



CONSUMER AFFAIRS

B E R M U D A

Promoting Confident Consumers and Responsible Traders

# Debt Management Appearances in Court Handbook

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# 1. Orders to Appear in Court

Consumer Affairs appreciates that there are many debtors that have entered into debt repayment plans with their creditors or debt collections agencies whereby it is agreed that the debtor make monthly payments toward an outstanding debt (i.e. pay outstanding day care fees, social utilities, etc.)

However, there are circumstances where a creditor or debt collection agency may consider taking a debtor to court in response to a debtor's inconsistent compliance with a debt repayment plan. The purpose of taking the debtor to court is to:

- Legally bind the debtor to a formal repayment agreement; and
- Ensure the availability of legal recourse in the event of continued non-repayment (i.e. ability to charge interest, default provision which imposes imprisonment).

By pursuing legal proceedings against a debtor, and obtaining judgement, a creditor or debt collection agency has the legal authority to pursue repayment against their debtor for up to 20 years. In support of the pursuit of legal proceedings, and the enforcement of judgement, a creditor or debt collection agency may appoint a bailiff to act on their behalf.

It is important to note at this stage the role a bailiff may play when a creditor or debt collection is considering legal proceedings against a debtor. A creditor or debt collection agency may **appoint a bailiff** to attend the residential address and/or place of employment of a debtor in order to:

- Serve notification on a debtor which informs them of a court date they must attend (i.e. **Ordinary Summons or Judgement Summons**);
- Notify a debtor that failure to appear in court will result in their arrest and forced attendance of court (i.e. a **Warrant of Arrest**); or
- Arrest a debtor and force their attendance in court in order to pay monies toward an outstanding or otherwise face a specified period of imprisonment (i.e. **Committal to Prison**).

The value in appointing a bailiff is that a creditor or debt collection agency may be able to rely on the appointed bailiff to act as a witness to verify that adequate notice of legal proceedings and the dates to appear in court were provided to the debtor (i.e. the notice was delivered and the debtor accepted delivery). This is particularly useful if the debtor attempts to dispute that the legal documents were not delivered to them and were not made aware of their required attendance in court.

The purpose of this section is to provide consumers with guidance on when they may be faced legal proceedings and/or confronted by a bailiff and how to manage such interactions.

## 2. Letter Before Action

As part of the commencement of legal proceedings a creditor or debt collection agency will mail a “Letter Before Action” to the last known residential address or place of employment of a debtor. In such a circumstance the creditor or debt collection agency **may appoint a bailiff** to personally serve the debtor with the Letter Before Action.

The Letter Before Action will inform the debtor that:

- They owe a specified amount of money from a creditor;
- In order to avoid having their debt being subject to legal proceedings, and incurring additional costs, to contact the creditor or debt collection agency within a specified period of time (i.e. 7 days);
- The debt is to be paid in full, or that they enter into a repayment plan, if they do not dispute the bill; and
- Failure to contact the creditor or debt collection agency within the prescribed period of time will result in the debt being subject to legal proceedings.

If a bailiff attends your residential address or place of employment, to serve you with a Letter Before Action, Consumer Affairs advises that you request the bailiff to provide the following information:

- Proof of identification (i.e. driver’s license)
- Proof of authority (i.e. documentation proving authority to act as a court bailiff or an agent of the creditor or debt collection agency); and
- Proof of appointment by the creditor or debt collection agency.

### 2.1 Confirm Validity of the Letter Before Action

When you receive a Letter Before Action, Consumer Affairs advises that you review its contents to confirm its accuracy and whether the debt belongs to you. A debtor will not owe the debt if:

- It belongs to someone else (e.g. your name is similar to the person who owes the debt); or
- You have already paid all of the debt.

If you **dispute liability for the bill** Consumer Affairs advises that you contact the creditor or debt collection agency immediately and provide them with copies of evidence showing that you are not responsible for the debt and a follow-up letter explaining that you do not owe the money.

