

# *The Attachment of Debts Act*

*being*

Chapter A-32 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan, 1979, c.4; 1979-80, c.2 and 92; 1980-81, c.76; 1983, c.77; 1984-85-86, c.77; 1988-89, c.5; 1993, c.45; and 1998, c.P-42.1 and c.48; and 2001, c.50.*

## **NOTE:**

**This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.**

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## CHAPTER A-32

### An Act respecting the Attachment of Debts

#### SHORT TITLE

##### Short title

- 1 This Act may be cited as *The Attachment of Debts Act*.

#### INTERPRETATION

##### Interpretation

- 2 In this Act:

- (a) “**court**” means Her Majesty’s Court of Queen’s Bench for Saskatchewan;
- (b) “**judge**” means a judge of Her Majesty’s Court of Queen’s Bench for Saskatchewan.

R.S.S. 1965, c.101, s.2; R.S.S. 1978, c.A-32, s.2.

##### Application

- 2.1 This Act does not apply to a debt due under a maintenance order as defined in *The Enforcement of Maintenance Orders Act*.

1984-85-86, c.77, s.2.

#### GARNISHEE SUMMONS AND SERVICE

##### Issue of summons

3(1) Subject to sections 8 and 9, a person who has obtained a judgment or order for the recovery or payment of money and a plaintiff in an action for debt or liquidated demand may issue a garnishee summons (form A) with such variations as circumstances may require, directed to one or more persons alleged to be indebted, either jointly or severally, to the defendant or judgment debtor.

(2) The summons shall be issued by the local registrar upon the plaintiff or judgment creditor, his solicitor or agent, filing an affidavit;

- (a) showing the nature and amount of the claim against the defendant or the amount remaining due and unsatisfied under the judgment, and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor;

(b) stating, that, to the best of the deponent's information and belief, the proposed garnishee, naming him, is indebted to the defendant or judgment debtor, or, if the moneys sought to be attached are wages or salary, that, to the best of the deponent's information and belief, the defendant or judgment debtor was or is employed by the garnishee and where and in what capacity the defendant or judgment debtor was or is so employed.

(3) The affidavit mentioned in subsection (2) shall not be deemed insufficient merely by reason of its having been sworn prior to the issue of the statement of claim in the action.

R.S.S. 1965, c.101, s.3; R.S.S. 1978, c.A-32, s.3;  
1998, c.48, s.2.

**Debts owing from firms**

4 Debts owing from a firm, carrying on business within Saskatchewan may be attached, although one or more members of the firm may be resident abroad, if some person having the control or management of the partnership business, or some member of the firm within Saskatchewan, is served with the garnishee summons.

R.S.S. 1965, c.101, s.4; R.S.S. 1978, c.A-32, s.4.

**Service binds debts**

5(1) Service of the summons on the garnishee shall bind any debt due or accruing due from the garnishee to the defendant or judgment debtor and all wages or salary that become due or payable at any time within five days after service of the summons.

(2) The garnishee summons may be served, whether on the garnishee, defendant or judgment debtor, in any way that a statement of claim may be served; and the provisions relating to service of a statement of claim apply to service of a garnishee summons.

(3) A copy of the garnishee summons shall be served on the defendant or judgment debtor, or his solicitor, within twenty days after service on garnishee, or within such further time as the court or a judge may order *ex parte*.

R.S.S. 1965, c.101, s.5; R.S.S. 1978, c.A-32, s.5;  
1998, c.48, s.2.

**Attachment of moneys owing by Government, Crown corporation, etc.,  
for wages or salary**

6(1) Subject to subsection (1.1), the Government of Saskatchewan may be garnisheed under this Act with regard to moneys due or accruing due to a member of the public service or to a person temporarily employed by it within the meaning of *The Public Service Act, 1998* for wages or at a salary.

(1.1) The Government of Saskatchewan may be garnisheed pursuant to this Act with regard to moneys due or accruing due to a person pursuant to *The Saskatchewan Medical Care Insurance Act*.

(2) A Crown Corporation established by or pursuant to an Act of the Legislature, the Department of Telephones, the Liquor and Gaming Authority and The Workers' Compensation Board may be garnisheed under this Act with regard to moneys due or accruing due to a person employed for wages or at a salary.

