

EXAMINATIONS IN AID OF EXECUTION

INTRODUCTION

The following is a general guide only as to the conduct of an examination in aid of execution. In the final analysis, your professional judgment and understanding of the facts will govern how to adapt this checklist to a particular case.

Thorough preparation is the key to examination in aid of execution.

LIST OF AUTHORITIES

As with Debtor-Creditor law, the difficulty with this area is that there is little written on the subject, and the reported decisions are often contradictory. Even so, there are a number of useful sources of information.

Debtor-Creditor Law: Enforcement Saskatchewan Bar Admission Course.

These materials are more rudimentary than Dunlop, but are a good synopsis. This material is updated on a regular basis.

Dunlop, *Creditor-Debtor Law in Canada*, 2nd Ed., (Toronto: Carswell, 1995).

The most complete source. Material on Examination in Aid of Execution may be found in Chapter 8.

Holden, "Collection of Debts," *Law Society of Upper Canada, Special Lectures*, (Toronto: The Law Society of Upper Canada, 1954).

Likely the genesis of all checklists relating to Examinations in Aid of Execution.

McKeague & Vorony, *The Queen's Bench Rules of Saskatchewan: Annotated* (out of print), (Regina: Law Society of Saskatchewan, 1998).

See especially Part 31.

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CHECKLIST

A. COMPELLING ATTENDANCE

1. Who to Examine.
 - 1.1 In case of individual debtor, you will want to examine that debtor. You may do so without order.
 - 1.2 In case of corporate debtor, *ex parte* application must be made under Rule 383(3) to name appropriate person to be directed to attend for examination.
 - 1.3 If it is alleged that property has been transferred to another person or firm, under Rule 383(4), an order may be sought to compel recipient to attend for examination in aid of execution. This must be done on notice to judgment debtor.
2. The Appointment.
 - 2.1 Book an appointment for the examination with court reporter. Confirm in writing.
 - 2.2 Once you have determined who you wish to examine, obtain appointment from Local Registrar, ensuring that examination will be in judicial centre closest to where examinee resides.
 - 2.3 If you will require examinee to produce documents, issue subpoena *duces tecum* in appropriate form.
 - 2.4 Serve appointment and subpoena, if used, conduct money and witness fee, as far in advance of examination as you can. Serve debtor personally, not through his or her solicitor. If you wish to examine a person in more than one capacity (e.g. as guarantor and director), indicate this on appointment and subpoena. If order for examination was granted, have copy of this served at same time.
 - 2.5 Send copy of appointment to court reporter, under cover of a letter, seeking confirmation of date and location.
 - 2.6 Obtain proof of service of appointment (and subpoena), and of witness fee and conduct money. Retain on your file.

Notes:

- 2.7 Review and update any personal information obtained on debtor (refer to section B.4 of *General Collections* checklist). The difficulty in conducting examination in aid of execution is that judgment debtor knows the lay of the land better than you. Moreover, there is substantial incentive on part of judgment debtor to mislead you. Canvass all information sources available to you to obtain independent information as to debtor's assets. This information will assist you in preparing for examination, and will serve as a check on debtor's veracity.
- 2.8 Prepare questions, in accordance with the following checklist.
- 2.9 If examinee appears, proceed with examination.
3. Failure to Appear.
 - 3.1 If examinee does not appear after one-half hour, have court reporter make a note of this.
 - 3.2 Upon return to your office, prepare Affidavit and have court reporter swear to non-attendance.
 - 3.3 File proof of service of Appointment (and subpoena) and witness fee and conduct money. File Affidavit of Court Reporter, before proceeding further.
 - 3.4 Prepare Notice of Motion and draft order, seeking order committing examinee for contempt of court, or in alternative, requiring him to attend at time or place, to be specified in draft order. If examinee is to bring documents with him or her, ensure that draft order reflects this.
 - 3.5 Make necessary arrangements to have examinee served with Notice of Motion, affidavit material and draft order, well in advance of return date.
 - 3.6 Remember that application for committal requires strict adherence to rules. Ensure that all steps are taken in appropriate time frames, and that there is technical compliance with all Rules of Court respecting motions and affidavits.
 - 3.7 File Proof of Service of Motion and supporting documents.
 - 3.8 Appear on return date, seeking order. If this is first appearance, be prepared to have court order re-attendance.