If the Letter Before Action does not contain the right information Consumer Affairs advises that you immediately contact the creditor or debt collection agency and inform them that the Letter Before Action is incorrect.

If you **do not dispute liability for the bill**, whether partially or in full, Consumer Affairs advises that you contact the creditor or debt collection immediately and negotiate a repayment plan for the portion of the bill that is undisputed. This may stop them from commencing legal proceedings against you and avoid having to paying extra fees.

Consumer Affairs advises that you ask for a copy of your receipt whenever you make a payment to the creditor or debt collection agency. It is important that you obtain a proof of payment in case you need to prove at a later date what you have paid. If you cannot afford to pay the whole debt in full through one lump sum payment Consumer Affairs advises that you try to negotiate an installment plan.

### 3. Ordinary Summons

In circumstances where a debtor:

- Does not contact a creditor or debt collection agency, following receipt of a Letter Before Action, within the prescribed period time; or
- Disputes liability for the debt,

The creditor or debt collection agency that issued the Letter Before Action may appoint a bailiff to serve the debtor with an Ordinary Summons.

The purpose of an Ordinary Summons is to formally communicate to the debtor of their debt held with a creditor and inform the debtor that they are **obligated to attend court on a specified date** in order to either:

- Acknowledge that they owe the debt, either partially or in full; or
- Dispute the bill, either partially or in full.

If a bailiff or process server attends your residential address or place of employment to serve you with an Ordinary Summons, Consumer Affairs advises that you request the bailiff or process server to provide the following information:

- Proof of identification (i.e. driver's license);
- Proof of authority (i.e. documentation proving authority to act as a court bailiff); and
- Proof of appointment by the creditor or debt collection agency.

It is important to note that **if you are not present at your residential address or place of employment** at the time the bailiff or process server attempts to serve the Ordinary Summons, a bailiff or process server may:

- **Provide the Ordinary Summons to an adult who lives at your residential address** (i.e. parent, grandparent, spouse); or
- **Provide the Ordinary Summons to your employer.**

When you receive an Ordinary Summons, Consumer Affairs advises that you **make sure the Ordinary Summons contains the right information**. A valid Ordinary Summons must contain the following information:

- The debtor's correct name and address;
- The name and address of the creditor that claims you owe them money;
- The amount of debt owed to the creditor; and
- The date that you are attend court;

If the Ordinary Summons **does not contain the right information** (i.e. the debt belongs to your child or family member), or you are of the view that you **do not owe the debt** (i.e. the debt belongs to someone else or you have previously paid the debt in full), **or the amount of debt stated is incorrect**, Consumer Affairs advises that you **contact the creditor or debt collection agency immediately** and discuss the observed issue.

As part of your discussions with the creditor or debt collection agency, Consumer Affairs recommends that you provide copies of any evidence supporting your position (i.e. a copy of an invoice or bank statement indicating that you paid the debt in full).

If the creditor or debt collection agency **refuses to acknowledge your attempts to discuss the errors** in the Ordinary Summons, it is advised that you **attend court** on the date specified in the Ordinary Summons.

If you **fail to attend court** the creditor or debt collection agency will request “**judgement in default**” and issue a Judgement Summons against you. Consequently, your ability to dispute the debt will be negatively impacted as purpose of attending court in response to an Ordinary Summons is to **state your position**.

If you are of the view that the information contained in the **Ordinary Summons is correct** and you **owe the debt**, Consumer Affairs advises that you **contact the creditor or debt collection agency immediately** to discuss an **informal repayment plan** and request that the Ordinary Summons be pulled from the court listing.

If you **fail to comply with the repayment plan** the creditor or debt collection agency will likely have their matter **relisted in court** and a follow-up Ordinary Summons issued on you. It is important to note that each time your debt is listed and re-listed in court this will result in additional administrative fees being included onto your outstanding debt.

