

LEAVE ME OUT OF IT

By Doc W.R. Crooks

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Civil lawsuits are usually aimed at recovering money. Over the years, one of the most effective methods of obtaining money to satisfy a judgment, or to freeze money pending the outcome of the court action, has been garnishment.

Garnishment involves serving a Garnishee Summons on a third party (the “Garnishee”) who is (usually) not involved in the dispute. The Garnishee might owe the debtor money for services or products, or employ the debtor and owe wages. The most common question asked by a Garnishee is “What do I do to not become involved in this dispute?”

There are many acts and cases which govern garnishment. Specific Saskatchewan statutes include the *Attachment of Debts Act* and the *Enforcement of Maintenance Orders Act*. This area of law can be complex and if not handled properly, a Garnishee may be brought into the action to justify their response (or lack of response) to a Garnishee Summons.

The first step should be for the Garnishee to seek legal advice, as there may be specific circumstances affecting the situation. Garnishees should always know their rights and obligations before proceeding with action in what is already a contentious situation. There are a few helpful hints and things to be wary of if you become a Garnishee.

The Garnishee should carefully review the Garnishee Summons served upon them by the creditor. These documents should always note what Court the garnishee was issued out of and why it was issued. Upon a careful review, the Garnishee should contact the Court in order to ensure that the garnishment is legitimate. Do not take too long, however, as there are strict time limits involved in garnishment.

Pay close attention to the nature of the garnishment, and what funds it can attach to. It may be that it will only attach to wages which are to be paid out within a certain time period following the date upon which the garnishee was served, or it may attach to any funds which are due or accruing due to the Debtor. The term “due and accruing due” is a phrase that has been subject to litigation time and time again, and its exact meaning may depend on the specific circumstances.

Many times a Garnishee may be in contact with the creditor, debtor, or their solicitors. Always remember that neither party is in a position to give advice to the Garnishee as to how they should conduct themselves, as this would be a conflict of interest. If the Garnishee is aware of a conflict between the creditor and debtor as to the disposition of the funds, the Garnishee may wish to pay the funds into court so the creditor and debtor can settle the dispute amongst themselves.

If wages are garnished, a Garnishee must be aware of the *Attachment of Debts Act*, which requires the debtor be paid a basic personal minimum, with the remainder of the wages being paid into court.

To protect itself, a Garnishee should usually not pay funds directly to any party in the litigation; payments should always be made to the Court from which the garnishee was issued. In response to a Maintenance Enforcement Garnishee Summons, however, direct payment to the Maintenance Enforcement Office might be required.

The Garnishee should always be leery of jurisdictional issues. Garnishment is a civil matter, which is governed by specific laws for each province. Therefore, if a Summons is received from a court outside of Saskatchewan, there may be different requirements. A Garnishee will want to avoid any situation which could lead to paying the sum twice.

In short, there are pitfalls and problems that a Garnishee should be aware of. In any scenario, legal advice should be sought in order to help the Garnishee avoid becoming part of the dispute between the Creditor and Debtor.

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