



Debt law

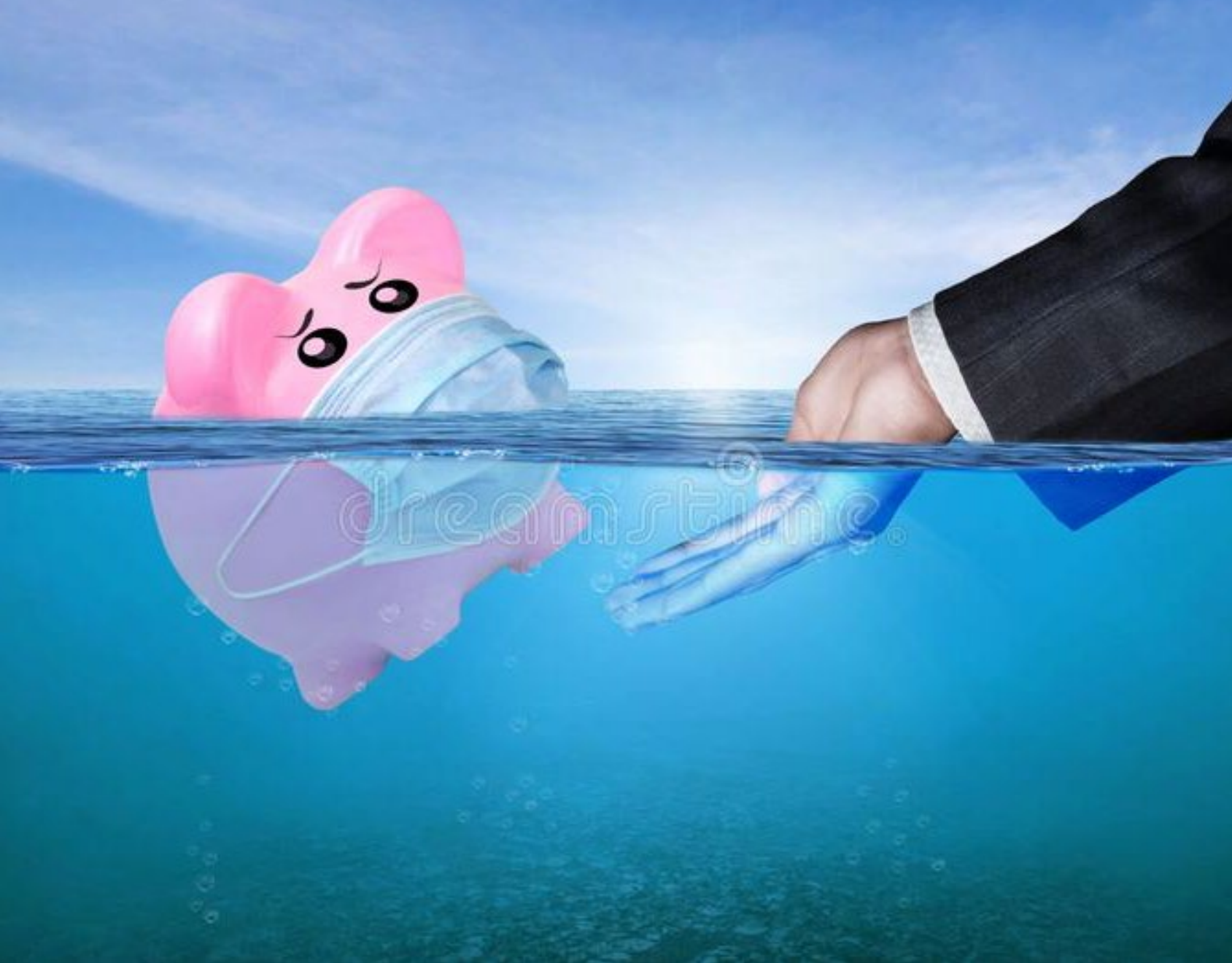
Overview of key issues

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Debt law workshop

October 25, 2021

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Vancouver, B.C.

Debt law: introduction

Dealing with legal issues about debt is complex.

“Debt law” is not one area of law: many pieces of legislation interact and affect legal issues about debt.

- Special rules apply to secured creditors (e.g. mortgage debt owed to a bank; car loan secured against a car, etc.) – beyond scope of this workshop
- Special rules apply to alleged overpayments of government benefits (e.g. welfare, EI, Canada Child benefit, Canada Pension Plan) – beyond scope of this workshop
- When it comes to collection of debts, some creditors such as government and Family Maintenance Enforcement Program, have ‘superpowers’ as creditors: beyond scope of this workshop

Debt: sample client situations

Debt issues can present themselves in your work in many ways. Each engages different laws and rules. For example, your client may:

- receive letters from creditors or calls from a collection agent
 - BC's *Business Practices and Consumer Protection Act* regulates debt collectors, and provide some rights and remedies:
<https://www.consumerprotectionbc.ca/consumer-help/debt-collection/>
- be unable to make full payments on their bills, but with some ability to pay
 - For financial remedies, refer to the non-profit Credit Counselling Society: www.nomoredebts.org
 - The Credit Counselling Society may give some information about bankruptcy, but only a licensed Trustee in Bankruptcy can help someone declare bankruptcy.
 - The federal Office of the Superintendent in Bankruptcy licenses Trustees in Bankruptcy and administers bankruptcy laws: <https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/home>

Debt: sample client situations (2)

Or, your client may:

