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CHAPTER G-2

GARNISHEE ACT

- 1.** (1) In this Act
- Definitions
- (a) “garnishee” includes any person or partnership or corporation incorporated by any law of this province, or doing business in this province by an authorized agent; garnishee
- (b) “judgment debtor” means any person or partnership, or corporation incorporated by any law of this province, or doing business in this province by an authorized agent, against whom any person has obtained a judgment in the Supreme Court; judgment debtor
- (c) “primary debtor” includes any person or partnership, or corporation incorporated by any law of this province, or doing business in this province by an authorized agent. primary debtor
- (2) In this Act any jurisdiction, power or authority conferred upon the Supreme Court or a judge thereof may be exercised on behalf of the court by the prothonotary of the Supreme Court. R.S.P.E.I. 1974, Cap. G-2, s.1; 1975, c.27, s.5; 1992, c.42, s.3. Prothonotary, powers
- 2.** (1) Unless otherwise ordered by a judge, service of orders, writs, summonses and notices issued or made pursuant to this Act, may be effected in the manner prescribed by the Rules of the Supreme Court. Service of orders, writs etc.
- (2) Any agent or official served with an order or summons on behalf of his principal shall be bound to obey such order or summons in the same manner as if the agent or official were such principal. R.S.P.E.I. 1974, Cap. G-2, s.2. Agent served for principal
- 3.** Repealed by 1989, c.3, s.1 *{eff.}* June 24/89. Discovery of judgment debtor
- 4.** Repealed by 1989, c.2, s.1 *{eff.}* June 24/89. Jail, committal to, where
- 5.** Any debts or liabilities due or owing or accruing due by any garnishee to any judgment debtor, or to any defendant or primary debtor, may be attached in the Supreme Court in the manner and with the effect prescribed by the rules of the court. R.S.P.E.I. 1974, Cap. G-2, s.5; 1984, c.21, s.2. Attachment of debts
- 6.** (1) If any garnishee fails to comply forthwith with any order for payment by him of money to a judgment creditor, or into court, then the court or a judge may order execution to issue, and execution may Execution may be ordered

thereupon issue to levy the amount due from such garnishee towards satisfaction of the judgment debt or amount claimed by a plaintiff.

Payment into court before judgment (2) If judgment has not been recovered in respect of the principal debt, the sheriff shall pay into court any amount recovered by the execution against the garnishee.

Condition precedent to issue of order for execution (3) No order shall be made for execution to issue against a garnishee who has not appeared upon the application for an order absolute for payment by him of money to a judgment creditor or into court, unless four clear days have elapsed since service upon him of the order absolute or since service on him of such notice thereof as a judge may direct.

Idem (4) No order shall be made for execution to issue, or for further proceedings to be taken by an attaching creditor against any garnishee, unless a copy of the attaching order with the name of the garnishee endorsed thereon has been duly served upon the primary debtor. R.S.P.E.I. 1974, Cap. G-2, s.6.

Primary debtor, where no dispute as to claim **7.** If a primary debtor does not dispute the claim of an attaching creditor, he may, within five days after service of an attaching order on him, in case no action has been commenced, confess the claim, or if action has been commenced within the time, confess the action, in which case, if no action has been brought, none shall be commenced, or if brought shall not be further proceeded with, if the sum or sums garnisheed and paid to the attaching creditor or into court are sufficient to satisfy the amount of the attaching creditor's claim so confessed and costs, and the court may make an order upon the confession for the payment to the attaching creditor of the amount so confessed and costs. R.S.P.E.I. 1974, Cap. G-2, s.7.

Postponement or adjournment of hearings **8.** The court or judge may postpone or adjourn the hearing and other proceedings in all garnishee cases, to allow time for further evidence, or for any other purpose, and may require service on and notice to other or additional parties. R.S.P.E.I. 1974, Cap. G-2, s.8.

Attachment of inheritance **9.** The interest of any primary debtor in any debt or legacy due from, or payable by an executor or administrator, or to become due and payable by an executor or administrator to the primary debtor, or the interest of any primary debtor in any division of the personal estate of an intestate, may be attached and the executor or administrator shall be treated as a garnishee. R.S.P.E.I. 1974, Cap. G-2, s.9.