### 3.1 Attendance at Court - Debtor Does Not Dispute Debt

If a debtor attends court and states that they **do not dispute the debt in full**, the courts will **award judgement** to the creditor or debt collection agency that filed the Ordinary Summons and will request the debtor to confirm whether:

- They will be **paying the debt in full** by a specified date;
- They will be **paying the debt through installments**.

Following entering a payment plan the courts will likely impose on the debtor what is called a **“default” provision**. A default provision affords the creditor or debt collection agency a measure of legal recourse if the debtor fails to comply with the agreed repayment schedule.

If the creditor or debt collection fails to comply with the agreed repayment schedule, the creditor or debt collection agency may serve a Judgement Summons on the non-compliant debtor and require them to attend court to discuss their non-compliance.

If a creditor or debt collection agency is forced to bring the matter before court again through the issuance of a Judgement Summons, and the debtor fails to attend court, the creditor or debt collection agency will be entitled to request permission from the court to issue a Warrant of Arrest.

If a Warrant of Arrest is to be served on the debtor, the creditor or debt collection agency **may appoint a bailiff** to:

- To arrest the debtor and force their attendance in court; and
- Obligate the debtor to make a large payment toward the outstanding debt.

Following attendance in court for a Warrant of Arrest, if the debtor **continues to fail to comply with the repayment plan** the creditor or debt collection agency will be entitled to have the matter relisted in court and **issue a Committal to Prison**.

If a Committal to Prison is to be served on the debtor, the creditor or debt collection agency **may appoint a bailiff** to:

- To arrest the debtor; and
- Obligate the debtor to make a large payment toward the outstanding debt.

If a debtor is brought before court on a Committal to Prison and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise the “default” clause** (i.e. face 7 days in jail). It is important to note that **completion of an imprisonment period does not void the debt**. That upon being released from prison the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

### 3.2 Attendance at Court - Debtor Disputes Part, or All, of Debt

If a debtor receives an Ordinary Summons and **disputes a portion, or all of a debt**, the courts will request the debtor to confirm:

- Whether they will be paying the portion of the debt they do not dispute in full by a specified date; or
- Whether they will be paying the portion of the debt they do not dispute through installments.

The courts will then **set a trial date** which will afford the debtor and creditor or debt collection agency the opportunity to present their arguments regarding the **disputed portion of the bill** and determine whether the debtor is obligated to pay the disputed portion of the bill. Similarly, if the debtor disputes the **entirety** of a debt the courts will set a trial date.

If following the completion of trial the **debtor is considered liable** for the disputed portion of the bill, the courts will require the debtor to **enter into a repayment plan** and will likely impose what is called a **“default” provision**. A default provision affords the creditor a measure of legal recourse if the debtor **fails to comply** with the agreed repayment schedule.

If a creditor or debt collection agency is forced to bring the matter before court again through the issuance of a Judgement Summons (i.e. due to non-compliance with a repayment schedule), and the debtor fails to attend court, the creditor or debt collection agency will be entitled to request permission from the court to issue a Warrant of Arrest.

As part of the issuance of a Warrant of Arrest, the creditor or debt collection **may appoint a bailiff** to:

- To arrest the debtor and force their attendance in court; and
- Obligate the debtor to make a large payment toward the outstanding debt.

Following the issuance of a Warrant of Arrest, the creditor or debt collection agency will now be in a position to **exercise their “default clause”**. The default provision will entitle the creditor or debt collection agency to have the matter relisted in court and **issue a Committal to Prison**.

As part of the issuance of a Committal Prison, creditors and debt collection agencies will be empowered to appoint a bailiff to:

- To arrest the debtor; and
- Obligate the debtor to make a large payment toward the outstanding debt.



If a debtor is brought before court on a Committal to Prison and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise the “default” clause** (i.e. face 7 days in jail). It is important to note that **completion of an imprisonment period does not void the debt**. That upon being released from prison, the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

### 3.3 Failure to Attend Court - Judgement in Default

Consumer Affairs **cannot understate the importance of attending court** on the date specified in the Ordinary Summons. Failure to attend court on the date specified in an Ordinary Summons will result in the creditor or debt collection agency being able to:

- Obtain “judgement in default” against the debtor; and
- The authority to serve a Judgement Summons on the debtor.

