



# A Walk through Yukon's Small Claims Court

## #6 Judgments and How To Collect a Small Claim



### ALSO AVAILABLE IN THIS SERIES:

- #1 What is Small Claims Court?
- #2 How to Start a Small Claim
- #3 You Are Being Sued - What to Do
- #4 Mediation and Pre-Trial Conferences
- #5 Getting Ready for Court



# Judgments and How to Collect a Small Claim

## DEFAULT JUDGMENTS

### What is a default judgment?

A default judgment is a judgment in favour of the plaintiff if the defendant has not replied to the claim. It can be issued when the defendant's time to reply to the claim has expired. A default judgment has the same effect as if a judge ordered the defendant to pay you what you say you are owed, and can be enforced in the same way.

### How do I get a default judgment when I know the exact amount that the defendant owes me?

When you know the exact amount owed to you, your claim is known as a claim for a "liquidated" amount. Liquidated amounts include NSF cheques or unpaid bills for goods or services. If the time period for the defendant to reply has expired, you can fill in a Default Judgment for Plaintiff (Form #9).

The amounts that can be set down in the default judgment include:

- 1) the amount of your claim;
- 2) any interest that you claimed when you filed your claim. If you and the defendant agreed on a set rate of interest, the judgment should include that amount. (If you claimed interest from a set date when you filed your claim, you must calculate the amount of interest prior to filing the default judgment.)
- 3) court costs. This includes fees paid to the court for filing, serving documents, and photocopying. You must provide the clerk with copies of the receipts.

Make a copy of the default judgment for your records and bring it and the original in to the clerk along with the completed Affidavit or Certificate of Service to show when the defendant was served with your claim. The clerk will sign Form #9, stamp the forms and file the original in court. The copy will be returned to you for your records.

### How do I get a default judgment when I know that the defendant owes me money, but I don't know the exact amount?

If your claim is for an "unliquidated" amount (such as property damage or personal injury), you should complete the Default Judgment with Notice of Hearing (Form # 10). (When completing the "Notice of Hearing" part of the form, ask the clerk for the next available court dates. This allows you to set a hearing date to appear before a judge to sort out a fair and reasonable amount for your claim.)

At the hearing, you will not have to prove that the defendant was at fault. The defendant is admitting fault by not replying to your claim. However, you must prove the extent of your injury or property damage. (See Booklet #5, Getting Ready for Court.)

When the judge has heard your case and has decided on an amount for your claim, that amount is shown on the default judgment. The clerk will sign and stamp the form as filed in court.

### How does the defendant find out about the default judgment?

The law does not require you to serve the defendant with the default judgment. The claim form states that failure to file a reply within the required time period can result in a judgment against the defendant.

### How do I get the defendant to pay me?

If you want to receive payment on your claim, you could give or send the defendant a copy of the judgment and ask for payment. If your case goes to a judge to set an amount for the claim, wait until the judge decides the amount before you notify the defendant. You can send the defendant's copy by regular mail, by fax, or by giving it to the defendant or their agent.

In some cases, if you approach the defendant and ask for the money, the defendant will pay the money to you or to the clerk. If the defendant pays you directly, you may be asked to sign a written release which states that, now that you have been paid the amount in question, you have no further claim against the defendant in this matter.

If the defendant fails to pay after you have a default judgment, you will have to take collection action to be paid. (See the third section of this booklet, Enforcing Your Judgment (Collecting on a Claim).)

## RESTITUTION CLAIMS

### What is a restitution claim?

Under the *Criminal Code*, a judge in a criminal court can order a convicted offender to pay money, known as restitution, to people who have been injured or whose property has been damaged as a result of the crime or arrest. The restitution sections of the *Criminal Code* make it possible for victims to file a "stand alone" restitution order in civil court in order to enforce payment of the order against the offender.

People owed restitution can use the civil courts to collect their money in the same ways that are open to people who have obtained judgments in civil court.

