

## **RULE 45**

### **INTERIM PRESERVATION OF PROPERTY**

#### **INTERIM ORDER FOR PRESERVATION OR SALE**

- 45.01** (1) The court may make an interim order for the custody or preservation of any property in question in a proceeding or relevant to an issue in a proceeding, and for that purpose may authorize entry on or into any property in the possession of a party or of a person not a party.
- (2) Where the property is of a perishable nature or likely to deteriorate or for any other reason ought to be sold, the court may order its sale in such manner and on such terms as are just.

#### **SPECIFIC FUND**

- 45.02** Where the right of a party to a specific fund is in question, the court may order the fund to be paid into court or otherwise secured on such terms as are just.

#### **RECOVERY OF PERSONAL PROPERTY HELD AS SECURITY**

- 45.03** (1) Where in a proceeding a party from whom the recovery of personal property is claimed does not dispute the title of the party making the claim, but claims the right to retain the property as security for a debt, the court may order the party claiming recovery of the property to pay into court or otherwise give security for the debt and such further sum, if any, for interest and costs as the court directs.
- (2) The affidavit in support of a motion under subrule (1) shall disclose the name of every person asserting a claim to possession of the property of whom the party claiming recovery has knowledge and every such person shall be served with notice of the motion.
- (3) On compliance with an order under subrule (1), the property shall be given to the party claiming recovery and the money in court or the security shall await the outcome of the proceeding.

*National Police of Colombia v. Dash*, 2014 PECA 16

The appellant argued that an interim preservation order should not have been granted as there was no underlying proceeding. The Court of Appeal found that this procedural error could be remedied by a costs order, and allowed an amendment which corrected the procedural error.