional Municipality of York *Melissa Miller* for the Respondent Rohan Salmon
Respondents	
	HEARD: July 2, 2019 and January 14, 2020

BY THE COURT:

Introduction

[1] The applicant, Sunrise North Senior Living Ltd ("Sunrise"), seeks an order in the nature of *mandamus* compelling the Sheriff of the Regional Municipality of York (the "Sheriff") to comply with an order requiring the eviction of the respondent Rohan Salmon from a unit in a retirement home operated by Sunrise.

[2] In November 2017, the Landlord and Tenant Board (the "Board") made an eviction order that was to take effect on May 31, 2018. To date, Mr. Salmon has not moved out and the Sheriff has refused to enforce the eviction order because of health and safety concerns.

[3] For the reasons below, we grant an order in the nature of *mandamus* requiring the Sheriff to deliver vacant possession to Sunrise of the unit occupied by Mr. Salmon. However, given the unique circumstances of this case, the Sheriff is given until March 31, 2020 to comply with the order.

Background facts and procedural history

The parties

[4] Sunrise operates a retirement home located in Richmond Hill. Retirement homes in Ontario are governed by the *Retirement Homes Act*, 2010, S.O. 2010, c. 11.

[5] Mr. Salmon is 50 years old. Mr. Salmon has been living at the Sunrise retirement home for over 15 years. He was seriously injured in a car accident over 16 years ago. There is some dispute in the evidence over whether he is paraplegic or quadriplegic, but there is no dispute that the accident has left him with significant physical impairments. Mr. Salmon is also morbidly obese. He requires extensive care and assistance in his daily life, including a lift for his transfers, personal support workers for his personal care and hygiene needs, and assistance with all household tasks. There is no issue about Mr. Salmon's capacity to make decisions about his own care; he is capable and has no difficulties communicating verbally and in writing.

[6] As detailed below, the Sheriff is responsible for enforcing eviction orders made under the *Residential Tenancies Act, 2006,* S.O. 2006, c. 17. As explained in the Sheriff's evidence on this application, in Ontario the Sheriff is no longer a specific person. Instead, duties assigned to the "Sheriff" in various statutes are performed by authorized Enforcement Officers within Court Enforcement Offices of the Ministry of the Attorney General.

Proceedings before the Landlord and Tenant Board

[7] In July 2017, Sunrise applied to the Board to terminate Mr. Salmon's tenancy due to the non-payment of rent. According to Sunrise, up to that point Mr. Salmon had a long history of not paying his rent and Sunrise made the application to the Board as a "last resort" after years of attempting to negotiate a resolution.

[8] Mr. Salmon was represented by counsel throughout the Board proceedings and these proceedings.

[9] Before the matter went to a hearing before the Board, Mr. Salmon and Sunrise reached a settlement. On November 3, 2017, the Board issued a consent order reflecting the terms of the settlement, which were as follows:

a. The tenancy between Sunrise and Mr. Salmon was terminated;

b. Mr. Salmon was to move out of his unit by May 31, 2018;

c. Sunrise would not seek payment of Mr. Salmon's unpaid arrears, which at that point exceeded $18,000;

d. Mr. Salmon was to pay a daily rate of $202.96 for the remainder of the tenancy on the 15th of every month. If Mr. Salmon failed to make these payments, Sunrise could move without notice to the Board for an earlier eviction;

e. The Sheriff was to give vacant possession of the unit to Sunrise on or after June 1, 2018;

f. If the unit was not vacated on or before May 31, 2018, starting on June 1, 2018, Sunrise could file the Board's order with the Sheriff for enforcement; and

g. Sunrise was to undertake good faith efforts to assist Mr. Salmon in identifying adequate alternative housing.

[10] It appears that Mr. Salmon did not initially pay the daily rate agreed to under the Board's consent order. In December 2017, Sunrise applied to the Board for relief. On March 7, 2018, the Board issued an order in which it found that Mr. Salmon did not meet his payment obligations and required him to move out on April 23, 2018.

[11] Mr. Salmon and Sunrise then reached an agreement to reinstate the consent order that required Mr. Salmon to move out of his unit by May 31, 2018. The Board issued an order on April 23, 2018, that reflects this agreement.

[12] Mr. Salmon never appealed the Board's eviction order.

[13] Mr. Salmon did not move out of his unit at Sunrise on May 31, 2018, as required under the eviction order.

Sunrise's efforts to enforce the eviction order and the Sheriff's response

[14] Given that Mr. Salmon did not move out of the unit, on June 11, 2018, Sunrise filed the Board's eviction order with the Newmarket Court Enforcement Office for enforcement by the Sheriff. As part of the process, Sunrise was required to provide information about any special circumstances relevant to the eviction. Sunrise advised the Court Enforcement Office about Mr. Salmon's health circumstances, including that he is a paraplegic with severe obesity, that he requires a mechanical lift to be transferred from his bed, and that he requires the ongoing care of service providers.

[15] Following Sunrise's filing of the eviction order with the Court Enforcement Office, Enforcement Officers took a number of steps to assess how they would conduct the eviction. They attended Mr. Salmon's unit to serve him with the eviction order. At that time, Mr. Salmon advised that he would not willingly leave his unit and that he had no place to go. Enforcement Officers also met with the York Regional Police who advised that their role "would be limited to keeping the peace, and that they would not forcibly remove or apprehend Mr. Salmon ... if he refused to leave". Based on these consultations with the police and its own internal assessment, the Court Enforcement Office concluded that "there was no safe place for Mr. Salmon to be moved in light of his underlying physical challenges and associated daily care needs".

[16] In the circumstances, the Court Enforcement Office requested that Sunrise apply to the Superior Court of Justice to obtain directions on how to carry out the eviction pursuant to Rule 60.17 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

Justice Bale's decisions

[17] Sunrise brought an application for directions to the Superior Court in Newmarket on September 21, 2018. The application was before Bale J. The Sheriff and Mr. Salmon were respondents on the application.