Notes:

- 3.9 In case of second or subsequent failure to appear, be prepared to argue vigorously for committal order.
- 3.10 In event that order to attend is granted, make necessary arrangements to have this order served upon examinee and re-attend at court reporter at appointed time and place.

B. THE EXAMINATION

The following are suggested areas that you may wish to canvass with examinee. Remember, however, that full preparation is required for examination, mindful at all times of particular circumstances of examinee and/or judgment debtor.

The following suggestions are premised on examination of individual judgment debtor. Appropriate departures should be considered for other types of examinations

- 1. Preliminary Matters.
 - 1.1 Name, aliases.
 - 1.2 Date of birth.
 - 1.3 Address and telephone number.
 - 1.4 Whether this person is, in fact, judgment debtor in these proceedings.
 - 1.5 Specify date and amount of judgment.
 - 1.6 Discuss mechanics of examination in aid of execution, including:
 - 1.6.1 Will examine regarding assets to best of examinee's ability.
 - 1.6.2 Question relating to property owned now, and property disposed of since debt was incurred.
 - 1.6.3 Questions relating to assets held in trust for judgment debtor.
 - 1.6.4 Answers must be verbal.
- 2. Income Earning Activities.
 - 2.1 Employment.
 - 2.1.1 Occupation.

Notes:

- 2.1.2 Present employment, including:
 - a. Name and address of employer.
 - b. Length of employment.
 - c. Title of position.
 - d. Full or part-time.
 - e. Disciplinary action or prospects for promotion.
 - f. Whether strictly an employee, or a part owner of business.
 - g. Basis of payment.
 - h. When is employment income paid, date and the like?
 - i. Is payment made by way of cheque or direct deposit?
 - j. Is employee entitled to any bonuses? If so, when paid, and how?
 - k. Any stock participation plan? How does it work?
 - l. Any expenses paid by employer? If so, how, and when? Any amounts currently owing?
 - m. What deductions are made from pay cheque, income tax returns filed for last five years? If so, produce copies, and verify truth of statements contained therein.
- 2.2 Any part time employment in addition to the foregoing? If so, repeat questions above.
- 2.3 If unemployed, obtain full details of termination. Why did it occur, was there severance package? How was severance package paid? Is any of it yet available for attachment?
- 2.4 Shareholdings or partnership interests that debtor may have in any business.
- 2.5 If presently self-employed, or employed by business in which debtor has interest:
 - 2.5.1 Name of business.
 - 2.5.2 Business premises.

Notes:

- 2.5.3 Registered office.
 - 2.5.4 Nature of partnership or shareholding interest.
 - 2.5.5 Names of other partners or shareholders.
 - 2.5.6 Is there any partnership agreement or shareholders agreement in place? Ask for copy of agreement.
 - 2.5.7 Any financial statements for business available? Ask for copies.
 - 2.5.8 What is current financial status of business? How much is owing? To what banks? What security is held?
 - 2.5.9 Does business owe any money to debtor? How much, when is it payable and how much has been paid in past?
 - 2.5.10 Income tax returns should have been subpoenaed and should be checked. Questions arising should be addressed.
3. Real Property.
- 3.1 Present Residence:
 - 3.1.1 Address.
 - 3.1.2 Owned or rented?
 - 3.1.3 If rented, amount of rent, when due and whether paid by cash or cheque?
 - 3.1.4 Name of landlord?
 - 3.1.5 Details of lease, including who signed it?
 - 3.1.6 Relationship of landlord to debtor? In particular, if landlord is related to debtor, how did landlord obtain property?
 - 3.1.7 If owned, owned wholly or jointly? Date of purchase? Amount of mortgage payments? How mortgage payments are met?
 - 3.1.8 Equity in property? Ask for copy of Certificate of Title and of any mortgage, or other such arrangement.
 - 3.2 Does debtor own or have interest in other real property by him or herself? In partnership with anyone?

