ORDERS

RULE 59

ORDERS

EFFECTIVE DATE

59.01 An order is effective from the date on which it is made, unless it provides otherwise.

PREPARATION AND FORM OF ORDER

Preparation of Draft Formal Order

59.02 (1) Any party affected by an order may prepare a draft of the formal order and send it to all other parties represented at the hearing for approval of its form.

(2) Repealed.

General Form of Order

(3) An order shall be in Form 59 A (order) or 59 B (judgment) and shall contain,

(a) the name of the judge or Prothonotary who made it;

(b) the date on which it was made; and

(c) a recital of the particulars necessary to understand the order, including the date of the hearing, the parties who were present or represented by a lawyer and those who were not, and any undertaking made by a party as a condition of the order.

(4) The operative parts of an order shall be divided into paragraphs, numbered consecutively.

Order Directing Payment for Minor

(5) An order directing payment into court or to a trustee on behalf of a minor shall show the minor's birth date and full address and shall direct that a copy of the order be served on the Official Guardian.

Order for Costs

(6) An order for the payment of costs shall direct payment to the party entitled to receive the costs and not to the party’s lawyer.

Order on which Interest Payable

(7) An order for the payment of money on which postjudgment interest is payable shall set out the rate of interest and the date from which interest is payable.

SIGNING ORDERS

General

59.03 (1) Every order shall be submitted in accordance with subrules (4) to (8) for the signature of the Judge or Prothonotary, as the case may be, unless the court or judge who made the order has signed it.

(2) Where an order states that it may be signed only on the filing of an affidavit or the production of a document, the Judge or Prothonotary shall examine the affidavit or document and ascertain that it is regular and sufficient before signing the order.

(3) Where a Judge ceases to hold office or becomes incapacitated after making an order but before the order is signed, the order may be settled and signed by another judge of the court.

(3.1) Where the Prothonotary ceases to hold office or becomes incapacitated after making an order but before the order is signed, the order may be settled and signed by a judge of the court.

Signing Where Form of Draft Order Approved

(4) Where all the parties represented at the hearing have approved the form of the order, the party who prepared the draft order shall,

(a) file the approval of all the parties represented at the hearing, together with a copy of the order; and

(b) leave the order with the Judge or Prothonotary for signing.

~~**Signing Where Approval of Form Not Required**~~

(5) Repealed.

Where Judge or Prothonotary Satisfied

(6) Where the Judge or Prothonotary is satisfied that the order is in proper form, the Judge or Prothonotary shall sign the order and return it to the party who left it to be signed.

Where Judge or Prothonotary not Satisfied

(7) Where the Judge or Prothonotary is not satisfied that the order is in proper form, the Judge or Prothonotary shall return the order unsigned to the party who left it to be signed and the party may,

(a) submit the order in proper form and, if required by the Judge or Prothonotary, file the approval of the parties to the order in that form, together with a copy of the order; or

(b) obtain an appointment to have the order settled by the court or judge that made it and serve notice of the appointment (Form 59 C) on all other parties who were represented at the hearing and file it, with proof of service, before the appointment date.

Appointment to Settle Where Form of Draft Order not Approved

(8) Where approval is not received within a reasonable time, a party may obtain an appointment to have the order settled by the Prothonotary or, where the Prothonotary considers it necessary, by the court, judge or

Prothonotary that made it, and notice of the appointment (Form 59 C) shall be served on all other parties who were represented at the hearing and filed, with proof of service, before the appointment date.

Urgent Cases

(9) In a case of urgency, the order may be settled and signed by the court, judge or Prothonotary that made it without the approval of any of the parties who were represented at the hearing.

Appointment to Settle Disputed Order before Judge or Prothonotary

(10) Where an objection is taken to the proposed form of the order in the course of its settlement before the Prothonotary, the Prothonotary shall settle the order in the form that the Prothonotary considers proper and the objecting party may obtain an appointment with the court or judge that made the order to settle the part of the order to which objection has been taken and serve notice of the appointment (Form 59 C) on all other parties who were represented at the hearing and file it, with proof of service, before the appointment date.

(11) Where the order was made by a court that consisted of more than one judge, the appointment shall be with the judge who presided at the hearing or, where he or she is unavailable, any other judge who was present at the hearing.

(12) The judge with whom an appointment is obtained under subrule (11) may refer the settling of the order to the full court that made the order.

(13) Where an appointment is not obtained under subrule (10) or (11) within seven days after the Prothonotary settles the order a party may require the Prothonotary to sign the order as settled by them.

(14) After an order has been settled under subrule (10) by the judge or Prothonotary who made it, or under subrule (11) or (12), the Prothonotary shall sign it unless it was signed by a judge or Prothonotary at the time it was settled.

ENTRY OF ORDER

Every Order to be Entered and Filed

59.04 (1) Every order shall be entered in accordance with subrules (2) to (4) immediately after it is signed and the party having the order signed shall give to the Registrar the original to file.

(2) Every order shall be entered in the office of the Registrar.

(3) Where an order in a subsequent action or application affirms, reverses, sets aside, varies or amends an earlier order, it shall be entered not only in the office described in subrule (2) but also in the office in which the earlier order was entered.

