

# Enforcing Court Orders

## Enforcing Basics

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## Enforcing Court Order Basics

Enforcing an order means making sure that what the court ordered is done. Usually, you want to collect money that is owed to you. Unfortunately, just because a Court ordered that someone pay you money does not always mean you will see a cheque right away. Some people simply do not have the money to pay. Some others will not obey a Court order.

## Limitation Periods and Judgments

For some money judgments, a limitation period of ten years starts to run from the date of judgment. That means that if you do not receive a payment within 10 years, the judgment becomes no longer enforceable.



### Learn More

For more information on judgments expiring, see [here](#).

## File Your Order

First, take your order to the court registry for filing. You will drop your order off for filing. It will take some time for the Registry to review the order and return a filed

copy. You can find out roughly how long it will take by asking a registry officer. For information on drafting orders, see [Orders](#).

## Ask the Debtor for Payment

The first step in enforcing an order is to deliver the stamped order on the person(s) affected by the order and ask for payment. Set a deadline for payment, and give the person reasonable time to comply.

The judgment debtor may pay you the money that the court ordered. In that case, the judgment debtor can ask for proof of payment. You must complete [Form 55](#), file it with the registry, and serve a filed copy on the judgment debtor.

If the debtor doesn't pay you immediately, you will have to take steps to enforce your court order. You have 10 years before the order expires, but it is a good idea to try to collect the debt as soon as possible.



### Find the Form

[Form 55](#) Acknowledgment of payment

## If the Debtor Does Not Pay

You have a few options if the debtor does not pay. The most common options are:

- Find out the debtor's financial situation by:
  - Conducting an examination in aid of execution hearing or
  - Arranging a subpoena to a debtor hearing
- Garnish the debtor's wages or bank account
- Seize and sell the debtor's assets or
- Register the judgment against the debtor's land

## Find Out the Debtor's Financial Situation

If the judgment debtor does not pay the money owing to you, there are two procedures under the Rules of Court that require the judgment debtor to answer questions, under oath, about their financial situation and ability to pay the debt.

In addition to giving you an opportunity to question the debtor about their financial situation, it also provides an opportunity to discuss payment of the debt, thereby avoiding further costs and delays.

There are two ways that you can force the judgment debtor to answer questions under oath:

- You can conduct an examination in aid of execution, which helps you find out about the debtor's assets and income or
- You can issue a subpoena to the debtor to have a judge or a registrar examine the debtor and make an order about how the debt will be paid

After you learn about the debtor's financial situation, you can take steps to collect the money owing to you by a garnishment or other means.

Remember that a judgment debtor who has no assets and no income might not be able to pay the money that is owed to you.

## Examination in Aid of Execution

An examination in aid of execution is an examination under oath before a court reporter (see **Rule 13-4(7)**). It is similar to an examination for discovery (see **Discovery**). The purpose is to find out about the debtor's income, assets and plans to pay the judgment.

To conduct an examination, fill out **Form 59.1** and serve it on the party to be examined. If the debtor is a company, you can name the person that you want to examine, such as a director, officer, or employee of the company. If the debtor is a partnership, you can name any partner to be examined.



## Find the Form

### Form 59.1 Appointment for examination in aid of execution



## Read the Rules

### Rule 13-4 Examinations in Aid of Execution

**Rule 13-4(10)** tells you how to serve the appointment for examination in aid of execution. If the person to be examined is a party of record and is represented by a lawyer, you must serve an appointment in **Form 59.1** on the lawyer along with witness fees for the person to be examined. (You can find out the correct amount of witness fees in Schedule 3 of **Appendix C to the Rules**.) If the person you want to examine is not represented by a lawyer, serve the appointment on that person, along with witness fees. The appointment and fees must be served at least 7 days before the examination.

In general, you want to find out about the judgment debtor's financial situation, so ask questions about:

- Employment:
  - Where they are employed including the name and address of employer
  - Income from employment, including the amount, timing of payment, date of payment, if payment is made directly into bank account
  - If the debtor works for their own company, its address, registered office, names of directors, whether debtor owns shares in the company
  - If currently unemployed, what are their prospects for future employment
- Assets/property:
  - What the debtor owns (e.g., a car) and its value
  - Whether debtor has sold or given away property since the date of judgment
  - If debtor rents or owns current residence
  - How debtor pays the rent or mortgage and
- Banking:
  - Where the debtor has bank accounts (name and address of banks)

- Type of accounts (chequing or savings account numbers, balance in bank accounts and if accounts are jointly owned)

You can ask the debtor to bring financial documents to the examination, such as pay slips, credit card statements, income tax returns, and so on.