- have received court documents because a creditor is suing them on an alleged debt:
 - Refer to a lawyer for legal advice and help responding to court documents
- have questions about an alleged overpayment of government benefits:
 - knowing whether they can dispute the alleged overpayment, or apply to have it written off, requires good knowledge of the benefit scheme involved (e.g. EI law, for EI overpayments).
- have already declared bankruptcy, but has had their discharge from bankruptcy refused and wants to know what to do
 - Resource: BC Supreme Court Discharge from Bankruptcy Guidebook
<https://supremecourtbc.ca/sites/default/files/web/Discharge%20from%20Bankruptcy%20v3.pdf>

Debt: sample client situations (3)

Or your client may:

- Owe a specific debt such as a **student loan** they can't easily pay and wonder what rights they have to debt management or forgiveness.
 - This requires knowledge of the *Canada Student Financial Assistance Act*, and provincial student loan policy, which provides repayment assistance of various sorts, and often changes
 - For example, student loans can be forgiven based on 'severe and permanent disability' : see <https://www.canada.ca/en/services/benefits/education/student-aid/grants-loans/repay/assistance/severe-disability.html>
- Have consumer law questions, such as whether they can cancel a particular contract, or have other rights
 - Consumer Protection BC licenses certain sectors and regulates some types of consumer contracts: <https://www.consumerprotectionbc.ca>
 - Consumer Protection BC also offers information and referrals to other resources, so can be a good place to start on consumer law problems

Debt: Sample client situations (4)

- Or, your client may:
 - Wonder if old debts ever die: are there deadlines for collection of debts?
 - Have a judgment against them, and worry about what a creditor might do. What limits are there on debt collection rights?
 - Be in crisis because they have had their wages garnished, or CPP or other benefits taken from their bank account, and want to know what they can do

Debt law resources for advocates

a) **People's Law School clicklaw wikibook: Consumer and Debt law**
[https://wiki.clicklaw.bc.ca/index.php?title=Consumer and Debt Law](https://wiki.clicklaw.bc.ca/index.php?title=Consumer_and_Debt_Law)

- Designed for advocates and community workers
- 250 pages, about 45 different topics

b) **UBC Law Students' Legal Advice Program (LSLAP) manual:**
<https://www.lslap.bc.ca/manual.html>

Updated yearly, written by law students and supervising lawyers for law students in LSLAP clinics

- 22 chapters, including one on Consumer Protection, and one called Creditors' Remedies and Debtors' Assistance

c) **PovNet debt list:**

- provincial list with members including representatives of the Credit Counselling Society.
- Apply to join PovNet list at <https://www.povnet.org/online-community> or email Nicky@povnet.org

Outline:

- Dealing with debt collectors: rights under the Business Practices and Consumer Protection Act
- Limitation periods
- How can unsecured debts be collected: rights and remedies to collection
 - Payment hearings and payment orders
 - Garnishing orders against wages:
 - Garnishing orders and bank accounts
 - What assets are exempt from seizure
 - Special rules for government benefits that have statutory protection

Rights against debt collectors: *Business Practices and Consumer Protection Act*

- The BPCPA licenses and regulates “debt collectors” Does not include in-house collections, lawyers acting for creditors, and government collectors (e.g. Revenue Services BC)
- Collector must provide written notice of the original and current amount of the debt, including a breakdown of the current amount owing; identity of original and current creditor, and authority of collector to collect, five days prior to calling a person. Source: BPCPA section 115.
- Collector must not harass the debtor, their friends, family, acquaintances, or employer. Source: BCCPA s.114
- Collector must comply with limits set on communication
 - Cannot contact at work (with exceptions);
 - Must communicate only in writing (or via lawyer), if asked by debtor;
 - Cannot further communicate if debtor disputes the debt in writing (copied to creditor and debt collector)

Source: BPCPA section 114(c)

What debt collectors can/can't do

(chart copied from <https://www.consumerprotectionbc.ca/2014/10/getting-calls-from-a-debt-collector/>)

Debt collectors **can**:

- Call you on a Sunday between 1 and 5 p.m.
- Call you at work to request your home address, phone number and email address (if they don't have it)
- Make one attempt to contact you at work to collect a debt (but only if they have your home contact information and have been unable to make contact)
- Contact your employer in certain circumstances
- Contact a member of your family or household, relative, neighbour, friend or acquaintance to try to get your home address, phone number or email

Debt collectors **can't**:

- Call you after 9 p.m. or before 7 a.m.
- Discuss details of your debt with someone else (unless they have your permission)
- Collect more than what is owing on the debt (aside from interest at the rate in your original credit agreement)
- Contact you in a way that costs you money
- Use threatening, profane or intimidating language
- Exert undue, excessive or unreasonable pressure to collect a debt
- Publish or threaten to publish your failure to pay (except to a credit reporting agency)

Rights against debt collectors: Remedies

If a debt collector contravenes rules in BCPA, including boundaries set by the client on communication, possible remedies are:

- Seek negotiated/financial solution
- Written complaint to Consumer Protection BC (which regulates the debt collector;s license)
- Starting civil court action for harassment against collector: BCPA s.171
 - See BC Supreme Court case [*Roach v Total Credit Recovery*](#), 2007 BCSC 530
- Request prosecution by Crown Counsel (in extreme cases)

Rights against debt collectors: BPCPA s 116(4)

Section 116 (4) A collector **must not** continue to communicate with a debtor

(a) except in writing, if the debtor

(i) has notified the collector to communicate in writing only, **and**

(ii) has provided a mailing address at which the debtor may be contacted,

(b) except through the debtor's lawyer, if the debtor

(i) has notified the collector to communicate only with the debtor's lawyer, and

(ii) has provided an address for the lawyer, **or**

(c) if the debtor has notified **the collector and the creditor** that the debt is in dispute and that the debtor would like the creditor to take the matter to court.

