

**GARNISHMENT OF WAGES PAID BY
THE FEDERAL CROWN**

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GARNISHMENT OF WAGES PAID BY THE FEDERAL CROWN

INTRODUCTION

Recovery of a debt owed can often be difficult and, in that regard, garnishment (or the “attachment of debts” as it is sometimes called) has been described as “undoubtedly the most powerful weapon in the arsenal of the creditor.”⁽¹⁾ Debtors often have few seizable assets, but are likely to have a bank account or a job that pays wages or a salary. Garnishment is a frequently used procedure that permits a creditor (the “garnishor” in this case) to attach and seize debts owing by a third party to the debtor. The third party, known as the “garnishee,” is often an employer of the debtor, or the debtor’s bank, but may be any person who is or will become indebted to the debtor. Garnishment is equally effective for family creditors in respect of debts arising from family support obligations. In all Canadian jurisdictions, a garnishment process is available to creditors who have obtained a money judgment in the appropriate court; in some of those jurisdictions, garnishment is also permitted in certain instances before judgment. Though the process varies from province to province, generally speaking, in order to garnish, there must be a debt due or accruing due. For these purposes, the term “debt” is most commonly used to describe an obligation to pay a sum certain or a sum readily reducible to a certainty. The obligation may or may not depend on an express or implied contract.⁽²⁾

(1) C.R.B. Dunlop, *Creditor – Debtor Law in Canada*, Carswell, 2nd ed., 1995, p. 363.

(2) *Ibid.*, p. 16.

Proceedings for the recovery of a debt are usually conducted in the civil court of first instance in each jurisdiction, known in most provinces and territories as the Supreme Court or the Court of Queen’s Bench. Proceedings may also be conducted in the Small Claims Court in jurisdictions where such a court exists and the size of the claim permits. Generally speaking, a successful claim for an unpaid debt will result in a judgment to pay money. Following judgment, the usual mechanisms for enforcement are the issuance of a writ of execution against goods or land or garnishment of moneys owing to the debtor. In each province and territory, there are laws specifying that some minimum amount of personal property owned by debtors, a portion of the debtor’s wages, as well as certain other assets, are exempt from garnishment or seizure under legal process.

At common law, a rule of public policy is that wages or salaries payable by the Crown out of national funds are not subject to attachment or other methods of execution.⁽³⁾ However, Part I of the *Garnishment, Attachment and Pension Diversion Act*,⁽⁴⁾ has reversed the common law position in that, “notwithstanding any provision of any other Act of Parliament preventing the garnishment of Her Majesty,” it expressly permits the garnishment of federal salaries and remuneration such as “fees, honoraria or other payments of like import” to satisfy judgments or orders, including family maintenance orders. Thus, salaries and wages paid to federal public servants, federally appointed judges, Members of Parliament, employees of the Senate, the House of Commons and the Library of Parliament, members of the Royal Canadian Mounted Police and others paid by the federal Crown can be subject to garnishment and attachment orders.

Since Part I of the Act, for the most part, makes the federal Crown bound by “provincial garnishment law” in respect of the salaries or wages it pays, it is necessary to look at the relevant provincial garnishment legislation to determine what exemptions exist in respect of the garnishment of federal wages or salaries. “Provincial garnishment law” is defined for purposes of Part I as a province’s law of general application relating to garnishment in force at the time in question. This paper therefore documents the approach and any exemptions that are in place in each province and territory with regard to the garnishment of wages or salaries, in respect of both ordinary debts and those arising from family support obligations.

(3) For example, *Flarty v. Odlum*, (1790) 3 Times Reports 681.

(4) R.S.C. 1985, c. G-2 as amended.

NEWFOUNDLAND

Newfoundland's *Attachment of Wages Act* ⁽⁵⁾ stipulates that the amount of wages or salary to be exempted from attachment or execution under the Act must be set out by order of the Lieutenant Governor in Council. The order may prescribe different amounts for single and married persons supporting dependants.⁽⁶⁾ According to the *Attachment of Wages Exemption Order*⁽⁷⁾ made pursuant to the Act, the net monthly amount exempt from attachment or execution is:

- in the case of a married person supporting a spouse, the sum of \$1,019;
- in the case of a married person supporting a spouse and one dependant; the sum of \$1,059;
- in the case of a married person supporting a spouse and more than one dependant, the sum of \$1,059, plus \$47 for each dependant in excess of one;
- in the case of a person supporting one or more dependants, the sum of \$963 plus \$47 for each dependant in excess of one; and
- in the case of any other person, the sum of \$649.⁽⁸⁾

The Act defines a “dependant” to include:

- (a) a brother, sister, parent or grandparent;
- (b) a person under the age of 16 years; and
- (c) a person who is 16 or more years of age and who
 - (i) is in regular attendance at school; or
 - (ii) because of mental or physical disability is unable to earn a livelihood.⁽⁹⁾

The Act also provides that, where the debt due or accruing due consists of wages or salary covering a period greater or less than one month, the part of it exempt from attachment

(5) R.S. Nfld. 1990, c. A-20 as amended.

(6) *Ibid.*, s. 3(2).