You can only conduct an examination in aid of execution once a year (see **Rule 13-4(4)**), so make sure that your examination is thorough and you find out everything you need to know about the debtor's financial status. Think carefully about the kind of information you need and prepare your questions ahead of time.

The examination in aid of execution application will give you a picture of the judgment debtor's financial situation and how you are most likely to get paid. It may also lead to an agreement for payment from the debtor. If it does not, there are several steps you can take to get payment. The two most common are garnishment of the debtor's wages or bank account or seizing the debtor's assets or property.

## Subpoena to Debtor

A subpoena to debtor is another procedure to help you find out about the judgment debtor's financial situation. This application is described in **Rule 13-3**. A subpoena to debtor application differs from an examination in aid of execution in that the hearing is held before an examiner – usually a registrar or a master of the court.

You must issue a subpoena to debtor (**Form 56**) and file an affidavit. (For help preparing an affidavit, see **Affidavits**.) If the debtor is a company, you can name the person that you want to attend the hearing, such as a director, officer, or employee of the company. If the debtor is a partnership, you can name any partner to attend.



### Find the Form

**Form 56** Subpoena

Your affidavit must show that the debtor has not paid and that bailiffs are not seizing assets under a writ of execution. You must also pay the expenses of the debtor to attend court. You must serve Form 56 at least 7 days before the

examination. You may call other witnesses, too, if they can provide information about the judgment debtor's financial situation.

The questions that you can ask the debtor are more limited than in an examination in aid of execution. The questions that you can ask about are set out in **Rule 13-3(4)**:

- The debtor's income and property
- The debts owed to and by the debtor
- If the debtor has disposed of any property and
- The ability of the debtor to pay the judgment now or in the future

After asking the debtor questions, under oath, about their financial situation, the examiner can make an order for repayment of the judgment, on terms. For example, the examiner may order that the judgment debtor pay you \$500 per month until the debt is paid or payment of the entire debt before a fixed date.

The subpoena to debtor application will give you a picture of the judgment debtor's financial situation and how you are most likely to get paid. It may also lead to an agreement for payment from the debtor. If it does not, there are several steps you can take to get payment. The two most common are garnishment of the debtor's wages or bank account or seizing the debtor's assets or property.

## Garnishing

### Garnish the Debtor's Wages

Garnish means "attach", as in garnishing the debtor's wages. Garnishment is a way to get the debtor's money, like wages or money in the bank, paid to you. For example, if you know that the debtor is employed, you might garnish their salary. This means that money from the judgment debtor's paycheque goes into court, and then to you.

Garnishment of wages is an effective and less expensive remedy when the debtor is employed, and you should consider this option before taking other steps to collect the money owed to you on your judgment. Garnishment of a debtor's wages often prompts the debtor to negotiate a repayment schedule.

Use Form B of **Schedule 1**, Affidavit in Support of Garnishing Order After Judgment, and Form D of **Schedule 1**, Garnishing Order After Judgment.



### Find the Form

The forms to use for garnishment of wages are set out in **Schedule 1** to the ***Court Order Enforcement Act***.

The typical procedure for garnishing the debtor's wages is as follows:

1. Prepare an affidavit to support your garnishing order. The **Affidavits** sets out:
  - The details of the court order you are enforcing
  - The amount owing
  - That someone else (e.g., an employer) owes money to the debtor
  - That person or company is in BC (including the address)
2. Fill out the garnishing order (Form D to **Schedule 1**)
3. File the garnishing order and your affidavit in the court registry. (There is a filing fee.) The registry will give you the copies you need for service. You are entitled to some expenses in addition to the money that is owed to you (e.g., the filing fee; service fees; fees for swearing the affidavits)
4. Serve the garnishing order on the garnishee (i.e., the employer)
5. The garnishee pays the money into court
6. Serve the garnishing order on the debtor, and file an affidavit of service.
7. The money will be paid into court
8. Serve a "notice of payment out" on the debtor. This notice says that you will ask the court to pay the money to you. If the debtor does not respond for 10 days, you can file proof that you served the debtor with the notice of payment and apply to the court for the money
9. The court will then pay the money to you. You do not have to use a special form to ask the court to pay the money out to you. You can write a letter, setting out what money has been paid into court and what is owed to you. If the debtor agrees that you are entitled to the money, they can sign a consent form and it will be paid to you immediately

There is a limit on the amount of wages that can be garnished. It is usually a maximum of 30% of the debtor's net income after statutory deductions. Employment insurance and social assistance payments cannot be garnished.