[18] On September 21, 2018, the application judge made an order based on the consent of the parties that included the following terms:

a. The Sheriff "is authorized to take such steps as are reasonably required to evict" Mr. Salmon "and provide vacant possession" of the unit to Sunrise on November 30, 2018.

b. The parties could re-apply to the application judge if they required further directions on four days notice.

c. The March of Dimes, Centre for Independent Living and A Place for Mom were to provide information to Mr. Salmon's lawyer about when Mr. Salmon placed his name on their waiting lists and when he could reasonably expect to be accommodated. This information was then to be provided to Sunrise and the Sheriff.

d. The Local Health Integration Network (the "LHIN") was to provide Mr. Salmon with "information relating to the options available for patients with the needs of Mr. Salmon", and that information was to be shared with Sunrise and the Sheriff.

[19] In his brief endorsement, the application judge also stated that "it is the expectation of the court that Mr. Salmon, through counsel, will pursue alternate accommodations, over and above that available through the organizations" listed in the order.

[20] Despite this order, Mr. Salmon did not identify a place where he was to be moved to and the Sheriff did not enforce the eviction order by November 30, 2018.

[21] On January 8, 2019, Bale J. issued a further endorsement in this matter based on the written submissions of the parties. In his decision, he found that he did not have jurisdiction to make the order sought by Sunrise because Rule 60.17 of the *Rules of Civil Procedure* does not contemplate a freestanding application for directions but, rather, a "motion" for directions in the proceeding in which the order was originally made. He also held that a motion for directions was not the appropriate procedure for Sunrise to seek the enforcement of the eviction order.

[22] Despite finding that he did not have jurisdiction over this matter, the motion judge made findings in relation to the efforts made by Mr. Salmon to comply with the September 21, 2018 order to find alternative housing:

> [11] In response to my request for further submissions, Ms. Miller, on behalf of Mr. Salmon, advised that she had been informed by each facility to which he has applied that they are unable to provide information with respect to his place on their list. They have no way of knowing when a place will become available, and when one does, they have to interview the next person on the list to determine whether the placement is appropriate. Ms. Miller also advised that she had spoken with the Central LHIN manager and had been told that they could not provide any information as to what facilities may be available and appropriate for Mr. Salmon, because he has not applied for long-term care. The reason that he has not applied is that he believes long-term care facilities to be inappropriate for him, given his relative youth, and mental acuity. She reports that Mr. Salmon is frustrated and depressed at his inability to find an appropriate placement.

[23] The motion judge went on to describe the Sheriff's responsibilities:

> [20] The law applying in this case is clear. Sunrise is entitled to possession of the rental unit, and has been so entitled since June 1, 2018. Pursuant to s. 141(1) of the *Courts of Justice Act* and s. 85 of the *Residential Tenancies Act, 2006*, the sheriff is required to enforce the eviction order, in the same manner as a writ of possession, and has been required to do so since the order was filed with her on June 11, 2018.
>
> [21] With absolutely no disrespect to Mr. Salmon, and while I have sympathy for the position in which he finds himself, having no right to remain at Sunrise and nowhere to go (he says), he is, in effect, a homeless paraplegic. I am confident that in Ontario in 2018 (and now 2019) there is some place, or places, to which the sheriff may safely take such a person, upon carrying out an eviction order. It is, in my view, the public duty of the sheriff to determine what that place or places are, and to carry out the eviction.

[24] Finally, the motion judge held that an application to enforce the eviction order should be brought to the Divisional Court by way of an application for judicial review:

> [22] Sunrise has not asked the court to order the sheriff to fulfill her public duty by enforcing the eviction order, and in any event, my view is that such an order is not available on a motion for directions under rule 60.17. If the sheriff continues to delay in enforcing the order, Sunrise's remedy would be an application to the Divisional Court for judicial review, pursuant to s. 2 of the *Judicial Review Procedure Act*. However, it is my expectation that the sheriff will now proceed to enforce the eviction order, without requiring the applicant to engage in further, and unnecessary, litigation.

Justice Charney's decision

[25] Following Bale J.'s January 8, 2019 decision, the Court Enforcement Office took additional steps to find a suitable place to which Mr. Salmon could be taken upon his eviction. They contacted a number of organizations and shelters in the York Region and the Greater Toronto Area, and concluded that there was nowhere they could take him because Mr. Salmon's

consent would be needed for admission or because the places they had contacted were not able to accommodate Mr. Salmon's medical needs.

[26] The Court Enforcement Office also contacted the LHIN, which informed them that it could facilitate Mr. Salmon's admission to a long-term care home, even on a temporary or urgent basis, but that Mr. Salmon's consent would be required for admission. In addition, the Enforcement Office identified a number of retirement homes that had vacancies and that could accommodate Mr. Salmon. Again, admission to a retirement home would require Mr. Salmon's consent.

[27] The Enforcement Office shared the information it obtained about the availability of long-term care homes and retirement homes with Mr. Salmon. In response, his counsel advised that Mr. Salmon would never consent to placement in a long-term care home and that the retirement homes identified were "not appropriate".

[28] On March 12, 2019, the Enforcement Office ultimately advised Sunrise that they would not carry out the eviction unless Mr. Salmon consented to be moved to alternative accommodations. The Sheriff also raised an issue about the eviction order expiring on the one-year anniversary of its being filed with the Court, which was June 11, 2018.

[29] Sunrise then brought an urgent application for judicial review before a single judge in Newmarket. The application was heard by Charney J. on April 26, 2019.

[30] In a decision released on April 29, 2019, Charney J. granted a one-year extension of the eviction order, starting from the date of his decision. The extension was without prejudice to Sunrise's ability at a later date to argue that the order does not expire. Having renewed the eviction order, the application judge went on to find that the matter was no longer urgent, and that it should be heard by a full panel of the Divisional Court. The matter was transferred to Toronto so that it could be heard more expeditiously.

Adjournment of July 2, 2019 hearing

[31] The application for judicial review came before this panel on July 2, 2019.

