

LITIGATION SERVICES

What is Garnishment?

Garnishment is a legal procedure to cause money owed to a debtor by a third party to be paid into Court. The third party is called the "garnishee" and is often the debtor's employer or a financial institution that holds money on deposit for the debtor.

A creditor obtains a "garnishing order" from the Court. The garnishment process is set out in the Court Order Enforcement Act.

In British Columbia, garnishment may be used as a tool to obtain payment in of money into Court before a judgment is obtained. This is called "prejudgment" garnishment. Because the impact of prejudgment garnishment can be so great on a debtor, the law requires the creditor to follow the required legal procedures meticulously. Errors may allow a debtor to have the garnishing order set aside.

In order to obtain a prejudgment garnishing order, the claim must be for a debt that is capable of arithmetic calculation, or what is called a "sum certain" or "liquidated" amount. Wages cannot be garnished by prejudgment garnishment.

If the claim is not for a certain sum, a garnishing order can only be obtained after a court has granted judgment. This is called "postjudgment" garnishment. Unlike prejudgment garnishment, postjudgment garnishment can garnish wages that in the ordinary course of employment become owing. However, not all the debtor's wages are available as the law provides that 70% of wages are exempt from garnishment.

A debtor who is the subject of garnishment does have some options. Besides seeking to have the order set aside, the debtor may also apply to the court for the release of the garnished funds on account of hardship. In the case of a postjudgment garnishment, the debtor may apply to the court for the release of the garnished funds and an order for payment of the judgment by installments.

Note that if money is attached under garnishment, the money does not go directly to the creditor. It is paid into the court. The money is paid to the creditor when the creditor obtains an order to have it paid out.

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