

GARNISHING ORDERS

Garnishment proceedings are allowed pursuant to Part 1 of the *Court Order Enforcement Act* and permit a plaintiff in an action or a judgment creditor to attach money owing to the defendant/judgment debtor directly from a person (called the garnishee) who owes money to the defendant/judgment debtor. There are garnishing orders before or after judgment.

A garnishing order before judgment is an extraordinary remedy and is only allowed in an action, not a proceeding commenced by petition. A garnishing order may only be issued for a liquidated claim. One definition of such a claim is:

“Debt or liquidated demand” – a liquidated sum is in the nature of a debt, i.e. a specific sum of money due and payable under or by virtue of a contract. Its amount must either be already ascertained or capable of being ascertained as a mere matter of arithmetic. If the ascertainment of a sum of money, even though it be specified or named as a definite figure, requires investigation beyond mere calculation, then the sum is not a “debt or liquidated demand” but constitutes “damages”

The affidavit must contain sufficient evidence that the claim is a liquidated claim before the registrar will issue a garnishing order. The forms in this package are examples only to assist when preparing your own documents. They are not meant to be used as “fill in” forms.

In a family law case, pursuant to section 18 of the *Family Maintenance Enforcement Act*, a creditor under a maintenance order may apply to the court for a continuing garnishing order for a period of up to 12 months.

Copies of the forms for garnishing orders and the supporting affidavit are included in this package and may be found in Schedule 1 of the *Court Order Enforcement Act*.

The filing fee for a garnishing order is \$80.00. If you require your affidavit to be sworn at the court registry the fee for swearing is \$40.00.

The information included in this package is as follows;

- 1) Form A – Affidavit in Support of Garnishing Order before Action
- 2) Form B – Affidavit in Support of Garnishing Order after Judgment
- 3) Form C – Affidavit in Support of Garnishing Order before Judgment
- 4) Form D – Garnishing Order after Judgment
- 5) Form F – Garnishing Order before Judgment
- 6) Form F34 – Order Made Without Notice (Sample desk order for a continuing garnishing order under the *Family Maintenance Enforcement Act*).
- 7) Affidavit in support of an application for a continuing garnishing order
- 8) Form F29 – Requisition for Consent Order or for Order Without Notice
- 9) Form F17 – Requisition (to be filed requesting an application for garnishing order before or after judgment)

This is the affidavit
of in this case
and was made on

No.
.....Registry

FORM A

In the Supreme Court of British Columbia

IN THE MATTER OF AN INTENDED ACTION

Between

Intended Plaintiff

and

Intended Defendant

**AFFIDAVIT IN SUPPORT OF GARNISHING ORDER
BEFORE ACTION**

I,, make oath and say:
[name, address and occupation]

(1) I am the above named intended plaintiff, and am aware of the facts referred to in this Affidavit.

OR

(1) I am the solicitor of the above named intended plaintiff, and am aware of the facts referred to in this Affidavit.

OR

(1) I am acting for the above named intended plaintiff, and am aware of the facts referred to in this Affidavit.

(2) That I wish to commence an action against the above named intended defendant for
[here state the nature of the intended action]

OR

(2) The intended plaintiff wishes *[as in (2)]*

- (3) That the actual amount of the debt, claim or demand in the cause of action is \$..... and that sum is justly due and owing by the intended defendant to the intended plaintiff after making all just discounts.

- (4) That to the best of my information and belief[*name, address and description of the garnishee*]...., the garnishee, is indebted, under obligation or liable to the intended defendant and that the garnishee is in the jurisdiction of this court, and the indebtedness, obligation or liability of the garnishee is not for salary or wages.

SWORN BEFORE ME at _____)
in the Province of British Columbia, this)
_____ day of _____, 20____ .)

A Commissioner for taking Affidavits)
in the Province of British Columbia)

(Signature of Deponent)

This is the affidavit
of in this case
and was made on

Form B

No.
..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff

and

Defendant

**AFFIDAVIT IN SUPPORT OF GARNISHING ORDER
AFTER JUDGMENT**

I, of, [*occupation*], make oath and say:

(1) I am the person entitled to enforce the judgment or order referred to in this Affidavit.

OR

(1) I am the solicitor of the person entitled to enforce the judgment or order referred to in this Affidavit.

OR

(1) I am acting for the person entitled to enforce the judgment or order referred to in this Affidavit, and I am aware of the facts referred to in this Affidavit.

(2) On a judgment entered [*or order made, as the case may be*] in this action, the above named (hereafter called the "judgment debtor") was found to be indebted to the above named for \$....., and the whole sum remains due [*or and of which \$..... still remains due, as the case may be*], and it is justly due and owing by to after making all just discounts.

(3) That to the best of my information and belief [*name, address and description of the garnishee*]...., the garnishee, is indebted, under obligation or liable to the judgment debtor and that the garnishee is in the jurisdiction of this court.