Notes:

- 3.3 Does debtor have interest in real property outside of Saskatchewan? If so, where located?
- 3.4 Has debtor disposed of any real property in last 24 months?
- 3.5 For each piece of property, obtain:
 - 3.5.1 Location, address and legal description.
 - 3.5.2 Nature of interest held, whether joint tenant, tenancy-in-common, trustee, beneficiary or so on?
 - 3.5.3 Length of time property has been owned or was owned?
 - 3.5.4 Present value of property, or sale price of property when disposed?
 - 3.5.5 Whether leased, and if so, name of tenant and any sublessees?
 - 3.5.6 For property currently owned, how did debtor obtain money to purchase property?
 - 3.5.7 For property sold, what did debtor do with proceeds?
- 3.6 If debtor does not own any real property, when was last time such property was owned, and to whom was it transferred? What was the consideration and what was done with the consideration?
- 4. Other Property.
 - 4.1 Motor Vehicles:
 - 4.1.1 Does debtor own any vehicles? If so, obtain full description, including license plate and V.I.N. (you may wish to backstop this with a prior SGI search).
 - 4.1.2 Who has legal title to vehicles? Owned jointly, individually, and so on?
 - 4.1.3 Are vehicles used for business, trade, calling or profession? If so, full details as to how vehicle is used?
 - 4.1.4 If a farmer, how are vehicles used in farming operation?
 - 4.1.5 How did debtor get to examination in aid of execution? Which vehicle was brought? Where is it currently parked? Is debtor prepared to turn vehicle over to Sheriff today?

Notes:

- 4.1.6 If vehicles are encumbered, nature of encumbrance?
- 4.1.7 If debtor does not own vehicle, when last owned, when disposed and destination of proceeds?
- 4.2 Other vehicles, such as boats, planes, all terrain vehicles, trailers and snowmobiles:
 - 4.2.1 Description, including registration number, type of interest, how long owned, value, whether used in business, trade, profession or calling?
 - 4.2.2 Money owing and whether encumbered?
 - 4.2.3 Present location?
- 4.3 Machinery, equipment, tools, office furniture and so on:
 - 4.3.1 Description?
 - 4.3.2 Nature of debtor's interest?
 - 4.3.3 How long owned?
 - 4.3.4 Location?
 - 4.3.5 Value?
 - 4.3.6 Whether used in trade, business, profession or calling? If so, nature and extent of use.
- 4.4 Investments (bonds, stocks, mutual funds, GIC's):
 - 4.4.1 Detailed description, including number of shares, nature of shares and so on?
 - 4.4.2 How long held?
 - 4.4.3 Where are certificates located?
 - 4.4.4 Who is transfer agent?
 - 4.4.5 Does debtor own alone or jointly with someone else?
 - 4.4.6 Are interest payments or dividend payments made periodically? If so, when?
- 4.5 RRSP's: Name of selling institution and trustee? Obtain all details, including whether self-directed, collapsible and how plan is held. Obtain copy of plan.
- 4.6 Accounts of financial institutions?

Notes:

- 4.6.1 Name of financial institution?
- 4.6.2 Branch at which account maintained?
- 4.6.3 Approximate amount on deposit?
- 4.6.4 Type of account (chequing, savings, term deposit)?
- 4.6.5 Is interest paid on regular basis? If so, when?
- 4.6.6 Is account joint, or solely in name of debtor? If joint, name of other account holders?
- 4.7 Insurance (on examinee's life, someone else's life, annuities, accident insurance, disability plans):
 - 4.7.1 Description of insurance.
 - 4.7.2 Carrier and policy number? Obtain copy of policy.
 - 4.7.3 Nature of interest? (Is it insurance on examinee's life, disability insurance, or so on?)
 - 4.7.4 Beneficiary?
 - 4.7.5 Face value, cash surrender value of plan now, maturity date and value as at maturity?
 - 4.7.6 Amount and timing of payments, including who makes payments?
- 4.8 Money owing to debtor?
 - 4.8.1 Type of obligation (promissory note, IOU, judgment, secured debt and so on)?
 - 4.8.2 Amount owed?
 - 4.8.3 Due now, or in future?
 - 4.8.4 Current value of obligation, and if not owing, value at maturity?
 - 4.8.5 Is debt owing to judgment debtor alone? If not, identity of other joint creditors?
 - 4.8.6 Debtor's name, address, occupation and employer?
 - 4.8.7 Any security held for debt? If so, nature of security?
 - 4.8.8 Has judgment debtor taken any steps to collect?

Notes:

- 4.9 Cheques, bonds, negotiable instruments, travelers cheques and so on?
 - 4.9.1 Description of document held?
 - 4.9.2 Amount?
 - 4.9.3 Whether held by debtor alone, or jointly with someone else, including details?
- 4.10 Any other investments in businesses, not covered above, including full details of business, address and so on?
- 4.11 Furnishings and personal belongings:
 - 4.11.1 What type of furniture does debtor own? What is its value?
 - 4.11.2 Does debtor own anything special (e.g. expensive stereo, big screen TV, art, antiques or the like, which might exceed household furnishings exemption)?
 - 4.11.3 Is debtor involved in any hobbies, crafts or other special interests, requiring specialized equipment? If so, what equipment is owned and what is its value?
- 4.12 Cash: cash currently in debtor's pocket?
- 4.13 Cash held at home or in other locations?
- 4.14 Safety deposit boxes? Where are they located? What do they contain? What in them is of any money, and who has keys to safety deposit box?
- 4.15 Any unexecuted contracts?
- 4.16 Is there agreement for sale for land or property which is not executed? If so, full details including name of other party, value, amount paid and so on?
- 4.17 Any property presently in anyone else's possession?
 - 4.17.1 For repair? Pawned? Loaned?
 - 4.17.2 If so, obtain full details including location and name of person who currently has possession?
- 4.18 Is judgment debtor the beneficiary of family trust or any other trust? If so, nature of trust? Name of trustee? Value of interest? Name of other beneficiaries?

Notes:

5. Disposition of Assets.
 - 5.1 Has debtor sold, disposed or transferred any assets since debt arose? If so: description of property and debtor's interest in that property?
 - 5.2 Manner in which property was disposed?
 - 5.3 Assignment, gift, encumbrance, sale?
 - 5.4 Identity of transferee? Any relationship to judgment debtor? Did transferee know of debtor's financial position, and of estate?
 - 5.5 Date of disposition?
 - 5.6 Any value received for disposition?
 - 5.7 Does debtor still have interest in property?
 - 5.8 At time of disposition, was debtor: paying debts as they became due? In a position where realizable value of his or her assets exceeded that of his or her liabilities?
 - 5.9 If disposition was payment, was it in ordinary course of business? Was it at demand of creditor?
 - 5.10 Has debtor granted security in his or her property to anyone?
 - 5.11 Has debtor allowed anyone to use his or her property without charging for use?
 - 5.12 Types of gifts made to family members, including Christmas gifts, birthday gifts and so on?
6. Family Means and Assets.
 - 6.1 Marital status of debtor.
 - 6.2 If married or common law, spouse's name?
 - 6.3 Spouse's employment status? If employed, position held?
 - 6.3.1 Employer, including address?
 - 6.3.2 Approximate earnings?
 - 6.3.3 Length of employment?
 - 6.4 If unemployed: previous employment? When terminated? Any money owing?

