

Getting Results

Small Claims Court Guide #6

Some people think that when the trial is over and the judge's decision is made, the winner will be paid and that's the end of the case. Unfortunately, for some it's just the beginning.

Getting a court order is one thing, but getting your money, or whatever the judge says you're entitled to, is another matter.

That's what this guide is about. It will answer some questions about what happens after you've got your court order. And if you've lost your case and have to pay, it will tell you what some of your options are.

For more information about the small claims process, see the other publications in this series, which are listed at the end of this guide. For answers to particular problems or questions, read the small claims court rules or seek legal advice.

Note: From time to time, the Ministry of Justice and the Provincial Court run pilot projects to explore ways to improve small claims court. If the registry where your case is filed is running a pilot project, it might not follow the process in this guide. You can find more information on the pilot project processes from your court registry or online at the Ministry of Justice website (www.ag.gov.bc.ca) under "Court Services".

1. If I win my case, will the court collect my money for me?

No. Collecting money is not the court's responsibility. The court has a number of procedures you can use and tools that are available to you, but it's up to you to use them.

2. What do I do once I have my order?

Whether your payment order was made by a judge after a trial or settlement conference, or whether you got it by default, the order first has to be put in writing. Then you give it to the registry, where it will be signed and entered in the court records. This is called filing the order and it must be done before you can take any steps to collect on it.

After that, the first thing you should do is send a copy to the debtor with a letter asking for prompt payment. Be sure to include the address where payment may be made. Set a reasonable deadline, taking into account whether payment will likely come by mail and other circumstances you may know about.

If that doesn't work, you will have to take other steps to enforce your order. You have ten years before the order expires, but usually, the faster you act, the better your results will be.

If you are trying to enforce an order from the B.C. Residential Tenancy Branch, please first consult their website at <http://www2.gov.bc.ca/gov/topic.page?id=F5709091E978464C84DC373CC556D44F>. This website explains the steps to take to enforce a monetary order, including the final step of enforcement through small claims court.

3. But I will eventually get my money, won't I?

Probably, but maybe not. If the debtor (the one who owes the money) simply can't pay, there isn't much you can do. But that's not to say that you won't ever get it. The person may get a job in a few months, for example. You still have your court order and you may be able to collect it then.

On the other hand, trying to collect money from a person who is really determined not to pay, can be a losing battle. It can cost you more - in time and money - than the case is worth.

Many people do want to pay their debts, especially if they are given time to do so. Others may be persuaded to pay if you are persistent in your use of the rules and procedures provided by the small claims court.

4. What happens after the payment order is made?

It used to be that the payment order was the end of the judge's involvement, unless the creditor came back to take some enforcement action. Now under the current rules, the judge will try to increase your chances of being paid by setting a reasonable timetable for payment.

After the payment order is made - whether at a settlement conference or at the end of the trial - the judge asks whether the debtor needs time to pay. If the answer is "Yes," the debtor will be asked to suggest a payment schedule.

A person might say, for example, "I can pay that in 30 days." Or, "I could pay \$100 on Friday and \$200 a month until it's all paid." These are only examples. Whatever the proposal, it should be one that the debtor can handle and that is reasonable from the creditor's point of view.

The judge then asks whether the creditor agrees with the suggested schedule. If so, the judge will make the order, called the payment schedule, in the terms proposed by the debtor. If not, the judge may:

- order a payment hearing, which means that the creditor can't do anything to enforce the payment order until after the hearing;
- order a payment schedule without the creditor's consent, if the creditor is being unreasonable in refusing to accept the debtor's proposal; or
- not order any payment schedule at all, which means the debt is due immediately.

5. What can the creditor do if the debtor doesn't pay?

If the debtor does not pay, the creditor has a number of options. The most commonly used are:

- a payment hearing;
- garnishing wages or bank accounts;
- seizure and sale of goods by the court bailiff;
- a default hearing (if there was already a payment schedule in effect); or
- registration against land.

Let's talk about each of these procedures in turn.

6. The Payment Hearing

What is the purpose of a payment hearing?

The payment hearing gives both the court and the creditor information about the debtor's financial situation.

It may be that the creditor will want to issue a garnishing order and needs to know where the debtor works or banks. Or it may be that the debtor wants to pay by instalments. In that case, the payment hearing gives the court the information needed to make the appropriate order.

If the debtor's address is a post office box number, the creditor should find out at the payment hearing where the person can be found - in case a summons, for example, has to be served personally.

It is likely a good idea for a creditor to try and find out as much as possible about a debtor's employment and bank accounts in case this information becomes necessary.