Fact pattern: Roxana

A woman named Roxana calls your office on intake; she is really stressed.

She says she owes about \$4000 on an old credit card debt from about 3 years ago, around the time her son was first born. Roxana moved a lot and she thought the creditor had forgotten about all about it, but a collection agent has been phoning her almost every day for the past three weeks, asking her to pay. She's says she's a single mum and can't afford to pay anything.

When she told the debt collector that, they sent her a budget sheet to fill out. She hasn't done that yet.

- What can you tell Roxana?

Roxana: more information

Roxana's credit card debt is from about 3 years ago. If she hasn't made a payment in 3 years, or agreed in writing that she owes it, it *might* be too late for the creditor to sue her. You need to know:

- What limitation period applies to credit card debts in BC?
- When did she last make a payment?
- When did she last acknowledge responsibility for the in writing?

Be careful! If you write to a collection agent and/or a creditor, **make sure you don't acknowledge in writing that the person owes the money.** If you do, the limitation period could restart (Limitation Act, section 24). A written acknowledgement by the person *or their agent* can restart a limitation period.

Tip: Use language referring to “the alleged debt”



Limitation Period issues

Limitation periods: basics

A “limitation period” is the deadline to start legal action (e.g. about an event or debt)

Most limitation periods in BC governed by the [Limitation Act](#), SBC 2012 c.13

- An older version of the Act applies in certain cases

Missing a limitation date creates a defence to the claim

Calculating a limitation period can be very tricky: give legal information, not legal advice

Limitation Period for Unsecured Debts

BC has a 2 year limitation period for unsecured debt claims discovered since June 1, 2013

- See: *Limitation Act* section 6

Limitation period runs from the date on which the claim was, or ought to have been, “discovered”

- Limitation periods don’t run against minors, or people under legal disabilities

Limitation periods are re-started by Acknowledgement (s.24)

- Signed written acknowledgment by self or agent restarts the limitation period timer; and
- A partial payment on the debt also restarts the limitation period
- Debts to the BC government carry a 6 year limitation period
 - See [Financial Administration Act s.86.1](#)

Acknowledgments and payments made **after** the limitation period do NOT restart limitation periods under the *Limitation Act*.

Limitation period for judgments

1. Creditors have 10 years from the date of a BC judgment to enforce: *Limitation Act*, section 7
2. Creditor may gain another 10 years by suing a debtor on the basis of the first judgment; must be started before the 10 years elapses.

Fact pattern: Frankie

Frankie calls you on intake today.

They say they have applied for income assistance and that the Ministry has told them they must open a bank account to have their welfare deposited by electronic funds transfer.

Frankie says they have not had a bank account for many years, because ICBC obtained a judgment against them for about \$100 000, 12 years ago. They don't want to open a bank account because they are worried that, if they do, ICBC will garnish money from their bank account.

- What can you tell Frankie?

Enforcement of unsecured debts: rights and remedies



Collection of unsecured debts: rights & remedies

- To forcibly collect money from a debtor, an unsecured creditor must first have a court judgment (e.g. in Provincial (Small Claims) Court, or BC Supreme Court)
- Small Claims Court's jurisdiction is claims & enforcement up to \$35 000
- Options for enforcing a judgment in Small Claims Court include:
 - payment hearings: ask for order for installment payments
 - garnishing orders, most commonly against wages or bank accounts
 - Order for seizure and sale of assets.
- Resource: JES Online help guide Small Claims BC
<https://smallclaimsbcc.ca/after-trial/enforcing-orders>

Small Claims payment hearings

- Either the debtor or creditor can apply for a payment hearing
- Debtor should provide detailed budget statement showing their financial situation and ask the judge for a payment schedule they can actually afford
- **If the debtor obeys the payment schedule, the creditor cannot use other methods to collect the debt** (*Small Claims Rules*, Rule 11(6))
- If the debtor misses a payment, either creditor or debtor can request a new payment hearing to change the payment schedule. Once a payment is missed, creditor can take other steps to collect the debt

Garnishing orders

- If a creditor has a judgment, a “garnishing order” is a way the creditor can get money someone else owes the debtor
- It is most common to garnish wages or bank accounts.
- Two step process
 1. creditor applies to court for order to garnish specific funds, then serves the order on the “garnishee.”
Garnishee pays money into court (unless reasons for it to refuse e.g. government benefits with statutory protection)
 2. once the court receives the money, the creditor applies to court for payment of the money out of court. Debtor receives notice of this application.
- There are strict rules and timelines that must be followed to get a garnishment order
- Resource: JES Online help guide Small Claims BC
<https://smallclaimsbcc.ca/after-trial/garnishing-and-seizing>

Garnishment of wages: limits and remedies

- BC's *Court Order Enforcement Act* sets limits on the amount of wages that can be garnished
- limit is 30% of net income (but up to 50% if for child or spousal support orders)
- a garnishing order applies only to wages payable within the next seven days. Multiple garnishing orders can be expensive: filing fees are charged to the creditor
- if having wages garnished causes the debtor serious financial hardship, they can apply to court to have the garnishing order released, & a payment plan substituted
 - Court Order Enforcement Act s 5
 - Resource: Peoples Law School
<https://www.peopleslawschool.ca/creditor-garnish-wages-or-bank/>

Mario: fact pattern

- Mario calls you on intake this morning. He says RBC visa has obtained a judgment against him two months ago for credit card debt of \$25 000. He is a single father of one, and earns \$2100 per month. He agrees he owes the money, but is really worried that if RBC visa garnishes his wages, he won't be able to afford his rent and he and his daughter will get evicted. This is his only debt.
- What can you tell Mario?