### What kind of restitution payments are covered by civil enforcement provisions?

If any of these situations applies, you can consider civil enforcement in either Small Claims Court (for amounts \$5,000 and under) or Supreme Court (for amounts of \$5,000.01 and over):

- 1) If your property is damaged, lost or destroyed when a crime is committed or when an arrest or attempted arrest is made, you may be entitled to restitution in an amount not exceeding the value of the property;
- 2) If you are injured when a crime is committed or when an arrest or attempted arrest is made, you may be entitled to restitution in an amount not exceeding the cost of your damages (including loss of income or support);
- 3) If you are the spouse or child of an offender or a person who was a member of the offender's household when the crime was committed or when the arrest or attempted arrest was made and you were forced to leave your home, you may be entitled to restitution in an amount not exceeding the cost of moving out of the offender's household, the cost of temporary housing, food, child care and transportation;

- 4) If you bought property in good faith from an offender who was convicted or given an absolute or conditional discharge for a crime and you were not aware that the property was obtained as a result of that crime, you may be entitled to restitution in an amount not exceeding the amount that you paid for the property, if the court orders the property returned to its lawful owner;



- 5) If you loaned money to an offender who was convicted or given an absolute or conditional discharge for a crime, and the offender used property obtained from the commission of the crime as security for the loan, you may be entitled to restitution up to the total amount outstanding on the loan if the court orders the property returned to the lawful owner.

### When can I file my restitution order in court?

Restitution is payable immediately after the court makes the order. If the offender fails to pay the restitution on the day that the order is granted, you may file the order in court on the next day.

### How much does it cost to file a restitution order?

There is no charge to file the order.

### What can I do to enforce the order?

Your order can be enforced in the same manner as any Small Claims judgment. You do not need to go to court to have your order filed in Small Claims Court. The clerk can accept your restitution order and file it as a Small Claims judgment. After your order is filed, you can collect on your claim.

# ENFORCING YOUR JUDGMENT (COLLECTING ON A CLAIM)

## What to do after your judgment is filed in court:

When your judgment is filed in court, the defendant is required by law to pay you the amount of money set out in the judgment (or, in some cases, to return the property you asked to have returned to you). It is up to the defendant to find out if a judgment has been filed against them, but as a courtesy you could mail the defendant a copy of the judgment and request payment within a reasonable period of time.

If the defendant does not pay the debt, it is up to you to take the next step to recover your money or property. Your judgment is good for a long time, but you must take steps to collect on it within 10 years, or you cannot enforce it.

The court will not act as a collection agency on your behalf. **If you decide to enforce your judgment, you should review the table at the end of this booklet which summarizes the various options for enforcement.** The most common methods of enforcing judgments are also explained next. If you have questions as to which method you should use, you may want to call the Law Line at 668-5297 (toll-free at 1-867-668-5297), or consult a lawyer. The clerk cannot give you advice about what you should do.

Whatever you decide, you must give clear instructions before the clerk can issue the documents you need as part of the collection process.

## Options for collecting your debt:

How you decide to collect your debt depends on many things. If you want to get money from the income or assets of the defendant (sometimes referred to as the “debtor”), you will need to know if the debtor has a bank account or a source of wages or contract money that can be garnished. Assets such as cars can be seized and sold, or you could place a lien on land owned by the debtor. If the debtor lives outside the Yukon, you may have to look at reciprocal enforcement in another province or territory to enforce your judgment. If you are unable to obtain information about the debtor’s income or assets, you may want to go to court to examine the debtor under oath to ask questions which will help you decide how to collect on the debt.

## How To Go About The Most Common Methods Of Enforcing Your Judgment:

### 1) Garnishment of Wages:

This method allows you to have the debtor’s employer pay a portion of the debtor’s wages to you instead of to the debtor. The amount that can be deducted from a debtor’s wages is limited by law so that the debtor still has money to live on while the wages are being garnished.

To garnish a debtor’s wages, you must know the name and address of the debtor’s employer. Ask the clerk to provide a Writ of Immediate Garnishment or a Writ of Continuing Garnishment form, a Notice of Response to Writ form and instructions for you to fill in the forms. You should use a Writ of Immediate Garnishment when you think that you can collect your money all at once. If you think that you will have to garnish several of the debtor’s paycheques to collect your debt, you should ask for a Writ of Continuing Garnishment, which is good for up to one year.

If you use a *Writ of Immediate Garnishment*, provide the clerk with the original and two copies of the completed writ. The clerk will file the original in court. You should serve one copy of the writ and three copies of the Notice of Response to Writ on the debtor’s employer (the “garnishee”), and keep one copy of the writ. You will not have to fill out an affidavit of service, but you should keep track of the time, the date and the person you served with the writ in case there is a dispute.

If you use a *Writ of Continuing Garnishment*, ask the clerk for an Affidavit in Support of Garnishment at the same time that you request the writ, Notice of Response to Writ and instructions for completing these forms. Provide the clerk with the completed affidavit as well as the original and three copies of the writ. The original writ and the affidavit will be kept on the court file. You should distribute the remaining copies of the writ and three copies of the notice of response as follows:

- a) one copy of the writ and all three copies of the notice must be served personally on the garnishee;
- b) within 14 days of the date that the garnishee is served, one copy of the writ must be served on the debtor by either personal service, registered or certified mail; and
- c) keep one copy of the writ.