Read about the other procedures in this guide and come prepared to ask the debtor questions about their employment, about any motor vehicles or land owned by the debtor and about all bank branches where the debtor has an account. Where it is appropriate, you can also ask questions about a debtor's monthly income and expenses. There is a statement of finances form available from the registry that may be helpful. Debtors can be asked to confirm income or expenses by requesting them to bring such items as pay slips, credit card statements and their last income tax return.

When is the payment hearing held?

A payment hearing can be held at any time before the debt is paid in full:

- If the judge makes a payment order after a trial or settlement conference, the creditor or the debtor can ask the judge for a payment hearing. It may be that it can be held the same day. If not, a date will be set in the near future.
- If the debtor has failed to pay as agreed, or as ordered by the court, either side can come back to court and ask for a payment hearing, whether or not there has already been one.
- If the debtor's circumstances change so that they are no longer able to meet a schedule that had been agreed to or ordered earlier, the debtor could ask for a payment hearing.

How does a creditor ask for a payment hearing?

If you are a creditor (that is, if you have a court order that someone must pay money to you), you must complete a Summons and mail it or bring it to the court registry for filing. The Summons form is available for downloading and completing online (SCR Form #12) at www.ag.gov.bc.ca under "Court Services".

After the summons is accepted for filing, you will have to personally serve or arrange for someone else to personally serve the person who is to come to the hearing. Service by mail is not permitted. The notice must be served in accordance with Rule 12 (7) and cannot be served outside of British Columbia. The court can make an order for substituted service of a summons to a payment hearing, if the judge is satisfied that the debtor is avoiding the court process. .

If the debtor is a company, you will want the summons to name the person who has the information you need. You can name any director, officer or employee of the company. If the debtor is a partnership you can name any partner.

Once the summons has been served, the affidavit of service should be completed and be sworn so that it is ready to be shown to the judge if the debtor does not appear.

How does a debtor ask for a payment hearing?

If you are a debtor (that is, if a court order says you must pay money to someone), you must fill out a notice to get a date for the hearing. The notice of payment hearing (SCR Form #13) is available online.

The notice must be served on the creditor at least seven days before the hearing. The Notice of Payment Hearing can be served by mail or email. Because service by mail is presumed to be served 14 days after mailing, the notice would have to be mailed at least 21 days before the date of the payment hearing. Service by email is deemed to occur on the day of transmission if the document is transmitted before 4:00 p.m., or on the next day that is not a Saturday or a holiday if the document is transmitted after 4:00 p.m. The notice would have to be emailed at least seven days before the payment hearing on a day that is not a Saturday or holiday, or eight days before the payment hearing if e-mailed on a Saturday or holiday.

Service may be proven by a certificate of service in Form 4.

It is recommended that you complete a statement of your monthly income and expenses. Give the court and the creditor a copy of this form at the hearing.

What if the creditor does not attend the hearing?

If you are the creditor and you don't plan to go to the payment hearing, you should either send a representative or let the registry know by letter that you want the hearing to go ahead without you. The court can choose to hold the hearing in your absence or to cancel or adjourn it.

What if the debtor does not attend?

If you are the debtor, you must attend the payment hearing. You can be arrested for not attending if you were served with a summons to attend or if you were not in court when the judge ordered you to attend.

What if the debtor is not given time to pay?

If there is no payment schedule, the full amount of the payment order is due immediately. As soon as the order is made, the creditor can file the order and then go ahead and enforce it.

What if a payment schedule is ordered?

If a payment schedule is ordered, the debtor is only obliged to make the payments in the amounts and on the dates ordered in the schedule. As long as those payments are made, the creditor cannot do anything else to enforce the order.

But if the debtor fails to make a payment - or makes only a partial payment - the whole amount of the order becomes due immediately.

Example 1

Lois sued Norman and the judge made a payment order in her favour for \$1,500. In a payment schedule, the judge then ordered Norman to pay \$100 to Lois on the 1st of each month.

As long as Norman makes those payments on time, Lois cannot do anything to enforce the order.

But if he misses a payment, the whole amount is immediately due. The amount due is the \$1,500 minus whatever Norman has already paid, plus interest.

Lois could then garnish his bank account, for example, to collect that amount.

7. Can a payment schedule ever be changed?

Yes, the court allows for changes in circumstances. A creditor or a debtor can ask the court at any time for a payment hearing, whether or not there has already been one. If there is already a payment schedule in effect, the court can be asked to cancel it or to change its terms.