(7) *Consolidated Newfoundland Regulations*, Regulation 953/96.

(8) *Ibid.*, s. 2.

(9) R.S.Nfld. 1990, c. A-20 as amended, s. 2.

or execution will be in the same ratio to the exemption described above as the ratio between the period in question and “one month or four weeks.”⁽¹⁰⁾

Nothing in the Act, however, applies to an attachment or execution issued in respect of a family financial support order.⁽¹¹⁾ According to Newfoundland’s *Family Law Act*,⁽¹²⁾ where there is a default in payment under a support order, a clerk of the court may require the debtor, upon notice to:

- (a) file a financial statement;
- (b) submit to an examination as to assets and means; and
- (c) appear before the court to explain the default.⁽¹³⁾

Where it considers it appropriate in such a proceeding, the court may make an attachment order directing the employer to deduct from remuneration due to the debtor at the time the order is served (or after due or accruing due) and to pay into court a stated amount, including court costs.⁽¹⁴⁾ An attachment order with respect to family financial support has priority over another seizure or attachment of wages or pension arising before or after the service of the order.⁽¹⁵⁾ The Act further stipulates that an order for support may be enforced under the *Support Orders Enforcement Act*.⁽¹⁶⁾

According to that Act,⁽¹⁷⁾ support orders may be registered by a creditor or a debtor with the Director of Support Enforcement⁽¹⁸⁾ whose duty is to enforce such registered orders.⁽¹⁹⁾ No other person is permitted to take proceedings to do so while an order is registered

(10) *Ibid.*, s. 4(1).

(11) *Ibid.*, s. 8.

(12) R.S.Nfld. 1990, c. F-2 as amended.

(13) *Ibid.*, s. 51(1).

(14) *Ibid.*, s. 53(1).

(15) *Ibid.*, s. 53(3).

(16) *Ibid.*, s. 56.

(17) R.S.Nfld. 1990, c. S-31 as amended.

(18) *Ibid.*, s. 4(1).

(19) *Ibid.*, s. 3(2).

with the Director.⁽²⁰⁾ However, nothing in the Act prohibits the Director or a creditor from taking proceedings under another Act to enforce a support order.⁽²¹⁾

Under the *Support Orders Enforcement Act*, an obligation to pay money under a support order may be enforced by garnishment of money payable to the debtor by another person.⁽²²⁾ A garnishment order may be made where either the debtor has already defaulted in payment or where the judge considers that the circumstances warrant it in order to secure payment under the support order.⁽²³⁾ A garnishment order may include payment of arrears, a lump sum or future periodic payments.⁽²⁴⁾ On application by the debtor, a judge may, where satisfied that it would be grossly unfair and inequitable to do otherwise, make an order specifying the amount of money that is exempt from garnishment.⁽²⁵⁾

NOVA SCOTIA

According to Nova Scotia's *Rules of Civil Procedure*, under a garnishment order an employer is required to pay the sheriff 15% of a judgment debtor's gross wages. In no case, however, shall the gross wages of a debtor supporting a family⁽²⁶⁾ fall below \$315 per week, or those of a single debtor fall below \$210.

Under Nova Scotia's *Maintenance Enforcement Act*,⁽²⁷⁾ the Director of Maintenance Enforcement must take all measures he or she considers advisable to enforce a maintenance order filed with the Director and in respect of which the parties have not opted out of the enforcement program.⁽²⁸⁾ To enforce a maintenance order, the Director may issue a garnishment requiring one or more "income sources" of the "payor" (the person required under a

(20) *Ibid.*, s. 4(4).

(21) *Ibid.*, s. 4(5).

(22) *Ibid.*, s. 14(1).

(23) *Ibid.*, s. 17(2).

(24) *Ibid.*, s. 17(3).

(25) *Ibid.*, s. 25.

(26) Nova Scotia, *Rules of Civil Procedure*, Rule 53.02.

(27) S.N.S. 1994-5, c. 6 as amended.

(28) *Ibid.*, s. 6, 7.

maintenance order to pay maintenance) to deduct specified amounts from remuneration due to the payor at the time the order is served (or thereafter due or accruing due).⁽²⁹⁾ A garnishment binds every income source that is served with an order by the Director, whether or not it is named in the order.⁽³⁰⁾ An “income source” for purposes of the Act includes an individual, a corporation or entity that owes a payor money for wages, salary or other remuneration, commission, bonus, piece-work allowance; an accident, disability or sickness plan benefit; a disability, retirement or other pension; an annuity; a fee for service; rental income; or income of a type prescribed by regulation.⁽³¹⁾ The Act specifically states that it “binds Her Majesty in right of the Province and in right of Canada.”⁽³²⁾

PRINCE EDWARD ISLAND

In Prince Edward Island, a discretionary policy is followed in determining the amount of wages or salary exempt from garnishment. The regulations made pursuant to that province’s *Garnishee Act*⁽³³⁾ set out the amounts and purposes of sums that are exempt.⁽³⁴⁾ The prothonotary of the P.E.I. Supreme Court calculates the amount on the basis of an exemption for each “item of basic need” prescribed by regulation, although “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 *Welfare Assistance Act*.”⁽³⁵⁾ The monthly exemptions for “items of basic need” are set out in the regulations as follows:

- Food: \$30 for each person over 12 years of age up to two persons; \$25 for each additional person over 12 years of age; \$20 for each child under 12 years of age; plus a reasonable allowance for a special diet required by the judgment debtor or a dependant;
- Clothing: \$15 for the head of the household and \$10 for each additional person;

(29) *Ibid.*, s. 19(1).