Notes:

- 6.5 Does spouse own real property? Refer to questions above.
 - 6.6 Does spouse own any vehicles? Refer to questions above.
 - 6.7 Does spouse have accounts at financial institutions? Refer to questions above.
 - 6.8 Has debtor given spouse any money to put in his or her accounts? If so, when?
 - 6.9 Spouse's other property, including type, description, location and nature of address?
 - 6.10 Did debtor provide money for spouse to buy any items of property? If so, complete details?
 - 6.11 Has any property been conveyed to spouse recently? If so, complete details?
 - 6.12 Does spouse support anyone not in debtor's family unit?
 - 6.13 Are there other family members living with debtor? Does debtor support them? Who are they and what do they do?
 - 6.14 Does debtor support any family members not living with them?
 - 6.15 Do any of debtor's children living at home work? If so, details of employment and amount earned?
 - 6.16 Do any of debtor's children own real property, vehicles or possess bank accounts? If so, see corresponding items for spouse.
 - 6.17 Has any property been recently transferred or conveyed to family members? If so, complete details?
 - 6.18 Have family members been given cash, or has property been purchased for them recently by debtor? If so, complete details.
7. Inheritances.
- 7.1 Has debtor received inheritance recently from anyone? If so, from whom? Amount? Where did inheritance go? Have all payments been made under inheritance?
 - 7.2 Does debtor expect to obtain any inheritance in next 12 to 36 months? From whom? Approximate amount? Approximate timing of inheritance?

Notes:

- 8. Present Income/Expenses.
 - 8.1 Income Per Month:
 - 8.1.1 Principal job.
 - 8.1.2 Part-time income.
 - 8.1.3 Room and board or rent from others.
 - 8.1.4 Pension payments.
 - 8.1.5 Unemployment insurance.
 - 8.1.6 Workers compensation.
 - 8.1.7 Disability benefits.
 - 8.1.8 Refundable tax credits.
 - 8.1.9 Annuities.
 - 8.1.10 Anything else?
 - 8.2 Expenses per month:
 - 8.2.1 Food.
 - 8.2.2 Clothing.
 - 8.2.3 Mortgage/rent.
 - 8.2.4 Property tax.
 - 8.2.5 Utilities.
 - 8.2.6 Car/transportation.
 - 8.2.7 Insurance.
 - 8.2.8 Education.
 - 8.2.9 Recreation.
 - 8.2.10 Debt payments.
 - 8.2.11 Other.
- 9. Debts
 - 9.1 What debts other than this does examinee have (bank debts, judgment debts, credit cards, mortgage and so on)?
 - 9.2 For each debt:
 - 9.2.1 Name of creditor.

Notes:

- 9.2.2 Amount owed?
- 9.2.3 Details of repayment? Is debt current?
- 9.2.4 Security held?
- 9.2.5 Account/credit card number?
- 9.3 When did examinee last apply for loan? Details.
- 9.4 Has debtor guaranteed anyone else's indebtedness since this debt arose?
- 9.5 Are there any other contingent liabilities, such as guarantees, that debtor may be liable upon?
- 9.6 Has debtor made promissory notes or bills of exchange or endorsed any such notes or bills since debt arose? If so, complete details.
- 9.7 Is debtor holding any property for anyone else, as trustee, bailee or otherwise?
- 9.8 What is cause of debtor's financial difficulties?
- 9.9 Has there been any general assignment of debts made by debtor?
- 9.10 Has debtor ever signed or been petitioned into bankruptcy? If so, details.
- 9.11 Has debtor ever said that they were insolvent or made proposal under *Bankruptcy and Insolvency Act*? If so, full details.
- 10. Other Judgments
 - 10.1 Is this only judgment outstanding against debtor? If not, full details of each.
 - 10.2 Are there any legal proceedings pending against debtor? If so, full details of each.
 - 10.3 Has debtor brought or threatened any legal proceedings against anyone in last 36 months? If so, full details of each.
 - 10.4 Have any other creditors taken enforcement proceedings against debtor in last 12 months?
 - 10.5 Is debtor paying anything to any other judgment creditor on regular basis? If so, how, and full details?
 - 10.6 Is there any other anticipated litigation against debtor in next 12 months?

