



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **BAILABLE PROCEEDINGS ACT**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to January 1, 2009. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

If you find any errors or omissions in this consolidation, please contact:

*Legislative Counsel Office*

*Tel: (902) 368-4292*

*Email: [legislation@gov.pe.ca](mailto:legislation@gov.pe.ca)*



## BAILABLE PROCEEDINGS ACT

### Table of Contents

Section	Page
1. Bailable writ, minimum amount .....	5
2. Writ of <i>capias</i> .....	5
3. Arrest, limitations.....	5
4. No arrest for debt incurred as a statutory penalty .....	5
5. Where bailable writs may issue.....	5
6. Commencement of an action.....	6
7. Writs of <i>capias ad satisfaciendum</i> .....	6
8. Arrest for non-payment of money.....	6
9. Transfer of prisoner to county of residence .....	6
10. Release upon security.....	7
11. Surety to make oath.....	7
12. Action for escape of debtor, liability of sheriff .....	7
13. Arrest of debtor where sureties become insufficient .....	7
14. Defence to action upon the bond.....	7
15. Assignment of the bond .....	7
16. Manner in which debtor to be examined .....	8
17. Surrender of debtor into custody of sheriff by sureties .....	8
18. Writ of <i>feri facias</i> against goods of debtor.....	8
19. Discharge from custody .....	8
20. Application of Act.....	8
21. Rules .....	8
22. Procedure against non-resident .....	9
23. Arrest of non-residents .....	9
24. Endorsement of true day on writs .....	9
25. Proper name of debtor incomplete on writ, effect of.....	9
<b>SCHEDULE</b>	<b>11</b>
FORM 1*	11
FORM 2*	12
FORM 3*	13





## BAILABLE PROCEEDINGS ACT

### CHAPTER B-1

#### 1. **Bailable writ, minimum amount**

No bailable writ to arrest and hold to bail shall be issued out of the Supreme Court for a cause of action less than \$32. *R.S.P.E.I. 1974, Cap. B-1, s.1.*

#### 2. **Writ of *capias***

No person is subject to arrest under any writ of *capias* who, by reason of any privilege, usage or otherwise is by law exempt therefrom. *R.S.P.E.I. 1974, Cap. B-1, s.2.*

#### 3. **Arrest, limitations**

No person is liable to arrest for non-payment of costs either on mesne or final process. *R.S.P.E.I. 1974, Cap. B-1, s.3; 1987, c.6, s.1.*

#### 4. **No arrest for debt incurred as a statutory penalty**

No person shall be arrested or imprisoned on any claim or on any judgment recovered against him as a debtor, at the suit of any person, for any penalty or sum of money in the nature of a penalty or forfeiture not imposed by statute, or bylaw of any municipal corporation, except in cases and under circumstances where, on claims or judgments for ordinary debts, parties can be arrested or imprisoned. *R.S.P.E.I. 1974, Cap. B-1, s.4.*

#### 5. **Where bailable writs may issue**

- (1) In case any party plaintiff being a creditor of, or having a cause of action against any person liable to arrest, by the affidavit of himself, or of some other individual, shows to the satisfaction of a judge of the Supreme Court, that the party plaintiff has a cause of action against such person to the amount of \$32, or upwards, or that he has sustained damage to that amount, and also by affidavit shows such facts and circumstances as satisfy the said judge that there is good and probable cause for believing that the person, unless he is forthwith apprehended, is about to quit Prince Edward Island with intent to defraud his creditors generally, or the said party or plaintiff in particular, the judge may order and direct that the person against whom the application is made, be held to bail, for such sum as the judge thinks fit, and thereupon the party plaintiff may issue a bailable writ and one or more concurrent bailable writs in the Supreme Court (Form 1 in the Schedule) against the person so directed to be held to bail.

#### **Endorsement on the bailable writ**

- (2) The sum specified in the affidavit referred to in subsection (1) shall be endorsed by the Prothonotary on the back of the said bailable writ in the form following: "By oath and judge's

fiat for the sum of \$.....”, for which sum, so endorsed, the sheriff shall take bail, and for no more. *R.S.P.E.I. 1974, Cap. B-1, s.5.*

## 6. Commencement of an action

The issuing of a bailable writ shall be deemed to be the commencement of an action, and thereupon the rules of court shall apply to the appearance thereto and subsequent proceedings in the action, excepting the bailable proceedings, in the same manner as if such action had been commenced by a writ of summons. *R.S.P.E.I. 1974, Cap. B-1, s.6; 2008, c.20, s.72(7).*