If a creditor or debt collection agency obtains judgement in default, the debtor effectively **loses their day in court** (i.e. ability to dispute the debt) unless it can be proven that their lack of attendance in court on the date specified in the Ordinary Summons was due to:

- Lack of service and adequate notice (i.e. the Bailiff did not serve the Ordinary Summons); or
- Exceptional circumstances impacted their ability to attend court (i.e. medical or personal emergency supported by evidence).

Following receipt of judgement in default the creditor or debt collection agency will then issue a Judgement Summons against the debtor; which will obligate the debtor to attend court and provide an explanation as to why they did not court on the date specified in the Ordinary Summons and enter into a debt repayment plan.

While attending court on the Judgement Summons the debtor will be afforded the opportunity to explain while they were unable to attend court on the Ordinary Summons. If the court is of the view that the explanation provided is not satisfactory, the court will continue to enforce the previously awarded “judgement in default” and obligate the debtor to enter into a repayment plan.

In addition to continuing to enforcing “judgement in default”, the courts will likely **impose what is called a “default” provision**. A default provision affords the creditor a measure of legal recourse if the debtor **fails to comply** with the agreed repayment schedule.

If a creditor or debt collection agency is forced to bring the matter before court again, the creditor or debt collection agency will be entitled to request permission from the court to issue a Warrant of Arrest.

As part of the issuance of a Warrant of Arrest, the creditor or debt collection **may appoint a bailiff** to:

- To arrest the debtor and force their attendance in court; and
- Obligate the debtor to make a large payment toward the outstanding debt.

Following the issuance of a Warrant of Arrest, the creditor or debt collection agency will now be in a position to exercise their “default clause”. The default provision will entitle the creditor or debt collection agency to have the matter relisted in court and **issue a Committal to Prison**.

As part of the issuance of a Committal Prison, creditors and debt collection agencies will be empowered to appoint a bailiff to:

- to arrest the debtor; and
- obligate the debtor to make a large payment toward the outstanding debt.

If a debtor is brought before court on a Committal to Prison and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise the “default” clause** (i.e. face 7 days in jail). It is important to note that **completion of an imprisonment period does not void the debt**. That upon being released from prison, the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

## 4. Judgement Summons

Consumer Affairs appreciates that there will be circumstances where a creditor or debt collection agency will issue a Judgement Summons against a debtor in the event that the debtor:

- Failed to attend court following receipt of an Ordinary Summons (i.e. Judgement in Default); or
- Fails to comply with a repayment schedule agreed while in attendance in court for an Ordinary Summons (i.e. debtor did not dispute liability of debt while in attendance in court),

The purpose of a Judgement Summons is to inform the debtor that they are **obligated to attend court** in order to either:

- Provide a valid reason as to why they did not attend court following receipt of the Ordinary Summons (i.e. due to a medical emergency could not attend, provides evidence and judgement in default does not apply) and dismiss the “judgement default”; or
- Provide an explanation to the court as to why they have failed to comply with the previously agreed repayment schedule; and
- Impose a “default clause” and agree to a repayment schedule if not previously done so.

By being in possession of judgement against the debtor (i.e. “judgement in default”, debtor admittance of fault while attending court on an Ordinary Summons or judgement being awarded following trial), the creditor or debt collection agency has the authority to appoint a bailiff or process server to serve the debtor with a Judgement Summons.

If a bailiff or process server attends your residential address or place of employment, to serve you with a Judgement Summons, Consumer Affairs advises that you request the bailiff or process server to provide the following information:

- Proof of identification (i.e. driver’s license);
- Proof of authority (i.e. documentation proving authority to act as a court bailiff); and
- Proof of appointment by the creditor or debt collection agency.

