



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

GARNISHEE ACT GARNISHEE REGULATIONS

PLEASE NOTE

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This document is *not* the official version of these regulations. The regulations and the amendments printed in the *Royal Gazette* should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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GARNISHEE ACT
Chapter G-2

GARNISHEE REGULATIONS

Pursuant to section 17 of the *Garnishee Act* R.S.P.E.I. 1988, Cap. G-2, Council made the following regulations:

1. Definitions

In these regulations,

- (a) “**Act**” means the *Garnishee Act* R.S.P.E.I. 1988, Cap. G-2;
- (b) “**court**” means the Supreme Court;
- (c) “**Director of Social Assistance**” means the Director of Social Assistance appointed under section 4.4 of the *Social Assistance Act* R.S.P.E.I. 1988, Cap. S-4.3;
- (d) “**medical practitioner**” means a medical practitioner as defined in the Schedule to the *Interpretation Act* R.S.P.E.I. 1988, Cap. I-8.1;
- (e) “**nurse practitioner**” means a nurse practitioner as defined in clause 1(g) of the Registered Nurses Regulations (EC350/18) under the *Regulated Health Professions Act* R.S.P.E.I. 1988, Cap. R-10.1. (EC84/23)

2. Notice to judgment debtor

- (1) The Prothonotary shall, upon receipt of a judgment creditor’s application for an attaching order against a judgment debtor under the Act, notify the judgment debtor of a time and place at which to appear before the Prothonotary for examination.

Form of notification

- (2) The notification referred to in subsection (1) shall be in Form A as set out in the Schedule to these regulations. (EC84/23)

3. Examination of judgment debtor

- (1) Where the judgment debtor appears before the Prothonotary, the Prothonotary shall orally examine the judgment debtor and shall during the oral examination ascertain
 - (a) the number of persons over the age of 12 years who are dependent for maintenance or support upon the judgment debtor;
 - (b) the number of persons under the age of 12 years who are dependent for maintenance or support upon the judgment debtor;

- (c) the number of persons in the judgment debtor's household who are persons with a disability as defined in the *Supports for Persons with Disabilities Act* R.S.P.E.I. 1988, Cap. S-9.1;
- (d) the number of persons mentioned in clause (a), (b) or (c) who, under a prescription issued by a medical practitioner or nurse practitioner, require a special diet;
- (e) in the case of rented living accommodations, the amount of rent payable for the accommodations;
- (f) whether the judgment debtor owns or rents the judgment debtor's living accommodations;
- (g) in the case of living accommodations owned by the judgment debtor, where the judgment debtor is paying for the living accommodations, the cost of
 - (i) taxes payable in respect of the accommodations,
 - (ii) the mortgage payments payable in respect of the accommodations,
 - (iii) the fire insurance payments in respect of the accommodations,
 - (iv) fuel for the 12-month period immediately preceding the date of examination,
 - (v) utilities for the 12-month period immediately preceding examination under these regulations;
- (h) where the judgment debtor is boarding,
 - (i) the amount charged for board, and
 - (ii) the amount charged for lodging;
- (i) what, if any, continuing health and medical expenses are incurred by the judgment debtor or a person dependent on the judgment debtor for maintenance or support;
- (j) the judgment debtor's costs of necessary transportation, including but not limited to the average cost of transportation to and from the judgment debtor's principal place of employment;
- (k) the amount of payments being made by the judgment debtor pursuant to Part X of the *Bankruptcy Act* R.S.C. 1985, Chap. B-3;
- (l) the amount of income accruing to the judgment debtor and to the judgment debtor's dependents from any source other than under the *Social Assistance Act* or the *Supports for Persons with Disabilities Act*, or from a private welfare agency; and
- (m) other costs or expenses which the judgment debtor considers substantially increase the judgment debtor's financial burden. (EC84/23)

4. Where judgment debtor fails to attend, etc.

- (1) Where the judgment debtor fails to attend the examination or fails to provide complete and honest answers,
 - (a) the Prothonotary shall report the judgement debtor's failure to attend the examination or to provide complete and honest answers, as the case may be, to the judgment creditor;
 - (b) the judgment creditor may bring proceedings for contempt against the judgment debtor, and may use the Prothonotary's report as evidence in those proceedings; and
 - (c) the judgment creditor may apply to the Prothonotary to accept evidence from one or more persons other than the judgment debtor respecting the information specified in section 3.

Evidence from other persons

- (2) On application by the judgment creditor under clause (1)(c), the Prothonotary may accept written or verbal evidence from one or more persons other than the judgment debtor respecting the information specified in section 3. (EC84/23)

5. Calculation of exemption

- (1) The Prothonotary shall calculate an exemption from the garnishment of wages due or accruing due to the judgment debtor on the basis of
- (a) the information ascertained by the Prothonotary pursuant to the examination of the judgment debtor under section 3 and from other persons under subsection 4(2); and
 - (b) information provided to the Prothonotary by the Director of Social Assistance respecting the amount of assistance a person in the circumstances of the judgment debtor would receive if the person were wholly dependent on payments made under the *Social Assistance Act*.

Information provided by Director

- (2) For greater certainty, the Prothonotary may at any time consult the Director of Social Assistance to determine the amount of assistance a person would receive if the person were wholly dependent on payments made under the *Social Assistance Act*.