## 7. Writs of *capias ad satisfaciendum*

Writs of *capias ad satisfaciendum* may be issued only in the following cases:

- (a) in cases in which the defendant has been held to bail, upon a bailable writ issued on a judge’s order made under this Act, or a *capias* it shall not be necessary before suing out a writ of *capias ad satisfaciendum* to make or file any further or other affidavit than that upon which the defendant was arrested in the first instance;
- (b) where the defendant has not been so held to bail, if the plaintiff in the action by the affidavit of himself, or some other party, shows to the satisfaction of a judge of the Supreme Court, that he has recovered judgment in the Supreme Court against the defendant for the sum of \$32 or upwards, exclusive of costs, and also by affidavit, shows such facts and circumstances as to satisfy the judge that there is good and probable cause for believing either that the defendant, unless he is forthwith apprehended, is about to quit Prince Edward Island, with the intent to defraud his creditors generally or the plaintiff in particular, the judge may order that a writ of *capias ad satisfaciendum* (Form 2 in the Schedule) be issued out of the Supreme Court, and the writ may thereupon be issued upon the judgment, according to the practice of the Supreme Court. *R.S.P.E.I. 1974, Cap. B-1, s.7; 1975, c.27, s.5.*

## 8. Arrest for non-payment of money

Process of contempt for non-payment of any sum of money, or for non-payment of any costs, charges or expenses, payable by any rule or order of the Supreme Court, or of a judge thereof, is abolished, and no person shall be detained, arrested or held to bail for non-payment of money, unless a special order for the purpose is made on an affidavit or affidavits, establishing the same facts and circumstances as are necessary for an order for a writ of *capias ad satisfaciendum* under this Act, and in such case the arrest when allowed, shall be made by means of a writ of attachment corresponding as nearly as may be to a writ of *capias ad satisfaciendum*. *R.S.P.E.I. 1974, Cap. B-1, s.8; 1975, s.27, s.5.*

## 9. Transfer of prisoner to county of residence

In case a person is arrested and committed to gaol in any other county than that in which he resides or carries on business at the time, that person is entitled to be transferred to the gaol of his own county on prepaying the expense of his removal, and the sheriff in whose county he was arrested may, if he is satisfied of the facts, transfer him accordingly, but if the sheriff declines to act without an order of the court or a judge, an order shall be made on the application of the prisoner and notice to the opposite party. *R.S.P.E.I. 1974, Cap. B-1, s.10.*

**10. Release upon security**

When any person is arrested by virtue of any writ, *capias*, or process issued as provided in this Act, the sheriff or his deputy, as the case may be, shall upon sufficient bail being offered, let the defendant go at large upon his first executing a bond, (Form 3 in the Schedule) with two sureties, to the sheriff and to his satisfaction, to be jointly and severally bound in a penalty of double the amount for which the debtor is so confined, conditioned that the debtor will observe and obey all notices, orders, or rules of court touching or concerning the debtor or his returning and being remanded into close custody, and that upon reasonable notice to them, or any of them, requiring them so to do, they will produce the debtor to the sheriff and if arrested on mesne process also conditioned that the defendant will enter an appearance in the usual manner and will abide by the final issue and determination of the action and pay or perform any judgment or order that may be given or made against him with costs as may be ordered. *R.S.P.E.I. 1974, Cap. B-1, s.11.*

**11. Surety to make oath**

The sheriff shall also require each surety to make oath in writing, to be annexed to the bond, that he is a freeholder or householder in some part of Prince Edward Island, stating where, and is worth the sum for which the debtor is in custody, (naming it), and \$200 more, over and above what will pay all his debts. *R.S.P.E.I. 1974, Cap. B-1, s.12.*

**12. Action for escape of debtor, liability of sheriff**

So long as the debtor in all respects, observes, fulfils and keeps on his part the conditions of the bond, the sheriff shall not be liable to the party at whose suit the debtor is confined, in an action for the escape of such debtor from jail, unless the debtor is again committed to the close custody of such sheriff in due form of law. *R.S.P.E.I. 1974, Cap. B-1, s.13.*

**13. Arrest of debtor where sureties become insufficient**

In case the sheriff has good reason to apprehend that the sureties or any of them have, after entering into the bond, become insufficient to pay the amount by them severally sworn to, he may again arrest the debtor and detain him in close custody. *R.S.P.E.I. 1974, Cap. B-1, s.14.*