[32] At the beginning of the hearing, the panel heard initial submissions from Ms. Miller, counsel for Mr. Salmon, and from Sunrise. However, rather than continuing with the full hearing of the application, the panel then encouraged the parties to try to resolve the matter. The parties were then able to reach agreement on a process that was meant to lead Mr. Salmon to identify and move to suitable alternative accommodations, failing which the matter was to come back for a hearing before the panel at a later date. The agreement of the parties was reflected in an order of this Court, which included the following terms:

a. By July 16, 2019, Mr. Salmon was to provide consent to Sunrise and the Sheriff disclosing his personal health information for purposes of inquiring into potential new accommodations on his behalf.

b. By July 16, 2019, Mr. Salmon was to provide Sunrise and the Sheriff with copies of his applications to The March of Dimes, Centre for Independent Living and A Place for Mom.

c. By July 16, 2019, Mr. Salmon was to serve Sunrise and the Sheriff with the medical records relevant to his search for new accommodations.

d. By July 16, 2019, Mr. Salmon was to advise the parties of the parameters he was using to identify potential new accommodations.

e. By July 16, 2019, Mr. Salmon was to provide the list of parameters to his LHIN caseworker. Mr. Salmon was to ask his LHIN caseworker to inquire into all long-term care homes that can reasonably accommodate his parameters. If a long-term care home could not meet his parameters, Mr. Salmon was to ask his LHIN caseworker to advise which long-term care homes, if any, can come closest to accommodating his parameters.

f. By July 30, 2019, the Sheriff and Sunrise were to provide Mr. Salmon with a list of potential new accommodations. Sunrise and the Sheriff were permitted to update the list from time to time.

g. Mr. Salmon was to continue reasonable efforts, independent of Sunrise and the Sheriff, to identify and pursue potential new accommodations.

[33] In addition to the terms above, the order also required Mr. Salmon to report regularly on his communications with potential new accommodations, to provide details about why he found potential new accommodations not suitable and to report on his communications with his LHIN caseworker about potential accommodations in a long-term care home.

[34] Paragraph 10 of the order also provided that:

> If Mr. Salmon maintains that long-term care home is not a suitable destination, he is to complete a medical assessment and to serve the report of the medical assessor regarding his eligibility for admission to a long-term care home by no later than 30 days after the assessment.

[35] Finally, Mr. Salmon was to advise the Sheriff where he was to be moved by November 30, 2019. In the event Mr. Salmon failed to do so, the matter was to come back before this panel on a date to be arranged with the Court for early 2020, and a schedule was set for the parties to deliver their materials. Mr. Salmon's materials were due on December 17, 2019.

Events since July 2, 2019

[36] Unfortunately, following the July 2, 2019 order, Mr. Salmon did not identify a place where he was to be moved, and the matter came back before the panel on January 14, 2020.

[37] In advance of the hearing, Sunrise and the Sheriff filed supplementary materials, outlining what has occurred since July 2, 2019. Mr. Salmon did not file additional materials.

[38] Based on the evidence filed by the parties, it appears that Sunrise and the Sheriff met their obligations under the order made July 2, 2019. Mr. Salmon met some, but not all, of his obligations.

[39] Mr. Salmon did provide a list of parameters he is using to search for new accommodations. He is seeking a 500 square feet suite or a space with a layout that can accommodate specified equipment. Counsel for Sunrise points out that the list includes some equipment that Mr. Salmon does not currently have in his unit and that he did not include his budget as part of his parameters.

[40] While Mr. Salmon provided a copy of his application to The March of Dimes, he did not provide copies of his applications to either the Centre for Independent Living or A Place for Mom.

[41] With respect to the option of moving to a long-term care home, it appears that Mr. Salmon maintained his objection to this option throughout most of the time leading to this hearing despite the requirement in the July 2, 2019 order that he explore this option with the LHIN:

a. In a letter dated July 15, 2019, counsel for Sunrise asked counsel for Mr. Salmon to advise of his inquiries with his LHIN caseworker about the long-term care homes that could accommodate his parameters. In response, in correspondence of the same date, Mr. Salmon's lawyer stated:

> I'm not sure how many other ways I can say that there is no discussion of LTC facilities if there is no consent for same. That's how it works. So no specific options were discussed. That part of the order is now satisfied in my view. Further compliance is not possible as long as my client has not provided his consent to be placed in LTC.

b. In a letter dated July 15, 2019, the LHIN described a meeting it had with Mr. Salmon. In the letter, the LHIN indicated that Mr. Salmon's caseworker could assist him with the admission process to a long-term care home, but that "Mr. Salmon declined to apply for admission…"

c. On August 21, 2019, the LHIN provided Mr. Salmon with a list of 14 long-term care homes that may be able to accommodate him, and encouraged him to take a virtual tour of the facilities. In the same correspondence, the LHIN indicated that it could not assess Mr. Salmon's suitability for the homes without his consent.

d. In correspondence dated August 29, 2019, Mr. Salmon's lawyer again advised Sunrise's lawyer that Mr. Salmon was not consenting to be placed on a long-term care home list, and that the assessment process could therefore not begin.

e. In October 2019, Sunrise's counsel and the Sheriff's counsel contacted this panel, seeking direction on the basis that Mr. Salmon was not meeting his obligations under our order of July 2, 2019. On October 18, 2019, the panel made a written direction

that included a requirement that Mr. Salmon was expected to comply with all of the terms of the order in good faith.

f. On November 5, 2019, Mr. Salmon's lawyer wrote to the panel with the following information:

> I can further advise that my client has now made an application with the CLHIN for the sole purpose of inquiring about long-term care options to comply with the Order. His intention remains clear that he does not wish to be placed into long-term care, but he will advise what options exist. This confirms the advice of the CHLIN that an application to long-term care does not equate to admission to long-term care, which still requires his consent.

g. Finally, on November 25, 2019, Mr. Salmon's lawyer advised counsel for Sunrise and the Sheriff that her client advised her "that he did formally apply for long-term care and is waiting to hear back on suitable accommodation". She also advised that Mr. Salmon was on his way to the hospital due to an infection and that he would not be able to meet the November 30th deadline.