It is important to note that **if you are not present at your residential address or place of employment** at the time the bailiff or process server attempts to serve the Ordinary Summons, in order to effectively serve a Judgement Summons a bailiff or process server may:

- Provide the Judgement Summons to an adult who lives at your residential address (i.e. parent, grandparent, spouse); or
- Provide the Judgement Summons to your employer.

When you receive a Judgement Summons, Consumer Affairs advises that you **make sure the Judgement Summons contains the right information**. A valid Judgement Summons must contain the following information:

- The debtor’s correct name and address;
- The name and address of the creditor that claims you owe them money;
- The amount of debt owed to the creditor;
- The date that you are attend court;

If the Judgement Summons **contains the correct information**, and you **do not dispute** the debt, Consumer Affairs advises that you **contact the creditor or debt collection agency immediately and enter into an informal repayment plan**. Consequently, the creditor or debt collection agency will have your matter delisted from court.

Failure to comply with your agreed repayment plan will likely result in having your matter being relisted in court. It is important to note that each time your debt is listed and re-listed in court will result in administrative fees being included in your outstanding debt.

If the Judgement Summons **does not contain the right information** (i.e. the debt belongs to your child or family member), or you are of the view that you **do not owe the debt** (i.e. the debt belongs to someone else or you have previously paid the debt in full), **or the amount of debt stated is incorrect**, Consumer Affairs advises that you **contact the creditor or debt collection agency immediately** and discuss the observed issue.

As part of your discussions with the creditor or debt collection agency, Consumer Affairs recommends that you provide copies of any evidence supporting your position (i.e. a copy of an invoice or bank statement indicating that you paid the debt in full).

If the creditor or debt collection agency **refuses to acknowledge your attempts to discuss the errors** in the Judgement Summons, Consumer Affairs recommends that you **attend court** on the date specified in the Ordinary Summons.

If you **fail to attend court** on a Judgement Summons, the creditor or debt collection agency will have the authority to request permission from the courts to issue a "Warrant of Arrest". Upon receiving permission to issue a Warrant of Arrest, the creditor or debt collection agency will likely appoint a bailiff to serve the Warrant of Arrest against the debtor. If you are served with a Warrant of Arrest, you will be arrested by the bailiff and brought to court to enter into a repayment plan.

Additionally, if you **fail to attend court on a Judgement Summons**, and **failed to attend court after receiving an Ordinary Summons** (see above), your ability to dispute the debt will be rendered void. Failure to attend court on an Ordinary Summons affords creditors or debt collection agencies the opportunity to obtain "judgement in default".

By attending court on a Judgement Summons, debtors are afforded the opportunity to provide a valid explanation for their non-attendance on the Ordinary Summons (i.e. medical emergency) and request the "judgement in default" be rendered void.

#### **4.1 Attendance at Court – Failure to Attend Ordinary Summons Date**

If a debtor has a legitimate reason as to why they **did not attend court on an Ordinary Summons** (i.e. medical emergency or personal emergency), and they **wish to dispute their liability for the debt** (i.e. partially or fully), Consumer Affairs cannot understate how important it is for the debtor to **attend court with supporting evidence** following receipt of a Judgement Summons.

While in attendance at court, the debtor will be afforded the opportunity to present their explanation to the court for their non-attendance and provide supporting evidence. Upon consideration of the merits of the explanation for their previous non-attendance, the court has the authority to:

- Dismiss any “judgement in default” and “default clause” previously awarded to the creditor; and
- Set a trial date so that both parties may argue the merits of their case and establish the existence of liability.

Consumer Affairs advises that **if the court is willing to dismiss** a judgement in default and set a trial date, the debtor should:

- Comply with all instructions imposed by the court (i.e. exchange of evidence and defense statement); and
- Prioritize attendance at court for the trial date.

If a debtor **fails to attend court on a Judgement Summons and dispute "judgement in default"**, the debtor’s ability to request the court to dismiss a “judgement in default” will be incredibly difficult; especially if a bailiff served the Judgement Summons on the debtor as it may be argued that the debtor was given adequate notice to attend court.