(4) The certificate of the Registrar of the Supreme Court of Canada in respect of an order made on an appeal to that court shall be entered in the office of the Deputy Registrar of the Court of Appeal and in the

office where the action or application was commenced and all subsequent steps may be taken as if the order had been made in the court from which the appeal was taken.

AMENDING, SETTING ASIDE OR VARYING ORDER

Amending

59.05 (1) An order that,

(a) contains an error arising from an accidental slip or omission; or

(b) requires amendment in any particular on which the court did not adjudicate,

may be amended on a motion in the proceeding.

Setting Aside or Varying

(2) A party who seeks to,

(a) have an order set aside or varied on the ground of fraud or of facts arising or discovered after it was made;

(b) suspend the operation of an order;

(c) carry an order into operation; or

(d) obtain other relief than that originally awarded,

may make a motion in the proceeding for the relief claimed.

SATISFACTION OF ORDER

59.06 A party may acknowledge satisfaction of an order in a document signed by the party before a witness, and the document may be filed and entered in the court office where the order was entered.

Lanigan v. PEITF, 2017 PECA 9

The general rule is that a final decision of the court cannot be re-opened. Reconsideration is a power that a court should be most reluctant to exercise. A court should only reconsider in exceptional and special circumstances, otherwise the principle of finality would be jeopardized. Until the court has issued a formal order of judgment it has the authority to reconsider and vary its judgment. This particular motion was dismissed. The court did observe that a court may exercise its power of reconsideration to prevent a miscarriage of justice **.**

Ayangma v. PEI H.Rts. Comm. & La Commission Scolaire, 2015 PESC 4

The appellant made a motion to vacate the original order to post security for costs on the grounds that a change of circumstances had occurred which showed the rationale for the order no longer existed. The Court dismissed the motion indicating that recent actions of the appellant constituted additional support for the original order

for security for costs.

L.G.K. v. L.A.D., 2013 PESC 15

The trial judge made post-decision corrections and additional findings. The Court found that Rule 59.05(1)(b) gives the court the power to amend on any particulars on which the Court did not adjudicate, whether or not it was asked to do so at trial.

Griffin v. Summerside (City), 2010 PECA 19

After the Court of Appeal issued its reasons for judgment and before the Court issued the formal order, the Court ruled that it retained the jurisdiction to resolve the question as to when interest accrued due on costs ordered by the trial judge. The Court found that pursuant to Rule 59.05(1)(b) its decision required an amendment to address a particular the Court had not been asked to adjudicate upon during the hearing of the appeal.

Ayangma v. French School Board, 2011 PECA 3

After the formal order is issued the court does not have jurisdiction pursuant to Rule 59.05 to reopen the appeal to entertain legal arguments which were not pursued or considered at the trial or the appeal.

Beck v. Harris, 2001 PESCAD 11

The defendant obtained summary judgment dismissing the plaintiff's claim. The plaintiff subsequently applied to set aside the summary judgment on the ground that he had obtained an expert's report which would establish there was a genuine issue for trial. The motion judge set aside the order for summary judgment. The defendant appealed and the decision of the motion judge was upheld. In accordance with Rule 1.04(1), this Rule is to be construed liberally. In considering whether to set aside or vary a summary judgment because of new evidence, the court should consider the following:
a. that the new evidence would have had an important influence on the decision whether or not there was a triable issue;
b. that the evidence is apparently credible; and
c. and that it could not have been obtained by reasonable diligence before summary judgment.

Edison v. Edison, 2000 PESCTD 45

When costs have not been addressed in the order but were sought by the parties, the court has failed to adjudicate on the matter and the order requires amendment pursuant to Rule 59.05(1). The respondent's motion to amend the divorce judgment to include an award of costs was granted.

Lewis v. Prince Edward Island (1999), 172 Nfld. & P.E.I. R. 93 (P.E.I.S.C.-A.D.)

Following the delivery of written reasons in two cases, orders were never issued. The applicant made an application to set aside or vary the two decisions. The application was dismissed as the court found the nature of the relief being sought did not bring the application within Rule 59.05(1) or (2).

Canadian Imperial Bank of Commerce v. Bonnell, [1999] P.E.I.J. No. 39 (Q.L.) (P.E.I.S.C.-T.D.)

The court had power to amend pursuant to Rule 59.05(1) as no formal judgment had been issued. Prior to formal judgment being issued, the court retains the jurisdiction to clarify the terms of its judgment, to reconsider the judgment or ruling given, and to change the disposition of a motion.

Cairns v. Harris (1995), 129 Nfld. & P.E.I.R. 250 (P.E.I.S.C.T.D.)

The trial judge gave written reasons wherein he ordered the defendant to pay damages under various heads. On only one head of damages did he award interest. There was no formal order taken out subsequent to the delivery of the trial judge's reasons; however, the decision was appealed and a decision was given by the Appeal Division with no mention of the issue of interest. The trial judge retired and the plaintiff made a motion to another judge of the Trial Division pursuant to Rule 59.03(3) and 59.05 asserting there was an error in the trial judge's decision which arose from an accidental slip or omission, which error required an amendment. The motion was dismissed. The Court was not convinced the decision of the trial judge to award interest on only one head of damages was an accidental slip or omission.