[42] With respect to the option of moving to another retirement home, both Sunrise and the Sheriff provided Mr. Salmon's lawyer with lists of retirement homes that appeared to meet Mr. Salmon's needs and that had vacancies or upcoming vacancies. Mr. Salmon's lawyer provided some emails her client had sent to a number of retirement homes, including some of the retirement homes identified by Sunrise and the Sheriff. However, it is hard to accept that these emails represent a serious effort to find a suitable place. For example:

a. The criteria identified in the emails are higher than what Mr. Salmon has in his current unit. For instance, his email makes reference to three lifts, when he currently only has one, and to needing space for items he currently does not have, such as a power wheelchair and rehab arm-bike.

b. Mr. Salmon's budget is unclear, arguably making it sound like he has a lower budget than he has. At Sunrise, his rent is $6,000 per month and he pays separately for support workers. However, his emails to retirement homes suggest that he has a ceiling of $6,000 per month for his rent and for his support workers.

c. There is no evidence of follow up. For example, one retirement home said that they may be able to accommodate his needs, but there is no follow up correspondence from Mr. Salmon.

[43] Mr. Salmon also did not comply with the requirement that he undergo a medical examination to determine his suitability for a long-term care home. As reviewed above, the July 2, 2019 order required him to undergo a medical examination if he maintained his position that long-term care was not suitable for him. In its October 2019 correspondence, Sunrise advised that Mr. Salmon had still not undergone a medical assessment. In our subsequent direction, the panel required that Mr. Salmon undergo a medical assessment by no later than November 15, 2019, and as stated above that he "comply with the terms of the Order in good faith". Despite

this direction, it appears that Mr. Salmon did not undergo a medical examination. Instead, at the hearing before us, his counsel argued that he was not required to undergo the medical examination because he had applied for long-term care. Up until the November 5th communication from Mr. Salmon's counsel, Mr. Salmon had made it clear to Sunrise and the Sheriff that he was only applying for long-term care to comply with the order. However, since it is plain that he had no intention of actually consenting to a placement, it is hard to see that Mr. Salmon's refusal to undergo a medical assessment to determine his suitability for long-term care was made in good in faith.

[44] Finally, and most significantly, Mr. Salmon did not advise where he was to be moved by the November 30, 2019 deadline. As indicated above, his lawyer did advise Sunrise and the Sheriff that he would not be able to comply with this term of the order due to his hospital admission in late November. However, Mr. Salmon returned to the Sunrise retirement home in early December, and nevertheless did not comply with this aspect of the order after that date nor did he provide an explanation for not doing so.

[45] Besides Mr. Salmon's failure to comply with the July 2nd order, Sunrise's evidence is that Mr. Salmon has not paid the full amount of rent owed since that time. Mr. Salmon maintains that three of the cheques he provided to Sunrise were misplaced. Even if this were true, it could be easily remedied with replacement cheques, which he has not provided. In addition, without going into detail or deciding who is in the wrong, it is evident from Sunrise's evidence that relations between Mr. Salmon and Sunrise's staff continue to deteriorate. There are significant disagreements over the scope of services Mr. Salmon is to receive while he is still at Sunrise, and Sunrise's staff have complained that Mr. Salmon is rude and has threatened them.

Adjournment request

[46] At the beginning of the hearing on January 14, 2020, Mr. Salmon's lawyer requested an adjournment. She advised that Mr. Salmon was in the hospital and that she had not been able to get instructions from him over the past seven weeks. She indicated that the latest medical information she had received was from Mr. Salmon's sister on the Friday before the hearing, who indicated that Mr. Salmon was in the hospital due to internal bleeding. Mr. Salmon's lawyer indicated that she was unable to serve responding materials because of Mr. Salmon's unavailability due to medical issues.

[47] Both Sunrise and the Sheriff opposed the adjournment. Sunrise provided an affidavit that indicated that Mr. Salmon was hospitalized between November 25 and December 3, 2019, and again since December 31, 2019. This suggests that Mr. Salmon was at home for most of December and, yet, in that time period, he took no steps to comply with the requirement that he advise where he was to be moved nor with the deadline for providing responding materials by December 14, 2019.

[48] After hearing submissions from the parties, we denied the request for an adjournment. For the sake of completeness, we take the opportunity to explain here the reasons for denying the adjournment.

Ferguson Estate (Re), 2018 PECA 19

The Executor brought the motion pursuant to Rule 14.05 which permits the court to give an opinion or direction on a question affecting the rights of a person in respect to the administration of an estate. This rule refers to motions in respect of any matter where it is unlikely that there will be any material fact in dispute. Rule 37.12(2) permits a judge hearing a motion to grant various relief, to order the trial of an issue, with such directions as are just, and adjourn the motion to be disposed of by a trial judge.

National Police of Colombia v. DASH 224, LLC 2014 PECA 16

A legal proceeding can be commenced by way of action or application. Motions are made within an action or application to seek interlocutory or interim relief. A proceeding cannot be commenced solely to obtain interlocutory or interim relief.

Ellis v. Callahan & Camp Abegweit 2006 PESCTD 52

The court granted an order extending the time for service of the statement of claim on a defendant. If the defendant is alleging prejudice to him as the basis to oppose the extension of time, he must show it is prejudice which has been caused by the delay.

Sogelco v. Island Sea Products et al. 2006 PESCTD 3; (2006), 254 Nfld. & P.E.I. R. 301

Where there were issues of fact and credibility in dispute, the case did not qualify to be heard as an application pursuant to Rule 14.05(3)(h).

Kloosterman v. Grimme 2005 PESCTD 46; (2005), 251 Nfld. & P.E.I.R. 300

The relevant statute provided for issues to be determined by application. Accordingly, the court directed that pursuant to Rule 14.05(2) the issue between the parties could be brought before the court by way of notice of application. The court provided directions as to how the application could proceed.