You may have the Sheriff serve the writ, but there will be a fee of \$53.50 plus \$.42 per kilometre travelled for the service. You may not be able to recover this amount if you are unable to collect any money from the debtor.

As the garnishee, the employer must send money from the employee's paycheque to the court once they have been served with the writ. A maximum of 30 per cent of the cheque can be deducted in response to the writ. By law, the debtor must be left with a certain minimum dollar amount which is based on the number of dependents that the debtor supports.



If the garnishee pays money into court, the clerk will contact you. Before you can have the money paid out, you must take the following steps:

a) Within 10 days of the date that you are notified by the clerk of the payment, you must serve the debtor with a notice about the payment. You can do this by sending a letter with the date and amount of the payment, the garnishee's name and the court file number. You can also do this by sending a copy of the Notice of Response to Writ completed by the garnishee showing the amount of money paid into court and the date

of the payment. (Service must be either in person or by registered mail.) If you have filed a Writ of Continuing Garnishment and more than one payment is made into court, you must send a notice each time you are notified that a payment has been made.

b) After you have notified the debtor, ask the clerk for an Affidavit to Apply for Monies in Trust. Complete it and swear it in front of the clerk so that it can be filed in court. If more than one payment is made, you may either file an affidavit each time you ask to have money paid out, or file an affidavit asking for the total amount once all the money has been paid into court.

The clerk will normally pay out the money 30 days after the date that the affidavit is filed in court. This period is required by the *Garnishee Act* to make sure there is no dispute of the garnishment.

## 2) Garnishment of Bank Account

The procedure for garnishing the debtor's bank account is basically the same as that used to garnish wages. The main difference is that the writ must be served on the debtor's bank instead of on the employer. You are not restricted to garnishing a portion of the debtor's money as is the case when you garnish the employer. If you think that you can collect all your money at one time, you should use a Writ of Immediate Garnishment; otherwise, use a Writ of Continuing Garnishment. When you have served the bank, any money held in the debtor's name (up to the maximum amount of the judgment) must be turned over to the court.

Refer to the instructions set out under Garnishment of Wages for service of writs and for having money paid out of court.

## 3) Writ of Seizure and Sale of Personal Property

This method allows you to have the Sheriff seize personal property (not land) belonging to the debtor and to advertise it for sale. If the property is sold, the net proceeds of the sale (the amount left after the Sheriff's costs are covered) can be paid to you after a waiting period has expired.

If the debtor has a number of creditors, you may have to do some research, or get help from a lawyer, to determine whether your priority as a creditor is high enough to make it worth your while to seize the debtor's property. You will also have to make sure that the property you want to seize actually belongs to the debtor. You can do this by going to the Corporate Affairs office in the Law Centre in Whitehorse (or by phoning 667-5223 or the toll-free number, 1-800-661-0408, local 5223) to request a report of any liens that may be registered against the debtor's property.

If you decide to seize the debtor's property, ask the clerk for a Writ of Seizure and Sale of Personal Property (Form #18). You can fill in most of the form yourself, except for the sections dealing with the Sheriff's costs and the total amount you want to get from the sale. You must give the clerk a written statement about the amount still owing. The Sheriff will also need a written statement about the description and location of any of the debtor's assets, so you can combine the two statements on one piece of paper.



When you have completed your portion of the writ, make three extra copies of the writ and two of the statement. Give all these documents to the clerk, who will stamp the writ and all the copies. The clerk puts the originals on the court file. Take two copies of the writ and one of the statement to the Sheriff's Office. Keep the other copy of these documents. The writ is good for one year, and can be renewed for additional one-year periods.

This process is time-consuming, and it can be expensive. The entire process may take a few months, or longer if the debtor disputes the sale. The Sheriff will charge you a minimum of \$100 up front, and you may be charged additional amounts to cover the cost of storage and of advertising the sale of the property if the proceeds of the sale do not cover the amount of the debt and the Sheriff's costs. The Sheriff will add these costs to the amount of the judgment. If there is enough money left from the proceeds of the sale, you may be able to recover these costs.

#### 4) Examination of Debtor

This method is a way to bring the debtor before a judge to explain what assets they have which may be used to pay off the debt. It is useful when you have been unable to find out the name of the debtor's employer or of other sources of income, and/or when you can't find any of the debtor's assets (such as bank accounts, personal property or real estate). You should be sure that you have made a good effort to locate the debtor's employer or assets before you ask for an examination of the debtor.