(30) *Ibid.*, s. 19(2).

(31) *Ibid.*, s. 2(d).

(32) *Ibid.*, s. 3.

(33) R.S.P.E.I. 1988, c. G-2 as amended.

(34) *Ibid.*, s. 17(2).

(35) *Ibid.*, s. 17(3).

- Household and personal items: A maximum of \$15 per family unit calculated as follows: \$6 for the first person over 12 years of age; \$4 for the second person over 12 years of age; \$2 for any person under 18 years of age not in receipt of an allowance; \$2 for each additional person over 18 years of age;
- Living accommodations: a rental allowance or, for a homeowner, an allowance covering mortgage payments, taxes, fire insurance and other assessments provided that the allowance does not exceed what reasonably might be expected to be paid for accommodation of a comparable kind and quality in the same area;
- Fuel and utilities: An allowance on the basis of actual cost based on the previous year's expenditure provided that such allowance does not exceed what is reasonable for the area;
- Health care services: An allowance for the actual cost to the judgment debtor of: necessary medical and surgical services, nursing, dental and optical care; essential prescription drugs; and prosthetic appliances.⁽³⁶⁾

The *Garnishee Act* also stipulates that a judge who believes that a judgment debtor is in receipt of a regular salary or wages may make an order for the attachment of future accruing salary or wages until such time as the debt due to the attaching creditor and costs are paid and satisfied.⁽³⁷⁾ In determining the amount of the order, the judge must calculate and take into account the exemption to which the judgment debtor would have been entitled on wages due or accruing due (or must adopt such a calculation already made by the prothonotary).⁽³⁸⁾

Pursuant to the Prince Edward Island's *Maintenance Enforcement Act*,⁽³⁹⁾ the Director of Maintenance Enforcement must enforce maintenance orders filed in the office of the Director.⁽⁴⁰⁾ The Director may prepare a statement of any arrears and serve this on the "payor" together with a notice requiring the payor to file a financial statement in the Director's office and to appear in court and explain the default.⁽⁴¹⁾ The court has the power to order that the wages of the payor be garnished in the amount specified; the garnishee must pay the amount specified into

(36) Regulations under the *Garnishee Act*, R.R.P.E.I., c. G-2, s. 3.

(37) R.S.P.E.I. 1988, c. G-2 as amended, s. 17(5).

(38) *Ibid.*, s. 17(6).

(39) R.S.P.E.I. 1988, c. M-1 as amended.

(40) *Ibid.*, s. 2(2).

(41) *Ibid.*, s. 11(1).

court without any hearing to show cause why he or she should not do so.⁽⁴²⁾ The court may, on motion, vary the order if satisfied that there is a material change in the payor's circumstances.⁽⁴³⁾ The Act also provides that the provisions of that province's *Garnishee Act* do not apply to any payment order made or enforced pursuant to the *Maintenance Enforcement Act*.⁽⁴⁴⁾

NEW BRUNSWICK

By virtue of a provision in New Brunswick's *Garnishee Act*,⁽⁴⁵⁾ wages due to the judgment debtor for his or her personal labour and services on a hiring are exempt from garnishment.⁽⁴⁶⁾

Where support orders are filed with a court administrator, the province's *Family Services Act*⁽⁴⁷⁾ provides for a system of automatic deduction of support payments by "income sources." All support orders are automatically filed when they are made, unless the person who would benefit from the order notifies the court to the contrary.⁽⁴⁸⁾ An "income source" for the above purposes is an individual, corporation or other entity that owes money to a person against whom a support order has been made, including: wages or salary; commission, bonus or piecework allowance; accident, sickness and disability benefits; disability, retirement or other pension; an annuity, or income of a type prescribed by regulation.⁽⁴⁹⁾

Where a support order has been filed with the court, the person against whom the order was made must, within 14 days, provide the court with required information and:

- arrange for an income source to pay the money into court; or
- request that the court administrator make a payment order; or

(42) *Ibid.*, s. 11(4.1).

(43) *Ibid.*, s. 11(5).

(44) *Ibid.*, s. 17.

(45) R.S.N.B. 1973, c. G-2 as amended.

(46) *Ibid.*, s. 31.

(47) S.N.B. 1980, c. F-2.2 as amended.

(48) *Ibid.*, s. 122.2.

(49) *Ibid.*, s. 111.