Notes:

- 10.7 Are there any criminal proceedings against debtor, or contemplated, including income tax, and so on?
- 10.8 Is there any potential for directors assessments against defendant from Workers Compensation, Revenue Canada, the provincial government and so on?
- 10.9 What is current status of debtor on his or her income tax payments?
- 10.10 Why has this judgment not been paid?
- 10.11 Does debtor intend to pay judgment creditor? If so, how?

C. SUPPLEMENTARY QUESTIONS FOR CORPORATE OFFICER

1. Preliminary Matters.

- 1.1 Name of officer.
- 1.2 Home and business address.
- 1.3 Telephone numbers.
- 1.4 Position held and length of time.
- 1.5 Officer agrees that they are there for examination in aid of execution.
- 1.6 Whether officer is aware of amount owing to creditor pursuant to judgment.

2. Records.

- 2.1 Location of minute book.
- 2.2 Location of financial statements.
- 2.3 Are financial statements available for past five years? If so, obtain copies.
- 2.4 Verify the following from financial statements:
 - 2.4.1 Revenues and expenses.
 - 2.4.2 Salaries paid to officers and directors.
 - 2.4.3 Loan advances and dividends to shareholders.
- 2.5 Any share re-purchases.
- 2.6 If dividends paid or share re-purchase made, was company insolvent at time this was done? If so, names and addresses of all directors at time action was taken.

Notes:

- 2.7 Bank statements available? If so, obtain copies.
 - 2.8 Date of incorporation? If Certificate of Incorporation available, obtain copy.
 - 2.9 Present shareholders and interest held.
 - 2.10 Have any shareholders left corporation since date the debt arose? If so, complete details.
 - 2.11 Have any shareholders joined corporation since date the debt arose? If so, complete details.
 - 2.12 Is there Unanimous Shareholders Agreement? If so, where is it located? Obtain copy.
 - 2.13 Details regarding share transfer since debt arose. Determine whether shares are paid for in full, and whether company has undergone any share reorganization since debt arose.
 - 2.14 Names of directors, and officers since debt arose.
 - 2.15 If corporation is of moderate size, names of employees since debt arose.
 - 2.16 Address of current business premises and registered office.
 - 2.17 Are current business premises owned or leased? Full details.
 - 2.18 Nature of business carried on by company.
 - 2.19 Cause of financial difficulties faced by company, and cause of its inability to pay judgment debt?
 - 2.20 If company has ceased to carry on business, date upon which this happened?
 - 2.21 Has company assigned in bankruptcy, or had receiver appointed?
 - 2.22 Any goods held or sold on consignment.
 - 2.23 Does debtor company have any related companies? If so, details of relationship.
3. Dividends and Payments.

If review of records shows that these are an issue, revisit this in detail. If no records are available, then question the corporate officer in detail on these items.

Notes:

- 3.1 Last dividend paid by company, including date, to whom paid and amount.
- 3.2 Other dividends paid since debt arose, including dates, to whom paid and amount.
- 3.3 Salaries and bonuses: obtain full details of salaries and bonuses paid to employees over past 12 months.
- 3.4 Have any expenses been incurred on behalf of company by directors, shareholders or employees which were paid back by company since debt arose? If so, full details.
- 3.5 Have shareholders loans been repaid by company since debt arose? If so, provide full details.
- 3.6 Has company provided any financial assistance to related companies, officers or directors since debt incurred? If so, full details.
- 3.7 Have there been bank loans, leases or other liabilities owed by company since debt arose which have been paid out? If so, obtain full details.
- 3.8 Inquire as to whether corporate debtor intends to satisfy judgment, and how.

D. COSTS

Note that in the event that an application must be made to compel attendance, or to seek committal, these costs will normally be sought in the order.

In the case where an application is brought to name a corporate officer, the costs of the application and of the examination in aid of execution are matters to be dealt with by the court.

If you are fortunate enough to have sufficient assets to satisfy your judgment, you may consider bringing an application under Rule 386, to have the court order that you are entitled to recover the costs of bringing applications, and examining, in addition to the amount of the judgment debt.

Notes:

Notes: