

TAB 1



Enforcing Judgments

Should you conduct an Examination in aid of Execution?
Practical considerations and strategies

Mark Lieberman, *Kronis, Rotsztain, Margles, Cappel LLP*

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Should you conduct an Examination in aid of Execution? Practical considerations and strategies

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You have obtained judgment. But, now what? What are you are going to do to collect on it? Well, unless you have specific information to garnish, seize assets or enforce on property, judgment creditors are often left holding their hands up in the air wondering what to do and also wondering, why did we spend all of this money securing a judgment, when we do not know how to collect? There must be something we can do to get answers.

Yes, there are options. An examination in aid of execution is almost always an “option” to get answers. However, it may not always be the best or most practical option. This paper will go over some of the basic questions a creditor will have about examinations in aid of execution and will seek to provide answers to those questions in order to provide practical guidance to creditors throughout the process.

Why should a creditor conduct an examination?

As noted, what is the point of obtaining a judgment if you cannot collect? While this is a question that one should ask and answer **before** actually pursuing legal action, circumstances often change, leaving a creditor without an obvious way to collect. Debtors may lose their jobs, sell their property, or dispose of assets, etc., before a creditor can enforce. Or there are, of course, circumstances where you may end up with an order or judgment where collection was not an original consideration (like a cost award at the end of a trial).

An examination of a debtor pursuant to rule 60.18(2), conducted under oath, can be a very powerful tool for enforcement purposes. Rule 60.18 (2) enables a creditor to examine the debtor in relation to:

- a) The reason for nonpayment or nonperformance of the order;
- b) The debtor’s income and property;
- c) The debts owed to and by the debtor;
- d) The disposal the debtor has made of any property either before or after the making of the order;
- e) The debtor’s present, past and future means to satisfy the order;
- f) Whether the debtor intends to obey the order or has any reason for not doing so; and,
- g) Any other matter pertinent to the enforcement of the order.

As you can see, the information that can be obtained is very broad. Further, the Honourable Justice Myers in the decision of *Zakhary v. Age-Less Dermal Therapy Inc*, 2015 ONSC 5428 made it clear that the right to an examination is non-discretionary.

The examination presents an opportunity for the creditor to obtain a full picture of the debtor's financial situation and to secure information to assist with its collection efforts. A creditor should conduct an examination to not only obtain basic information about the debtor's employment, property and other assets, future receivables, and past transactions, but also for a specific purpose, such as to gain access to a mortgage payout statement, obtain information about a possible fraudulent conveyance action, or gather information on a specific asset (like the location and particulars of a vehicle or a share certificate). All of this makes it seem that examinations are a panacea for all creditors, and that one should always proceed with one, but...

Why are examinations in aid of execution not always the best approach?

There are three main reasons why examinations in aid of execution may not necessarily be the best approach: the debtor may not attend; they can be costly; and the process can be time consuming. The most important of these reasons is that the debtor often does not show up. In situations where the debtor has not already engaged counsel, it is likely that the debtor will not show up to an examination in aid in execution. In my experience, this occurs approximately 85% of the time. That is not to say that a creditor cannot force the issue, which brings us to the second consideration: cost.

Examinations in aid of execution can be fairly costly for creditors, especially in situations where the debtor does not cooperate or the creditor has to "force" the debtor to attend. If the debtor fails to attend an examination, a creditor may bring a motion to compel the debtor to attend. This would be followed by another examination, and, if the debtor again fails to attend, the creditor may bring a contempt motion (the subject of the next paper). It is not hard to see how costs can increase significantly with at least four appearances just to get the debtor in a room to be examined. In Small Claims Court, the process for obtaining a contempt hearing is quicker, as a contempt hearing can be ordered after the first failure to attend. A creditor must consider the costs and effort when beginning the examination process, especially in situations where you know you have an uncooperative debtor.

Related to the issue of cost is that of time. The process of conducting an examination in aid of execution of an uncooperative debtor can take time in terms of a motion to compel attendance, attempting to serve the debtor, and various motions on the examination itself if the debtor fails to answer questions or fails to provide responses to undertakings. The process can be extended many months, not only increasing the cost to a creditor, but also providing the debtor with further time (or as creditors like to refer to as "delay") to avoid paying and potentially dispose of assets to prevent execution. Often, if you have information on enforcement (such as bank account information or employment information for garnishment purposes) it is sometimes better not to examine first and instead use that information to attempt enforcement.

When can a creditor conduct an examination?

The Rules permit a creditor to conduct an examination as soon as judgment is obtained. Although it is highly recommended that a writ of seizure and sale be filed in the jurisdiction where the debtor resides and any jurisdiction where they own property, it is not a requirement to conduct an examination. Interestingly, Rule 60.18 indicates only that the creditor be “entitled” to enforce and that the enforcement “may” proceed in order to examine the debtor. Also, while only one examination may be held during a 12 month period, Rule 60.18 (4) permits a creditor to seek leave to examine more than once per year. Our view is that as long as a valid reason is established to conduct a second examination (i.e., changed circumstances) the court would likely grant leave for a second examination.

Who may be examined?

Yes, of course the debtor themselves can be examined, and as outlined in Rule 60.18 (3), an officer or director of a corporation, a partner in a partnership or a sole proprietor all may be examined. However, the Rules allow for creditors to obtain an order to examine “any person who the court is satisfied may have knowledge” of the debtor’s finances as outlined in Rule 60.18 (2).

Rule 60.18 (6) states that the court may grant such an order “where difficulty arises concerning the enforcement of an order”. If you think this is pretty broad, you would be correct. The courts have actually interpreted this quite broadly in the case law to allow creditors to examine non-parties to obtain information.

With that said, leave to examine a third party will not be granted as of right (and the motion must be on notice to the third party). The creditor is required to have attempted (and had difficulty) to examine the debtor. In situations where the debtor is very evasive, non-responsive, left the jurisdiction or deceased, a court may grant an order. Courts will balance not having strangers to the litigation being unduly harassed by examinations with this Rule, as the Court of Appeal noted in *CIBC v. Sutton* (1981), 34 O.R. (2d) 482, but at the same time the judge or master will have discretion to evaluate the facts and grant the order when necessary or appropriate.

Also, the question as to who can be examined under this order has generally been interpreted broadly. If the creditor can establish on reasonable grounds that the person has information to assist, the court will likely grant an order. However, the bar facing a creditor seeking such an order is not too high. As per *Speigle v. Klein* [1962] O.W.N. 37, a creditor need not establish conclusively that a person has possession of the debtor’s property. The courts have even ordered lawyers be examined as third parties where there is reasonable grounds that they were in possession of the debtor’s property (such as share certificates in the case of *Maynards Auctioneers & Appraisers Ltd. v. Commercial Industrial Auctioneers Ltd.* (1979), 18 C.P.C. 132).

Where shall one conduct an examination in aid of execution?

The procedures applicable to examinations set out in Rule 34 of the *Rules of Civil Procedure* apply to examinations in aid of execution. Rule 34 states that a debtor shall be examined in the county where that person resides, unless the court orders otherwise or unless the parties otherwise agree (Rule 34.03). If the debtor resides outside of Ontario, the same examination rules will apply.

The examination is to be held by an official examiner in the appropriate jurisdiction, unless otherwise agreed to by consent of the parties. In the Small Claims Court, an examination is held before a deputy judge in a courtroom. The examination is recorded by an official court reporter and, like an examination at an official examiner's office, a transcript can be requested.

What is the process to proceed with an examination (and how must a debtor be served)?

Generally, the process is dictated by Rule 34 of the *Rules of Civil Procedure*. A Notice of Examination (see samples at appendix A and B to this paper) is prepared and served on the person being examined. Service is valid by personal service or alternative to personal service. In practice, although alternative to personal service is permitted under the Rules, it is always better to serve the debtor personally. Not only is the debtor more likely to attend (which is the ultimate goal), but also, it will assist in efforts to secure an order to compel attendance if the debtor does not attend or does not cooperate. Service that is not personal often leaves some doubt as to whether the person being served actually received notice or not.

Also, interestingly, the Rules specifically exclude service on the debtor's solicitor as valid service for an examination in aid of execution (Rule 60.18 (7)). In practice, where a debtor has counsel, lawyers for the creditor generally consult with counsel first to arrange for the examination on consent. While the *Rules of Civil Procedure* may not technically require it, it is recommended to reach out to counsel first in order to remain consistent with the Rules of Professional Conduct and not directly contact another lawyer's client. However, if counsel for the debtor does not respond or cooperate, it is appropriate to then serve their client directly with the Notice of Examination, and in fact, this is permitted and expected pursuant to the Rules.

We are scheduling the examination. How long is the examination itself?

The Rules do not put a timeframe on an examination. In fact, the case law indicates that examinations can be a half day, a full day, or possibly longer. If you know in advance that the debtor's financial situation is complex and will require time, it is possible to schedule the examination for a full day or longer. Typically though, most examinations in aid of execution are booked for 2 hours and can be completed in one hour. Most examiner's offices reserve a half day booking for these examinations. In Small Claims Court, the examination in court is typically no longer than one hour.

The Debtor has been served. What do you do to prepare?

This is a question that is often overlooked. Counsel for creditors often treat examinations in aid of execution as a *pro forma* process and rely strictly on the questionnaire (more on that below). Lack of preparation is probably the biggest error many creditors make in the examination process. An examination is an opportunity to ask questions under oath, and without proper preparation, that opportunity can be wasted. Having knowledge about the debtor in advance of the examination not only assists the examiner with the types of questions to ask, but also allows the examiner to be prepared for the answers given and to know what to investigate further.

Specifically, review of the entire client file is expected. Where there is a credit application and a credit file, it should always be reviewed, as it often has useful information about the debtor's financial position at the time of obtaining credit. In addition, and most importantly, you should conduct searches to uncover more information about the debtor. Property searches should be conducted and reviewed. They will reveal mortgage information, liens and other encumbrances on title. An execution search should be conducted to reveal what other judgments are registered. An updated credit bureau should also be conducted. This can reveal additional useful information on the status of the debtor's credit and liabilities, as well as employment history and other items from the public record. A PPSA search is also very useful, as it can give the examiner information on what assets are being financed (or leased). Lastly, it is always helpful to dig around the internet for information on the debtor that may be in the public domain (e.g. though Facebook, LinkedIn or other social media). Information contained on these sites and others can give the examiner ammunition for questioning.

An element of your preparation for the examination should be a review of the types of relationships that support enforcement steps. For example, an employment relationship is a debtor-creditor relationship, and, therefore, the proceeds of that relationship (i.e. wages) are attachable by garnishment. Certain investment relationships amount to trust relationships, and, therefore, the investments are not subject to garnishment, but to seizure. A review of the legal relationships and the enforcement proceedings that can take advantage of these relationships, accompanied by some knowledge of the debtor's financial situation, will provide for a more fruitful examination.

Ok. I'm prepared. What questions should I ask and how should I conduct the examination?

One of the most common misconceptions about conducting an examination is that as long as you follow the questions on a good questionnaire, you will obtain the information you need (see sample questionnaires for an individual and corporate debtor at appendices C and D to this paper). While a good questionnaire is important and should always be used as guidance for the examiner, flexibility is essential when conducting an examination. Knowing when to veer off

from the standard questions to explore avenues that may lead to collection opportunities is even more important.

One of the most common mistakes an examiner can make is to stick only to the questions and not explore areas that are raised (or in some cases, not raised) by the answers (or lack thereof). The examiner's preparation as noted above will prepare them for answers and allows them to dig deeper and explore areas beyond those in the straight questionnaire. For example, if a PPSA search leads to a vehicle, be sure to question the debtor about the details, how payments are being made, and what bank account they are coming from, etc. While getting the essential information is important, exploring areas the debtor leads you to is crucial to gathering evidence that you may not otherwise be able to obtain (bank accounts, future receivables, other assets, etc.).

As previously mentioned, the examination itself is governed by the same rules as regular examinations (Rule 34 of the *Rules of Civil Procedure*). Debtors commonly do not bring all of their financial information as required by the Notice of Examination. Therefore, there are often many undertakings (and sometimes refusals) to deal with. Obtaining and following up for these undertakings, especially from a non-represented debtor can be an arduous task, but there are often key items to follow up on, such as mortgage payout statements, RRSP particulars and statements, and bank account statements amongst other items. Motions to compel this information from examinations can be done as well.

Lastly, while not commonly used, should evidence be revealed during the examination itself (or later after undertakings are answered and reviewed) that the debtor concealed or made away with property to defeat or defraud creditors, the creditor may bring a motion to the court for an immediate contempt order against the debtor (Rule 60.18(5)). We suggest that the evidence would have to be clear evidence revealed on the record for this to apply, and as a result it is not a commonly used rule.

So, any final thoughts to a judgment creditor anxiously wanting to proceed with a examination in aid of execution?

Examinations in the right situation can be a useful and effective means to collect information in order to assist you in collection efforts. A tremendous amount of evidence can be collected from the debtor on their financial situation, and in some cases, even from a third party. However, before going down this road, a creditor should carefully consider all options and also ensure proper planning and preparation is done in order to confirm it is really the best approach and also, when it is the best approach, to make the most of your opportunity.