- file security with the court to secure payment of the support order.⁽⁵⁰⁾

If the above requirement is not complied with within the set time, a court administrator may make a payment order directing an income source to pay the court a specified amount.⁽⁵¹⁾ As well, a person against whom a support order has been made may request a court administrator to make such an order.⁽⁵²⁾ Where payments under a support order are in default, the court administrator may, without prior notice to the debtor and without a hearing, direct the income source to pay to the court, or to a person named in the order, specified amounts to be applied against those payable under the support order.⁽⁵³⁾

QUEBEC

According to the relevant article of Quebec's *Code of Civil Procedure*,⁽⁵⁴⁾ the following wages and other compensation are exempt from garnishment:

- all gross salaries and wages to the extent of 70% of the excess over the following unseizable portion: \$180 per week plus \$30 per week for each dependant in excess of two, if the debtor is supporting his consort, has a dependent child, or is the main support of a relative; or \$120 in all other cases; and
- contingent emoluments and fees due to ecclesiastics and ministers of religion by reason of their current services, and the income of their clerical endowment.⁽⁵⁵⁾

In calculating salaries and wages, the following are excepted:

- the contributions of the employer to pension, insurance or social welfare funds;
- the value of food and lodging supplied or paid for by the employer on the occasion of travelling while carrying out work; and

(50) *Ibid.*, s. 122.3(1).

(51) *Ibid.*, s. 122.3(2).

(52) *Ibid.*, s. 122.4.

(53) *Ibid.*, s. 123.3.

(54) R.S.Q., c. C-25 as amended.

(55) *Ibid.*, Art. 553.

- passes given by a transportation undertaking to its employees.⁽⁵⁶⁾

The same article provides that in the case of family support orders, up to 50% of income is unseizable.⁽⁵⁷⁾

An Act to Facilitate the Payment of Support⁽⁵⁸⁾ provides that a debtor of support shall make his or her support payments to the Minister of Revenue for the benefit of the creditor.⁽⁵⁹⁾ The court may, however, exempt a debtor from this obligation where he or she establishes a trust guaranteeing the payment of support or where, on a joint application of the parties, the court is satisfied that the parties have consented and the debtor furnishes sufficient security to guarantee support payments for three months.⁽⁶⁰⁾ Otherwise, where a debtor is paid periodically by a source, the Minister must collect support payment by deductions at source from the following amounts and in the following order:

- 1) salary, wages or other remuneration;
- 2) fees or advances on remuneration, fees or profits;
- 3) benefits granted under an Act in respect of a pension plan or compensation plan;
- 4) other amounts specified by regulation.⁽⁶¹⁾

The Minister must determine the sum that may be deducted at source, having regard to the support payments to be made, up to the portion that is seizable for support debts as determined under the *Code of Civil Procedure*. Arrears in support payments may be included in that sum, in such proportion as the Minister determines. For the purpose of determining that sum, all of the income sources set out above are deemed to be salary.⁽⁶²⁾

(56) *Ibid.*

(57) *Ibid.*

(58) S.Q. 1995, c. 18 as amended.

(59) *Ibid.*, s. 2.

(60) *Ibid.*, s. 3.

(61) *Ibid.*, s. 11.

(62) *Ibid.*, s. 15.

ONTARIO

According to Ontario's *Wages Act*,⁽⁶³⁾ 80% of a person's wages is exempt from seizure or garnishment.⁽⁶⁴⁾ The exception is that only 50% of a person's wages is exempt from seizure or garnishment under an order for support or maintenance enforceable in Ontario.⁽⁶⁵⁾ "Wages" here, do not include an amount that the employer is required by law to deduct from wages.⁽⁶⁶⁾ For purposes of the Act, "wages" are defined to mean wages or salary, whether the employment in respect of which they are payable is by time or by the job or piece or otherwise.⁽⁶⁷⁾

A judge of the court in which a notice of garnishment is issued against a person's wages may, on motion by the creditor on notice to the person, order a decrease in the exemption from garnishment where satisfied that it is just to do so, having regard to the person's financial circumstances and other relevant matters.⁽⁶⁸⁾ Likewise, the judge may (on motion by the person whose wages are being garnished on notice to the creditor) order an increase in the exemption, where satisfied that it is just to do so, having regard to the person's financial circumstances and any other relevant matter.⁽⁶⁹⁾

Under Ontario's *Family Responsibilities and Support Enforcement Act, 1996*,⁽⁷⁰⁾ consenting parents are able to opt out of the government's enforcement program for support orders and deal directly with one another. To safeguard the interests of vulnerable parties, however, a judge can prohibit opting out. The Director of the Family Responsibility Office generally has an obligation to enforce support deduction orders filed in his or her office.⁽⁷¹⁾ An "income source" that receives notice of a support deduction order (made at the same time as a support order) must deduct from the money owned to the payor the amount of support owed (or such other amount that is set out in the notice), and must pay that money to the Director for the

(63) R.S.O. 1990, c. W.1 as amended.

(64) *Ibid.*, s. 7(2).

(65) *Ibid.*, s. 7(3).

(66) *Ibid.*, s. 7(1).

(67) *Ibid.*, s. 1.

(68) *Ibid.*, s. 7(4).

(69) *Ibid.*, s. 7(5).

(70) S.O. 1996, c.31.