(3) Such garnishee process shall be served upon:

(a) the Minister of Finance or Deputy Minister of Finance, where the defendant or judgment debtor is a member of the public service or is temporarily employed by the Government, and if the salary or wages of such defendant or judgment debtor are paid elsewhere than from the office of the Department of Finance at Regina, by serving the garnishee process also upon the deputy minister of the department by which the salary or wages are paid;

(b) the comptroller, treasurer or accountant of the corporation, where the defendant or judgment debtor is an employee of Saskatchewan Power Corporation;

(c) the general manager, manager or secretary of the corporation, where the defendant or judgment debtor is an employee of any other Crown corporation;

(d) the Minister of Telephones or the deputy minister, where the defendant or judgment debtor is an employee of the Department of Telephones;

(e) the chief executive officer of the Liquor and Gaming Authority, where the defendant or judgment debtor is an employee of the authority;

(f) **Repealed.** 1993, c.45, s.45.

(g) the chairman or secretary of The Workers' Compensation Board, where the defendant or judgment debtor is an employee of the board;

(h) the Minister of Health or the deputy minister where the moneys sought to be attached are payable pursuant to *The Saskatchewan Medical Care Insurance Act*;

in their respective offices.

(4) No moneys so due or accruing due are attachable under this Act unless the plaintiff or judgment creditor has given to the officers mentioned in clause (a) of subsection (3) or of an officer mentioned in clause (b), (c), (d), (e), (f), (g) or (h) of subsection (3), as the case may require, by personal service or by registered mail with postage prepaid, at least thirty days' written notice of intention to issue a garnishee summons. A notice served by registered mail shall be deemed to have been served on the day of the date of the receipt of the postmaster for the envelope containing the notice.

(5) A notice required by subsection (4) shall state the name of the defendant or judgment debtor, the amount of the judgment or the nature and amount of the debt claimed as owing by him and, where he is employed by the Government of Saskatchewan, the branch of the public service in which he is employed.

(6) A notice shall cease to have any effect in satisfaction of the requirement of subsection (4) unless the garnishee summons to which the notice relates is served on the garnishee on or before the last day of the month next following the month in which the notice is served.

R.S.S. 1965, c.101, s.6; 1966, c.93, s.2; R.S.S. 1978, c.A-32, s.6; 1979-80, c.2, s.3; 1988-89, c.5, s.3; 1993, c.45, s.45; 1998, c.P-42.1, s.42.

**Attachment of moneys owing by Government, Crown corporations, etc., other than wages or salary**

7(1) A Crown corporation established by or pursuant to an Act of the Legislature and the Liquor and Gaming Authority may be garnisheed under this Act with regard to moneys due or accruing due to any person other than moneys due or accruing due to a person employed by the corporation or authority for wages or salary.

(2) Such garnishee process shall be served upon:

- (a) the comptroller, treasurer or accountant of the corporation, where Saskatchewan Power Corporation is the garnishee;
- (b) the general manager, manager or secretary of the corporation, where any other Crown corporation is the garnishee;
- (c) the chief executive officer of the Liquor and Gaming Authority, where the authority is the garnishee;
- (d) **Repealed.** 1993, c.45, s.45
- (e) **Repealed.** 1988-89, c.5, s.4.

in their respective offices.

R.S.S. 1965, c.101, s.7; 1966, c.93, s.3; R.S.S. 1978, c.A-32, s.7; 1988-89, c.5, s.4; 1993, c.45, s.45.

**Exception as to municipalities**

8 No debt due or accruing due to a city, town, village, northern municipality or rural municipality shall be liable to attachment.

R.S.S. 1965, c.101, s.8; R.S.S. 1978, c.A-32, s.8; 1983, c.77, s.4.

**Attachment of wages or salary after judgment**

9(1) Subject to subsection (2), proceedings by way of garnishee summons to attach a debt due or accruing due to a person for or in respect of his wages or salary shall be taken only where the claim of the creditor against the debtor is upon a judgment.

(2) If upon application, which may be made *ex parte*, the court or a judge is satisfied that it will be conducive to the ends of justice to do so, the court or judge may make an order upon such terms as to costs or otherwise and subject to such undertaking, if any, as the court or judge may think just, permitting the issue of a summons before judgment; and any party affected by such order may move to set aside the summons.

R.S.S. 1965, c.101, s.9; R.S.S. 1978, c.A-32, s.9.