Consequently, a debtor that fails to attend court for a Judgement Summons will likely be brought before court again **through the issuance of a Warrant of Arrest**; regardless as to whether or not the debtor is responsible for the debt. As part of the issuance of a Warrant of Arrest the creditor or debt collection **may appoint a bailiff** to:

- Arrest the debtor and force their attendance in court; and
- Obligate the debtor to make a large payment toward the outstanding debt.

Following the issuance of a Warrant of Arrest the creditor or debt collection agency will now be in a position to exercise their “default clause”. Exercising the default provision will entitle the creditor or debt collection agency to **issue a Committal to Prison** and have the matter relisted in court.

As part of the issuance of a Committal Prison, creditors and debt collection agencies will be empowered to appoint a bailiff to:

- Arrest the debtor; and
- Obligate the debtor to make a large payment toward the outstanding debt.

If a debtor is brought before court on a Committal to Prison, and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise the “default” clause** (i.e. face 7 days in jail). It is important to note that **completion of an imprisonment period does not void the debt**. That upon being released from prison, the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

## 4.2 Attendance at Court – Non-Compliant with Repayment Schedule

If a debtor finds themselves unable to comply with a repayment schedule that was agreed to while in attendance on an Ordinary Summons, it is advised that they contact their creditor or debt collection agency in order to:

- Communicate a change in their financial circumstances (i.e. become unemployed); and
- Propose an amended repayment plan until their financial circumstances change for the better (i.e. found employment).

Failure to openly communicate with your creditor or debt collection agency and continued non-payment of your debt will likely result in the issuance of a Judgement Summons. The issuance of a Judgement Summons will require your attendance in court in order to explain your non-payment.

It is important to note that failure to attend court, following receipt of a Judgement Summons, will result in the courts awarding the creditor or debt collection agency the authority to issue a Warrant of Arrest.

In this circumstance the creditor or debt collection agency may appoint a bailiff to visit their debtor's residential home, or place of employment, and physically arrest them in order to force their attendance at court. As part of the issuance of a Warrant of Arrest the creditor or debt collection **may appoint a bailiff** to:

- Arrest the debtor and force their attendance in court; and
- Obligate the debtor to make a large payment toward the outstanding debt.

Following the issuance of a Warrant of Arrest the creditor or debt collection agency will now be in a position to exercise their "default clause". Exercising the default provision will entitle the creditor or debt collection agency to **issue a Committal to Prison** and have the matter relisted in court.

As part of the issuance of a Committal to Prison creditors and debt collection agencies will be empowered to appoint a bailiff to:

- Arrest the debtor; and
- Obligate the debtor to make a large payment toward the outstanding debt.

If a debtor is brought before court on a Committal to Prison, and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise the "default" clause** (i.e. face 7 days in jail). It is important to note that **completion of an imprisonment period does not void the debt**. That upon being released from prison, the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

## 5. Warrant of Arrest

Consumer Affairs appreciates that there will be circumstances where a debtor will be forcibly brought to court in order to address a debt they have with a creditor or debt collection agency. The purpose of a Warrant of Arrest is to force a debtor's attendance due to one of the following events having occurred:

- Failure to attend court following service of an Ordinary Summons and/or Judgement Summons; and/or
- Non-compliance of agreed repayment schedule.

Having discussed the nuances associated with Ordinary Summons and Judgement Summons (see above), Consumer Affairs appreciates that there will be circumstances where a creditor or debt collection agency needs to issue a Warrant of Arrest in order to:

- Enforce judgement and mandate the debtor make payments towards the debt ("judgement in default" for non-appearance, judgement following trial, judgement following debtor's admittance); and/or
- Force the debtor to attend court in order to enter into a legally binding agreement (i.e. debtor refuses to attend court to dispute the bill and/or refuses to contact the creditor or debt collection agency).

By being in possession of judgement against the debtor (i.e. "judgement in default", debtor admittance of fault while attending court on an Ordinary Summons or judgement being awarded following trial), the creditor or debt collection agency has the authority to appoint a bailiff to serve the debtor with a Warrant of Arrest.

