

SUBPOENA TO DEBTOR

What is it?

The subpoena to debtor allows an inquiry into the income, expenses, assets and liabilities of a judgment debtor with a view to obtaining an order for payment of the judgment. [Civil Rule 13-3, Civil Form 56 or Family Rule 15-6, Form F66]. The subpoena may be directed to the judgment debtor, to an officer or director of a corporation if the judgment debtor is a corporation, or to a person liable to execution if the order is against a partnership or a firm – [Civil Rule 13-3(2) or Family Rule 15-6(2)].

What happens before the hearing?

The judgment creditor must obtain a date for the hearing from Supreme Court Scheduling. The subpoena is presented for filing at the court registry (**filing fee required**) together with a supporting affidavit and a copy of the judgment attached. The subpoena, judgment and affidavit must be served **personally** on the judgment debtor at least 7 days prior to the hearing along with any expenses the person served would be entitled to were he or she required to attend the court as a witness. See [Appendix C, Schedule 3]. (Usually \$20.00 for attendance plus travel expenses if any.)

The affidavit in support of the subpoena to debtor must state that the judgment is unsatisfied and that no writ of execution is outstanding against the judgment debtor. Although Civil Rule 13-3 and Family Rule 15-5 are silent regarding where the hearing must take place, it may be argued that for economic reasons, the registry nearest the judgment debtor's residence is the most appropriate venue for the hearing to be held.

What happens at the hearing?

The parties introduce themselves. The registrar usually gives a brief overview of the conduct of the hearing. The registrar will then swear in the judgment debtor.

The judgment creditor (or counsel for the judgment creditor) will ask the judgment debtor a series of questions. At the conclusion of these questions, the judgment debtor will be asked if there is anything they want to clarify or add. The registrar may also question the judgment debtor.

Once all the evidence is in, the registrar will ask both the judgment creditor and the judgment debtor to make brief submissions summarizing the evidence presented and the relief sought.

If the person subpoenaed does not attend, refuses to be sworn, refuses or neglects to

produce or permit inspection of a document despite an order to that effect, or does not give answers which are to the satisfaction of the registrar, the person may be required to appear before a judge who may in turn order that person's committal: Civil Rule 13-3(8) or Family Rule 15-6(8).

If the registrar believes the judgment debtor has the ability to begin repaying the judgment, an order will be made. This order can take various forms. The usual one is an order that the judgment be paid in instalments over a period of time.

Once an order is made, if the payments are kept current, the judgment creditor can take no further execution proceedings.

What happens after the hearing?

An order is drawn up by the judgment creditor or their counsel and is entered in the court registry. The order usually sets out the amount of the payment, when it is to be paid, to whom it is to be paid and where the payments are to be submitted.

If the judgment debtor does not make the payments as ordered, the creditor then may apply to the court for an order that the judgment debtor be found in contempt. If this happens, the judgment debtor will be arrested and brought before the court. The judgment debtor may be sent to jail for disobeying the court order.

Documents Required:

For the **judgment creditor**:

- Subpoena to debtor [Civil Form 56 or Family Form F66]
- Entered judgment
- Affidavit in support
- Filing fee of \$80.00
- Proof of personal service on the judgment debtor including a statement that the appropriate conduct money was tendered to the debtor

For the **judgment debtor**:

- proof of income, assets and liabilities (income tax returns, copies of bills, hydro, loans, credit card statements etc.)
- Statement of Income and Expenses

Further reading: Continuing Legal Education Manual – Practice Before the Registrar.

Note: If you appear at the hearing without proper documentation the matter may be adjourned. This will result in an inconvenience to you and the opposing party and may result in costs being awarded against you if it is thought that what you have done is improper.