## SETTING ASIDE THE GARNISHEE SUMMONS

**Application to set aside garnishee**

**10** The defendant or judgment debtor or the garnishee, or a person claiming to be interested in the moneys attached, may apply to a judge in chambers to set aside a garnishee summons issued under section 3.

R.S.S. 1965, c.101, s.10; R.S.S. 1978, c.A-32,  
s.10.

## DISPUTE BY GARNISHEE

**Dispute by garnishee**

**11(1)** If the garnishee disputes his liability or claims that the debt is not or may not be attachable, he shall enter with the local registrar, within the time specified in the summons or such further time as the court or a judge may allow, a statement showing the grounds on which he disputes liability or claims that the debt is not or may not be attachable.

(2) When such statement has been entered, the court or a judge may, on application of the plaintiff or any other person interested, on two days' notice given to the garnishee:

(a) fix a time and place for summarily determining the question of liability or whether the debt is attachable; or

(b) order that an issue or question necessary for determining such liability, or whether the debt is attachable, be tried and determined in any manner in which an issue or question in an action may be tried or determined;

and may direct who shall be the parties to the issue or question.

(3) A determination under this section whether summarily or otherwise shall form a judgment of the court and may be enforced as such.

R.S.S. 1965, c.101, s.11; R.S.S. 1978, c.A-32,  
s.11.

**Delay by plaintiff**

**12** If within two months after the garnishee has entered the statement referred to in section 11, the plaintiff or judgment creditor does not proceed to have the question or liability determined as hereby provided, the garnishee may apply for an order to set aside the garnishee summons.

R.S.S. 1965, c.101, s.12; R.S.S. 1978, c.A-32,  
s.12.

## PAYMENT INTO AND OUT OF COURT

**Garnishee's costs**

**13** When a garnishee pays money into court in answer to a garnishee summons and employs a solicitor for the purpose, the solicitor may deduct therefrom the sum of \$5 where the amount paid in exceeds \$1,200, and in other cases the sum of \$3.

R.S.S. 1965, c.101, s.13; R.S.S. 1978, c.A-32,  
s.13.

**Order for payment to plaintiff**

**14(1)** No order shall be made against the garnishee or for payment out of any money paid into court by the garnishee, until at least ten days after service of the summons on the defendant or judgment debtor and on the garnishee, nor when a garnishee summons issues prior to judgment until the plaintiff has recovered a judgment against the defendant.

**(2)** No money paid into court under these proceedings shall be paid out except on the written consent of the parties interested or by order of the court or a judge, which order may be made *ex parte* or on such notice as the court or judge may direct.

R.S.S. 1965, c.101, s.14; R.S.S. 1978, c.A-32,  
s.14.

## DETERMINING THE INTEREST OF THIRD PERSONS

**Suggestion of claim of third party**

**15** When it is suggested by the garnishee, or any person claiming to be interested, that the debt attached belongs to a third person or that a third person has a lien or charge upon it, the court or a judge may order the third person or any other person to appear and state the nature and particulars of his claim.

R.S.S. 1965, c.101, s.15; R.S.S. 1978, c.A-32,  
s.15.

**Procedure in determining claim**

**16** After hearing the allegations of a third person appearing pursuant to an order made under section 15, and of any other person whom by the same or any subsequent order the court or a judge may require to appear, or in case of a third person not appearing when ordered, the court or judge may order execution to issue to levy the amount due from the garnishee, or any issue or question to be tried or determined according to the preceding sections of this Act, and may bar the claim of the third person, or make such other order as the court or judge thinks fit, upon such terms, in all cases, with respect to the lien or charge, if any, of the third person, and to costs, as the court or judge thinks just and reasonable.

R.S.S. 1965, c.101, s.16; R.S.S. 1978, c.A-32,  
s.16.



**Determination of question of fraud**

**17** On a summary hearing or trial of an issue the court or a judge may, after inquiring into the claim or suggested interest of a third person to or in the debt attached, hold it to be void as against the garnishee, plaintiff or judgment creditor as being a fraud as against creditors or otherwise impeachable by them.

R.S.S. 1965, c.101, s.17; R.S.S. 1978, c.A-32, s.17.

**JUDGMENT AND EXECUTION****Default by garnishee**

**18** If the garnishee does not pay into court the amount due from him to the debtor or an amount equal to the claim or judgment and costs, and does not dispute the debt due or claimed to be due from him to the debtor, the court or a judge may, after judgment has been entered against the primary debtor or at once when the garnishee summons is founded on a judgment already recovered, order that judgment be entered against the garnishee and that execution issue to levy the amount due from the garnishee or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.