Garnishment of bank accounts

- Garnishing orders can also be issued against bank accounts
- Joint bank accounts cannot be garnished unless the creditor has a judgment against both account holders
- The *Court Order Enforcement Act* does not limit the amount that can be garnished from a bank account
- Up to the whole judgment debt can be garnished
- A debtor whose bank account is garnished can apply to the court to have the garnishing order released based on financial hardship, and have a payment plan substituted (Court Order Enforcement Act, section 5)
- Resource: Peoples Law School
<https://www.peopleslawschool.ca/creditor-garnish-wages-or-bank/>

Limits on collection: *Indian Act* section 89

Creditors cannot seize or attach the real or personal property of someone with Indian status if the property is situated on a reserve, unless the creditor is a band, or also has Indian status (*Indian Act*, s 89(1))

- If the creditor is an Indian or band, the *Indian Act* protections do not apply.
- Exceptions:
 - “conditional sales agreements” can be enforced on reserve (e.g. secured loan where the lender keeps title to the security such as a car) (*Indian Act*, s 89(2))
 - Leasehold interests in on-reserve land are not exempt from enforcement (*Indian Act*, s 89(3))
- It is not always clear what constitutes “personal property situated on reserve;” - client may need legal advice

Limits on collection: government benefits

- Most government benefits can't be garnished at source. The legislation the benefits are paid under specifically states they cannot be garnished.
 - e.g. welfare, CPP, EI, OAS, GIS, WCB, CVAP, Canada Child tax benefit
 - exceptions: some kinds of benefits may be withheld for money owed to the government, or if FMEP is enforcing
- Statutory protection e.g.: BC's *Employment and Assistance Act* says:
 - section 29 (1) *Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.*
 - (2) *Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the Financial Administration Act or a prescribed enactment.*

Limits on collection: government benefits

Two other situations are fairly common, but should have remedies:

- a) Benefits are deposited to a bank account & a creditor tries to garnish (or garnishes) the account
- b) Protected benefits in a bank account are collected (set off) by the bank for other money the account-holder owes the bank (e.g. a credit card debt with the same bank). This can happen even though the bank has no judgment against the debtor.
- See: Detailed handout materials on Sched, with template letter to bank, and case law addressing both situations

Fact pattern: Jaspreet

- You have a new client named Jaspreet. She is 75 and receives Old Age Security and GIS benefits of \$1550/month. During the pandemic, Jaspreet didn't want to have to cash cheques, so she started having her benefits directly deposited in her bank account with ABC Bank. She has a credit card with ABC Bank too, and owes about \$10 000 on it.
- Today she went to ABC Bank to withdraw her rent, and discovered ABC Bank has taken \$1200 of this month's benefits out, and applied it to her credit card debt. She says she won't be able to pay her rent or buy food this month.

What do you tell Jaspreet? Can you help her get that money back?

Seizure of assets: what assets are exempt

- Unsecured creditors with a judgment may apply to court for an order allowing them to seize and sell assets
- Only Court Bailiffs can execute orders for seizure and sale of assets
- Some assets are exempt from seizure:
 - Assets that a debtor owns jointly (unless the judgment is against all joint owners of the asset);
 - Personal and real property of a person with Indian status if situated on reserve (unless the creditor also has Indian status or is a band);
 - If there is a lien on the item (e.g. a vehicle loan secured against an RV), the lien holder is paid out first. If the secured asset is seized, the judgment creditor is only entitled to the amount remaining after the lien holder is paid out.
 - The *Court Order Enforcement Act* and *Regulation* set out other important exemptions for assets that can't be seized (see next slide)

Court Order Enforcement Act and Regulation: exempt assets

The following assets are exempt from seizure and sale under BC's *Court Order Enforcement Act* ss 70 to 78, and the *Court Order Enforcement Act Exemption Regulation*:

- Necessary clothing of the debtor & the debtor's dependants;
- Medical and dental aids required by the debtor and the debtor's dependants;
- \$4,000 for household furnishings and appliances;
- \$5,000 for one motor vehicle (\$2000 if the debt is for child or spousal support);
- \$10 000 for tools and other personal property of the debtor that are used by the debtor to earn income from the debtor's occupation.
- Equity in the debtor's principal residence of \$12 000 if located in the Capital Regional District or the Metro Vancouver Regional District; and \$9 000 elsewhere in BC.
- RRSPs and RRIFs may be exempt, some exceptions apply

Fact pattern: Mei

- Mei calls you on intake this morning. She says that a visa card company recently obtained a judgment against her for \$45,000. She usually works as a self-employed housecleaner, but she had a family crisis last year and was out of work for a while, during which she had to live off his credit card.
- Mei is back at work now, but is really worried that the creditor might try to seize some of her belongings. She needs her van and expensive vacuums and appliances, and other cleaning supplies for work; she thinks they are worth about \$30 000 in all.

Mei wants your help with this. What can you tell him?

Fact pattern: Jamie

- Jamie has been your client for a while. They call you today and let you know that a debt collector has been calling them often about an old credit card they used to have when they lived in Vancouver 6 years ago. Jamie hasn't used the card since then or paid anything, and thought the credit card company had forgotten all about it too. They told the debt collector they're on welfare and can't afford to pay anything. Jaime says they just have an old car worth \$2 000, and the stuff in their apartment.