Note also that a garnishing order only applies to wages that become payable within 7 days from the date the affidavit in support was sworn. So, the order must be timed to coincide with the debtor's pay period and a new order must be prepared for every subsequent pay period. For example, if the debtor is paid twice a month, and their next payday is July 15, your affidavit must be sworn no earlier than July 8th. When you deliver the garnishing order to the debtor's employer, you will be able to get some money only from the July 15th paycheck. You will have to go through the procedure again for every pay period, and this could take a very long time.

## Garnish the Debtor's Bank Account

Money in the debtor's chequing or savings account can be garnished as long as it is not held jointly with someone who does not owe you money. For example, if the debtor's savings account is held jointly with their wife, you are not entitled to money from that account. The debtor's RRSP account cannot be garnished.

The garnishment procedure is described above in garnishment of wages. The garnishing order only applies to money in the accounts at the bank branch that is served. So, for example, if the debtor has bank accounts at the Royal Bank at 123 Main Street, the garnishing order does not apply to another bank account that the debtor has at the Royal Bank on Central Street.

## Seize the Debtor's Assets

If you know that the debtor owns assets, like a car, you can ask the court bailiff to take the car and sell it at a public auction. This procedure is costly, so you want to be sure that sale of the asset will generate enough money to pay the debt that is owed to you.

The ***Court Order Enforcement Act*** states that certain assets are exempt from seizure:



## Jointly Owned Property

You cannot seize anything that the debtor owns jointly with someone else.

## Personal property

- Debtor can keep all necessary clothing
- Debtor can keep medical aids for themselves, or a dependent
- Debtor can keep \$4,000 of household goods
- Debtor can keep \$10,000 of tools of the trade and
- Debtor can keep \$5,000 from a motor vehicle

## Principal residence

- Debtor can keep \$12,000 equity of their principal residence if it is in the Greater Vancouver district and
- Debtor can keep \$9,000 equity of their personal residence if it is anywhere else in BC

## Steps to seizing assets

The usual procedure for seizing the debtor's assets is as follows. This example assumes that a car is being seized:

1. Go to the court registry and tell the registrar that you want an order for seizure and sale
2. The court registrar will approve the order, forward it to the court bailiff, and give a copy to you. Give the bailiff a copy of the information you received about the car
3. You will have to give a deposit of money to the court bailiff to cover the cost of the seizure
4. At the time of seizure, the bailiff will inform the debtor what is exempt from seizure. The debtor will have the opportunity to pay the debt before the car is seized
5. If the debtor cannot pay, the bailiff seizes the car and sells it, usually at auction. The bailiff may not seize the car if its value is not great enough to cover the bailiff's fee and the charges for towing, storage, auction, etc.

The most common items that are seized are motor vehicles. If you have not conducted an examination in aid of execution or a subpoena to the debtor, you may want to find out what vehicles the debtor owns, and whether it is owned jointly with someone else.

To do this, you can send a copy of the judgment to ICBC at:

ICBC, Vehicle Records Search Room 154,

151 W. Esplanade St.

North Vancouver, BC V7M 3H9

There is a fee for this service. (Call 1-800-464-5050 or 604-661-2233 for more information.)

Next, you need to find out if there is a security agreement or lien registered against the debtor's vehicle. You can conduct a search at the personal property registry and there is a fee for this service. You can do this at your local Government Agent office, Motor Vehicle Licensing office, or at:

Personal Property Registry Ministry of Finance

PO Box 9431 Stn Prov Govt

Victoria BC V8W 9V3

More information can be obtained by calling (250-356-8600) or [here](#).

## Register Against Land

If the debtor owns land in BC, you can register your judgment against the land. The debtor cannot sell or mortgage the land until the judgment is paid. It is an effective procedure, but it may take many years before you are paid. If you do not know if the debtor owns land, you can do a name search at the land title office, for a fee.

If you discover that the debtor owns land, ask the court registry for a certificate of judgment (***Court Order Enforcement Act, Schedule 2***). There is a fee for this certificate. Next, take the certificate to the land title office where the land is located. For a fee, you can register the certificate of judgment against the debtor's property. The registration is good for two years. You have to renew it when the registration expires.

If the property is owned in joint tenancy (for example, the debtor and their spouse own the family home), you can still register your judgment against it. If the debtor dies, however, the property belongs to the other joint tenant absolutely, and your registration has no effect.

While it is possible to force the sale of the debtor's land, it is a complicated and expensive procedure. It should only be done with the assistance and advice of a lawyer.