

ANNEX A – Issue 3: specific recommendations concerning Rules 425, 449-457 that garnishment procedure should be more administrative in nature

Requisition

The subcommittee recommends that the requisition should be supported by an affidavit stating the relevant facts, and attaching the relevant documents, upon which the judgment creditor forms his/her belief that the garnishee is or will become indebted to the judgment debtor, as well as confirming the extent to which the amount of the judgment remains unpaid.

Reference is made to rule 60.08(4) of the Ontario *Rules of Civil Procedures* for suggested wording.

Reasons:

- It provides accurate information on the debt;
- It would be useful for the garnishee, especially if it is a large corporation or financial institution, for the retrieval of information relating to the alleged debt;
- May reduce instances of garnishees disputing the debt (a garnishee related to the judgment debtor may be tempted to file a simple denial in order to gain time. Details about the alleged debt, in the notice of garnishment, would force a debtor to immediately give specifics for his/her denial).

Scope and Wording of the Notice of Garnishment

The Rules should require that the Notice of Garnishment contain the following information:

- (i) The specifics of the debt;
- (ii) That the garnishee is prevented from paying the judgment debtor any amount owing to the judgment debtor until further order of the court;
- (iii) That the garnishee is required to file with the Court registry and to serve the judgment creditor within a reasonable time (for example, ten (10) days) from service of the Notice of Garnishment a Declaration under oath. This Declaration would state all debts and liabilities owing to the judgment debtor to which the garnishee is subject by reason of an obligation incurred on or before the day of his/her Declaration. The Declaration would state all relevant facts and attach all relevant documents, except to the extent that they appear in the Notice of Garnishment.

If the garnishee denies being indebted or liable to the judgment debtor, or claims to be indebted for a lesser amount than the amount set out in the Notice of Garnishment, the garnishee will state all relevant facts and provide all relevant documents to support his/her position;

- (iv) That the debtor or any other interested party who contests the validity of the garnishment is allowed, within a specified period of time after the filing of the Declaration with the Court, to apply to court by notice of motion served on the creditor. The subcommittee recommends that the current wording of Rule 455 should be preserved.

Reasons:

- Requiring the garnishee to state his/her position with all relevant material will expedite an order being rendered and/or circumscribe the subject matter of the dispute.
- There is no apparent need to require the debtor to appear, either in person or in writing, unless he disputes the proceeding. As a matter of fact, cases where a debtor contests the validity of a garnishment order are quite rare.
- Allowing for notice to any other interested party right up front of their ability to contest provides a transparent and expeditious way to resolve disputes. Knowing that court proceedings have been initiated may also serve to reduce undue pressure being placed on a garnishee by a third party to re-route the funds.

When Garnishment is Deemed Effective (Rule 449(3))

The Rules should provide that the garnishment becomes effective upon personal service of the Notice of Garnishment on the garnishee, and not on both the debtor and the garnishee.

Grounds upon which the Judgment Debtor may dispute the Validity of the Garnishment

The Rules should limit the reasons for a judgment debtor to contest the validity of the garnishment proceeding.

The Rules should expressly stipulate that, on a garnishment proceeding, a judgment debtor may not contest the judgment, or the certificate having force of judgment, which gave rise to the garnishment.

Reasons:

- The Federal Court decisions in *Mauro* and *Millette* have established that a judgment debtor has very limited standing in a garnishment proceeding. A judgment debtor has

only a right to intervene on the quantum of the debt of the garnishee to him/her. A debtor has no standing to contest his/her underlying liability to the creditor. Circumscribing the instances when a debtor can challenge a garnishment would codify the current case law and serve to prevent futile disputes on the part of the judgment debtor, especially in tax collection matters where self-represented taxpayers improperly attempt to challenge the underlying tax debt.

Debts Payable upon a Term or a Condition

Rule 451(2) should explicitly state that it applies to debts payable upon a term being satisfied and to debts payable upon a condition occurring.

Reasons:

- The current wording that “an order may be made for payment ... as at the time the debt becomes payable” is too vague. It is unclear whether it applies to debt payable upon a condition occurring (future event that is uncertain). Section 639 C.c.p. provides for an order in both situations.

Debts Exempt from Execution and “Situs” of the Debt (Rule 452)

Rule 452 should be expanded to situations other than “wages and salary”. Therefore, the specific reference to wages and salary in the provision should be deleted. Also, a roadmap as to which provincial law ought to apply should be added.

Reasons:

- There is uncertainty with respect to the provincial law applicable to certain exemptions, contract debts or time limitations in the context of garnishment proceedings. For example, in Québec, RRSPs have been subject to garnishment when not exempt. While exemptions relating to RRSPs may be similar from one province to another, they may also differ. The Rules are currently silent on which law would govern on exemptions: the law governing the head office of the financial institution where the contract was concluded or the law of the domicile of the judgment debtor?
- There is no “federal code” of private international law which determines the law of which province is to be applied to exemptions generally.