(71) *Ibid.*, s. 20(1).

person entitled to support.⁽⁷²⁾ However, this total amount must not exceed 50% of the “net amount” owed by the income source to the payor.⁽⁷³⁾ “Net amount” is defined as the total amount owed by the income source to the payor at the time payment is made to the Director, less: income tax, Canada Pension Plan contributions, unemployment insurance, union dues, and such other deductions as may be prescribed by the regulations.⁽⁷⁴⁾ “Income source” is broadly defined for these purposes to mean an individual, corporation, or other entity that owes or makes any payment, whether periodically or in a lump sum, to or on behalf of the person required to pay support under a support order, including wages, salaries, commissions, bonuses, or piece-work allowances.⁽⁷⁵⁾

MANITOBA

Under Manitoba’s *Executions Act*,⁽⁷⁶⁾ three months’ wages or salary of the execution debtor are exempt from seizure under a writ of execution.⁽⁷⁷⁾

The province’s *Garnishment Act*⁽⁷⁸⁾ provides that the service of garnishment process on a garnishee binds a) any debt due or accruing due at the time of service from the garnishee to the defendant or judgment debtor, other than wages, and b) all wages that become due and payable from the garnishee to the judgment debtor within one month from the effective date of the garnishing process.⁽⁷⁹⁾ The Act defines “wages” to include salary, commission and fees, and any other money payable by an employer in respect of work or services performed in the course of employment; but it does not include deductions made by the employer under any federal or provincial Act.⁽⁸⁰⁾ Except as otherwise provided in the Act, 70% of wages is exempt from seizure or attachment under a garnishing order issued out of any court; in no case shall the

(72) *Ibid.*, s. 22(1).

(73) *Ibid.*, s. 23(1).

(74) *Ibid.*, s. 23(5).

(75) *Ibid.*, s. 1(1).

(76) R.S.M. 1987, c. E-160 as amended.

(77) *Ibid.*, s. 3,4, 23.

(78) R.S.M. 1987, c. G-20 as amended.

(79) *Ibid.*, s. 4.

(80) *Ibid.*, s. 1.

amount of exemption be less than a) in the case of a person without dependants, \$250/per month and b) in the case of a person with one or more dependants, \$350.⁽⁸¹⁾ Where the wages of a person are seized or attached under a maintenance order as defined in the Act, the exemption allowed to that person is \$250 per month. The Act specifies that in all these cases the exemption may be in such greater amount as may be prescribed by regulation, per month or *pro rata* for a shorter period.⁽⁸²⁾

The Act provides that a creditor who has under the Act initiated proceedings by way of seizure or attachment of a person's wages or a debtor affected by such proceedings may make an application in writing supported by affidavit to the clerk of the appropriate court for an increase or decrease of the amount of the exemption allowed.⁽⁸³⁾ The clerk of the court must, within three days after the receipt of such application, notify the persons affected of the date on which he or she will consider the matter; this cannot be later than seven days after the receipt of the application.⁽⁸⁴⁾ After duly hearing the evidence adduced and having regard to all the circumstances, the clerk may make an order confirming, increasing or reducing the allowed exemption.⁽⁸⁵⁾ However, no order can be made that a) would increase the exemption allowed under the Act to more than 90% of the wages; or b) would reduce the wages to an amount less than the exemption to which the employee is entitled as set out above.⁽⁸⁶⁾

The Act stipulates that a person affected by an order confirming, increasing or reducing the exemption allowed can, not later than 14 days from the date of the order, by a notice of motion, appeal the order to a judge in chambers in the relevant court.⁽⁸⁷⁾ The appellant must serve the motion on the clerk of the relevant court and on every other person affected at least

(81) *Ibid.*, s. 5.

(82) *Ibid.*, s. 7.

(83) *Ibid.*, s. 8(2).

(84) *Ibid.*, s. 8(3).

(85) *Ibid.*, s. 8(4).

(86) *Ibid.*, s. 8(5).

(87) *Ibid.*, s. 8(6).

three days before the date fixed for the hearing of the appeal.⁽⁸⁸⁾ The judge hearing the appeal may confirm or vary the order but the exemption may not exceed the maximum set out above.⁽⁸⁹⁾

Part VI (Enforcement of Maintenance Orders) of the province's *Family Maintenance Act*⁽⁹⁰⁾ generally applies in the case of a maintenance order (other than an order for the payment of a lump sum) unless the person entitled to receive the payments thereunder signs and files with the "designated officer" a statement indicating that Part VI shall not apply. Where a maintenance order to which Part VI applies is in default, the designated officer may take one or more of a number of enumerated actions, including proceeding to obtain a garnishing order, to enforce the order.⁽⁹¹⁾ The Act specifically states that the *Garnishment Act* applies with respect to any garnishment issued to enforce a maintenance order under the *Family Maintenance Act*.⁽⁹²⁾

SASKATCHEWAN

Under Saskatchewan's *Attachment of Debts Act*,⁽⁹³⁾ service of a garnishee summons binds 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 the following five days.⁽⁹⁴⁾ The Act provides that, subject to the exception noted below, a garnishee summons to attach a debt due or accruing due to a person in respect of his or her wages or salary shall be made only where the claim of the creditor against the debtor is upon a judgment.⁽⁹⁵⁾ However, on application, a court or a judge satisfied that it will be conducive to the ends of justice to do so, may make an order permitting the issue of a summons before judgment; any party affected by such order may move to set aside the summons.⁽⁹⁶⁾ The procedure is set out in the Act.