**14. Defence to action upon the bond**

The sureties of the debtor may plead the debtor's arrest and detention as a defence to any action brought against them upon the bond entered into by them and the defence, if sustained in proof, wholly discharges them from the action and the debtor may again be allowed to go at large on giving to the sheriff a new bond with sureties as aforesaid. *R.S.P.E.I. 1974, Cap. B-1, s.15.*

**15. Assignment of the bond**

The party at whose suit the debtor is confined may require the sheriff to assign the bond to him and the assignment shall be made in writing under the seal of the sheriff, and the assignee of the sheriff or the personal representative of the assignee may maintain an action in his own name upon the bond, which action the sheriff shall have no power to release, but upon executing the assignment at the request, the sheriff is thenceforth discharged from all liability on account of the debtor in his safe custody. *R.S.P.E.I. 1974, Cap. B-1, s.16.*

**16. Manner in which debtor to be examined**

The sureties of any debtor may surrender him into the custody of the sheriff at the gaol and the sheriff, his deputy or the gaoler shall there receive such debtor into custody and the sureties may plead the surrender or an offer to surrender, and the refusal of the sheriff, his deputy or gaoler to receive the debtor into custody at the gaol, as a defence to any action brought on the bond for a breach of the condition happening after such surrender or tender and refusal, and the defence if sustained in proof shall be a good defence to the action, but the debtor may again be allowed to go at large on giving to the sheriff a new bond with sureties as aforesaid. *R.S.P.E.I. 1974, Cap. B-1, s.17.*

**17. Surrender of debtor into custody of sheriff by sureties**

The party at whose suit any debtor has been confined may at any time, while the debtor is at large upon bail apply to the court or judge from which the process issued, or a judge having authority to dispose of matters arising in such court for an order for the examination of the debtor in the manner provided in the Garnishee Act R.S.P.E.I. 1988, Cap. G-2 and in case the debtor neglects or omits to submit himself to be examined pursuant to the order made in that behalf, or refuses to make full answers in respect to the matters touching which he is examined to the satisfaction of the court or judge, the court or a judge may make a ruling or order that the debtor be committed to close custody, and the sheriff on due notice of the ruling or order, shall forthwith take the debtor and commit him to close custody until he obtains a ruling of the court or a judge's order for again allowing him to go out of close custody, or giving the necessary bond as aforesaid, or until he is otherwise discharged by due course of law. *R.S.P.E.I. 1974, Cap. B-1, s.18; 2008, c.20, s.72(7).*

**18. Writ of fieri facias against goods of debtor**

The party at whose suit any debtor has been confined in any execution may, wherever the debtor has been admitted to bail, sue out a writ of *feri facias* against his lands or goods, notwithstanding that the debtor has been charged in execution, and the writ shall not be stayed, but shall be proceeded with until executed, although the debtor is recommitted to close custody, but the goods and chattels exempt by statute from seizure, shall be protected from the writ of *feri facias*. *R.S.P.E.I. 1974, Cap. B-1, s.19.*

**19. Discharge from custody**

A person arrested under a writ of *capias ad satisfaciendum*, or under a writ of attachment, though he is not confined to close custody, but has given bail, may apply for and obtain his discharge in the same manner and subject to the same terms and conditions, as nearly as may be, as an execution debtor who is confined to close custody. *R.S.P.E.I. 1974, Cap. B-1, s.20.*

**20. Application of Act**

Nothing in this Act shall extend or be applicable to debtors who are in custody upon any criminal charge. *R.S.P.E.I. 1974, Cap. B-1, s.21.*

**21. Rules**

The judges of the Supreme Court or any two of them shall have power to make rules and orders regulating the practice and forms of proceedings in the Supreme Court under this Act, and such rules, orders and forms shall have the same force and effect as if they constituted a part of this Act. *R.S.P.E.I. 1974, Cap. B-1, s.22; 1975, c.27, s.5.*



**22. Procedure against non-resident**

- (1) Where the defendant debtor is not a resident of the province, no judge's order shall be necessary to hold the defendant debtor to bail upon mesne process nor to take him in execution after judgment, nor shall the plaintiff creditor be required to make affidavit, by himself or his agent, either that, before or after judgment, there is any cause for believing that the debtor is about to quit Prince Edward Island, but the plaintiff creditor shall be entitled to issue a bailable writ or writs or a writ or writs of *capias ad satisfaciendum*, in the Forms in the Schedule on his filing with the Prothonotary an affidavit against such defendant debtor to the amount of \$32 or upwards, or has recovered judgment, as the case may be, and that the defendant debtor is not a resident of the province.