Keeler v. Prince Edward Island (1998), 162 Nfld. & P.E.I.R. 55 (P.E.I.S.C.-T.D.)

A "notice of claim" served pursuant to s-s.10(2) of the Crown Proceedings Act does not meet the definition of "originating process" in Rule 14.03(1) and even if it could fit within the meaning of "notice of action", it was not issued out of the court by the Registrar of the Court, as required by the Rules.

MacDonald Estate v. Clow [1997] 1 P.E.I.R. 314 (P.E.I.S.C.-T.D.)

An application was brought seeking a declaration the applicant was the owner of certain lands. The court held that as the issue to be resolved involved an interpretation of the deed held by the applicant, the application was properly brought under Rule 14.05(3). Confirmed on appeal. See: [1997] P.E.I.J. No. 97 (P.E.I.S.C.-A.D.) (Q.L.).

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

Declaratory relief should be sought by an originating process. Rule 14.05 (3)(e) specifically contemplates it be sought by notice of application; however, if the parties agree and if the matter is in fact not dealt with in a summary fashion, the court may entertain the granting of such relief by way of notice of motion.

RULE 60

ENFORCEMENT OF ORDERS

DEFINITIONS

60.01 In Rules 60.02 to 60.19,

(a) "creditor" means a person who is entitled to enforce an order for the payment or recovery of money;

(b) "debtor" means a person against whom an order for the payment or recovery of money may be enforced.

ENFORCEMENT OF ORDER FOR PAYMENT OR RECOVERY OF MONEY

General

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

(a) a writ of execution (Form 60A) under Rule 60.07;

(b) garnishment under Rule 60.09;

(c) a writ of sequestration (Form 60B) under Rule 60.10; and

(d) the appointment of a receiver.

Recovery of Costs without Order Awarding Costs

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

ENFORCEMENT OF ORDER FOR POSSESSION OF LAND

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

ENFORCEMENT OF ORDER FOR RECOVERY OF PERSONAL PROPERTY

60.04 (1) An order for the recovery of possession of personal property other than money may be enforced by a writ of delivery (Form 60D), which may be obtained on filing with the Registrar a requisition together with a copy of the order as entered.

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

ENFORCEMENT OF ORDER TO DO OR ABSTAIN FROM DOING ANY ACT

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

ENFORCEMENT BY OR AGAINST A PERSON NOT A PARTY

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

(2) An order that may be enforced against a person who is not a party may be enforced against that person in the same manner as if he or she were a party.

WRIT OF EXECUTION

Where Available Without Leave

60.07 (1) Where an order may be enforced by a writ of execution, the creditor is entitled to the issue of one or more writs of execution (Form 60A), on filing with the Registrar a requisition setting out,

(a) the date and amount of any payment received since the order was made; and

(b) the amount owing and the rate of post-judgment interest,

together with a copy of the order as entered and any other evidence necessary to establish the amount awarded and the creditor's entitlement.

Where Leave is Required

(2) If ten years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a writ of execution shall not be issued unless leave of the court is first obtained.

(3) An order granting leave to issue a writ of execution and sale ceases to have effect if the writ is not issued within one year after the date of the order granting leave, but the court may grant leave on a subsequent motion.

Order for Payment into Court

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

Order for Payment at Future Time

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

Delivery to Sheriff

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

Duration and Renewal

(7) A writ of execution issued against a party against whom judgment has been recovered remains in force so long as the judgment remains in force.

(8) Where a writ of execution is filed with a sheriff, the sheriff shall, not less than thirty days nor more than sixty day before expiration of the writ, mail a notice of its expiration to the creditor, at the address shown on the writ or the most recent request to renew it.

Change of Debtor's Name

(9) Where the name of a debtor named in a writ of execution is changed after the writ is issued, the creditor may file an affidavit with the sheriff setting out the change, and the sheriff shall,

(a) amend the writ by adding the new name of the debtor following the words " now known as"; and

(b) amend the index of writs to show the new name.

Writ to Bear Creditor's Address

(10) Every writ of execution shall bear the name and address of the creditor and his or her lawyer, if any.

(10.1) If the address of the creditor's lawyer changes after the writ is issued, the creditor may have the new address noted on the writ by filing a requisition to that effect with the Sheriff

Property in Hands of Receiver

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

Seizure of Personal Property

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

Sale of Personal Property

(13) Personal property seized under a writ of execution shall not be sold by the sheriff unless notice of the time and place of the sale bas been,

(a) mailed to the creditor at the address shown on the writ or the creditor's lawyer and to the debtor at his or her last known address, at least ten days before the sale; and

(b) published in a newspaper of general circulation in the place where the property was seized.

Abortive Sale

(14) Where personal property seized under a writ of execution remains unsold for want of buyers, the sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances.

(15) On receipt of a notice under subrule (14), the creditor may instruct the sheriff in writing to sell the personal property in such a manner as the sheriff considers will realize the best price that can be obtained.

STATUTORY EXECUTION AGAINST LAND

Sale of Land

60.08 (1) A creditor may not take any step to sell land under a writ of execution until four months after the writ was filed with the sheriff or, where the writ has been withdrawn, four months after the writ was re-filed.

(2) No sale of land under a writ of execution may be held until six months after the writ was filed with the sheriff or, where the writ has been withdrawn, six months after the writ was re-filed.

(3) A sale of land shall not be held under a writ of execution unless notice of the time and place of sale has been,

(a) mailed to the creditor at the address shown on the writ or to the creditor's lawyer and to the debtor at his or her last known address, at least thirty days before the sale;

(b) published in the Royal Gazette once at least thirty days before the sale and in a newspaper of general circulation in the place where the land is situate, once each week for two consecutive weeks, the last notice to be published not less than one week nor more than three weeks before the date of sale; and

(c) posted in a conspicuous place in the local courthouse for at least thirty days before the sale.