(88) *Ibid.*, s. 8(7).

(89) *Ibid.*, s. 8(5), (8).

(90) R.S.M. 1987, c. F-20 as amended.

(91) *Ibid.*, s. 55(4).

(92) *Ibid.*, s. 59(3).

(93) R.S.S. 1978, c. A-32 as amended.

(94) *Ibid.*, s. 5(1).

(95) *Ibid.*, s. 9(1).

(96) *Ibid.*, s. 9(2).

The Act provides that the amount of an employee's wages or salary exempt from attachment in any month is \$500 plus \$100 for each of his for her dependants.⁽⁹⁷⁾ The Act defines a "dependant" for these purposes as including: a) a wife, husband, brother, sister, parent, or grandparent; or b) a person under the age of 16; or c) a person 16 years of age or more who is in regular attendance at school or who by reason of mental or physical disability is unable to earn a livelihood.⁽⁹⁸⁾

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, that the plaintiff or judgment creditor claims is received by an employee in addition to a fixed money wage or salary. The value thus ascertained shall be deducted from the amount of the exemption to which the debtor would otherwise be entitled.⁽⁹⁹⁾

As well, the Act specifies that, where the debt due or accruing due consists of wages or salary for a period of less than one month, the part thereof exempt from attachment will be in the same ratio to the exemption allowed by the Act as the relevant period bears to "one month of four weeks."⁽¹⁰⁰⁾

The Act expressly stipulates that this exemption does not apply to a judgment or order respecting: an action founded upon a separation agreement; a debt contracted for board or lodging; or 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 Improvements District Relief Act*.⁽¹⁰¹⁾

The Act does not apply to a debt due under a maintenance order as defined in the *Enforcement of Maintenance Orders Act*,⁽¹⁰²⁾ which⁽¹⁰³⁾ a claimant may, by filing a notice in writing, choose not to have filed in the Maintenance Enforcement Office.⁽¹⁰⁴⁾ However, where

(97) *Ibid.*, s. 22(2).

(98) *Ibid.*, s. 22(3).

(99) *Ibid.*, s. 22(5).

(100) *Ibid.*, s. 22(7).

(101) *Ibid.*, s. 22(8).

(102) *Ibid.*, s. 2.1.

(103) S.S. 1984-85-86, c. E-9.2 as amended.

(104) *Ibid.*, s. 7(5).

such an order has been filed, the Director of Maintenance Enforcement may take such steps as he or she considers advisable, including garnishment, to enforce the order.⁽¹⁰⁵⁾ The garnishment procedure is set out in the Act, which stipulates that, notwithstanding any other Act and subject to the provision noted below and the regulations, no money is exempt from garnishment.⁽¹⁰⁶⁾ However, on application by the person who has an obligation to pay a maintenance order, a judge may, where he or she is satisfied that it would be grossly unfair to do otherwise, make an order specifying the amount of money that is exempt from garnishment.⁽¹⁰⁷⁾

ALBERTA

Alberta's *Civil Enforcement Act*⁽¹⁰⁸⁾ deals primarily with the enforcement of a money judgment. In any month that the garnishee summons is in effect, the sum attached is the amount by which an enforcement debtor's net pay for the month exceeds his or her actual employment earnings exemption for the month.⁽¹⁰⁹⁾ The Act defines "net pay" to mean the total employment earnings payable by an employer to a person in that month, minus any deductions prescribed by regulation.⁽¹¹⁰⁾ The regulations set out those deductions as income tax, Canada Pension Plan contributions, and unemployment insurance contributions.⁽¹¹¹⁾

According to the Act, an enforcement debtor's actual employment earnings exemption for any month is the sum of his or her minimum exemption plus one half of the amount by which his or her net pay exceeds that amount. However, an employment earnings exemption for any month must not exceed the maximum exemption. The Act stipulates that both the minimum and maximum employment earnings exemption for any month must be determined in accordance with the regulations:⁽¹¹²⁾ unless otherwise ordered by the court, the minimum

(105) *Ibid.*, s. 8, 14.

(106) *Ibid.*, s. 27(1).

(107) *Ibid.*, s. 27(2).

(108) S.A. 1994, c. C-10.5 as amended.

(109) *Ibid.*, s. 81(1).

(110) *Ibid.*, s. 77.

(111) Alberta, *Civil Enforcement Regulation*, Regulation 276/95, s. 39(1).