R.S.S. 1965, c.101, s.18; R.S.S. 1978, c.A-32, s.18.

**Garnishee discharged by payment or levy**

**19** Payment made by or execution levied upon the garnishee shall be a valid discharge to him against the judgment debtor to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

R.S.S. 1965, c.101, s.19; R.S.S. 1978, c.A-32, s.19.

**Costs in garnishee proceedings**

**20** The costs of an application for an attachment of debts and of proceedings arising from or incidental to the application shall be in the discretion of the court or a judge, and, as regards the costs of the judgment creditor, shall, unless otherwise directed, be retained out of moneys recovered by him under the garnishee order and in priority to the amount of the judgment debt.

R.S.S. 1965, c.101, s.20; R.S.S. 1978, c.A-32, s.20.

**Execution stayed till money due**

**21** Execution shall issue to levy the money owing from a garnishee only when and so far as the money shall become fully due.

R.S.S. 1965, c.101, s.21; R.S.S. 1978, c.A-32, s.21.

## ATTACHMENT OF WAGES OR SALARY

**Exemption from attachment**

22(1) Subject to the other provisions of this section, no debt due or accruing due to an employee, for or in respect of wages or salary, is liable to attachment unless the debt exceeds the sum mentioned in subsection (2), and then only to the extent of the excess.

(2) The amount of an employee's wages or salary exempt from attachment in any month is \$500 plus \$100 for each of his dependants that he supports.

(3) For the purpose of subsection (2), "**dependant**" means:

(a) a spouse as defined in section 2 of *The Family Maintenance Act, 1997*, brother, sister, parent or grandparent; or

(b) a person under the age of sixteen years; or

(c) a person being sixteen years of age or more who:

(i) is in regular attendance at a school; or

(ii) by reason of mental or physical disability is unable to earn a livelihood.

(4) An employer who has been served with a garnishee summons to attach wages due or accruing due to his employee may retain the amount of the wages of the employee that is exempt from attachment and pay that amount to the employee.

(5) If the plaintiff or judgment creditor claims that an employee, in addition to a fixed money wage or salary is given board or lodging or the use of a house, or any other thing of value, in part payment or compensation for his services, the plaintiff or judgment creditor may apply, on not less than five days' notice, to the judge for an order appraising the money value of the board or lodging, use of house or other thing, and the value thus ascertained shall be deducted from the amount of the exemption to which the defendant or judgment debtor would otherwise be entitled.

(6) In case of an attachment of wages or salary, the defendant or judgment debtor or plaintiff or judgment creditor may without awaiting the regular sittings of the court, apply to a judge, upon at least five days' notice in writing to the other party or his solicitor, for an order fixing the amount of exemption and finally disposing of the matter, and the judge may order accordingly.

(7) Where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment is that sum that bears the same proportion to the amount of the exemption allowed by subsections (2) and (5) as the period for which the wages or salary is due or accruing due bears to one month of four weeks.

(8) Nothing in this section applies to a garnishee summons issued under:

(a) **Repealed.** 1984-85-86, c.77, s.2.

- (b) a judgment or order respecting:
    - (i) an action founded upon a separation agreement;
    - (ii) a debt contracted for board or lodging; or
    - (iii) hospital expenses payable to a hospital or recoverable by a municipality or by the Minister of Municipal Affairs under *The Local Improvement Districts Act* or *The Local Improvement Districts Relief Act*.
- (9) If the amount of the exemption to which the defendant or judgment debtor is entitled, or a portion thereof, is paid into court, it is not necessary for him to claim the amount or the portion, but he is entitled, in the absence of notice of an application under subsection (5) or subsection (6), to have it paid out to him at any time on application to the local registrar accompanied by an affidavit showing such facts as so entitle him.
- (10) Where a defendant or a judgment debtor does not make an application under subsection (9) for payment out to him of the amount to which he is entitled and that has been paid into court, prior to the expiration of two months after the date:
- (a) the amount is paid into court;
  - (b) judgment is recovered against the debtor;

whichever date is the later, the judgment creditor may, either *ex parte* or on such notice as the court or judge directs, apply to the court or a judge to have the amount, or so much of the amount as is sufficient to satisfy his judgment, paid out to him, and where an application is made the court or judge may make such order as is deemed advisable in the circumstances.