**Endorsement on bailable writ**

- (2) The sum specified in the affidavit shall be endorsed by the Prothonotary on the back of the writ (if a bailable writ) in the form following: "By oath for the sum of \$.....", for which sum, so endorsed, the sheriff shall take bail, and for no more. *R.S.P.E.I. 1974, Cap. B-1, s.23; 2008, c.20, s.72(7)*.

**23. Arrest of non-residents**

No person who is not a resident of the province shall be liable to arrest on mesne process at the suit of any person who is himself a non-resident. *R.S.P.E.I. 1974, Cap. B-1, s.24*.

**24. Endorsement of true day on writs**

The sheriff or other officer or person to whom any writ mentioned in this Act is directed or who has the execution and return thereof shall, forthwith after the execution thereof, endorse on the writ the true day of the execution thereof. *R.S.P.E.I. 1974, Cap. B-1, s.25*.

**25. Proper name of debtor incomplete on writ, effect of**

Where the defendant is described in the bailable writ or affidavit to hold to bail, by initials, or by a wrong name, or without a Christian name, the defendant shall not be discharged out of custody, or the bail-bond delivered up to be cancelled, on motion for that purpose, if it shall appear to the court or judge that due diligence has been used to obtain knowledge of the proper name. *R.S.P.E.I. 1974, Cap. B-1, s.26*.



**SCHEDULE**

**FORM 1\***

Bailable Writ  
CANADA  
PROVINCE OF  
PRINCE EDWARD ISLAND  
\_\_\_\_\_ County

Elizabeth II, &c.

To the Sheriff of \_\_\_\_\_ County, greeting:

We command you that you take A.B. if he is found in your bailiwick, and him safely keep, so that you have his body before us in our Supreme Court, at Charlottetown, on the eighth day after arrest, to appear and put in bail, as well as to answer in an action at the suit of C.D. and have you then there this writ.

WITNESS &c., our Chief Justice, at Charlottetown this \_\_\_\_ day of \_\_\_\_\_.

E.F. G.H.

Plaintiff's Attorney Prothonotary

**ENDORSEMENTS**

This writ was issued by E.F., of \_\_\_\_\_ in \_\_\_\_\_  
County, Attorney for the said Plaintiff.

My address for service is \_\_\_\_\_

To the defendant: You are entitled to give bail to the Sheriff as directed by law.

\*[Note Form 1 is prescribed by subsection 5(1).]

**FORM 2\***

Writ of *Capias ad Satisfaciendum*

CANADA

PROVINCE OF

PRINCE EDWARD ISLAND

\_\_\_\_\_ County

Elizabeth II, &c.

To the Sheriff of \_\_\_\_\_ County, greeting:

We command you that you take A.B. if he is found in your bailiwick, and him safely keep, so that you have his body before us immediately after the execution hereof to satisfy C.D. \$\_\_\_\_\_ which the said C.D. lately in our Supreme Court recovered against A.B. whereof A.B. is convicted, and have you then there this writ.

WITNESS &c., our Chief Justice, at Charlottetown this \_\_\_\_ day of \_\_\_\_\_.

E.F.    G.H.

Plaintiff's Attorney      Prothonotary

**ENDORSEMENTS**

Levy for the sum of &c., as in fi fa, executions.

This writ was issued by E.F., &c., as in Schedule "1"

The    defendant    is    a    \_\_\_\_\_    and    resides    at

\_\_\_\_\_.

\*[Note Form 2 is prescribed by section 7.]



**FORM 3\***

Bail Bond

Know all men by these presents that we \_\_\_\_\_ are held and firmly bound to \_\_\_\_\_ Esquire, Sheriff of \_\_\_\_\_ County, in Prince Edward Island, in the sum of \$\_\_\_\_\_ to be paid to the Sheriff or his certain attorney, executors, administrators and assigns, for which payment to be well and truly made, we bind ourselves and each of us for himself, our and every of our heirs, executors and administrators.

SEALED with our seals and dated this \_\_\_\_ day of \_\_\_\_\_.

The condition of this obligation is such that if the above bounden \_\_\_\_\_ do observe and obey all notices, orders or rules of court touching or concerning the said \_\_\_\_\_ at the suit of \_\_\_\_\_ or his returning and being remanded into close custody and will enter an appearance in the said action and in case final judgment is given against him shall pay the amount of such judgment with costs of suit or abide such other order that may be made or be rendered according to law to the custody of the Sheriff then this obligation to become void, otherwise to remain in full force and virtue.

\*[Note Form 3 is prescribed by section 10.]