Jamie wants your help with this. What can you do to help them?

Fact pattern: Lorne

- Lorne is employed as a truck driver by JZ and Sons Long Haul Trucking. Lorne has several creditors and feels the world is closing in on him. Yesterday, one of the credit card companies he owes started a Small Claims action against him. Lorne has a reasonably steady income, though he does have some lay off times. He has a wife who has a small home day care business, and they have two school age children. Together, Lorne and his wife bring in about \$3500 net, but after rent of \$1800 and other living expenses, he finds he seldom has more than \$200 or \$300 to pay on all his debts. In 2010 he was involved in a car accident and ICBC said it was his fault. His premiums went up after that. He hasn't heard from ICBC since then, but he fears he may owe them some money. He also has several credit card debts totaling \$20,000, a bank loan for \$12,000, and a loan from a payday lender for \$1500.



Questions?

Alison Ward: award@clasbc.net

(insert date)

Via Fax: 604-xxx xxxx

URGENT

XXX Bank
Address

Attention: Ms Whoever, Branch Manager

Dear Ms. Whoever

Re: Client's name
Bank Account #: XXXXXXXX
Visa Account number: Xxx xxxxxxxx xxxx

Mr. Client has contacted our office regarding the above _____ visa account that he holds with XXX Bank. I am assisting him as his advocate in this matter.

Mr Client subsists on benefits for Persons with Disabilities ("PWD benefits") from the BC Ministry of Social Development and Poverty Reduction ("MSDPR") in the amount of \$XXX.XX per month. As a search of your records will confirm, MSDPR electronically deposits this amount to his account each month. We are advised that this is Mr. Client's only source of income. We **attach** a copy of a recent electronic Notice of Deposit from MSDPR confirming deposit of welfare benefits into his account.

We understand from Mr. Client that on (date), XX Bank debited the amount of \$xxx.xx from his bank account, due to an alleged debt that he owes to XX Visa. This set-off of funds was not legally permissible as the funds taken from Mr. Client's account are welfare benefits that are protected by law from set off and execution.

The *Employment and Assistance for Persons with Disabilities* legislation governs the provision of PWD benefits in BC. Section 20 of the *Employment and Assistance for Persons with Disabilities Regulation* B.C. Reg. 265/2002, provides:

No garnishment, attachment, execution or seizure

20 (1) Disability assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

(2) Subsection (1) does not prevent disability assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the *Financial Administration Act* or a prescribed enactment.

Courts have confirmed that statutorily-protected benefits do not lose their statutory protection after being directly deposited into a bank account. We refer you to the decision of the Ontario Court of Justice in *McIntosh v Laronde*, a copy of which is **attached**.

Urgent Action Requested

We require that XX Bank immediately credit to Mr. Client's account the full amount of funds that was set off against his account on (date). In addition, we request that XX Bank refrain from debiting any further amounts from Mr. Client's account based on the nature of the funds in his account.

This is an **urgent** matter. Without his PWD benefits, Mr. Client has no money for food or other necessities of life. His rent is due on (date).

Unless these funds are immediately credited back to Mr. Client, he is at risk of being evicted for non-payment of rent. In addition, his health is suffering because of lack of access to appropriate nutrition. The stress of this event has also exacerbated his underlying heart condition, resulting in at least increased blood pressure and nosebleeds for which he has had to make a medical appointment.

We thank you in advance for your attention to this matter and trust you will act promptly.

Yours truly,

(Advocate name, Name of Agency)

Encls.

cc: Community Relations and Service Quality Manager, MSDPR Region for the client's region
Via facsimile to XXX Visa
client

Benefits protected by statute from attachment and set-off

*Prepared by Alison Ward, lawyer, Community Legal Assistance Society, updated October 21, 2021

***NOTE:** The discussion in this paper **does not apply to situations where FMEP or the government (Federal or Provincial) is the creditor.**

Statutory benefits are not usually protected from collection when the creditor collecting a debt is the government, and special rules apply when the creditor is FMEP.

You've probably all heard clients ask the question: "I owe money to the bank. Can they take away my welfare benefits? Or my EI? Or my child tax benefit?"

Do you know the answer to this question? Do you think it's a simple answer? If you think it's simple, think again.....

Some benefits issued by government are paid under legislation that provides those benefits with statutory protection from some collection actions by creditors. Some other monies, such as RRSPs, and some private pension monies are also given protection from enforcement by statute. The focus of the discussion on this paper is what protection, exactly, is given to benefits paid by government under legislation that provides them with protection from some collection action.

Let's look at two examples.

1. Section 29 of the BC *Employment and Assistance Act* says:

29 (1) Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

(2) Subsection (1) does not prevent income assistance, hardship assistance or a supplement being retained by way of a deduction or set off under this Act, the Financial Administration Act or a prescribed enactment.

2. Section 42 of the *Employment Insurance Act* says:

Benefits not assignable

42. (1) *Subject to subsections (2) and (3), benefits are not capable of being assigned, charged, attached, anticipated or given as security and any transaction appearing to do so is void.*

(2) Any amounts payable under this Act by any person and required to be credited to the Employment Insurance Operating Account may be recovered out of any benefits payable to that person, without affecting any other mode of recovery.

(3) If the Government of Canada, a provincial or municipal government or any other prescribed authority pays a person an advance or assistance or a welfare payment for a week that would not be paid if unemployment benefits were paid for that week, and unemployment benefits subsequently become payable to that person for that week, the Commission may, subject to the regulations, deduct from those or any subsequent benefits and pay to the government or the prescribed authority an amount equal to the amount of the advance, assistance or welfare payment paid, if the person had, on or before receiving the advance, assistance or welfare payment, consented to the deduction and payment by the Commission.