Debts attachable **10.** The debts attachable under this Act include all sums of money liquidated and unliquidated, legal and equitable, payable or accruing due to the judgment debtor or primary debtor, for any cause other than personal torts or wrongs, and also include all moneys or sums payable, or

that may be payable, by virtue of a policy of insurance, after a loss total or partial, subject to the same being adjusted between the insurer and the insured as if it were not attached, and nothing herein contained prejudices the insurer from making any defence to the claim that could be made if the same had not been attached. R.S.P.E.I. 1974, Cap. G-2, s.10.

11. When any debts or moneys within the meaning of this Act, due or payable, or accruing due to the judgment debtor or primary debtor, have been or shall be assigned by the judgment debtor or primary debtor, the assignee and the person owing the debt may be garnisheed, and the court or a judge may inquire in a summary manner into the validity of the assignment and the consideration therefor and may declare the assignment void in whole or in part, and may declare the assignee and the person owing the same, or either of them, to be garnishee for the debts so assigned or for any surplus thereof that may remain after payment of what is due to the assignee. R.S.P.E.I. 1974, Cap. G-2, s.11.

Assignment of debts or moneys by debtor

12. (1) The order of the court or a judge for an execution against a garnishee, or a judgment recovered against any garnishee at the suit of an attaching creditor under this Act, operate as and constitute a lien upon the interest of the garnishee in any freehold or leasehold lands, to the same extent as a judgment of the Supreme Court constitutes a lien or charge upon the interest of a judgment debtor in freehold or leasehold lands.

Lien created by order of court

(2) The lien may be enforced against lands in the same manner as a judgment of the Supreme Court may be enforced against the lands of a judgment debtor, if the attaching creditor files with the prothonotary a minute of the order or judgment containing the particulars of the order or judgment similar to the minute of a judgment required to be filed in the case of a judgment in the Supreme Court; and until the minute has been filed, the order or judgment shall have the same force and effect against or upon the lands of the garnishee, as a judgment of which no minute has been filed. R.S.P.E.I. 1974, Cap. G-2, s.12.

Enforcement of lien

13. (1) Where an order is made by a judge for an execution against any garnishee, either immediate or at any future time, or a judgment has been recovered by any judgment creditor or attaching creditor against any garnishee, and the debt or sum of money attached in the hands of the garnishee is secured by a judgment or mortgage or other instrument creating a lien upon the real or personal estate of the garnishee, the order or judgment of the judgment creditor, or attaching creditor, when a minute thereof has been filed, operates as an assignment of the judgment, or mortgage, or other instrument, to the judgment creditor, or attaching creditor, and the judgment creditor or attaching creditor shall, for all

Order for execution against a garnishee, effect of

purposes which may be considered necessary to enforce payment of the judgment, mortgage or other instrument constituting the lien as aforesaid, be the attorney of the judgment debtor, or primary debtor, without power of revocation.

Judgment creditor,
power *re* assets of
judgment debtor

(2) The judgment creditor or attaching creditor may exercise, in the name of the judgment debtor or primary debtor, or in his own or any other person's whose name the judgment or primary debtor might use, all the powers and authorities which the judgment or primary debtor might or could exercise for the purpose of enforcing payment of the lien, and shall and may execute all the deeds, matters, and things as he may consider necessary or expedient in or about the same, and upon payment thereof may execute all necessary releases or satisfactions for the same.

Security may be
required of
judgment creditor

(3) Notwithstanding subsections (1) and (2) where the amount secured by, and owing upon any judgment, mortgage, or other instrument is greater than the amount to which the judgment or attaching creditor is entitled, the judgment or attaching creditor shall before exercising any powers or authorities give such security as a judge may consider necessary for the payment into court by the judgment or attaching creditor, of any amount he may realize by enforcing the lien over and above the amount to which he is entitled and the costs of enforcing the lien, and in the event of the judgment or attaching creditor attempting to enforce the lien without having given the security the judgment or primary debtor or garnishee may call upon him by summons, to show cause why all further proceedings therein should not be stayed until the security has been given and the judge may make such order thereupon either with or without costs. R.S.P.E.I. 1974, Cap. G-2, s.13.

Payment or
satisfaction of
claim, effect of

14. Payment or satisfaction of the claim of an attaching creditor and satisfaction thereof entered in the proper office operates as a reassignment to a judgment or primary debtor of any judgment, mortgage, or other instrument creating a lien on the real or personal estate of any garnishee in the proceedings, for the amount thereof, which may not have been realized or enforced by the judgment or attaching creditor. R.S.P.E.I. 1974, Cap. G-2, s.14.