(4) The notice shall set out,

(a) a short description of the property to be sold, including the property number;

(b) the short title of the proceeding;

(c) the time and place of the intended sale; and

(d) the name of the debtor whose interest is to be sold.

(5) The Sheriff may adjourn a sale to a later date where the Sheriff considers it necessary in order to realize the best price that can be obtained in all the circumstances, and where the sale is adjourned, it

may be conducted on the later date with such further notice, if any, as the Sheriff considers advisable.

(6) Where a notice of sale of land under a writ of execution is published in The Royal Gazette before the writ expires, the sale may be completed by a sale and transfer of the land after the writ expires.

Abortive Sale

(7) Where land seized under a writ of execution remains unsold for want of buyers, the Sheriff shall notify the creditor of the date and place of the attempted sale and of any other relevant circumstances.

(8) On receipt of a notice under subrule (7), the creditor may instruct the Sheriff in writing to sell the land in such manner as the Sheriff considers will realize the best price that can be obtained.

GARNISHMENT

Where Available

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

Joint Debts Garnishable

(1.1) Where a debt is payable to the debtor and to one or more co- owners, one-half of the indebtedness or a greater or lesser amount specified in an order made under subrule (16) may be garnished.

Where Leave Required

(2) If ten years or more have elapsed since the date of the order, or if its enforcement is subject to a condition, a notice of garnishment shall not be issued unless leave of the court is first obtained.

(3) An order granting leave to issue a notice of garnishment ceases to have effect if the notice is not issued within one year after the date of the order granting leave, but the court may grant leave again on a subsequent motion.

Obtainiug Notice of Garnishment

(4) A creditor under an order for the payment or recovery of money who seeks to enforce it by garnishment shall file with the registrar where the proceeding was commenced a requisition for garnishment (Form 60F) together with a copy of the order as entered, any other evidence necessary to establish the amount awarded and the creditor's entitlement, and an affidavit stating,

(a) the date and amount of any payment received since the order was made;

(b) the amount owing, including postjudgment interest;

(c) details of how the amount owing and the postjudgment interest are calculated;

(c.1) the address of the debtor.

(d) the name and address of each person to whom a notice of garnishment is to be directed;

(e) that the creditor believes that those persons are or will become indebted to the debtor and the grounds for the belief;

(f) such particulars of the debts as are known to the creditor;

(g) where a person to whom a notice of garnishment is to be directed is not in Prince Edward Island, that the debtor is entitled to sue that person in Prince Edward Island to recover the debt, and the basis of entitlement to sue in Prince Edward Island; and

(h) where a person to whom a notice of garnishment is to be directed is not then indebted but will become indebted to the debtor, such particulars of the date on and the circumstances under which the debt will arise as are known to the creditor.

(5) The affidavit required by subrule (4) may contain statements of the deponent's information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

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

Service of Notice of Garnishment

(7) The creditor shall serve the notice of garnishment,

(a) on the debtor, together with a copy of the affidavit required by subrule (4); and

(b) on the garnishee, with a blank garnishee's statement (Form 60H) attached.

(8) The notice of garnishment shall be served by ordinary mail, or by personal service or an alternative to personal service under Rule 16.03.

(9) A notice of garnishment may be served outside Prince Edward Island if the debtor would be entitled to sue the garnishee in Prince Edward Island to recover the debt.

(10) Where the garnishee is a bank, loan or trust corporation, credit union, caisse populaire or the Province of Prince Edward Island Savings Office, the garnishee shall be served at the branch at which the debt is payable.

Garnishee Liable from Time of Service.

(11) The garnishee is liable to pay to the sheriff any debt of the garnishee to the debtor, up to the amount shown in the notice of garnishment or supplementary notice of garnishment, less $10 for the cost of making each payment, within ten days after service on the garnishee or ten days after the debt becomes payable, whichever is later.

(12) For the purposes of subrule (11), a debt of the garnishee to the debtor includes a debt payable at the time the notice of garnishment is served and a debt,

(a) payable within ten years after the notice is served; or

(b) payable on the fulfilment of a condition within ten years after the notice is served.

(13) For the purposes of subrule (11), a debt of the garnishee to the debtor does not include,

(a) if the garnishee is a bank, loan or trust corporation, credit union, caisse populaire or the Province of Prince Edward Island Savings Office, money in an account opened after the notice of garnishment is served;

(b) if the garnishee is an employer, a debt arising out of employment that commences after the notice is served; or

(c) if the garnishee is an insurer, a debt payable under an insurance policy that is entered into after the notice is served.

Payment by Garnishee to Sheriff

(14) A garnishee who admits owing a debt to the debtor shall pay it to the sheriff in the manner prescribed by the notice of garnishment, subject to section 17 of the Garnishee Act.

When Garnishee Must Serve Statement

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

Notice to Co-owner of the Debt

(15.1) When a creditor is served with a garnishee's statement that indicates that the debt is owed to the debtor and to one or more co-owners, the creditor shall forthwith serve the co-owners with a notice to co-owner of the debt (Form 60H.1) and a copy of the garnishee's statement.

(15.2) The notice to co-owner of the debt and the copy of the garnishee's statement shall be served by personal service or an alternative to personal service under Rule 16.03.

Garnishment Hearing

(16) On motion by a creditor, debtor, garnishee or any other interested person, the court may,

(a) where it is alleged that the debt of the garnishee to the debtor has been assigned or encumbered, order the assignee or encumbrancer to appear and state the nature and particulars of his or her claim;

(b) determine the rights and liabilities of the garnishee, the debtor and any assignee or encumbrancer;

(c) vary or suspend periodic payments under a notice of garnishment; or

(d) determine any other matter in relation to a notice of garnishment,

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

Enforcement against Garnishee

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

Payment by Garnishee to Person other than Sheriff

(18) Where, after service of a notice of garnishment, the garnishee pays a debt attached by the notice to a person other than the sheriff, the garnishee remains liable to pay the debt in accordance with the notice.

