

APPLICATION TO RELEASE A GARNISHING ORDER

What is it? Pursuant to section 5 of the *Court Order Enforcement Act*, (the *Act*) a party against whom a garnishing order has been issued may apply to the registrar or to the court for a release of the garnishment.

The test which the applicant must meet is set out in section 5(2) of the *Act*. A release of the garnishing order must be “just in all the circumstances”. The cases on section 5 have held that the tests or guidelines for setting aside a garnishing order pursuant to section 5 of the *Act* are as follows:

- a) where the garnishment is not necessary to ensure recovery on a judgment;
- b) where the garnishment causes undue hardship relative to releasing the garnishment;
- c) where the pleadings raise serious issues on the merits; or
- d) where the garnishment may be an abuse of process.

Documents required:

- Requisition [Civil Form 17 or Family Form F17]
- Financial statement, proof of income, assets and liabilities (if applicable)

What happens before the hearing?

The person who wishes to set aside the garnishing order obtains a date for the hearing through Supreme Court Scheduling. It may be heard without notice, but as a courtesy, Supreme Court Scheduling will often attempt to contact the opposing party or counsel if represented so someone attends the hearing on the creditor's behalf. (In some instances, the creditor's representative) They may attend by telephone in registries where those facilities are available. The hearing is usually set for the same day or the next day, depending on local practice. Both parties usually attend the hearing.

A requisition is filed – **no filing fee is payable**. If hardship is the reason for the application, the defendant or judgment debtor will be required to produce proof of their financial situation to the creditor and the court at the hearing. This includes a statement of their income and expenses, assets and debts. Supporting documents should also be brought to the hearing i.e. pay stubs, income tax returns, bank statements and bills.

What happens at the hearing?

The parties will introduce themselves to the registrar. The registrar will then make a brief statement about the process for the hearing. The defendant/debtor is sworn in. The financial statements and supporting documents are entered as exhibits. The creditor or its solicitor (if present) will ask the debtor questions on the financial information they have produced. After the creditor has finished asking questions, the debtor is given an opportunity to clarify or add information. The registrar may also ask questions.

Once all the evidence is in, the registrar will ask both the creditor and the debtor to make brief submissions summarizing the evidence presented and the relief sought.

The registrar will then make an order.

Options for orders include the following:

- 1) the application for relief is denied and the garnishment will stand;
- 2) the garnishment is released in part;
- 3) the garnishment is released in whole.

Note: If the garnishing order is after judgment, the registrar may only set it aside upon making an order for payments to be made on the judgment.

4) if there were monies paid into court, the registrar may order that those funds be paid out to either the debtor/defendant, the creditor or the garnishee.

What happens after the hearing?

The order is prepared by the creditor or its representative (if in attendance) it is then signed by the registrar and entered in the registry. If no one attends for the creditor, the registrar may arrange to have the order drafted on the debtor's behalf.

The debtor then makes the payments as ordered. The creditor cannot take any other execution proceedings against the debtor unless the debtor defaults on the payments for over 5 days or a garnishing order has been issued against the debtor in connection with another case – [section 5(7) (a)(b), *Court Order Enforcement Act*].

Further reading: Continuing Legal Education Manual – Practice Before the Registrar; section 5 *Court Order Enforcement Act*

This is an Information Sheet that provides general guidance only. It is not intended as legal advice. In the event of any conflict between this information and any Acts, Rules or law, the provision of the Acts, Rules or law apply.