R.S.S. 1965, c.101, s.22; 1966, c.93, s.4; 1973, c.5, s.1; R.S.S. 1978, c.A-32, s.22; 1979, c.4, s.3; 1979-80, c.2, s.4; 1984-85-86, c.77, s.2; 2001, c.50, s.3.

**23 Repealed.** 1979-80, c.92, s.8.

**24 to 32 Repealed.** 1984-85-86, c.77, s.2.

SCHEDULE  
(For Use in Claims for Debt Due or Accruing Due)

FORM A  
[Section 3]

GARNISHEE SUMMONS

In the \_\_\_\_\_, Judicial Centre of \_\_\_\_\_  
between \_\_\_\_\_ of \_\_\_\_\_, plaintiff,  
and  
\_\_\_\_\_ of \_\_\_\_\_, defendant,  
and  
\_\_\_\_\_ of \_\_\_\_\_, garnishee.

To the above named garnishee.

You are hereby notified that the plaintiff has recovered a judgment in this Court against the defendant for \_\_\_\_\_ (or You are hereby notified that a suit has been entered in this Court in which the plaintiff claims of the defendant the sum of \_\_\_\_\_ as shown by his Statement of Claim filed in Court, a copy of which is hereto annexed) and it is alleged on affidavit filed that you are indebted to the said defendant. And you are required within twenty days from the service hereof to notify the Local Registrar by statement in writing whether or not there is any debt due or accruing due from you to the defendant (or judgment debtor) and, if so, what debt and why you should not pay the same into Court to the extent of the plaintiff's claim and costs.

Issued at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_ .

\_\_\_\_\_  
*C.J., Local Registrar*

(L.S.)

*Note* - Take notice that in default of your so notifying the Local Registrar you are liable to have judgment entered up against you.

(For Use in Claims for Wages or Salary)

FORM A  
[Section 3]

GARNISHEE SUMMONS

In the \_\_\_\_\_, Judicial Centre of \_\_\_\_\_  
between \_\_\_\_\_ of \_\_\_\_\_, plaintiff,  
and  
\_\_\_\_\_ of \_\_\_\_\_, defendant,  
and  
\_\_\_\_\_ of \_\_\_\_\_, garnishee.

To the above named garnishee.

You are hereby notified that the plaintiff has recovered a judgment in this Court against the defendant for \_\_\_\_\_ (or You are hereby notified that a suit has been entered in this Court in which the plaintiff claims of the defendant the sum of \_\_\_\_\_ as shown by his Statement of Claim filed in Court, a copy of which is hereto annexed) and it is alleged on affidavit filed that to the best of the deponent's information and belief the defendant (or judgment debtor) was or is employed by the Garnishee, at \_\_\_\_\_, in the capacity of \_\_\_\_\_ and you are required within twenty days from the service hereof to notify the Local Registrar by statement in writing whether or not there is any sum due for wages or salary from you to the defendant (or judgment debtor) and, if so, what amount and why you should not pay the same into Court to the extent of the plaintiff's claim and costs.

Issued at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
*C.J., Local Registrar*

(L.S.)

*Note* - Take notice that in default of your so notifying the Local Registrar you are liable to have judgment entered up against you.

**Editorial Appendix**

Subsection 2(6) of *The Enforcement of Maintenance Orders Consequential Amendment Act*, being chapter 77 of the *Statutes of Saskatchewan, 1984-85-86*, provides:

“Notwithstanding section 2.1 of *The Attachment of Debts Act*, the provisions of that Act apply in respect of a garnishee summons that is issued pursuant to section 3 of that Act with respect to an order for maintenance and that is in effect on the day before the date this section comes into force”.

Subsection 2(5) of *The Enforcement of Maintenance Orders Consequential Amendment Act*, being chapter 77 of the *Statutes of Saskatchewan, 1984-85-86*, provides:

“Notwithstanding the repeal of clause 22(8)(a) and sections 24 to 32 of *The Attachment of Debts Act*, those sections continue to apply in respect of a garnishee summons that is served pursuant to section 25 of that Act with respect to an order for maintenance and that is in effect on the day before the date this section comes into force, and for that purpose, notwithstanding section 2.1 of that Act, those sections are deemed to be in full force and effect.”