Example 2

If Norman, in Example 1, had known that he was going to be unable to make that month's payment - maybe he was laid off for a couple months - he could have asked the court to change the terms of his payment schedule. He could have asked for a payment hearing, explained his situation to the judge, and asked for new terms that he could handle.

It may be that if Lois had known of his situation, she might have agreed to let Norman miss a payment or two. Then he could have simply filed a consent order with the registry and he would have been protected against any further enforcement during that time.

By the same token, if Lois discovered that Norman had taken a second job and had more income than before, she could ask for a payment hearing and ask the judge to increase the amount of Norman's monthly payments.

8. Garnishment

What is it?

If you have a judgment (a court order) requiring someone to pay you money, the law provides you with a tool called garnishment to use if the debtor does not pay.

Garnishment is a way of getting your hands on money that someone else owes to the debtor, before it goes to the debtor. Most often, people garnish wages or bank accounts.

Example 3

Norman misses one of his payments and Lois decides to garnish his bank account. (She knows where he banks from the last cheque he gave her.) She gets a garnishing order from the small claims court registry, fills it out and files it.

The registry gives her the copies she needs and she takes one to the bank and leaves it with the manager or a teller.

She finds out by calling the court registry that there was \$100 in Norman's bank account and that money has been paid into court. Now she can serve Norman and can apply to get that money paid to her.

Because this is quite a drastic measure, the rules are very strict and you have to follow them exactly. The rules for garnishment are actually contained in the *Court Order Enforcement Act* and they apply to enforcement of judgments from any court.

How do I do it?

The procedure in a typical case is this:

1. You prepare an affidavit in support of a garnishing order after judgment. This form tells:
 - the details of the court order you are enforcing;
 - the amount still owing;
 - that someone else (the garnishee) owes money to the debtor;
 - that the garnishee is in British Columbia; and
 - the address of the garnishee.
2. You fill out a garnishing order.
3. You file the affidavit and garnishing order in the court registry. There is a fee for having someone in the registry swear the affidavit and there is a fee for filing the garnishing order. The registrar inserts the amount of costs you may be allowed to collect, signs the order and gives back to you the copies you will need for service.
4. You serve the garnishing order on the garnishee (that is, the bank or the employer or whoever you have named in the order).
5. The garnishee pays the money to the court (if there is any money).
6. If there is any money paid into court, you serve the garnishing order on the debtor and file an affidavit of service.

All the rules have to be carefully followed. For example, if you don't have the name of the garnishee exactly right, the garnishee can legitimately ignore the order.

If you are garnishing a bank account, you have to know the branch where the debtor banks. A joint account cannot be garnished.

If you are garnishing wages, you must know the correct legal name of the employer, the address and the pay date. The date on which the affidavit is sworn must be within seven days before the pay date.

You can serve the documents on the garnishee and the debtor either personally or by registered mail. If the documents are served by registered mail, be sure to obtain a proof of service by either phoning toll free 1-888-550-6333 and asking for a signature copy or accessing the Canada Post Internet site at www.canadapost.ca and printing the delivery confirmation form (you will need the receipt number).

The usual practice is to serve the garnishee first (so that the debtor doesn't remove the funds) and then serve the debtor if money is paid into court.

Unfortunately, the garnishing procedure is a one-time measure that attaches only the money that is in the bank account when it is served or that is owed to the employee within seven days of when the affidavit in support of the garnishing order was sworn. If you want to repeat the procedure you have to obtain a new garnishing order and go through all the steps again.

How do I get the money, once it's been paid into court?

There are three possibilities:

- If the debtor agrees that you can have the money, they can sign a consent form and it will be paid to you immediately.
- If your payment order was obtained by default (the defendant didn't file a reply), you may apply for payment out of the money three months after it was paid into court.

- Whether the payment order was made by default or not, you may get the money paid out of court by serving a notice of payment out on the debtor. The notice says that you will be asking the court to pay you the money. Ten days after you serve the notice on the debtor, you may request the court pay you the money out of court after you have filed the notice of payment out of court and the Affidavit of service proving you served it upon the debtor.

Do I get back my expenses?

When you present your garnishing order for filing at the court, the registrar will estimate the amount of expense that will be allowed.

Example 4

Lois is garnishing Norman's bank account. The registrar may allow fees and costs, for example:

- *for the filing fee;*
- *for serving the order on the bank;*
- *for serving the order on Norman;*
- *for swearing the affidavit in support of garnishing order;*
- *for serving Notice of Payment Out on Norman; or*
- *for swearing/affirming the affidavits of service.*

If the bank pays some money into court, Lois will get the total expenses allowed by the registrar in addition to the money Norman already owed.