SWORN BEFORE ME at _____
in the Province of British Columbia, this
_____ day of _____, 20____ .

A Commissioner for taking Affidavits
in the Province of British Columbia

)
)
)
)
)
)
)
)
)
)
)

(Signature of Deponent)

This is the affidavit
of in this case
and was made on

Form C

No.
..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff

and

Defendant

**AFFIDAVIT IN SUPPORT OF GARNISHING ORDER
BEFORE JUDGMENT**

I,, of, [occupation], make oath and say:

(1) I am the above named plaintiff.

OR

(1) I am the solicitor for the above named plaintiff.

OR

(1) I am acting for the above named plaintiff, and I am aware of the facts referred to in this Affidavit.

(2) This action is pending, and was commenced on
[month, day, year]

(3) The nature of the cause of action for which this action is brought is

.....

(4) In respect of the cause of action the defendant is justly indebted to the plaintiff for \$....., after making all just discounts, and it is now justly due and owing.

- (5) That to the best of my information and belief .. [*name, address and description of the garnishee*]....., the garnishee, is indebted, under obligation or liable to the defendant and that the garnishee is in the jurisdiction of this court, and the indebtedness, obligation or liability of the garnishee is not for salary or wages.

SWORN BEFORE ME at _____
in the Province of British Columbia, this _____
day of _____, 20 ____.

A Commissioner for taking Affidavits
in the Province of British Columbia

)
)
)
)
)

(Signature of Deponent)
)
)

When making payment into court this action number must be quoted.

No.
..... Registry

Form D

In the Supreme Court of British Columbia

Before

District Registrar

Between

Plaintiff

and

Defendant

and

Garnishee

GARNISHING ORDER AFTER JUDGMENT

On reading the affidavit of, sworn
[month, day, year], I order that, except as otherwise ordered, all debts, obligations and liabilities owing, payable or accruing due from the garnishee [or garnishees or any of them] to the defendant be attached up to the total amount set out below and paid into court. If any of the debts, obligations and liabilities are owing, payable or accruing due for wages, then only as much of them as is permitted by section 3 of the *Court Order Enforcement Act* are to be attached and paid into court [see over]

Date:

.....
Registrar

To the Defendant(s):
(Name)
(Address)

To the Garnishee(s):
(Name)
(Address)

	\$	Cents
Amount due on judgment [or balance of it as the case may be]		
Cost of attachment proceedings		

Total amount attached		

NOTICE TO GARNISHEE

If you do not pay into Court at once the amount of your indebtedness to the defendant or judgment debtor, or the amount limited by the above attaching order, or if you do not dispute your liability, an order may be made against you for the payment of the full amount with costs.

If you dispute your liability you should at once file a dispute note, and the registrar will then send you notice of the day on which you are to appear in court.

"Owing, payable or accruing due" means owing, payable or accruing due at the time this order was served upon you but, in the case of wages or salary, includes wages or salary that will, in the ordinary course of employment, become due and payable within 7 days after the day on which the affidavit first above mentioned was sworn.

NOTICE TO EMPLOYER

Section 27 of the *Court Order Enforcement Act* makes it an offence to demote an employee or terminate a contract of employment of an employee merely because of the service of a garnishing order on the employer issued under this Act.

NOTICE TO DEFENDANT

To prevent further garnishment proceedings you may apply to the registrar or the court and, if considered just in all the circumstances, an order may be made releasing all or part of this garnishment and providing for payment of the judgment against you by instalments.

When making payment into court this action number must be quoted.

No.
..... Registry

Form F

*In the Supreme Court of British Columbia
(In Chambers)*

BEFORE MR./MADAM
District Registrar

Between

Plaintiff

and

Defendant

and

Garnishee

GARNISHING ORDER BEFORE JUDGMENT

On reading the affidavit of, sworn
[month, day, year], and on it appearing that the indebtedness, obligation or liability of the garnishee(s) is not for wages or salary, I order that all debts, obligations or liabilities owing, payable or accruing due from the above named garnishee [or garnishees or any of them] to the above named defendant(s), other than for wages or salary, be attached to the total amount set out below and paid into court.

Date:

.....
Registrar

To the Defendant(s):

To the Garnishee(s):

(Name).....
(Address).....
(Name)
(Address).....

(Name)
(Address).....
(Name).....
(Address).....

	\$	Cents
Amount due		
Cost of attachment proceedings		

Total amount attached		

NOTICE TO GARNISHEE

If you do not pay into court at once the amount of your indebtedness to the defendant, an order may be made against you for the payment of the full amount with costs.

If you dispute your liability, you should at once file a dispute note.

NOTICE TO DEFENDANT

You may apply to the registrar or the court and, if considered just in all the circumstances, an order may be made releasing all or part of this garnishment.

