MCMA – POA Collections Committee Best Practices – Notice of Garnishment – Superior Court

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 filing of the Certificate of Default (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 - (Superior Court)**
3. Writ of Seizure & Sale

After receiving the signed and dated C of D back from the court, the Creditor 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 garnish 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 - Superior Court:

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

1. Requisition
2. Notice of Garnishment
3. Affidavit in support.
4. If any payments have been made by the debtor after the judgment date, a separate page detailing post-judgment interest calculations is required.
5. Garnishee Statement
6. Affidavit of Service (Not required for Superior, only for SCC)
7. *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. If the Debtor moves or resides in another jurisdiction there is no need to file a Certificate of Judgment. One only has to change the Sheriff's information on the Notice of Garnishment docs to reflect where the Debtor resides and can file the docs in the creditor's home court.

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 a Requisition and an Affidavit in support. This Affidavit is similar to the Affidavit attached to a Writ of Seizure of Sale, (See Writs Superior Court).

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 and the Garnishee, it is important to draft and execute an Affidavit of Service for each and file the original Affidavit with the Court. (This is not needed for Superior Court Garnishments however is applicable to SCC).

Service of the Garnishment documents can be affected pursuant to Rule 16.02 personal service or 16.03 Alternatives to Personal Service, Rules of Civil Procedure. (Personal, mail, courier, acceptance by lawyer) as provided in Rule 16.03.

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.

Unlike the process outlined in the Small Claims Court process for garnishment, if you have identified that the Debtor is outside of your local court jurisdiction, you as the creditor will not have to do anything different.

Once you have filed the:

1. Requisition
2. Notice of Garnishment
3. Affidavit

Superior Notice of Garnishment documents are filed with the same Court where the Certificate of Default was originally filed. The only thing that changes on the documents is the Sheriff's office information.

It is that Court who will forward a copy of the Requisition, Notice of Garnishment and Affidavit to the Sherriff of the county in which the Debtor resides.

As with most processes in the Superior Court there are fees attached:

Issue & File Notice of Garnishment, see link below:

https://www.ontario.ca/laws/regulation/920293

ASSOCIATED DOCUMENTS/FILES:

Document/File Name	Location	Description
Requisition for Garnishment	Requisition for Garnishment.pdf	
Notice of Garnishment	Notice of Garnishment.pdf	

Document/File Name	Location	Description
Notice of Garnishment – Out of Jurisdiction	Notice of Garnishment-Out of	
Affidavit	Affidavit.pdf	
Garnishment Statement	Garnishee Statement.pdf	
Letter to Debtor	Letter to Debtor.pdf	
Letter to Garnishee	Letter to Employer or Bank.pdf	
Affidavit of Service - Debtor	Affidavit of Service-Debtor.pdf	
Affidavit of Service - Garnishee	Affidavit of Service-Garnishee.pd	
Termination of Garnishment	Termination of Garnishment.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	