

RULE 44 – ENFORCEMENT OF ORDERS

Order to pay money

- (1) An order to pay money to a person or into court may be enforced by a writ of execution in Form 45 or by writ of garnishment under the *Garnishee Act*.

Order for recovery of personal property or land

- (2) An order for recovery of personal property or land may be enforced by a writ of execution in Form 46 or 47.

Appointment of receiver

- (3) An order may be enforced by the appointment of a receiver under Rule 56.

Production of order before execution

- (4) No writ of execution shall issue without the production to the registry of a copy of the order upon which the writ is to issue.

Endorsement of writ

- (5) A writ of execution shall be endorsed with the name and address of the lawyer or person causing it to be issued.

Issue of writ of execution where order to pay money within a period

- (6) Where the order sought to be enforced is for the payment of money within a specified period, no writ of execution shall be issued until the expiration of the period.

Issue of writ of execution

- (7)
 - (a) Subject to these rules or an order of the court, a writ of execution may be issued by the clerk at any time during the lifetime of the order sought to be enforced.
 - (b) A writ of execution shall be prepared by the person seeking to enforce the order or the person's lawyer, shall be sealed by the clerk, and shall thereupon be deemed to be issued.
 - (c) The original writ of execution shall be filed in the registry.

Term and renewal of writ of execution

- (8)
 - (a) A writ of execution, if unexecuted, shall remain in force for two years, unless renewed.

(b) At any time before the expiration of a writ of execution, or a renewed writ of execution, the writ may be renewed for two years from the date of renewal on the application of the party issuing the writ.

(c) An application to renew a writ of execution may be made by requisition supported by an affidavit setting out the amount unpaid. The affidavit may be upon information and belief.

(d) A renewed writ of execution shall be endorsed by the court or the clerk with the date of the order granting renewal and the date of the renewal.

Enforcement costs

(9) (a) Unless the court otherwise orders, a party who is entitled to enforce an order is entitled to the costs, fees and expenses of enforcement.

(b) Subject to paragraph (c), where these rules or some other Act, statute or regulation provides that enforcement costs may be included in the amount endorsed on any process of enforcement, the clerk may fix the amount to be endorsed on the process.

(c) Where a judgment debtor alleges that he or she has satisfied an order for the payment of money or otherwise, whether or not the costs of enforcement and interest on those costs have been paid,

(i) either the judgment creditor or debtor may apply to have the costs of enforcement assessed before the clerk, and Rule 60 applies, or

(ii) the judgment debtor may apply to the clerk for an accounting.

(d) On an accounting referred to in paragraph (c)(ii), Rule 32 applies and the clerk may certify

(i) the amount, if any, then due to the judgment creditor,

(ii) the amount, if any, then due to the judgment debtor as a result of an overpayment, and

(iii) that the judgment has been paid.

(e) A certificate under paragraph (d)(iii) has the same effect as though it were an order under subrule (13).

Separate writs for costs

(10) Upon an order granting relief and costs there may be, at the election of the person entitled, either one writ or separate writs of execution for the relief granted and for the recovery of the costs.

Judgment for recovery of property other than land

- (11) Where it is sought to enforce an order for the recovery of property other than land or money by writ of execution, upon the application of the judgment creditor, the court may order that execution issue for the delivery of the property without giving the other party the option of retaining the property upon paying the assessed value, and that if the property cannot be found, and unless the court otherwise orders, the sheriff shall take possession of all the other party's lands, goods and chattels until the other party delivers the property or, at the option of the judgment creditor, until the sheriff realizes from the other party's goods and chattels the assessed value of the property.

Acknowledgment of payment

- (12) A judgment debtor may require, as a condition of paying a money judgment, that the judgment creditor forthwith execute, file and deliver an acknowledgment of payment, in Form 48.

Order that judgment has been paid

- (13) Where a judgment debtor claims to have paid the judgment but has not obtained an acknowledgment of payment from the judgment creditor, the debtor may apply to the court for an order certifying that the judgment has been paid.

Stay of execution

- (14) (a) The court may, at or after the time of making an order,
- (i) stay the execution of the order until such time as it thinks fit, or
 - (ii) provide that an order for the payment of money be payable by instalments.
- (b) Unless the court in an order under paragraph (a) (ii) otherwise provides, where an instalment is not paid by the time fixed for payment, the balance of the money remaining unpaid under the order is, at that time, due and payable without notice being given to the judgment debtor.
- (c) Without limiting the generality of paragraph (a), a party against whom an order has been made may apply to the court for a stay of execution or other relief on grounds with respect to which the supporting facts arose too late for them to be pleaded, and the court may give relief it considers just.

Application for directions

- (15) A sheriff, judgment creditor or judgment debtor may apply to the court for directions under Rule 46 concerning the sale of any property taken in execution.

Judgment summons

- (16) A judgment creditor may apply in writing to the clerk to examine a judgment debtor under the *Collection Act*, after obtaining a date from the trial coordinator, and the clerk shall issue a judgment summons in Form 49.

Order of commitment

- (17) A judgment debtor may be imprisoned by an order of commitment under the *Collection Act* in Form 50.

Debtor to be brought before court

- (18) Subject to subrule (20), a sheriff or peace officer executing an order of commitment shall promptly bring the person arrested before the court, and the person arrested may be examined by the court, and if the court considers that imprisonment is not appropriate, it may stay execution of the order and shall fix a time and place for a hearing to determine whether or not the order of commitment should be set aside or varied, and shall give directions for notice of the hearing to be given to the judgment creditor.

Application to set aside or vary order

- (19) A person who is the subject of an order of commitment may apply to the court to set aside or vary the order, and the court may direct a stay of execution of the order pending the hearing of the application and give directions for service of notice of the hearing.

Payment of debt

- (20) (a) A person who is the subject of an order of commitment may pay the amount payable endorsed on the order to the clerk.
- (b) Upon payment to the clerk of the amount payable, the clerk shall issue a receipt to that effect.
- (c) Upon payment of the amount payable or upon being shown a clerk's receipt to that effect, a sheriff or peace officer or warden shall release the person committed from custody and shall endorse the order accordingly and return it to the registry.
- (d) All money received under this rule shall forthwith be paid to the judgment creditor.

Requisition for discharge

- (21) A judgment creditor who has obtained an order of commitment may file in the registry a requisition requesting discharge of the person committed, and the clerk shall endorse the requisition and a copy with the words "This is your authority to discharge (name) from custody" above the clerk's signature, and, on being shown

the copy of the requisition, a sheriff or peace officer or warden shall release the person committed from custody and shall endorse the order accordingly and return it to the registry.

Liability imposed by order

- (22) No imprisonment under these rules extinguishes the liability imposed by an order.