In the Supreme Court of British Columbia

Claimant:

Respondent:

Garnishee:

ORDER MADE WITHOUT NOTICE

BEFORE) A JUDGE OF THE COURT)
) or) [date]....
) AN ASSOCIATE JUDGE OF THE COURT)

ON THE APPLICATION of[party(ies)].....

AND ON THE COURT DETERMINING THAT a hearing is not required and notice is not required;

THIS COURT ORDERS that:

1. except as otherwise ordered, all debts, obligations and liabilities owing, payable or accruing due from the Garnishee to [name of debtor] be attached to the total amount set out below and paid into court.
2. where any such debts, obligations and liabilities are owing, payable or accruing due for wages, then only as much of them as is permitted by section 3 of the *Court Order Enforcement Act*, are to be attached and paid into court.
3. this order shall remain in force for a period of [specify] months from this date to seize and attach any debt that becomes owing, payable or due at anytime while the order remains in force.
4. the [party] is entitled to its costs of this application.

By the Court,

.....
Registrar

To the Debtor:
[name and address]

To the Garnishee:
[name and address]

Address of the Registry: [address]

Amount due on judgment

[or balance of it as the case may be]	\$
Cost of attachment proceedings	\$
Total amount attached	\$

Notice to Garnishee

If you do not pay into Court at once the amount of your indebtedness to *[name of debtor]*, or the amount limited by the above attaching Order, or if you do not dispute your liability, an Order may be made against you for the full amount with costs.

If you dispute your liability you should at once file a dispute note, and the Registrar will then send you notice of the date on which you are to appear in Court.

Notice to Employer

Section 27 of the *Court Order Enforcement Act* makes it an offence to dismiss or demote an employee or terminate a contract of employment of an employee solely by reason of the service of a Garnishing Order upon the employer issued under this Act.

Notice to Respondent

To prevent further garnishment proceedings you may apply to the Registrar of the Court, and if considered just in all the circumstances, an Order may be made releasing all or part of this garnishment and providing for payment of the judgment against you by instalments.

This is the affidavit
of in this case
and was made on

File No.....
..... Registry

In the Supreme Court of British Columbia

Between

Claimant

and

Respondent

**AFFIDAVIT IN SUPPORT OF A CONTINUING
GARNISHING ORDER**

I, _____, make oath and say:
[name, address and occupation]

1. I am the person entitled to enforce the judgment or order hereafter referred to.
2. In an Order made in this proceeding on, the above named respondent, (hereinafter called the "Judgment Debtor") was ordered to pay maintenance to the above-named claimant/petitioner,, in the sum of \$..... per month on the day of each month commencing
3. The arrears now owing to me by the Judgment Debtor are as follows:
4. That to the best of my information and belief[name, address and description of the garnishee]...., the garnishee, is indebted, under obligation or liable to the judgment debtor and the garnishee is in the jurisdiction of this court.
5. I make this Affidavit in support of my Application for a Continuing Garnishing Order against the Judgment Debtor and directed to the said because I verily believe that the Judgment Debtor will continue not to comply with the maintenance order of this Court.
- 6.

7.

SWORN BEFORE ME at _____)
in the Province of British Columbia, this)
_____ day of _____ ,)
20_____.)

A Commissioner for taking Affidavits)
in the Province of British Columbia)

(Signature of Deponent)

Court File No.:
Court Registry:

In the Supreme Court of British Columbia

Claimant:

Respondent:

REQUISITION FOR CONSENT ORDER OR FOR ORDER WITHOUT NOTICE

Filed by:
[party(ies)]

- Required: An order by consent
 [OR]
- An order without notice

- 1. The rule or other enactment relied on is the *Court Order Enforcement Act* and Section 18 of the *Family Maintenance Enforcement Act*.
- 2. Attached to this requisition is a draft of the Continuing Garnishing Order required.

[Check whichever one of the following boxes is correct and complete any required information]

- 3. Each party affected has consented to the order.
- The evidence in support of the application is contained in the following documents that are filed with this requisition:
.....

[Check whichever one of the following boxes is correct and complete any required information]

- 4. No party is under a legal disability.
 [OR]
-*[Name of party]*..... is under a legal disability,
namely.....*[set out legal disability]*.....

Date:

.....
Signature of
 filing party lawyer for filing party

.....
[type or print name]

No.
..... Registry

In the Supreme Court of British Columbia

Between

Plaintiff/Judgment Creditor

and

Defendant/Judgment Debtor

REQUISITION – GENERAL

Filed by:
[party(ies)]

Required: A Garnishing Order Before/After Judgment pursuant to section 3 of the
Court Order Enforcement Act.

This requisition is supported by the following:

[Include a description of supporting document(s). Each affidavit included on the list must be identified as follows: "Affidavit #.....[sequential number, if any, recorded in the top right hand corner of the affidavit]..... of[name]....., made[dd/mmm/yyyy].....".]

- 1.
- 2.

Date:

.....
Signature of
 filing party lawyer for filing party(ies)
.....
[type or print name]