(112) S.A. 1994, c. C-10.5 as amended, s. 81(1).

employment earnings exemption for any month is \$800 plus \$200 per dependant and the maximum exemption is \$2,400 plus \$200 per dependant.⁽¹¹³⁾ On application, the minimum or maximum employment earnings exemption to which the employment debtor is entitled may be varied by the Court.⁽¹¹⁴⁾ In considering such an application, the court should take into consideration the following:

- the family responsibilities of the enforcement debtor;
- the personal circumstances of the enforcement debtor;
- the conduct of the enforcement debtor in the carrying out of the enforcement debtor's financial affairs; and
- the earnings of the enforcement debtor's spouse and dependants.⁽¹¹⁵⁾

For the above purposes, a "dependant" is defined to mean one or more of the following :

- any person for whom an enforcement debtor is entitled to claim a spousal amount for the purposes of the *Income Tax Act*;
- any child of the enforcement debtor who is under the age of 18 years and lives with the debtor;
- any relative of an enforcement debtor or of the enforcement debtor's spouse who, by reason of mental or physical infirmity, is financially dependent on the enforcement debtor;
- any other person who the court determines is financially dependent on the enforcement debtor.⁽¹¹⁶⁾

The above Act also stipulates that the portion of an enforcement debtor's employment earnings that is exempt from garnishment and the portion that is attached by the

(113) Alberta, *Civil Enforcement Regulation*, Regulation 276/95, s. 39(2).

(114) *Ibid.*

(115) *Ibid.*, s. 39(4).

(116) *Ibid.*, s. 36.

garnishee summons in respect of a judgment for the payment of alimony or maintenance must be determined in accordance with Alberta's *Maintenance Enforcement Act*.⁽¹¹⁷⁾

Under that Act,⁽¹¹⁸⁾ the Director of Maintenance Enforcement may enforce a maintenance order filed with the Director in the manner he or she considers appropriate.⁽¹¹⁹⁾ When a debtor (the person required under a maintenance order to pay maintenance) is in receipt of a salary, wages or other remuneration from an employer or any other person engaging his or her services, the Alberta Court of Queen's Bench may on application make a garnishment order directing the payment to a specific clerk of the court of a specified part of the salary, wages or other remuneration.⁽¹²⁰⁾ The part of the salary specified may include an amount to be applied to reduce arrears of maintenance payable under the maintenance order.⁽¹²¹⁾ The garnishment order must be directed to the debtor and the employer or other person engaging the debtor's services and must be stated to continue for the time fixed by the Court of Queen's Bench or until the Court orders otherwise.⁽¹²²⁾ An order served on the garnishee binds that part of the wages, salary or remuneration that is specified.⁽¹²³⁾ Upon being served with a garnishment order, the employer is required to notify the debtor and remit payment to the Court of Queen's Bench in accordance with the order.⁽¹²⁴⁾

BRITISH COLUMBIA

Under the provisions of British Columbia's *Court Order Enforcement Act*,⁽¹²⁵⁾ 70% of any wages due by an employer to an employee is exempt from seizure or attachment

(117) S.A. 1994, c. C-10.5 as amended, s. 81.

(118) S.A. 1985, c. M-0.5 as amended.

(119) *Ibid.*, s. 5.

(120) *Ibid.*, s. 5, 14(1).

(121) *Ibid.*, s. 14(2).

(122) *Ibid.*, s. 14(3).

(123) *Ibid.*, s. 14(4).

(124) *Ibid.*, s. 14(5).

(125) R.S.B.C. 1979, c. 75 as amended.

under a garnishing order issued by a judge or registrar of the B.C. Supreme Court. In no case shall the amount of the exemption be less than

- a) in the case of a person without dependants, \$100 per month, or proportionately for a shorter period; and
- b) in the case of a person with one or more dependants, \$200 per month, or proportionately for a shorter period.⁽¹²⁶⁾

For purposes of the above, “wages” include salary, commissions and fees and any other money payable by an employer to an employee for work or services performed in the course of employment of the employee, but do not include deductions from wages made by an employer under any federal or provincial Act.⁽¹²⁷⁾

The Act provides that, notwithstanding the above, where the wages of a person are seized or attached under a court order for alimony or maintenance, a duly executed separation agreement, or an order under section 17(2) of the *Family Maintenance Enforcement Act*, the exemption allowed to that person is 50% of any wages due where the wages do not exceed \$600 per month, and 33 1/3% for wages in excess of \$600 per month; in no case is the exemption permitted to be less than \$100 per month, or proportionately for a shorter period.⁽¹²⁸⁾

The Act also provides that a creditor who has proceeded by way of seizure or attachment of wages or a debtor affected by the proceedings may apply in writing to the registrar of the Supreme Court (or, if the proceedings are in the B.C. provincial Court, to a judge of that court), for an increase or reduction of the exemption allowed.⁽¹²⁹⁾ The registrar or judge must, within three days after receipt of the application, notify the persons affected of the date on which he or she will consider the matter, which must not be later than seven days after the receipt of the application.⁽¹³⁰⁾ After considering all the evidence presented and having regard to all the related circumstances, the registrar or judge may make an order confirming, increasing or reducing the

(126) *Ibid.*, s. 4(4).

(127) *Ibid.*, s. 1.

(128) *Ibid.*, s. 4(6).

(129) *Ibid.*, s. 5(1).

