

APPLICATION TO SET ASIDE A GARNISHING ORDER

What is it? Pursuant to section 5 of the *Court Order Enforcement Act*, (the *Act*) a party against whom a garnishing order has been issued may apply to the registrar or to the court for a release of the garnishment. In the usual course it is a registrar who hears the application.

The test which the applicant must meet is set out in section 5(2) of the *Act*. A release of the garnishing order must be “just in all the circumstances”. There are many reported decisions on the factors to be considered in deciding whether to set aside a garnishing order, some of those factors are:

- a) whether the garnishment is necessary to ensure recovery on a judgment;
- b) whether the garnishment causes undue hardship to the person whose funds have been garnished;
- c) whether the pleadings raise serious issues of the merits of the proceeding; or
- d) whether the garnishment may be an abuse of process.

Documents required:

- Requisition [Civil Form 17 or Family Form F17]
- Financial statement, proof of income, assets and liabilities (if applicable)

What happens before the hearing?

The person who wishes to set aside the garnishing order obtains a date for the hearing through Supreme Court Scheduling in the registry where the garnishing order has been issued. The hearing before the registrar may be without notice, but as a courtesy, Supreme Court Scheduling will often attempt to contact the opposing party or their counsel (if the opposing party is represented) so someone attends the hearing on the opposing party’s behalf. The hearing may go ahead on the day the person files the requisition or it may be heard on the next day, depending on local practice and whether the opposing party wishes to attend.

A requisition is filed – **no filing fee is payable**. If the reason for the application to set aside the garnishing order is hardship, the applicant will be required to produce proof of their financial situation to the opposing party and the registrar at the hearing. This proof includes, at a minimum, a statement by the applicant of their income and expenses, assets and debts. Supporting documents such as. pay stubs, income tax returns, bank and credit card statements may be required and applicants should make sure to bring to the hearing all relevant information available.

What happens at the hearing?

The parties introduce themselves to the registrar. The defendant/debtor is sworn in. Financial statements and supporting documents, as available, are entered as exhibits. The opposing party or their lawyer (if present) will ask the debtor questions on the financial information produced. After the opposing party has finished asking questions, the debtor is given an opportunity to clarify or add information to the evidence before the court. The registrar may also ask questions. If no one is present representing the opposing party, the registrar will ask the applicant a number of questions about the applicant’s financial circumstances.

Once all the evidence is in, the opposing party and the debtor each has an opportunity to make submissions (a summary of what they think should be done and why) as to their positions.

The registrar will then make an order.

Options for orders include the following:

- 1) the application for relief is denied and the garnishment will stand;

- 2) the garnishment is released in part;
- 3) the garnishment is released in whole.
- 4) if there were monies paid into court, the registrar may order that those funds be paid out to either the debtor/defendant, the creditor or the garnishee, or a combination of the three.

Note: If the garnishing order is made after judgment, the registrar may only set it aside upon making an order that the judgment debtor make payments on the judgment, usually monthly.

What happens after the hearing?

An order is prepared by one of the parties (as directed by the registrar) and entered in the registry.

The order included in this package is a template. If you are directed to prepare the order, in order for your order to be accepted by the registry for filing and entry, you will need to prepare a “clean” copy by removing all of the instructions that appear in italics as well as any paragraphs that do not apply. The below link is to the Ministry of Justice website where you will find online fillable forms which you may find helpful in preparing your order. You will need to select the link leading to either Supreme Court “Civil” or “Family” depending on what type of proceeding you are involved in:

<https://www2.gov.bc.ca/gov/content/justice/courthouse-services/documents-forms-records/court-forms>

If the garnishing order is released and the debtor is ordered to make payments towards the debt/judgment, the creditor cannot take any other execution proceedings against the debtor unless the debtor is in default of any payment prescribed for over 5 days or a garnishing order has been issued against the debtor in connection with another case – [section 5(7)(a) & (b), of the *Court Order Enforcement Act*].

Further reading: Continuing Legal Education Manual – Practice Before the Registrar; section 5 *Court Order Enforcement Act*

In the Supreme Court of British Columbia

Between

Plaintiff
Petitioner
Solicitor

and

Defendant
Respondent
Client

REQUISITION - GENERAL

Filed by:
[party(ies)]

Required: A hearing for a release of the garnishing order pursuant to section 5 of the *Court Order Enforcement Act*.

Time:

Date:

Place:

Time estimate:

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. Statement of Income and Expenses (if applicable)
- 2.

Date:

.....

Signature of
 filing party lawyer for filing party(ies)

.....

[type or print name]

No.
 Registry

In the Supreme Court of British Columbia

Between

Plaintiff
 Petitioner
 Solicitor

and

Defendant
 Respondent
 Client

STATEMENT OF INCOME AND EXPENSES

1.	INCOME		
	Gross monthly salary		
	Net monthly salary		
	Commissions		
	Unemployment Insurance		
	Pension		
	Investments		
	Rentals		
	Social Assistance		
	Other (Family Allowance, etc.)		
		TOTAL	\$
2.	ASSETS		
	Automobile market value		
	Make/year		
	Real Estate		
	(market value)		
	Real Estate (equity)		
	Bank (or other) Account		
	Stocks/Bonds		
	Life Insurance		
	Personal property		
	Cash Debtors		
	Other:		
		TOTAL	\$

3.	EXPENSES		
	Rent		
	Mortgage		
	Taxes		
	Utilities (heat, light, phone)		
	Food		
	Clothing		
	Transportation		
	Medical/Dental		
	Entertainment		
	Child care		
	Sundries		
	Other (insurance, etc)		
		TOTAL	\$
4.	DEBTS		
	Automobile payment		
	Balance owing		
	Bank or Finance Co.		
	Balance owing		
	Department Store		
	Balance owing		
	Credit Union		
	Balance owing		
	Other		
	Balance owing		
		TOTAL	\$
Total Expenses:		\$	
Plus Total Debts:		\$	
TOTAL MONTHLY OBLIGATION:		\$	
Total Income:		\$	
Minus Monthly Obligation:		\$	
TOTAL DISPOSABLE INCOME		\$	

SUBMITTED BY: (Name, Address & Occupation)

EMPLOYER: (Name & Address)

Date:

Signature:

b) the sum of \$..... to the defendant/judgment debtor.

2. the Judgment Debtor pay to the Judgment Creditor regular monthly payments of,
[amount]

commencing on day of each and every month thereafter
[day of month; e.g., first, fifteenth]

until the full amount of the judgment herein has been paid and satisfied or further order of the court.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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

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

By the Court.

.....
Registrar