What this type of statutory protection means, exactly, is a rather complicated area of law.

What benefits have statutory protection?

The Acts that govern the following types of benefits give them some statutory protection:

1. Income Assistance, PPMB benefits and supplements: refer to section 29 of the *B.C. Employment and Assistance Act* at http://www.bclaws.ca/civix/document/id/lc/statreg/02040_01#29
2. PWD benefits and supplements: refer to section 20 of the *B.C. Employment and Assistance for Persons with Disabilities Act* at http://www.bclaws.ca/civix/document/id/complete/statreg/02041_01#section20
3. CPP benefits: refer to section 65 of the *Canada Pension Plan* at <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-c-8/latest/rsc-1985-c-c-8.html>
4. OAS, GIS and survivor's benefits: refer to section 36 of the *Old Age Security Act* at <http://laws-lois.justice.gc.ca/eng/acts/O-9/page-13.html#h-35>
5. Federal Child Tax benefits: refer to section 122.61(4) of the *Income Tax Act* at <http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-suppl/latest/rsc-1985-c-1-5th-suppl.html>
6. Employment Insurance benefits: refer to section 42 of the *Employment Insurance Act* at <http://www.canlii.org/en/ca/laws/stat/sc-1996-c-23/latest/sc-1996-c-23.html>
7. Workers Compensation benefits: refer to section 120 of the *B.C. Workers Compensation Act* at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19001_03#section120
8. Crime Victim Assistance Act benefits: refer to section 21 of the *B.C. Crime Victim Assistance Act* at https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/01038_01#section21

9. Child care subsidy funds: refer to section 8 of the B.C. *Child Care Subsidy Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96026_01#section8
10. Some private employment pension benefits: refer to section 70 of the B.C. *Pension Benefits Standards Act* at http://www.bclaws.ca/civix/document/id/complete/statreg/00_12030#section70
11. Funds in RRSPs, Registered Retirement Income funds (RRIFs) and Deferred Profit Sharing Plan (DPSPs) (all as defined in the federal *Income Tax Act*) have some protection: refer to section 71.3 of the *Court Order Enforcement Act* at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96078_01#section71.3

Each of these statutes offers some statutory protection to the benefits issued under them. Those levels of protection vary among types of benefits.

One thing they have in common though, is that the above benefits are generally protected from being taken **at source** by creditors serving a garnishing order on the body that issue these benefits. For example, if a bank gets a garnishing order against CPP benefits owing to John Doe, and serves the garnishing order on Service Canada, CPP will not act on it. Such benefits cannot be garnished at source.

A trickier question arises once statutorily protected benefits are deposited in bank accounts.

Issue: Once statutorily protected funds are in a bank account, are they still exempt from garnishment or set-off?

Terminology:

What is a garnishing order?

A **GARNISHING ORDER** is an order made by a court that says that someone who owes money to the debtor must pay it to the creditor. In practice the money is paid to the court. The court holds onto the money and if there are no problems will then release it to the creditor.

What is set-off?

A **SET-OFF** happens without the need for a court order. It can happen when you owe money to a person or Bank for one purpose, and they owe you money for another. For example, if you have a CIBC account with \$3000 in it, and you owe \$1000 in old debt on a CIBC visa card. In that situation a CIBC might take money from your bank account to apply to your visa debt. This can only happen if you agreed to allow the bank to do this in the credit card agreement, or other loan contract.

The Problem

Once statutorily protected benefits are placed in a bank account:

- a) a creditor may be able to obtain a garnishing order from the Court against funds in the bank account. Note that in general, joint accounts cannot be garnished if the creditor has a claim against only one of the joint account holders (this is true whether or not the funds in the account have statutory protection); and
- b) an institutional creditor such as the Bank may set off the money in the bank account against other debts the person owes to the Bank (without a court order).

Possible Solutions

If statutory benefits are garnished from a bank account, or set off against by a bank, the person whose benefits were taken may have a legal remedy. They can argue that the funds should be returned to them because they are still statutorily protected benefits, even though they had been put in the bank.

How and where you would make this argument depends on whether the funds were taken through a garnishing order or set off.

a) Funds taken by a Garnishing Order from Court:

The person can apply to the Court Registry that made the garnishing order, to have the garnishing order set aside, and the money returned to the person, on the grounds that the monies seized are statutorily protected benefits that are exempt from garnishment.

See the case of *Metropolitan Toronto (Municipality) v. O'Brien*, [1995] O.J. No 4896 (copy **attached**) for a precedent from the Ontario Court of Justice holding that OAS and CPP benefits are still exempt from garnishment once deposited into a bank account. There are also two 2014 cases from the BC Provincial (Small Claims) Court that find welfare and OAS benefits do not lose their protection after being deposited into a bank account: *Cash Stop Loans v Dickson*, BCPC 0273 (welfare benefits) and *Cash Stop Loans v. Bayley*, 2014 BCPC 0274 (re OAS benefits).

b) Funds taken by Set –Off

The first step in this situation is to contact the bank manager or customer service department. Explain to them that the funds taken represent statutorily protected benefits and must be returned to the person. You may want to send the Bank representative a copy of the legislation that states that the funds are protected. You may also want to send the Bank a copy of a precedent case, *McIntosh v. Laronde*, [1998] O.J. 5988 (copy **attached**). In *McIntosh v. Laronde*, the Ontario Court of Justice found that Ontario welfare benefits that were deposited into a bank account, did not lose their statutory

protection. The creditor who had had the funds from her bank account seized, was ordered to pay the money back to the income assistance recipient.