(130) *Ibid.*, s. 5(2).

exemption allowed.⁽¹³¹⁾ However, no order can have the effect of increasing the allowed exemption to more than 90% of the wages due, or reducing the wages below \$100 per month for a person without dependants or \$200 per month for a person with one or more dependants, or proportionately for a shorter period.⁽¹³²⁾

Where a debtor is in default with respect to a maintenance order filed with the Director of Maintenance Enforcement under the *Family Maintenance Enforcement Act*,⁽¹³³⁾ the Director may commence garnishment proceedings in accordance with the Act.⁽¹³⁴⁾

NORTHWEST TERRITORIES

Under the Northwest Territories *Exemptions Act*,⁽¹³⁵⁾ exempt from garnishment of a debtor's wages is the sum of \$300, as well as a further \$100 for each adult and \$80 for each child who is wholly or partly dependent on the debtor for maintenance and support, for each calendar month in which the wages or salary is payable and a garnishee summons is in force.⁽¹³⁶⁾ This exemption applies to each occasion during the calendar month on which the employee is paid.⁽¹³⁷⁾ The exemption does not apply in a few instances, including where a garnishee summons has been issued on a judgment or order for the payment of alimony or maintenance.⁽¹³⁸⁾ As well, the wages or salary of an employee are exempt from garnishment to the extent of the amounts required to be deducted by the employer of the debtor by or under a federal Act or an Act of the Territories.⁽¹³⁹⁾ The Supreme Court of the Northwest Territories may, on application,

(131) *Ibid.*, s. 5(3).

(132) *Ibid.*, s. 5(4).

(133) S.B.C. 1988, c. 3 as amended.

(134) *Ibid.*, s. 15(1).

(135) R.S.N.W.T. 1988, c. E-9 as amended.

(136) *Ibid.*, s. 9(1).

(137) *Ibid.*, s. 9(2).

(138) *Ibid.*, s. 9(3).

(139) *Ibid.*, s. 9(5).

reduce the statutory exemption where the spouse or a dependant of a debtor is receiving remuneration, whether or not the spouse or dependant is joined as a debtor.⁽¹⁴⁰⁾

According to the Northwest Territories *Maintenance Orders Enforcement Act*,⁽¹⁴¹⁾ a Maintenance Enforcement Administrator who wishes to enforce by attachment a maintenance order filed in his or her office may serve two copies of the order and the notice of attachment on the employer of the maintenance debtor named in the order.⁽¹⁴²⁾ The employer must as soon as possible deliver or mail to the debtor one copy of these documents.⁽¹⁴³⁾ Subsequently, the employer must pay to the credit of the Government of the Northwest Territories any money payable to the debtor or that becomes payable from time to time thereafter, up to the amount shown in the order.⁽¹⁴⁴⁾ The prescribed monthly exemption from such attachment must be not less than \$300 and, where the debtor has dependent children in his or her custody, a further amount of \$80 for each child.⁽¹⁴⁵⁾

An attachment of wages under the *Maintenance Orders Enforcement Act* has priority over any other attachment or assignment of, or claim against such wages.⁽¹⁴⁶⁾

YUKON

The Yukon *Garnishee Act*⁽¹⁴⁷⁾ stipulates that, except as otherwise provided in the Act, 70% of the wages payable from time to time by an employer to a debtor is not attachable under a writ of garnishment; however, in no case shall the amount of the monthly exemption be less than

- a) in the case of a debtor supporting at least one dependant, \$1,000 and where he or she supports at least four dependants, an additional \$150 for the fourth dependant and for each additional dependant after the fourth dependant; and

(140) *Ibid.*, s. 9(4).

(141) R.S.N.W.T. 1988, c. M-2 as amended.

(142) *Ibid.*, s. 17(1).

(143) *Ibid.*, s. 17(3).

(144) *Ibid.*, s. 17(4).

(145) *Ibid.*, s. 17(5).

(146) *Ibid.*, s. 20.

(147) R.S.Y. 1986, c. 78 as amended.

- b) in the case of a debtor who supports no dependants, \$600.⁽¹⁴⁸⁾

The amount of the debtor's exemption may be reduced by the court upon the creditor's application where

- a) the judgment obtained by the creditor against the debtor was for a debt owing for board and lodging, or
- b) the creditor establishes to the satisfaction of the court that the exemption is excessive in view of the debtor's financial resources and commitments, and the provisions that may be made for the support and maintenance of the debtor and his or her dependants.⁽¹⁴⁹⁾

For purposes of the Act, "wages" means wages, salary, commissions, fees and money payable by an employer to a debtor in respect of work done or services performed in the course of employment.⁽¹⁵⁰⁾

According to the Yukon's *Maintenance and Custody Orders Enforcement Act*,⁽¹⁵¹⁾ it is the duty of the Director of Maintenance and Custody Enforcement to enforce maintenance orders filed in the Office of the Director.⁽¹⁵²⁾ An obligation to pay money under a maintenance order may be enforced by garnishment in accordance with the provisions of the *Garnishee Act*.⁽¹⁵³⁾

(148) *Ibid.*, s. 22(1).

(149) *Ibid.*, s. 22(2).

(150) *Ibid.*, s. 1.

(151) R.S.Y. 1986, c. 108 as amended.

(152) *Ibid.*, s. 2

(153) *Ibid.*, s. 10.