Payment to Sheriff Discharges Garnishee

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

Creditor to give Notice when Order Satisfied

(20) When the amount owing under an order that is enforced by garnishment has been paid, the creditor shall forthwith serve a notice of termination of garnishment (Form 60I) on the garnishee and on the sheriff.

Payment When Debt Jointly Owed

(21) Where a payment of a debt owed to the debtor and one or more co-owners has been made to the sheriff, no notice of motion for a garnishment hearing is delivered and the time for doing so has expired, the creditor may file with the sheriff, within 30 days thereafter,

(a) proof of service of the notice to co-owner; and

(b) an affidavit stating that the creditor believes that the co-owner of the debt is a person under disability and the grounds for the belief.

(22) The affidavit required by subrule (21) may contain statements of the deponent=s information and belief, if the source of the information and the fact of the belief are specified in the affidavit.

(23) Where the creditor does not file the material referred to in subrule (21), the sheriff shall return the money to the garnishee.

Garnishment Before Judgment

(24) A person who has not obtained an order for the payment or recovery of money, but who has commenced an action for the payment or recovery of money, may file a motion for garnishment and subrules 60.09 (1) to (23) apply with the necessary modifications, except that:

(a) the affidavit filed with the motion shall state the nature of the cause of action, the amount of the debt, claim or demand and that it is due and owing by the person against whom the action has been commenced, after making all just discounts;

(b) the sheriff shall not pay out any funds garnisheed that are in his possession until the person who commenced the action obtains an order for the payment or recovery of money against whom the action has been commenced;

(c) the sheriff may pay any such funds to the Registrar pending the outcome of the action;

(d) an order under this section shall only be made by the Prothonotary or a judge.

WRIT OF SEQUESTRATION

Leave Required

60.10 (1) A writ of sequestration (Form 60B), directing a sheriff to take possession of and hold the property of a person against whom an order has been made and to collect and hold any income from the property until the person complies with the order, may be issued only with leave of the court, obtained on motion.

(2) The court may grant leave to issue a writ of sequestration only where it is satisfied that other enforcement measures are or are likely to be ineffective.

(3) In granting leave to issue a writ of sequestration, the court may order that the writ be enforced against all or part of the person's real and personal property.

Variation or Discharge

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

WRIT OF POSSESSION

Leave Required

60.11 (1) A writ of possession (Form 60C) may be issued only with leave of the court, obtained on motion without notice or at the time an order entitling a party to possession is made.

(2) The court may grant leave to issue a writ of possession only where it is satisfied that all persons in actual possession of any part of the land have received sufficient notice of the proceeding in which the order was obtained to have enabled them to apply to the court for relief.

Duration

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

CONTEMPT ORDER

Motion for Contempt Order

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

(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.

(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for Arrest

(4) A judge may issue a warrant (Form 60J) for the arrest of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the

interest of justice and it appears that the person is not likely to attend voluntarily.

Content of Order

(5) In disposing of a motion under subrule (1), the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

(a) be imprisoned for such period and on such terms as are just;

(b) be imprisoned if he or she fails to comply with a term of the order;

(c) pay a fine;

(d) do or refrain from doing an act;

(e) pay such costs as are just; and

(f) comply with any other order that the judge considers necessary,

and may grant leave to issue a writ of sequestration under Rule 60.10 against the person's property.

Where Corporation is in Contempt

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

Warrant of Committal

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

Discharging or Setting Aside Contempt Order

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

Order that Act be done by Another Person

(9) Where a person fails to comply with an order requiring him or her to do an act, other than the payment of money, a judge on motion may, instead of or in addition to making a contempt order, order the act to be done, at the expense of the disobedient person, by the party enforcing the order or any other person appointed by the judge.

(10) The party enforcing the order and any person appointed by the judge are entitled to the costs of the motion under subrule (9) and the expenses incurred in doing the act ordered to be done, fixed by the judge or assessed by an assessment officer in accordance with Rule 58.

FAILURE TO COMPLY WITH INTERLOCUTORY ORDER

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

(a) stay the party's proceeding;

(b) dismiss the party's procceding or strike out the party's defence; or

(c) make such other relief as is just.

DISPUTE OF OWNERSHIP OF PROPERTY SEIZED BY SHERIFF

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

(2) On receiving a claim, the sheriff shall forthwith give notice of claim (Form 60L) to every creditor of the debtor who has filed an enforcement process with the sheriff, by mail addressed to the creditor at the address shown on the enforcement process, and the creditor shall within seven days after receiving the notice give the sheriff notice in writing stating whether he or she admits or disputes the claim.

(3) Where the sheriff,

(a) receives a notice admitting the claim from every creditor; or

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

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

Interpleader Proceedings

(4) Where the sheriff,

(a) does not receive a notice disputing the claim; or

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

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

(5) Where the Sheriff receives a notice disputing the claim, the Sheriff shall give notice to the person making the claim by mail addressed to the person's designated address(es) for service that, unless the person seeks an interpleader order under Rule 43 within 60 days of the date of

the notice, the Sheriff shall proceed as if the claim had been abandoned.

SHERIFF'S REPORT ON EXECUTION OF WRIT

60.15 (1) A party or lawyer who has filed a writ of execution with a sheriff may in writing require the sheriff to report the manner in which he or she has executed the writ of execution and the sheriff shall do so forthwith by mailing to the party or lawyer a sheriff's report (Form 60M).

(2) Where the sheriff fails to comply with a request made under subrule (1) within a reasonable time, the party serving the request may move before a judge for an order directing the sheriff to comply with the request.

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

Executed and Expired Writs of Execution

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

Withdrawal of Writ of Execution

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

Withdrawal of Writ ou Debtor's Requst

(3) When a judgment debt has been released by an order of discharge or by a certificate of full performance under the ***Bankruptcy and Insolvency Act (Canada)***, the debtor may request that the writ be withdrawn by giving the sheriff,

a. a written request to withdraw the writ (Form 60 N); and

b. a certified copy of the order of discharge or a copy of the certificate of full performance.