But if the bank has no money of Norman's, Lois will probably not be reimbursed for her costs.

Can all of a person's earnings be garnished?

No. The law provides for certain exemptions, depending on the debtor's circumstances. In most cases, 30 per cent of net wages or salary, after the normal payroll deductions, can be garnished.

Example 5

Norman makes \$2,000 per month at his job. His employer deducts \$200 per month for income tax and Canada Pension. That leaves \$1,800, so that the most that Lois could get by garnishing Norman's pay cheque is \$540 each month.

Employment insurance and social assistance payment cannot be garnished, but there are no exemptions for money that is sitting in a bank account.

What can I do if my money is being garnished?

You should immediately do one of two things. Either contact the creditor and try to work out a payment schedule that you can live with, or ask the registrar of the court to schedule a payment hearing so that you can ask a judge to order a payment schedule. If a payment schedule is in effect, then the creditor cannot garnish again, as long as you are meeting the terms of the schedule.

If the garnishment means a real financial hardship for you, you can ask the court or registrar to cancel the garnishing order and return the money. If that happens, a payment schedule will be ordered.

You can also ask a judge to increase the amount of your wages that is exempt from garnishment - up to 90 per cent of the net amount.

9. Seizure and Sale of the Debtor's Goods

If someone has been ordered by the court to pay you money and hasn't paid, you can ask the court bailiff to take personal possessions belonging to the debtor and sell them at public auction.

However, the costs of this procedure can be relatively high and you risk paying these costs with no recovery if you do not try and find out beforehand if the debtor has any goods worth taking.

What may be seized?

Under the *Court Order Enforcement Act*, a debtor is entitled to the exemptions of personal property as noted:

<i>Exemption Category</i>	<i>Maximum Amount Allowable</i>
<i>A Personal property of debtor</i>	
- household goods	\$4,000
- tools of the trade	\$10,000
- motor vehicle	\$5,000
- motor vehicle - if the debt is for the child maintenance arrears	\$2,000
<i>B Principal residence of debtor</i>	
- equity in a home - if the debtor's principal residence is in the Capital Regional District or the Greater Vancouver Regional District	\$12,000
- equity in a home - elsewhere in British Columbia	\$9,000

A debtor is also allowed to retain all necessary clothing and required medical aids for themselves or for a dependent. A debtor may choose any goods which they would like to exempt from seizure and sale, up to the maximum allowable amount within each category. A debtor has two days to choose which goods they would like to exempt from seizure. In addition, you may not seize anything that the debtor owns jointly with someone else. This often means that household goods, for example, cannot be taken.

The most common items to be seized are motor vehicles and shares in a company, although any goods that are worth taking and are not part of the exemption can be seized. You can find out or confirm what motor vehicles a debtor owns by sending a copy of the judgment to:

ICBC, Vehicle Records Search
Room 154, 151 W. Esplanade St.
North Vancouver, B.C. V7M 3H9

There is a fee for this service. For more information call 604 661-2233 or 1-800-464-5050. Alternatively, a legal search service can be used, but the fees will be higher.

To find out if there is a lien against the debtor's motor vehicle or other personal property, a personal property search is required. There is a fee for this service. The search will tell you if there is a lien and who are the secured parties. If you want information on the secured debt, you should contact the secured parties listed on the search.

The search on personal property can be conducted at your local ServiceBC office, motor licensing office, or at:

Personal Property Registry
Ministry of Finance
PO Box 9431 Stn Prov Govt
Victoria, B.C. V8W 9V3

For further information on the Personal Property Registry, including the fee for the search, contact 250 387-7848.

[What is the procedure?](#)

Go to the court registry and tell the registrar you want an order for seizure and sale. You will be given forms to complete and return. You also have the option of downloading and completing the order for seizure and sale from www.ag.gov.bc.ca under "Court Services Branch".

The registrar will advise you to review the list of authorized court bailiffs and choose a court bailiff. The registrar will issue the order and forward the original order to the court bailiff and will give you copies of the order. Be prepared to give the court bailiff copies of the information you received from ICBC and the Personal Property Registry, along with a letter setting out any other information about the debtor's goods that will assist.

You will be asked to pay a deposit to the court bailiff to cover the estimated amount of time it will take the court bailiff to do the job.

What does the court bailiff do?