APPENDIX “A”

NOTICE OF EXAMINATION

(FOR INDIVIDUAL)

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

[REDACTED]

Creditor

and

[REDACTED]

Debtors

NOTICE OF EXAMINATION

TO: [REDACTED]

YOU ARE REQUIRED TO ATTEND, on [REDACTED] at 10:00 a.m. at the office of:

[REDACTED]

For:

- ☐ Cross-examination on your affidavit dated (date)
- ☐ Examination for discovery
- ☐ Examination for discovery on behalf of or in place of (identify party)
- ☒ Examination in aid of execution
- ☐ Examination in aid of execution on behalf of or in place of (identify party)

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 34.10(3) of the *Rules of Civil Procedure* (the “*Rules*”) and produce the following documents and things: all bank books, driver’s license, lease agreements, phone bills, cable bills, pay stubs, utility/hydro bills, credit card statements, bank statements, financial statements, T4 slips, tax returns for past 3 years, welfare stubs, unemployment insurance stubs/receipts, letter books, share certificates, investment account statements, bills of exchange, promissory notes, bills of sale, mortgage statements, chattel mortgages, mortgages, assignment of mortgages and all other securities for money of any kind and all evidence of indebtedness of any person to you, and all ledgers, books, and documents or paper writings of any kind whatsoever showing your financial position, since the debt or liability, on which this judgment was obtained; and be prepared to answer questions and produce documentation in relation to the matters listed in subrule 60.18(2) of the *Rules*.

[REDACTED]

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[REDACTED]
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Lawyers for the Creditor

TO:

[REDACTED]

Debtor

[REDACTED]
Creditor

-and-

[REDACTED]
Debtors

Court File [REDACTED]

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
[REDACTED]

NOTICE OF EXAMINATION

**KRONIS, ROTSZTAIN,
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Fax: (416) 225-2593

Email: [REDACTED]

Lawyers for the Creditor

Our File No.: [REDACTED]

APPENDIX “B”

NOTICE OF EXAMINATION

(FOR CORPORATION)

Court File No. [REDACTED]

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

[REDACTED]

Creditor

and

[REDACTED]

Debtors

NOTICE OF EXAMINATION

TO: [REDACTED]

YOU ARE REQUIRED TO ATTEND, on [REDACTED], at 10:00 a.m. at the
office of:

[REDACTED]
[REDACTED]
[REDACTED]
Phone No.: [REDACTED]
Fax No.: [REDACTED]

For:

- ☐ Cross-examination on your affidavit dated
- ☐ Examination for discovery
- ☐ Examination for discovery on behalf of or in place of
- ☐ Examination in aid of execution
- ☒ Examination in aid of execution on behalf of or in place of [REDACTED]

YOU ARE REQUIRED TO BRING WITH YOU and produce at the examination the documents mentioned in subrule 34.10(3) and subrule 60.18(2) of the *Rules of Civil Procedure*:

- (a) the reason for nonpayment or nonperformance of the order;
- (b) the debtor's income and property;
- (c) the debts owed to and by the debtor;
- (d) the disposal the debtor has made of any property either before or after the making of the order;
- (e) the debtor's present, past and future means to satisfy the order;
- (f) whether the debtor intends to obey the order or has any reason for not doing so; and
- (g) any other matter pertinent to the enforcement of the order;

and the following documents and things: all articles of incorporation, minute books including shareholder agreements, annual financial statements including income statements, accounting records, bank books, lease agreements, phone bills, cable bills, pay stubs to employees, utility/hydro bills, credit card statements, bank statements, annual tax returns for past 3 years, letter books, bills of exchange, promissory notes, bills of sale, chattel mortgages, mortgages, assignment of mortgages and all other securities for money of any kind and all evidence of indebtedness of any person or corporate entity to you, and all ledgers, books, and documents or paper writings of any kind whatsoever showing the financial position of the corporation since the debt or liability, on which this judgment was obtained, was incurred.

[REDACTED]

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Lawyers for the Creditor

TO:

[REDACTED]

Debtor

[REDACTED]
Creditor

-and-

[REDACTED]
Debtors

Court File No. [REDACTED]

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
BRAMPTON

NOTICE OF EXAMINATION

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APPENDIX “C”

EXAMINATION QUESTIONNAIRE

(FOR INDIVIDUAL)

Examination in Aid of Execution (JDX)

Style of Cause:

Name of Debtor:

Place of Examination:

KRMC File No.

Supervising Lawyer:

Examiner:

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Date of Judgment:

Date Writ of Seizure and Sale filed with Sheriff:

Date Writ of Seizure filed with Land Titles Office:

Renewal Date:

ASK FOR THE DEBTOR'S DRIVERS LICENSE – GET SOMEONE IN THE REPORTERS OFFICE TO PHOTOCOPY IT FOR YOU

ANYWHERE IT SAYS "GET UNDERTAKING" receive the debtor's personal undertaking on record to provide you with the documentation, either via email, fax, or personally provide a photocopy.

