

Small Claims Court Guide: Garnishment

Getting Results: Collecting Money Owed

Some people think that when a trial is over, the winner will automatically be paid and that's the end of the case. Unfortunately, for some it's just the beginning. Getting a court order or a settlement agreement is one thing, but getting the money that's owed is another matter.

The Court will not collect money – that's the job of the person to whom the money is owed.

If the person who owes money does not pay, there are a number of tools to use to collect the money. This booklet describes one of these options: garnishment of wages or bank accounts.

Who are Creditors, Debtors and Garnishees?

- **Creditor:** A creditor is a person who is entitled to payment under a judgement or court order.
- **Debtor:** A debtor is a person who is required to make payment under a judgement or court order.
- **Garnishee:** A garnishee is a third party, often a bank or an employer, who owes money (often in the form of wages) to the debtor.

What is Garnishment?

Garnishment is a way of getting or collecting money that someone else owes to the debtor, before it goes to the debtor. Most often, people garnish wages or bank accounts.

Can all of a person's earnings be garnished?

No. The law provides for certain exemptions depending on the debtor's circumstances, such as how much the debtor earns and how many dependents he or she has. In most cases, no more than 30 per cent of net wages or salary, after the normal payroll deductions, can be garnished.

What are the specific exemptions on garnishing a person's wages?

According to the *Exemptions Regulations* the amount of wages and salary exempt from garnishment is the higher of:

- \$1,500 per month, plus an additional \$300 per month per dependent; or
- 70% of the debtor's net pay per month to a maximum of \$3,500 per month, plus an additional \$300 per month per dependent.

So, if a debtor earns \$3,000 net pay per month and has 3 dependents, all of these earnings are exempt from garnishment. This is based on the following calculation:

Net Pay calculation:	$70\% \times \$3,000$	= \$2,100 exempt
Dependents calculation:	$3 \times \$300$	= \$900 exempt
Total calculation	$\$2,100 + \900	= \$3,000 exempt

If a debtor earns \$5,000 net pay per month and has 1 dependent, \$1,200 could be garnished. This is based on the following calculation:

Net Pay calculation:	$70\% \times \$5,000$	= \$3,500 exempt
Dependents calculation:	$1 \times \$300$	= \$300 exempt
Total calculation	$\$3,500 + \300	= \$3,800 exempt
Garnishment calculation	$\$5,000 - \$3,800$	= \$1,200 to be garnished

How does one garnish a debtor's wages, salary, or bank account?

The procedure in a typical case is this:

- Prepare a Writ of Execution (Form 42). The Writ of Execution must include:
 - a) the amount owing under the court order that is being enforced;
 - b) the amount of costs incurred in attempting to collect the money; and,
 - c) the interest that has accumulated since the court order was made.
- Prepare an Affidavit in Support of a Garnishee Summons. The Affidavit must include:
 - a) the amount owing under the court order that is being enforced;

- b) that the garnishee, for example a bank or an employer, owes money to the debtor;
 - c) that the garnishee is in Nunavut. If the garnishee has more than one location in Nunavut, state the applicable location; and,
 - d) if the garnishee is the debtor's employer, state the debtor's job title and location of employment.
- Obtain and fill out a Garnishee Summons (Form 47). The Garnishee Summons must include:
- a) the first and last name of the creditor as it appears on the Writ of Execution and the court order;
 - b) the first and last name of the debtor as it appears on the Writ of Execution and the court order;
 - c) the official name of the garnishee (this may be a person or a company);
 - d) the amount of the judgement or court order; and,
 - e) the amount that remains payable.
- Obtain a Certificate of Subsisting Executions from the Sheriff's office at the court registry. This Certificate lists other creditors who are owed money by this debtor and who have filed Writs of Execution with the court. There is a \$15 fee for this service.
- File the Writ of Execution, the Affidavit, and the Garnishee Summons in the court registry. There is a \$15 filing fee.
- If the debtor owns land, file the Writ of Execution with the Sheriff and with the Registrar of the Land Titles Office.
- Serve the Garnishee Summons on the garnishee and the debtor.
- The garnishee then has 10 days to "answer" the Garnishee Summons. The garnishee provides the Answer to the Garnishee Summons to the court and not to the creditor directly. The garnishee has several options about how to answer. He or she may:
- a) pay to the court the money due or the amount the garnishee owes the debtor on the date the summons is served,
 - b) dispute the liability of the debtor;
 - c) state the money due is not yet payable, but is payable at a specific future date or after a specific event; or,

d) state that the money belongs to a third person.

- The court will mail or fax a copy of the Answer to the Garnishee Summons to the creditor.

How does a creditor get his or her money?

1. If there is any money paid into the court by the garnishee, the court will notify the creditor and the Sheriff. The Sheriff is the person who oversees the distribution of money that has been paid into the court.
2. Where the debtor owes money to a number of creditors, and these other creditors have filed Writs of Execution with the court, the money received through the garnishee process will be distributed among all the creditors.
3. If the money that has been paid into the court is the full amount owed to all of the debtor's creditors, the Sheriff will immediately pay this money to the creditors.
3. If the money that has been paid into the court is not the full amount owed to all of the debtor's creditors, the Sheriff will determine how the money will be distributed and will send a distribution statement to all creditors. The money will generally be distributed on a *pro-rata* basis and according to the priority of payments outlined in the *Consolidation of Creditors Relief Act (Nunavut)*.
5. If no objection is made to the way the Sheriff proposes to distribute the money, the Sheriff will pay out the money to the creditors. If an objection is made to the way the Sheriff will distribute the money, the creditor(s) can apply to a judge to settle the dispute.

This is one in a series of booklets available online or from the Small Claims Court Registry. The titles in the series are:

A (pages 1 - 4) WHAT IS SMALL CLAIMS COURT?

B (pages 1 - 7) MAKING A CLAIM

C (pages 1 - 4) SERVING DOCUMENTS

D (pages 1 - 5) REPLYING TO A CLAIM

E (pages 1 - 4) GETTING READY FOR COURT - PART 1 - MEDIATION

F (pages 1 - 3) GETTING READY FOR COURT – PART 2 - THE TRIAL

G (pages 1 - 3) DEFAULT

H (pages 1 - 3) WITNESSES

I (pages 1 - 4) GETTING RESULTS: GARNISHMENT

J (pages 1 - 5) GETTING RESULTS: SEIZURE

CIVIL RULES - For more detailed information you may want to look at the small claims court rules themselves. The rules have been written for non-lawyers. (Insert Link at beginning of paragraph)

The people behind the counter at the Small Claims Registry are helpful. They cannot give legal advice and they cannot fill out your forms for you, but they will gladly answer your questions about Small Claims Court procedures.

The information contained in this booklet is simply an overview of the significant provisions of the Small Claims Rules. The information is not intended to be legal advice. If you have any legal questions, you should see a lawyer.

Nunavut Legal Aid Offices:

Maliiganik Tukisiinaikvik (Iqaluit) – (867) 979-5377

Keewatin Legal Services (Rankin Inlet) – (867) 645-2536

Kitikmeot Law Centre (Cambridge Bay) – (867) 983-2906

High Arctic Law Office (Pond Inlet) – (867) 899-8707

Civil Registry of the Nunavut Court of Justice:

Main line – (867) 975-6102

Toll free – 1-866-286-0546 (select “2” for the Civil Registry)