The court bailiff must inform debtors of their exemption rights under the *Court Order Enforcement Act* when they first visit the debtor's home. The court bailiff will look into what assets might be seized. The debtor will be given the chance to pay the amount due at the time of seizure. If the debtor has an ability to pay, the presence of the court bailiff is sometimes an effective measure. If not, any goods worth seizing that are not part of the exemptions may be taken away and later sold by auction, sealed bid or other similar acceptable means.

Since the proceeds are used to pay the court bailiff's costs first, the goods need to have sufficient value at an auction to pay the court bailiff's final fee and the various charges for such items as towing, carting, storage and advertising. If the goods do not have enough value to pay these costs with at least some amount left over for the creditor, they are not worth seizing.

The court bailiff will return the original order for seizure and sale to the registry, with a notation explaining the outcome. If the procedure is not successful, you may not be able to get the costs you have paid to the court bailiff from the debtor.

10. Default Hearings

If a payment schedule was made after a trial or settlement conference, or following a payment hearing, and the debtor has not lived up to its terms, you can ask for a default hearing. To do that, you fill out a summons to a default hearing and submit it to the registrar. It will be served on the debtor by a sheriff or bailiff at least seven days before the hearing.

What happens at a default hearing?

The judge will ask the debtor why the payments were not made. After listening to the debtor and the creditor, the judge can change the terms of the payment schedule or confirm the terms as they stand. If the judge decides that the debtor's explanation for not paying shows contempt of court, the judge can order the debtor to be jailed for up to 20 days. If that happens, the debtor still owes the money, even after going to jail.

A debtor who does not show up for a default hearing can be arrested if the person was properly notified.

11. Registration Against Land

If your debtor owns land in B.C., you can register a certificate of judgment in the land title office. This procedure can be very effective in the long run since the debtor cannot normally sell or mortgage the land until the debt is paid. It is also one of the simpler and less costly procedures described in this guide.

If you do not know whether the debtor owns land, you can do a name search at a land title office. There will be a fee for this service.

How do I register my small claims judgment against land?

First, ask the registrar for a certificate of judgment. There is a fee for the certificate.

Then take this certificate to the land title office where the land is. Land Title office staff will assist with the title search in order to collect the necessary information for you to complete the forms required for registration in the Land Title office. A registration fee will apply. You can register one judgment against more than one property, if you wish. If the property is owned in joint tenancy with someone else (as is often the case, especially if it is a family home) you can still register your judgment against it, but if the debtor dies, the registration is cancelled.

Do I have to wait for the debtor to decide to sell?

No. You can ask the Supreme Court to force a sale of the property. But this is a complicated and costly process and is not often used to enforce a small claims judgment. You should get legal advice if you are thinking about applying for sale of land.

How long does the registration last?

The registration is good for two years and can be renewed every two years. If you keep renewing the registration for up to ten years, there is a greater likelihood that the debtor may sell or re-mortgage the land and you will be paid. You must remember to renew the registration before the two years are up and the earlier registration expires. Once the registration has expired, you will have to obtain a new certificate from the registry and you will have lost your place on the title.

12. Summary

You can see from all this that there are many different tools available to help you collect your money once a court has given you a payment order.

In most cases, you should start with a simple written request for payment along with a copy of the order. If that doesn't work, take a look at all the information you have about the debtor and try to decide what would be the most effective method.

Usually a payment hearing is a good start because you can use that to gather the information you may need later. A payment schedule is often the answer - if timing and amount of the payments are manageable for the debtor, you have a better chance of collecting what's owing to you.

But if the debtor has money available and is just determined not to pay, take a look at the other options we have discussed and decide what will give you the best chance of success.

13. How can I get more information about small claims court?

This is one in a series of guides available. The titles in the series are:

1. What is Small Claims Court
2. Making a Claim
3. Replying to a Claim
4. Serving Documents
5. Getting Ready for Court
6. Getting Results
7. Court Mediation for Small Claims Up to \$10,000
8. Court Mediation for Claims between \$10,000 and \$25,000

The people behind the counter at any small claims registry cannot give legal advice or fill out your forms for you, but they will gladly answer many of your questions about small claims court procedures. To contact a court registry, consult your telephone directory under "Court Services" in the provincial government blue pages or look for the information online at www.ag.gov.bc.ca.

This guide is provided by the Ministry of Justice and the Provincial Court of British Columbia

It is not intended as a substitute for the *Small Claims Act* or the small claims rules, which should be examined for specific information. You can find links to the *Small Claims Act* and rules at www.ag.gov.bc.ca under Court Services.

This information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

You may also wish to consult Clicklaw at www.click.bc.ca for additional legal information.