If a bailiff attends your residential address or place of employment to serve you with a Warrant of Arrest, Consumer Affairs advises that you request the bailiff or process server to provide the following information:

- Proof of identification (i.e. driver's license);
- Proof of authority (i.e. documentation proving authority to act as a court bailiff); and
- Proof of appointment by the creditor or debt collection agency.

When you receive a Warrant of Arrest, Consumer Affairs advises that you **make sure the Warrant of Arrest contains the right information**. A valid Warrant of Arrest must contain the following information:

- The debtor's correct name and address;
- The name and address of the creditor that claims you owe them money;
- The amount of debt owed to the creditor;
- The date that you are attend court;

If you can prove that the Warrant of Arrest **does not contain the right information** (i.e. the debt belongs to your child or family member), or you are of the view that you **do not owe the debt** (i.e. the debt belongs to someone else or you have previously paid the debt in full), Consumer Affairs advises that you:

- Inform the bailiff immediately; and
- Provide supporting evidence (i.e. proof of full payment of the debt).

If you are **in receipt of an incorrect Warrant of Arrest** (i.e. wrong names listed and/or debt belongs to someone else), you are **not obligated to leave your residential home or place of employment in order to attend court**.

Consumer Affairs recommends that you **contact the creditor or debt collection agency that had the Warrant of Arrest served** and discuss the observed issue. As part of your discussions with the creditor or debt collection agency, Consumer Affairs recommends that you provide copies of any evidence supporting your position (i.e. a copy of an invoice or bank statement indicating that you paid the debt in full).

If you find yourself arrested and forced to attend court, and you **have not previously been served with an Ordinary Summons or Judgement Summons**, Consumer Affairs advises that you request the courts to go through your court file and provide:

- A copy of filed Ordinary Summons;
- A copy of the filed Judgement Summons; and
- Supporting documentation (i.e. Affidavits of Service signed by the bailiff or process server)

By reviewing the above mentioned documentation you will be able to confirm whether the Ordinary Summons and Judgement Summons were effectively served on you. **If adequate service was not performed** the courts may afford you the opportunity to:

- Provide the courts with your evidence indicating that you are not liable for the debt;
- Communicate that due process was not followed; and
- That the Warrant of Arrest should be dismissed.

However, if it can be shown that an Ordinary Summons and Judgement Summons were effectively served on you, your failure to attend court effectively resulted in you **losing your ability to dispute liability for the bill**. At this stage the only option that you have available is to enter into a repayment plan for the debt.



## 6. Committal to Prison

A Committal to Prison is the highest form of escalation available to a creditor or debt collection agency seeking to recover a debt. A Committal to Prison is exercised following:

- The issuance and service of an Ordinary Summons and a Judgement Summons on a debtor; and
- The debtor has been previously forced to attend in court following the service of a Warrant of Arrest.

Similar to a Warrant of Arrest, a Committal to Prison is intended to force a debtor's attendance in court due to the debtor's **non-compliance of an agreed repayment schedule**.

Following a debtor's attendance in court for a Warrant of Arrest, the creditor or debt collection agency will now be in a position to issue a Committal to Prison. If a debtor or creditor issues a Committal to Prison on a non-compliant debtor, the debtor will be forced to attend court and make an immediate payment towards their debt and their repayment arrears (i.e. the repayment payments they are behind on).

For example, if a debtor has failed to make their last 7 debt repayments, at \$50.00 per month, and is served a Committal to Prison, it is likely that the debtor will have to pay the courts \$350.00 by end of day (i.e. 7 payments x \$50.00 per month).

If a debtor is brought before court on a Committal to Prison, and is unable to make a payment towards the outstanding debt, the creditor or debt collection agency will be entitled to request the courts to **exercise their "default" clause** (i.e. face 7 days in jail).