I. PARTICULARS OF PERSON EXAMINED

A. Personal History

- Full Name (including middle names):
- Birth Date:
- Place of Birth:
- Citizenship status:
- Residence address:
- Phone numbers:
 - Home Telephone:
 - Cell Phone:
 - Is this the phone number where we can reach them?
 - Can we leave a voice message at this number?
 - If not: where?
- Are you the person who owes money to _____ according to this judgment dated?
- Do you ever use any other name(s)? If so, what names:
- S.I.N.:
- Driver's License Number:

- Marital Status:
 Married: ☐ Single ☐ Divorced: ☐ Living Apart: ☐ Common Law: ☐
- Family Information:
 - Children:
 - How many:
 - Other dependants?
 - Total family group equals # persons:

B. Employment Status

- Unemployed: ☐ Employee: ☐ Self-employed: ☐ Part-Time: ☐
- Do you have a copy of your tax return?
 - If not **get** undertaking
 - What is your occupation?
 - For how long?
 - Name and address of employer:
 - Person to contact there, ie a superior?
 - Position:
 - Present Wages:
 - Obtain copy of pay slips (**get undertaking**):
 - Check gross payments:
 - (Optional) Check deductions for:
 - Income tax
 - Insurance plans
 - Dental insurance
 - Union fees
 - RRSP deductions
 - Pensions
 - **Optional (important if self-employed):**
 - When are you paid (day of week)
 - Other forms of salary or wages:
 - Bonus schemes:
 - Commissions:
 - Fees:
 - Merchandise:

- Are you in any way related to your employer?
- If unemployed, how much do you receive monthly?
- Do you receive any other payments monthly?

- Previous Employers (not important unless previous employers = debtors to the debtor)

Name	Address	How Long

- Have you ever been in business on your own?
 - When:
 - Where:
 - Inventory:
 - What:
 - Where kept:
 - Employees?
- (Optional): What is your highest level of education achieved?
- Have you been involved in any partnerships?
 - When
 - Where
- Have you ever carried on business under any trade or business name?
 - If so, what name
 - Inventory
 - What
 - Where kept
- Are you currently an Officer or Director of any corporation?
 - If so which corporation?
- Have you been an officer or director within the last two years? (If so obtain particulars)
- Do you currently have any part-time jobs?
 - If so where?
 - Name:
 - Address:
 - How much do you get paid?

II. PARTICULARS OF CURRENT PLACE OF RESIDENCE

A. Type of Accommodation:

- Description of Property (*i.e. two-storey, garage, number of bedrooms*)
 - Can search terraviva for further particulars if required (ie, legal description, sq. footage, etc)
- Municipal Address:
- Do you own it (*i.e. absolute, beneficial, joint tenant or tenant in common*)?
- Date of purchase:
- Amount paid:
- Do you remember what the house was appraised at when purchased?
- Present value:
- Any appraisals made recently?
- Who lives there?
- Particulars of Mortgage including:
 - Amount :
 - Balance owing:
 - Terms:
 - Address of Mortgagee:

OBTAIN UNDERTAKING TO PROVIDE THE MOST RECENT MORTGAGE STATEMENT

B. If They Do Not Own Their Current Residence

- Who does own the building:
 - Name:
 - Address:
- Rent:
 - How much?
 - When is it due?
 - Is rent up to date?
 - To whom do you give the rent?
 - Do you pay rent by cash or cheque?
 - Who signs the cheque?
 - Do you have roommates?
 - If so, do they owe you money?

- Is there a lease?
 - Who signed it?

III. PARTICULARS OF SPOUSE

- Full Name:
 - Maiden Name (if wife):
- Address:
- Age:
- Telephone:
- Employment status:

Unemployed: ☐ Employed: ☐ Self-employed: ☐ Part-Time: ☐

- Name of employer:
- Position:
- Address:
- Telephone number:
- Salary:
 - If relevant ask about tips, bonuses, profit sharing, moneys owing by employer:
 - And when paid?
- How long he/she worked there?
- Where did he/she last work?
 - Name:
 - Address:
 - Moneys due:
 - How much:
 - Any support to other people:

IV. PARTICULARS OF CHILDREN

<i>Name</i>	<i>Age</i>	<i>Address</i>	<i>Employed</i>	<i>Live with Debtor?</i>

V. PARTICULARS OF PERSONAL BUDGET

Sources of Income and Expenses

<i>Income (per month)</i>	<i>Expenses (per month)</i>
---------------------------	-----------------------------

1. Weekly Salary	\$	1. Food:	\$
------------------	----	----------	----

2.	Part-time Income	\$		Groceries	
3.	Room and Board from Others	\$		Meals outside Home	
4.	Pensions	\$		2. Clothing	\$
5.	Unemployment Insurance	\$		3. Housing:	
6.	Workers' Compensation	\$		Rent or mortgage	\$
7.	Family Allowance	\$		Taxes	\$
8.	Annuities	\$		Fuel	\$
9.	Inheritances	\$		Telephone	\$
10	Other (if applicable):			Cable	\$
	Rental income	\$	\	Gardening	\$
	Dividends	\$	-	Repairs and Maintenance	
	Tips	\$		Transportation	\$
	Commissions	\$		4. Insurance — home and life	\$
	Royalties	\$		5. Education and Recreation	\$
	License fees	\$		6. Medical and Dental Drugs	\$
	Bonuses	\$		7. Bank Loans	\$
	Public Assistance	\$		8. Toiletries	\$
	Support from others	\$		9. Laundry	\$
				10. Deductions from Income:	\$
				11. CPP	
				U/C	\$
				Tax	\$
				Pension	\$
				Dues	\$
				Insurance	\$

	Support	\$
	RRSP	\$
	Other (specify)	\$
12		\$

TOTAL _____

VI. ASSETS OTHER THAN WAGES

A. Real Estate (Besides primary residence)

Do you own any real estate:

<i>Street Address</i>	<i>City</i>	<i>Tenants</i>
1		
2		
3		

Do you own other real estate?

If not, when did you last own real estate?

How did you transfer it, and when?

To whom and for how much?

Who was the solicitor acting on your behalf?

B. Vehicles

Do you own (and/or lease or have the use of) an automobile or van?

Make:

Year:

Model:

License No.:

Serial No.:

Where is it kept?

What use is made of it?

Value?

How much do you still owe on it?

To whom?

Name:

Address:

What type of security is there for this debt?

Do you own any other automobiles? Provide the same information as above for each vehicle:

If no automobile owned, do you drive an automobile (if yes, ask particulars above and who does own the car)

When did you last own an automobile?

To whom sold and for how much?

Security taken and by whom?

Were there any liens on the car? By whom?

Any other transport devices (ie, tractors, snowmobiles, motorcycles, boats, etc)?

C. Bank Accounts

Do you have any bank accounts (ie chequing, savings, company account, joint account, RRSP accounts, tax free savings accounts, etc)

If yes:

<i>Bank</i>	<i>Address</i>	<i>Type & Account No.</i>	<i>Balance</i>

(Get Undertaking as to statements for the above)

If no bank accounts:

- When did you last have a bank/trust company account?
- Where?
- When did you close it?

When did you last have any claim to or interest in any bank account in any name?

Have you ever had the right of access to any safe deposit box?

- Box Number:
- Bank:
- Address:

D. Specific Assets

	Specific Assets	Yes	No	Describe
1	Mortgages			
2	I.O.U.'s			
3	Promissory notes			
4	Loan agreements			
5	Other security for payment of money			
6	Government bonds			
7	Other bonds			
8	Common stock in public and private			
9	Preferred stock in corporations			
10	R.R.S.P.			

E. Life Insurance

Do you carry life insurance on yourself? Yes/No.
Check whether term, group or whole life.

	<i>Name of Insurance Co.</i>	<i>Policy No.</i>	<i>Amount of Policy</i>	<i>Beneficiary</i>	<i>Premium</i>	<i>Who pays Premium</i>	<i>Cash Surrender Value</i>
1.							
2.							
3.							
4.							

Do you carry life insurance on your spouse or any person in whom you have an interest? If yes,
please give following information:

	<i>Name of Insurance Co.</i>	<i>Policy No.</i>	<i>Amount of Policy</i>	<i>Beneficiary</i>	<i>Premium</i>	<i>Who pays Premium</i>	<i>Cash Surrender Value</i>
1.							
2.							
3.							
4.							

F. Moneys Owning to Defendant

Is there money owing to you?

	<i>Name of Debtor</i>	<i>Address</i>	<i>Amount</i>	<i>Security Held</i>
1				
2				
3				
4				

G. Miscellaneous

Have you any income from any other source whatsoever?

Do you have any business deals pending which will likely give you money?

Have you any assets outside Ontario?

Have you any interest as beneficiary, remainderman, right of reversion, executor, administrator, trustee, guardian or otherwise under any will or *inter vivos* of trust or in any estate?

Have you ever been a party to a trust agreement or other trust instrument? Did you at any time put any money or property of any kind in trust for yourself or anyone else?

Have you received any money or property of any kind under any will or by inheritance or from any estate?

VII. ASSETS OF SPOUSE AND CHILDREN

A. Real Estate

Does your spouse own any real estate? Yes/No.

Do your children own any real estate? Yes/No.

	<i>Locations:</i>	<i>Street Address</i>	<i>City</i>	<i>Tenants</i>
1				

2				
3				
4				

B. Automobiles

	SPOUSE	CHILD 1	CHILD 2	CHILD 3
Make				
License No.				
Year				
Model Serial No.				
Where kept?				
What use made of it?				
How much does he/she still owe on it?				
To whom?				
Address:				
Equity in owned auto?				
What type of security is there for this debt?				
Does he/she own any other cars?				
If no automobile owned, does he/she <u>drive</u> an automobile? Yes/No. If yes ask for particulars above				
When did he/she last own an automobile?				
To whom sold:				
Amount:				
To whom sold:				
Security taken?				
• Name:				
• Address:				
• Telephone:				

C. Bank Accounts

Do your spouse or children have any bank accounts? Yes/No. If yes, give the following information:

	<i>Bank</i>	<i>Address</i>	<i>Type & Account No.</i>	<i>Balance</i>
1				
2				
3				
4				

Do you give them any money to put into the account(s)?

If yes, how much? When?

If no, where did they get it?

VIII. LIST OF CREDITORS (ie, credit cards, mortgage, lines of credit, car payment, owes the government, suppliers or employees (if biz))

Present debts (approximate) \$ _____

	Name of Creditor	Address	Amount	Security Held	Judgment
1					
2					
3					
4					
5					
6					

7					
8					
9					
10					

Give details of payments to other creditors:

Who:

How Much:

When:

Why:

What is the cause of your financial difficulty? Explain briefly:

Do you hold property in trust for anyone else?

During the past year did you guarantee any indebtedness for anyone else?

During the past year did you make or endorse anything for anyone?

Are you holding in your name or possession for the benefit of anyone else any property of any kind whether real property, personal property or otherwise?

Is anyone holding your property in trust for you?

IX. MISCELLANEOUS

Do you have any outstanding judgments or interest in any judgments against you or your company?

Do you any claims of any kind against anyone?

Have you any interest of any kind in any mortgage or any lease or interest in any leasehold on any real or personal property?

Are you a party to any action now pending in the courts?

Have you filed your income tax return for the last two years? (*Obtain a copy or*
GET UNDERTAKING)

Any tax refunds?

Have you ever been bankrupt? (*If so obtain particulars or undertaking to receive particulars*)

Does someone else have possession of your property (use discretion here)?

X. DISPOSTION OF ASSETS

Have you sold or transferred any of the assets in the above questions from the debt date to present?

Have you allowed anyone to use your land or property free of charge? Nominal (trifling, small) charge?

Have you assigned or transferred any of your property to anyone by way of security within the last five years?

XI. PROPOSED SETTLEMENTS

The amount owing to our client is . Is there any possibility that you may be able to get the money together to pay this debt?

If yes:

When:

What terms:

Suggested payment:

\$ per week, month; payments to be made starting

What arrangements have you made for paying this judgment?

Why has the judgment not been paid?

GIVE BUSINESS CARD, ENSURE ALL UNDERTAKINGS ARE FOLLOWED UP WITH

APPENDIX “D”

EXAMINATION QUESTIONNAIRE

(FOR CORPORATION)

Questions to ask an Officer
of a Corporate Judgment Debtor

1. INTRODUCTION:

1. Name of Officer: _____
2. Officer's Address: _____
3. Is this the Notice of Appointment that was served upon you?

4. Are you aware of the amount owing to this Creditor as a result of judgment?

5. What is your position with the Company? _____

6. How long have you been with the Company? _____

2. MINUTE BOOK:

1. Location of the Minute Book _____

2. Would you please make the Minute Book available to me if I want to examine them? _____

3. FINANCIAL STATEMENTS:

1. For present period, Location of Books of Accounting, Balance Sheets, General Ledger, Bank Statements etc. _____

2. For last year, Location of Books of Accounting, Balance Sheets, General Ledger, Bank Statements etc. _____

3. For five years prior, Location of Books of Accounting, Balance Sheets, General Ledger, Bank Statements etc. _____

4. What is the most recent audited financial statements?

5. Please describe the particulars of the revenues.

6. Please describe the particulars of the expenses.

7. Please describe the particulars of loans, goods provided to, advances, dividends to shareholders, officers etc.

8. Please describe, for the past 3 years, the salaries, benefits and other moneys paid to officers, directors, and employees

9. Has the Company provided any moneys, goods or benefits to relatives of officers, directors, shareholders?

10. Any extraordinary expenses or revenues during period?

11. Has the Company during the past five years returned any goods to creditors or paid creditors out of the normal course of business?

12. Copy of Bank Statements.

13. Who are the Company's auditors/accountants/solicitors?

4. PARTICULARS OF CORPORATION:

1. Date of Incorporation. _____

2. What is the authorized capital?

3. What kinds of shares were originally issued by the Company?

4. What was their original Value? _____

5. How many shares were originally issued? _____

6. Who were the original shareholders?

7. Who are the present shareholders?

8. Could you please give me the particulars of the transfer of shares?

9. Have any shares been transferred since date of judgment?

10. Were the shares paid for in full?

11. When was the last shareholder meeting? _____

12. Who were the original directors?

13. Who are the present directors?

14. Who were the original officers?

15. Who are the present officers?

16. Where is the Company's Head Office?

17. Are the premises owned or leased? _____

18. Does the premises have an insurance policy? _____

19. Are there other owned or leased premises? _____

20. Were the premises ever owned by the Company?

21. Could you please describe the type of
business _____

22. What was the cause for financial difficulties?

5. CREDITORS OF COMPANY:

1. Are there any other creditors? _____

2. What is the status of their claims, ie: Do they have secured claims or judgments?

3. Do any creditors have any form of security upon the Company's assets?

4. If so, what type, when given, and circumstances at time when given?

5. Please provide a list of all the creditors.

6. Is the Company making regular payments on any debts?

7. Please provide a list of all of the Accounts Payable?

8. Please provide a list of all of the Debts owing to shareholders (salaries up to date?)

9. Does the Company owe the Bank any money either on a loan or overdraft?

10. How does the Bank secure its indebtedness (ie: assignment of accounts receivable, Section 178 security, personal guarantees, floating charge, or security agreement?)

11. Are there any mortgages or liens against auto-mobile equipment, furniture, trade fixtures or general equipment or inventory of the Company?

12. Has the company returned any goods for credit out of ordinary course of business in the last twelve months?

13. Are any of the Company's goods taken on consignment or sold on consignment?

14. Income tax (owed or paid) provide copies of returns.

15. Does the Company owe any other money whatsoever?

6. ASSETS OF THE COMPANY:

1. Furniture

2. Office and plant equipment.

3. Vehicles – Type, when acquired, how used

4. Trade fixtures

5. Inventory

6. Please provide a list of Accounts receivable

7. Please also provide a list of non business loans receivable

8. Lease for office or other leases owned by Company

9. Sublets? _____

10. Does the company receive any rents?

11. Any holdings outside Canada?

12. Is the Company party to any trust agreement?

13. If so, with whom did the Company deal?

14. Did the Company own any bonds?

15. Are any mortgages payable to the Company?

16. Are any loan agreements payable to the Company?

17. Are any securities payable to the Company?

18. Did the Company own any common stock in other corporations?

19. Is the Company partner in other businesses?

20. Does the Company own any other personal property (ie: Television, Refrigerator)?

21. Does the Company own any real property?

22. Does the Company pay rent for any property?

23. Does the Company own any valuable property?

24. Where is the Company's Bank Account?

25. What is the Company's Bank Account Number?

26. What is the balance of the Company's Bank Account?

27. Does the Company have an Account at Trust Co.?

28. Does the Company have investments?

29. Has the Company money ever been put into accounts of persons other than the Company?

30. Have persons other than the Company ever paid debts of the Company?

31. Does the Company have a Safety-Deposit Box? _____

32. Where is it located? _____

33. What are the contents of it?

34. Other operating Divisions of the Company?

35. Does the Company hold any property in trust?

36. Does anyone hold any property in trust for Company?

37. Has the Company transferred any property other than in ordinary course of business in the last three years? Please provide details.

38. Does the Company have any property or effects of any nature that hasn't been mentioned?

39. Has the Company sold any assets?

40. If yes, to whom?

41. Has the Company ever sued anyone?

42. Is there a Judgment owing?

43. Does the Company have an action pending?

7. END:

1. Suggested payment terms

2. Any arrangements to pay judgment?

3. Why has judgment not been paid?

4. Does the company have any other assets or liabilities of any nature or kind that you have not mentioned?

5. Have you made full and frank disclosure of all of the assets or liabilities of the Company?
