MCMA – POA Collections Committee Best Practices – Notice of Garnishment - SCC

BACKGROUND:

Pursuant to section 68 of the Provincial Offences Act (POA) a Clerk of the Court may complete a Certificate of Default and upon filing with a court of competent jurisdiction shall be deemed to be an *order* or *judgment* of that court for the purposes of civil enforcement.

Upon issue of the C of D by a court of competent jurisdiction, you may then proceed with the issuing and filing of legal remedy documents within the civil court. Remedies include (but not limited to):

1. Examination
2. **Notice of Garnishment – (Small Claims Court)**
3. Writ of Seizure & Sale

After receiving the signed and dated Certificate of Default (C of D) back from the court, the Creditor (Municipality) is legally entitled to proceed with a garnishment of wages or other monies, to recover the defaulted fine amount due, plus interest and costs.

The effect of a Notice of Garnishment will require a Garnishee to submit up to the total amount of the garnishment identified on the Notice of Garnishment. This includes any monies being held, or owed to, or on behalf of, the Debtor. In the case of wages, you may garnish up to a max 20% of the net earnings, (after the statutory deductions) until paid to the value stated in the Notice of Garnishment.

In situations where *earnings** are paid directly to a bank account, the creditor may garnish up to 20% of those earnings. In the case of garnishment of a bank account garnishment, savings contract amounts or other deposits, you may be garnisheed up to the total value stated in the Notice of Garnishment.

*Earnings are defined as: payments made in return for contractual or non-contractual services in the form of salary, wages, commissions and payments to a sub-contractor.

In the case of multiple creditors, each having a valid Notice of Garnishment in force, each creditor will share equally in any and all monies submitted to the court jurisdiction vis-a-vis their garnishment or, that of another creditor, as defined in the Creditors Relief Act unless there is a preferred creditor, (ie: FRO-Family Responsibility Office).

DEFINITIONS & ACRONYMS:

Provincial Offences Act - POA
Certificate of Default - C of D
Civil Enforcement - CE
Creditors Relief Act - CRA
Carries on Business - COB

PROCEDURE:

Identifying the court jurisdiction:

The enforcement of Garnishments is through the Superior Court of Justice or the Small Claims Court, depending on the claimed value amount. Therefore, the only jurisdictional question is, geographical in nature; which court in Ontario should the garnishment documents be issued and filed?

Local Garnishments - Small Claims Court:

The creditor shall draft, issue and file the following documents:

1. Notice of Garnishment
2. Affidavit of Enforcement
3. Garnishee Statement
4. Affidavit of Service
5. Letters to both the Debtor and garnishee (**sample copies attached*)

A garnishment may be issued locally if:

1. C of D has been issued in the creditor's home court.
2. The Debtor resides or carries on business (COB) in the same jurisdiction.

If the Debtor lives or carries on business within the same geographic area as the court jurisdiction, the Creditor may apply to the court to issue a Notice of Garnishment. The Notice of Garnishment shall identify the Creditor the Debtor and the Garnishee including addresses for all.

Included with the Notice of Garnishment shall be an Affidavit for Enforcement. This Affidavit is similar to the Affidavit attached to a Writ of Seizure of Sale, (See Writs).
The Garnishee shall receive a copy of the issued Notice of Garnishment and a Garnishee Statement. Each Garnishee is required to complete and submit the Garnishee Statement back to the issuing Court, together with any monies owed pursuant to the garnishment Notice.

Once the Garnishment has been issued and appropriate document served on both the Debtor or the Garnishee, it is important to draft and execute an Affidavit of Service for each and file the original Affidavit with the court.

Service of the Garnishment documents can be affected pursuant to Rule 8.01(8) of the Small Claims Court. Personal, mail, courier or alternative to personal service as provided in Rule 8.03.

In practice you may wish to serve the Garnishee first followed by service to the Debtor a short time later.

The Court financial office will distribute cheques for monies paid into court to all parties, pursuant to the Creditor Relief Act, on a monthly basis.

<u>NON-Local Garnishments:</u>

Debtor in a different Court Jurisdiction:

For the most part the process is the same as indicated supra. However, there are significant changes to process.

Once you have identified that the Debtor is outside of your court jurisdiction you will be required to add the following steps to your process <u>after</u> the C of D has been issued:

1. Request a Certificate of Judgment from the originating Small Claims court and file it at the court in the jurisdiction where the Debtor resides or COB;

2. All documents, including payment of process, will then be forward to the “New” court to issue and file. (Not the originating court where the C of D was issued);

3. Any process indicated previous, filing of affidavits etc., will be completed through the “New” court.

Small Claims Court fees see link: https://www.ontario.ca/laws/regulation/920293

1. Certificate of Judgment
2. Issue & File Notice of Garnishment

<u>ASSOCIATED DOCUMENTS/FILES:</u>

Document/File Name	Location	Description
Affidavit for Enforcement-Bank	PDF Affidavit for Enforcement-Bank.p	
Affidavit for Enforcement-Wages	PDF Affidavit for Enforcement-Wages	
Notice of Garnishment (Bank-Employer)	PDF Notice of Garnishment (Bank-	
Garnishee Statement (Bank-Employer)	PDF Garnishee Statement (Bank-Em	

Garnish Letter to Bank	Garnish Letter to Bank.pdf	
Garnish Letter to Debtor-Bank	Garnish Letter to Debtor-Bank.pdf	
Notice to Co-owner of Debt	Notice of Co-owner of Debt.pdf	
Garnish Letter to Employer	Garnish Letter to Employer.pdf	
Garnish Letter to Debtor-Wages	Garnish Letter to Debtor-Wages.pdf	
Affidavit of Service - Debtor	Affidavit of Service-Debtor.pdf	
Affidavit of Service - Garnishee	Affidavit of Service-Garnishee.p	
Affidavit of Service – Co-Owner of Debt	Affidavit of Service-Co-Owner o	
Affidavit for Certificate of Judgment	Affidavit for Certificate of Judgm	
Certificate of Judgment	Certificate of Judgment.pdf	
Additional Debtors Form (aka)	Additional Debtors Form (aka).pdf	

DISCLAIMER:

"The information provided is the interpretation of the members of the POA Collections Committee and do not necessarily reflect the opinions of MCMA. Any person relying on the information contained herein is doing so at his/her own risk and is advised to seek direction from his/her Municipality.

The MCMA does not endorse the use of any product or service. The information contained in the Best Practices procedures is provided as a reference tool to aid in the development of procedures in compliance with all applicable legislation. While every reasonable effort is made to ensure the information provided herein is accurate, there are no representations made with respect to the currency, accuracy or legality of the information. Due diligence should be performed when developing procedures."

Log of Changes

Date	Specific Change	Editor	Reason
May 10, 2019		Linda Beaver	Add to MCMA Template
Aug 1, 2019	Added Sample Attachments	Linda Beaver	