If a debtor is unable to make a payment and the creditor or debt collection agency exercises their default clause, **the completion of an imprisonment period does not void the debt**. That upon being released from prison, the debtor **remains liable for repayment** of the outstanding debt and may be brought before the court again on follow-up Committals to Prison if they continue to not make payments towards their debt.

As part of the issuance of a Committal to Prison, creditors and debt collection agencies will be empowered to appoint a bailiff to:

- To arrest the debtor; and
- Obligate the debtor to make a large payment toward the outstanding debt.

If a bailiff attends your residential address or place of employment, to serve you with a Committal to Prison and force your attendance in court, Consumer Affairs advises that you request the bailiff or process server to provide the following information:

- Proof of identification (i.e. driver's license);
- Proof of authority (i.e. documentation proving authority to act as a court bailiff); and
- Proof of appointment by the creditor or debt collection agency.

When you receive a Committal to Prison, Consumer Affairs advises that you **make sure the Committal to Prison contains the right information**. A valid Committal to Prison must contain the following information:

- The debtor's correct name and address;
- The name and address of the creditor that claims you owe them money;
- The amount of debt owed to the creditor;
- The date that you are attend court;

If the Committal to Prison **does not contain the right information** (i.e. the debt belongs to your child or family member), or you are of the view that you **do not owe the debt** (i.e. the debt belongs to someone else or you have previously paid the debt in full), Consumer Affairs advises that you:

- Inform the bailiff immediately; and
- Provide supporting evidence (i.e. proof of full payment of the debt, driver's license).

If you can prove that you are **in receipt of an incorrect Committal to Prison** (i.e. wrong names listed and/or debt belongs to someone else), you are **not obligated to leave your residential home or place of employment in order to attend court**. Bailiffs are obligated to ensure that the information on a Committal to Prison is accurate; otherwise the Committal to Prison is not enforceable.

Immediately following communication of the error in the Committal to Prison to the bailiff, Consumer Affairs recommends that you **contact the creditor or debt collection agency that had the Committal to Prison served** and discuss the observed issue. As part of your discussions with the creditor or debt collection agency, Consumer Affairs recommends that you provide copies of any evidence supporting your position (i.e. a copy of an invoice or bank statement indicating that you paid the debt in full, driver's license indicating that you are not the person named in the Committal to Prison).

If the creditor or debt collection agency **refuses to acknowledge your attempts to discuss the errors** in the Committal to Prison, Consumer Affairs recommends that you **have your supporting evidence readily available at all times** in the event that you receive a follow-up Committal to Prison and are forced to attend court. In this circumstance you will likely need to provide the courts with your supporting evidence in order to have the Committal to Prison dismissed.

If you find yourself arrested and forced to attend court, and you **have not previously been served with an Ordinary Summons or Judgement Summons**, Consumer Affairs advises that you request the courts to go through your court file and provide:

- A copy of filed Ordinary Summons;
- A copy of the filed Judgement Summons; and
- Supporting documentation (i.e. Affidavits of Service signed by the bailiff or process server)

By reviewing the above mentioned documentation you will be able to confirm whether the Ordinary Summons, Judgement Summons and Warrant of Arrest were effectively served on you. **If adequate service was not performed** the courts may afford you the opportunity to:

- provide the courts with your evidence indicating that you are not liable for the debt;
- communicate that due process was not followed; and
- that the Committal to Prison should be dismissed.

However, if it can be shown that an Ordinary Summons, Judgement Summons and Warrant of Arrest were **effectively served** on you, you will be **unable to dispute your liability for the bill**. At this stage the only option that you have available is to make an **immediate payment towards your repayment arrears or otherwise face imprisonment**.



### **How to contact Consumer Affairs**

**Mailing address:**

D. Rego Building, 3rd Floor  
75 Reid Street  
Hamilton HM 12

**Telephone:**

Consumer Affairs (441) 297-7627  
Rental Unit (441) 297-7700

**Fax:** (441) 295-6892

**E-mail:** [consumers@gov.bm](mailto:consumers@gov.bm)

**FB** – Consumer Affairs Bermuda