(4) On receiving the documents described in subrule (3), the sheriff shall forthwith send the creditor, by mail addressed to the creditor at the address shown on the writ, a copy of the documents and a notice that the writ will be withdrawn unless the creditor,

a. makes a motion for an order under the ***Bankruptcy and Insolvency Act (Canada)*** that the judgment debt is not released by the order of discharge or certificate of full performance; and

b. within 30 days after the date of the sheriff's notice, serves the sheriff with a copy of the notice of motion and a copy of all affidavits and other material served for use on the motion.

(5) The sheriff shall withdraw the writ after the day that is 30 days after the date of the notice to the creditor, unless the creditor has taken the steps described in clause (4)(b). If the creditor takes the steps described in clause (4)(b), the sheriff shall not withdraw the writ at the debtor's request unless the court orders otherwise.

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

(7) When a writ of execution is withdrawn, the sheriff shall record the date and time of the withdrawal in a memorandum on the writ of execution, and where it is withdrawn as against all debtors named in it, shall remove the writ or statutory execution from his or her file and return it to the person who withdrew it.

DUTY OF PERSON FILING WRIT WITH SHERIFF

60.17 (1) Where a writ of execution has been filed with a sheriff and any payment has been received by or on behalf of the creditor, the creditor shall forthwith give the sheriff notice of the payment.

(2) Where an order has been satisfied in full, the creditor shall withdraw all writs of execution relating to the order from the office of any sheriff with whom they have been filed.

(3) Where the creditor fails to withdraw a writ of execution as required by subrule (2), the court on motion by the debtor may order that the writ of execution be withdrawn.

MOTION FOR DIRECTIONS

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

(a) to the judge or Prothonotary who made the original order;

(b) to a judge who had jurisdiction to make the original order; or

(c) where an appeal has been taken from the original order, to a judge of the Court of Appeal.

EXAMINATION IN AID OF EXECUTION

Definitions

60.19 (1) In subrules (2) to (6),

(a) "creditor" includes the sheriff and a person entitled to obtain or enforce a writ of execution, writ of possession, delivery or sequestration;

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

Examination of Debtor

(2) A creditor may examine the debtor in relation to,

(a) the reason for non-payment or non-performance of the order;

(b) the debtor's income and property;

(c) the debts owed to and by the debtor;

(d) the disposal the debtor has made of any property either before or after the making of the order;

(e) the debtor's present, past and future means to satisfy the order;

(f) whether the debtor intends to obey the order or has any reason for not doing so; and

(g) any other matter pertinent to the enforcement of the order.

(3) An officer or director of a corporate debtor, or, in the case of a debtor that is a partnership or sole proprietorship, a partner or sole proprietor against whom the order may be enforced, may be examined on behalf of the debtor in relation to the matters set out in subrule (2).

(4) Only one examination under subrule (2) or (3) may be held in a twelve month period in respect of a debtor in the same proceeding, unless the court orders otherwise.

(5) Where it appears from an examination under subrules (2) to (4) that a debtor has concealed or made a way with property to defeat or defraud his or her creditors, a judge may make a contempt order against the debtor.

Examination of Person other than Debtor

(6) Where any difficulty arises concerning the enforcement of an order, the court may,

(a) make an order for the examination of any person who the court is satisfied may have knowledge of the matters set out in subrule (2); and

(b) make such order for the examination of any other person as is just.

Service on Debtor

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

COSTS OF ENFORCEMENT

60.20 (1) A party who is entitled to enforce an order is entitled to the costs of the following steps on a partial indemnity scale, unless the court on motion orders otherwise:

1. An examination in aid of execution.

2. The issuing, service, filing, enforcement and renewal of a writ of execution and notice of garnishment.

3. Any order procedure authorized by these rules for enforcing the order.

(2) A party entitled to costs under subrule (1) may include in or collect under a writ of execution or notice of garnishment,

(a) $50. for the preparation of documents in connection with issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;

(b) Disbursements paid to a sheriff, registrar, Prothonotary, court reporter or other public officer and to which the party is entitled under subrule (1), on filing with the Prothonotary a copy of a receipt for each disbursement;

(c) An amount determined in accordance with Tariff A for conducting an examination in aid of execution, on filing with the Prothonotary an affidavit stating that the examination was conducted; and

(d) Any other costs to which the party is entitled under subrule (1), on filing with the Prothonotary a certificate of assessment of the costs.

(3) The Prothonotary may fix costs under clause (2)(c),

a. if all parties consent; or

b. if the lawyer's fee does not exceed $2,000, exclusive of goods and service tax.

(4) Under clause (3)(b), the Prothonotary shall fix costs of $750 plus disbursements.

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

Heijs v. Breuker, Dutch Trustee in Bankruptcy, 2018 PECA 12

A motion for civil contempt must be served personally unless otherwise ordered by the court.

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

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

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

An application was made to set aside a post-judgment garnishment proceeding on the grounds of non-compliance with Rule 60.09(4). What is necessary and contemplated by the Rule regarding post-judgment garnishment proceedings contemplates the provision of sufficient information and notice to fully inform other interested creditors of their claim for priority.

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

The defendant debtors moved to set aside and quash a pre-judgment garnishee issued by the plaintiff creditor against the corporate defendant.

Pre-judgment garnishment proceedings must be set aside if the procedure set out in the Rules of Court are not meticulously followed. The affidavit filed in support of the motion must contain all the information required by Rule 60.09(21) and the affidavit must be adapted to contain the information required by Rule 60.09(4) or be set aside as a nullity.

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

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

The affidavit to be filed with the requisition must not only contain the information required by Rule 60.09(21)(a) but as well, must be adapted to contain the information required by Rule 60.09(4).

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

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

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

TAB

11

PRACTICE NOTE 17

EX PARTE ORDERS

All lawyers are reminded of the fact that **ex parte** orders or injunctions will not be granted except in an absolute emergency, unless some notice has been given to the opposite party or the opposing attorney.