Defences of
garnishee, set off

15. In any proceedings between a judgment or attaching creditor and a garnishee under this Act, the garnishee may avail himself not only of any matter of defence to the action which he might have, had the action been brought by the judgment or primary debtor, but the garnishee may set off the amount of any debt due and owing to him from the judgment or attaching creditor. R.S.P.E.I. 1974, Cap. G-2, s.15.

Satisfaction to be
executed

16. When any judgment or attaching creditor has paid the amount of any claim for which he obtained an attaching order, he shall execute a

satisfaction thereof, upon request by any person interested in having it marked “satisfied”, and in case of refusal that person may obtain from a judge such order, with or without costs. R.S.P.E.I. 1974, Cap. G-2, s.16.

17. (1) Subject to subsections (2) and (3), wages due or accruing due to any judgment debtor for his personal labour and service may be garnisheed. Exemption from garnishment

(2) There is exempt from garnishment on wages due or accruing due to any judgment debtor for his personal labour and service, sums in such amounts and for such purposes as shall be more particularly set forth in regulations. Amounts exempt

(3) The amount of exemption referred to in subsection (2) shall be calculated by the Prothonotary of the Supreme Court on the basis of an exemption for each “item of basic need” prescribed by regulation, and in no case shall the exemptions under this section leave the judgment debtor with less income than he would receive if he were a person wholly dependent for his income on payments made under the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3. Calculation of amounts by

(4) The calculation of exemption referred to in subsection (3) shall be made in a manner prescribed by regulation made by the Lieutenant Governor in Council. Method of calculation

(5) Where it appears to a judge that a judgment debtor is in receipt of a regular salary or wages, the judge may make an order for the attachment of future accruing wages or salary and such judge may make an order for the payment into court to the credit of the attaching creditor of the balance of the wages or salary as and when the same accrues due until the debt due from the judgment debtor to the attaching creditor and costs are paid and satisfied. Attachment of future or accruing wages or salary

(6) Before making an order under subsection (5), the judge shall Amount of order
 (a) calculate the exemption to which the judgment debtor would have been entitled on wages due or accruing due pursuant to subsection (3); or
 (b) if such calculation has already been made by the prothonotary, adopt that calculation,
 and take the amount of the exemption into account in determining the amount of the order. R.S.P.E.I. 1974, Cap. G-2, s.17; 1975, c.27, s.5; 1987, c.28, s.1; 2001, c.19, s.16.

18. In any application to obtain an attachment of debts under this Act, the judge may in his discretion refuse to proceed where for the smallness of the amount to be recovered, or of the debt sought to be attached or Court may refuse to proceed, where

otherwise, the remedy sought would be worthless or vexatious. R.S.P.E.I. 1974, Cap. G-2, s.18.

Attachment and
discovery by sheriff

19. Notwithstanding any provisions of this Act or the rules of court, a sheriff, when acting under an execution order, may initiate proceedings without counsel to attach any debt or liability due or owing or accruing due by any garnishee to any judgment debtor or to discover the judgment debtor under section 3. R.S.P.E.I. 1974, Cap. G-2, s.19; 1977, c.11, s.1.

Her Majesty in right
of province may be
garnisheed

20. (1) Notwithstanding subsection 17(6) of the *Crown Proceedings Act* R.S.P.E.I. 1988, Cap. C-32, Her Majesty in right of the province is subject to the provisions of this Act relating to garnishment as if Her Majesty were an ordinary person, to the extent set out in subsection (2).

Attachment of
salary of public
officers

(2) A garnishee order may be issued pursuant to the rules of court for the attachment of salary or wages due or accruing due to a public officer who is an employee as defined in clause 1(h) of the *Civil Service Act* R.S.P.E.I. 1988, Cap. C-8.

Service of garnishee
order

(3) A garnishee order shall be served on Her Majesty in right of the province in the manner provided in subsection 10(1) of the *Crown Proceedings Act*. R.S.P.E.I. 1974, Cap. G-2, s.20; 1984, c.21, s.3.

Application of Act
to absent or
absconding debtors

21. Nothing in this Act shall be construed to apply to or in any way affect the law relating to proceedings against absent or absconding debtors, their estates and credits. R.S.P.E.I. 1974, Cap. G-2, s.21.