

Short notes on:

## **DEBT NOT BEING PAID OFF? APPLY FOR A GARNISHEE ORDER!**

A garnishee order can be obtained once a creditor has obtained judgment against a debtor for payment owed to the creditor. A garnishee order by the court provides that a creditor may attach portion of the debt owed by a third party, known as the garnishee. The garnishee will then subtract portion of the debt or the full amount due to the debtor, directly to the creditor.

### ***How to obtain a garnishee order:***

The creditor must apply to the relevant court in the form of an ex parte application. The application must be accompanied by a supporting affidavit identifying the debtor and the garnishee. In addition, the supporting affidavit must confirm judgment has been granted against the debtor, the outstanding debt and the debt payable by the garnishee. Once the application is issued at court, the debtor and the garnishee will be served with a copy of the application which will provide a date to appear if the debtor seeks to dispute the application. On the date of appearance, the debtor must provide reasoning why the debtor should not be liable for the debt owed.

### ***Appeal, amended or suspended:***

If the debtor cannot maintain him or herself along with his or her dependants, the court may amend a garnishee order in such a manner as to suit the debtor. Further, the court may amend, cancel or suspend a garnishee order if good cause is shown. This is dealt with on a case by case basis.

### ***The enforcement of a garnishee order:***

If there is no dispute against a garnishee order, the garnishee order may be enforced as if it were a judgment of the court. Therefore, where a garnishee defaults on a payment, a warrant of execution may be issued against him or her. Once the warrant of execution is issued, the sheriff of the court will proceed to the address listed in the warrant of execution and attach the property of the garnishee to sell the property at an execution auction.

## ***Conclusion***

A garnishee order may be useful by assisting the debtor in paying off the debt owed at the same time, the creditor is able to recover the debt. This is a useful tool to ensure payment is secured.