While you may start by dealing with the bank over the phone, it is best to follow up by sending them a letter outlining your position that the client's money must be returned, and the legal reasons for your opinion. Your argument will be easier to make if the only deposits to the bank account in question were from protected government programs. If protected benefits and other non-protected monies (such as child support or wages) were deposited to the account, it will be more difficult to argue that 100% of the funds that were set-off are protected.

If the creditor won't return the funds, and the funds are income assistance or other benefits with statutory protection from attachment or set-off, the person can apply to the Provincial (Small Claims) Court for an order that the funds be returned to them on the basis that they are protected from set-off and seizure. If there is no pre-existing court file between the creditor and the debtor, the client would have to start by completing a Notice of Claim, naming both the creditor and the bank as defendants. The client could then bring on an Application to a Judge to try and get the Court to deal quickly with their issue. Courts in BC have made decisions to return statutorily protected benefits that were set off from bank accounts; unfortunately, as far as I am aware, none of these decisions have been reported. You will therefore want to rely on the Ontario cases cited above to support your client's claim for return of their protected funds.

Where the funds that are set off against are income assistance or PWD benefits, you may also consider having your client apply to the Ministry of Social Development and Poverty Reduction ("MSDPR") for a crisis supplement to tide them over until their benefits are (hopefully) returned to them.

Because a client whose welfare benefits have been set off against will often be eligible for a crisis supplement (i.e., their resulting needs are unexpected as the set off itself was unexpected), MSDPR has a financial interest in ensuring that wrongful set offs against welfare benefits do not occur. Your regional Community Relations and Service Quality Manager ("CRSQ") at MSDPR may be willing to intervene with banks where set offs have occurred against welfare benefits, to assert that those funds are protected by their governing legislation, as set out above. Therefore, it may be very useful in dealing with such situations, to make the CRSQ for your region aware of any wrongful set off against welfare benefits. You can do this by copying MSDPR's CRSQ for your region on any letter you write to the bank or credit union involved and asking the CRSQ to intervene directly with the bank or credit union if you find the bank or credit union is not responsive to your efforts to resolve the problem on your client's behalf.

McIntosh v. Laronde

Between

**James R. McIntosh, respondent, and
Mabel Laronde, appellant**

[1998] O.J. No. 5988

165 D.L.R. (4th) 178

31 C.P.C. (4th) 256

File No. DV253/96 Sudbury

Ontario Court of Justice (General Division)
Divisional Court - Sudbury, Ontario

Campbell, Farley and Desotti JJ.

Heard: April 1, 1988.

Judgment: May 22, 1998

(9 pp.)

Creditors and debtors — Seizure or attachment of debtors' property — Exemptions — Disability allowance.

This was an appeal by the debtor from the dismissal of her motion to set aside the seizure of her monthly family benefits disability allowance. This was the debtor's sole source of income and the money was deposited directly into her account. The creditor seized \$198.04 from this account. The motions judge dismissed the debtor's motion on the ground that section 143.1(1) of the Courts of Justice Act protected against garnishment of social assistance but not against seizure.

HELD: Appeal allowed. The creditor was ordered to repay the money that had been seized. The debtor's social benefits did not lose their character as social benefits and did not become subject to seizure merely because they were deposited in a bank account. Protection from creditors continued after the benefit was paid into a bank account provided that the bank account's purpose was to receive the benefit. The exemption was not lost merely because of the modern convenience of electronic depositing. Any other interpretation would undermine the underlying social purpose of welfare legislation.

Statutes, Regulations and Rules Cited:

Courts of Justice Act, R.S.O. 1990, c. F.2, s. 143.1(1).

Family Benefits Act, R.S.O. 1990, c. F.2, s. 5(1)(b).

Counsel:

James McIntosh, in person.

Trevor Leech, for the appellant.

The judgment of the Court was delivered by

1 CAMPBELL J.:— This case raises the general issue; to what extent is a welfare recipient protected against seizure, by creditors, of funds received under a provincial welfare disability allowance?

2 The specific question is this: when a family benefits disability allowance is deposited electronically into a bank account, and the allowance is the sole source of the funds in the account,

are the funds in the bank account immune from seizure under s. 5(1)(b) of the Family Benefits Act, R.S.O. 1990, c. F2?

3 The Act provides as follows:

- 1.

In this Act,
"allowance" means an allowance provided on the basis
of need under this Act and the Regulations.

- recipient" means a person to whom an allowance is provided.
- 5(1)

An allowance,

- (a)
is not subject to alienation or transfer by the recipient; and
- (b)
is not subject to attachment or seizure in satisfaction of any
claim against the recipient.

4 Mabel Laronde's sole income is a monthly family benefits disability allowance of \$690.46 deposited directly by electronic means in her bank account by the Ontario Ministry of Community and Social Services. All the money in the account comes from her disability allowance. No other funds are paid into the account. An examination of the account shows the deposit of \$690.46 on the last day of every month, followed by the withdrawal of modest sums during the month for the expenses of daily living. The evidentiary record discloses very little about Ms. Laronde's personal circumstances. We are told that she is in her early sixties, that she has some sort of disability, and lives with her sister in a small apartment in rent-geared-to-income housing in North Bay. During some months Ms. Laronde's expenses are lower than others and she accumulates a small surplus in the account for "rainy day" purposes. Sometimes she withdraws cash from the account and if she does not spend it all at once she re-deposits what she does not then spend. During some months her expenses are higher and the balance in the account reduces. At the time her account was seized, on December 22, 1995, she had a balance of \$198.04 in her account.