If you want to use this method, ask the clerk for a Notice of Examination (Form #21), and an Affidavit (Form #12). Make three copies of the notice: one for your records, one to serve personally on the debtor, and one for an affidavit of service. Provide the clerk with three copies of your affidavit, which must include the following information:

- a) the date of the court order and the amount awarded;
- b) the rate of post-judgment interest payable;
- c) the date and amount of any payment received since the order was made; and,
- d) the amount owing including post-judgment interest.

The clerk will advise you of the date for the examination so that you can fill it in when you complete the rest of the form.

After the clerk has stamped the notice and the affidavit and returned your copies, you must serve the debtor personally with these documents at least 14 days before the date set for the examination. When you have served the debtor, complete an Affidavit of Service (Form #4) and return it along with a copy of the notice and your affidavit to the clerk, who will file it on the court file.

At the examination hearing, you may ask the debtor questions about the reason for non-payment, the debtor's income, property and debts, and about any property that the debtor may have sold or disposed of before or after the judgment was made. You may also ask the debtor about any past, present or future means they have to pay the debt, and whether the debtor intends to pay or has any reason for not paying. When you get this information from the debtor, you may take other enforcement action if the debtor fails to pay you the amount you are owed.

If the debtor fails to appear to be examined, you can ask the judge to order that a warrant of arrest be issued. If the order is granted, the clerk will issue a Warrant of Arrest (Form #22) to be carried out by the Sheriff or the RCMP. A debtor who wilfully fails to appear for an examination may be arrested and jailed for up to 40 days. A debtor who appears for an examination and who refuses to answer questions may be jailed for up to 40 days.



## HOW TO ENFORCE YOUR JUDGMENT

METHOD OF ENFORCEMENT	EXPLANATION	WHEN TO USE
Garnishment of Wages	a court order issued to an employer (or other person who owes the debtor money) to turn the money over to the court instead of to the debtor	<ul style="list-style-type: none"> <li>• debtor lives in the Yukon</li> <li>• you know debtor's employer</li> </ul>
Garnishment of Bank Account	a court order issued to a bank to turn over money held in the debtor's name to the court	<ul style="list-style-type: none"> <li>• debtor has a bank account in the Yukon</li> </ul>
Writ of Seizure and Sale of Personal Property (Form #18)	a court order directing the Sheriff to seize goods belonging to the debtor and to sell them at a public auction to pay the judgment	<ul style="list-style-type: none"> <li>• debtor has assets (cars, equipment, etc.) in the Yukon that can be seized</li> </ul>
Writ of Seizure and Sale of Land (Form #19)	a court order directing the Sheriff to seize and sell land owned by the debtor to pay the judgment (may require a lawyer)	<ul style="list-style-type: none"> <li>• debtor holds title to land in the Yukon</li> </ul>
Writ of Delivery (Form #20)	a court order directing the Sheriff to seize a specific item which the judge ruled was being wrongfully held by the debtor	<ul style="list-style-type: none"> <li>• only if judge made an order for the defendant to return the item to you</li> </ul>
Examination of Debtor (Form #21)	debtor is ordered to come to court to answer questions under oath about intention to pay judgment, income, assets, etc.	<ul style="list-style-type: none"> <li>• debtor lives in the Yukon</li> <li>• you don't know debtor's employer</li> <li>• you don't know of, or can't find, debtor's assets</li> </ul>
Warrant of Arrest (Form #22)	court order directing the Sheriff or peace officer to arrest the debtor	<ul style="list-style-type: none"> <li>• debtor wilfully refuses to come to court in response to Form #21</li> </ul>
Warrant of Committal (Form #23)	court order directing the Sheriff or peace officer to deliver the debtor to jail	<ul style="list-style-type: none"> <li>• debtor wilfully refuses to answer questions at examination hearing</li> </ul>
Reciprocal Enforcement	registering a judgment in another province or state where the defendant lives or has assets to enforce payment (may require a lawyer)	<ul style="list-style-type: none"> <li>• debtor lives, or has assets, outside the Yukon</li> </ul>

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**Need more information about Small Claims Court? Call:**

**Whitehorse: 667-5441**

**Dawson City: 993-5070**

**Watson Lake: 536-7551**

**Or toll-free from within the Yukon 1-800-661-0408, local 5441**

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**Yukon**  
Justice