Basis of calculation

- (3) For the purposes of subsection 17(3) of the Act, the exemption shall be calculated on the basis of each item of basic need specified in the Schedule. (EC84/23)

6. Notice of amount exempt from garnishment

Upon completing an oral examination pursuant to section 3 or upon receipt of information pursuant to subsection 4(2) or subsection 5(1), as the case may be, the Prothonotary shall within five days notify the judgment creditor and the judgment debtor of the amount which shall be exempt from garnishment. (EC84/23)

7. Certificate of Prothonotary

Unless otherwise ordered by the court pursuant to section 8, no attaching order shall be binding on a garnishee until the attaching order bears a certificate of the Prothonotary verifying the amount of wages exempt from garnishment. (EC84/23)

8. Appeal to court

- (1) A judgment debtor or a judgment creditor may appeal the amount of exemption calculated by the Prothonotary to the court.

Authority of court

- (2) The court may confirm or vary the calculation made by the Prothonotary. (EC84/23)

9. Revocation

The *Garnishee Act* Regulations (EC382/72) are revoked.

**SCHEDULE
NOTICE TO APPEAR**

Date

TO:

We have received an application from [judgment creditor, court file no.] for the garnishment of your wages.

You are entitled to an exemption from garnishment in an amount which will leave you with sufficient income to meet your needs as prescribed by the regulations under the *Garnishee Act*.

We require your assistance in deciding upon the full amount of the exemption to which you are entitled.

You are therefore required to attend a garnishment examination at in on, the day of, 20.... You are required to bring with you two copies of proof of your income and yearly expenses including living accommodations, fuel and utilities, food, clothing, household supplies, transportation and essential medical expenses.

If you do not appear for the garnishment examination, a decision may be made in your absence, which may include basing your exemption on the amount of assistance you would receive if you were wholly dependent on payments made under the Social Assistance Act.

YOURS TRULY,
Prothonotary

ITEMS OF BASIC NEED

1. Maximum monthly exemption

- (1) Subject to subsection 17(3) of the Act, a judgment debtor is eligible to receive a maximum monthly exemption for the basic needs of the judgment debtor and the judgment debtor's dependants, including food, clothing, household supplies, and personal requirements as follows:
 - (a) \$511 for each adult in the judgment debtor's household, including the judgment debtor and any dependant of the judgment debtor who is 18 years of age or older;
 - (b) \$388 for each dependant of the judgment debtor who is at least 12 years of age and less than 18 years of age;
 - (c) \$293 for each dependant of the judgment debtor who is less than 12 years of age;
 - (d) an additional \$76 for each person in the judgment debtor's household who is pregnant;
 - (e) an additional amount that, in the opinion of the Prothonotary, is required to cover the cost for a special diet that is required by the judgment debtor or a dependant of the judgment debtor;
 - (f) an additional \$150 for each person in the judgment debtor's household who is a person with a disability, as defined in clause 1(e) of the *Supports for Persons with Disabilities Act*.

Modification

- (2) The maximum monthly exemption determined in accordance with subsection (1) may be modified by the Prothonotary where
- (a) a judgment debtor resides in housing where one or more basic needs specified in subsection (1) are provided; or
 - (b) a dependant child of the judgment debtor does not ordinarily reside with the judgment debtor for each day of a month.

Calculation

- (3) Where the maximum monthly exemption is modified in the circumstances described in clause (2)(b), the exemption shall be determined by the following calculation:

$$(MME/30 \text{ days}) \times D$$

where

MME is the Maximum Monthly Exemption determined in accordance with subsection (1); and
D is the number of days in a month that the dependant child ordinarily resides with the judgment debtor in a month.

2. Actual cost of accommodations

- (1) Subject to subsection (3), a judgment debtor is eligible to receive a maximum monthly exemption for the cost of living accommodations on the basis of the actual cost of the living accommodations, provided that the cost does not, in the opinion of the Prothonotary, exceed what reasonably might be expected to be paid for comparable living accommodations in the same area.

Included costs

- (2) For greater certainty, the exemption referred to in subsection (1) includes
- (a) where the judgment debtor rents living accommodations, the cost of rent; or
 - (b) where the judgment debtor owns living accommodations, the cost of related taxes, mortgage payments, fire insurance and other amounts which may be required in respect of ownership of the living accommodation.

Boarding costs

- (3) Where the judgment debtor resides in a room in a private boarding house, the maximum monthly exemption for the cost of lodging is actual cost up to \$500 for one or two persons of the judgment debtor's household.

3. Costs of fuel and utilities

A judgment debtor is eligible to receive a monthly exemption for fuel and utilities on the basis of the actual cost of the fuel and utilities based on the previous year's expenditure, provided that the exemption does not, in the opinion of the Prothonotary, exceed what reasonably might be expected to be paid for comparable services in the same area for the same period.

4. Other costs

A judgment debtor is eligible to receive a monthly exemption for the cost to the judgment debtor of

- (a) necessary medical and surgical services, nursing, dental and optical care including dentures and eye glasses;
- (b) essential prescription drugs; and
- (c) prosthetic appliances. *(EC84/23)*