5 Ms. Laronde and her sister became indebted to James R. McIntosh, a North Bay lawyer, as a result of some estate litigation and they ended up owing him a balance of \$9,789.20 for his unpaid legal account. Again, the evidentiary record is sparse but it appears that she and her sister and some other beneficiaries of an estate ended up each having a fractional right to a family cottage on an island in Lake Temagami which is for some reason exempt from seizure. There is no evidence as to the exact nature of Ms. Laronde's interest in the family cottage and no evidence that she has any assets other than her welfare bank account and whatever rights she has in relation to the cottage. What is clear from the record though is that she has established her entitlement to the family benefits disability allowance through need.

6 Mr. McIntosh, after a number of unsuccessful demands for payment, filed a notice of execution with the Sheriff who notified Ms. Laronde's bank. On December 22, 1995, the bank froze the \$198.04 in Ms. Laronde's bank.

7 Ms. Laronde, through the local legal aid clinic, moved unsuccessfully in motions court to have the notice of seizure set aside, on the grounds that the seizure violated s. 143.1(1) of the Courts of Justice Act, R.S.O. 1990, c. F.2, as amended, which provides that no family benefits allowance may be garnisheed, even if it has been paid into a bank account. The learned motions judge, [1996] O.J. No. 2231, dismissed the motion on the grounds that s. 143.1(1) protects against garnishment but not against seizure.

8 Although it is arguable that the function of a garnishment is to effect a seizure and that a purposive interpretation of s. 143.1(1) protects against seizure as well as garnishment, it is not necessary to decide that point because a close examination of the record shows that the appellant, in addition to s. 143.1(1), relied also on s. 5(1)(b) of the Family Benefits Act, although this supplementary argument might not have been made clear to the learned motions judge. In our view this case is governed by s. 5(1)(b) of the Family Benefits Act and by the principle enunciated by O'Brien J. in *Metropolitan Toronto (Municipality) v. O'Brien* (1995), 23 O.R. (3d) 543. Although that case involved the exemption from garnishment of an old age security benefit, nothing turns on the difference. The principle is that protection from creditors continues after the benefit is paid into a bank account provided that the bank account's purpose is to receive the benefit. O'Brien J. held that the exemption is not lost merely because of the modern convenience of electronic depositing:

- Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.
- Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see *Foley v. Hill* (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.
- Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.
- I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modern convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.
- A somewhat analogous situation was dealt with in *Bonus Finance Ltd v. Smith*, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.
- Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.
- I conclude the exemption continued in this case notwithstanding the deposit.

9 We agree that social benefits do not lose their character as social benefits and do not become subject to seizure merely because they are deposited in a bank account. We would only add that any other interpretation would defeat the object and purpose of the statutory exemption, which is to ensure that the modest sums made available to disability pensioners to let them subsist from day to day should not be seized by creditors.

10 The use of bank account and electronic deposits is an administratively convenient and secure way to make welfare payments. Any other interpretation would also undermine the underlying social purpose of welfare legislation like the Family Benefits Act, so well expressed by Brennan J. in *Goldberg v. Kelly* (1970), 90 S. Ct. 1011 at p. 1019, 397 U.S. at p. 265:

- We have come to recognize that forces not within the control of the poor contribute to their poverty. This perception, against the background of our traditions, has significantly influenced the development of the contemporary public assistance system. Welfare, by meeting the basic demands of subsistence, can help bring within the reach of the poor the same opportunities that are available to others to participate meaningfully in the life of the community. At the same time, welfare guards against the societal malaise that may flow from a widespread sense of unjustified frustration and insecurity. Public assistance, then, is not mere charity, but a means to "promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." The same governmental interests that counsel the provision of welfare, counsel as well its uninterrupted provision to those eligible to receive it;

11 If mere deposit in a bank account subjects welfare payments to seizure, the use of bank accounts and electronic deposits would cease to be a convenience for welfare authorities and the recipients and would become a hazard for many recipients of public assistance who already have enough difficulty managing their money. It would require very express statutory language to remove from this vulnerable class of people the protection afforded by s. 5(1)(b) of the Family Benefits Act.

12 The appeal is therefore allowed and it is ordered that Mr. McIntosh repay to the appellant the \$198.04 together with interest of \$27.68 plus filing fees of \$1 80.00 for a total of \$405.72.

CAMPBELL J.

FARLEY J.:— I agree.

DESOTTI J.:— I agree.

Re
**Municipality of Metropolitan Toronto and O'Brien;
Canadian Imperial Bank of Commerce, Garnishee
[Indexed as: Metropolitan Toronto (Municipality) v.
O'Brien]**

23 O.R. (3d) 543

[1995] O.J. No. 4896

Ontario Court (General Division),

O'Brien J.

April 21, 1995

Debtor and creditor -- Garnishment -- Old age security and Canada Pension Plan payments electronically transferred into judgment debtor's bank account -- Moneys exempt from garnishment -- Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1) -- Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1).

The Municipality of Metropolitan Toronto ("Metro") provided O, who was totally blind and confined to a wheelchair, with food, lodging, and other services at a home for the aged. O did not pay for the services, and Metro obtained a default judgment in the amount of \$12,218.90 against him. To enforce its judgment, Metro served a notice of garnishment on a branch of the CIBC where O had a bank account. The bank manager advised Metro that it would not be remitting any funds since the money in O's account was exempt from seizure as Old Age Security and the Canada Pension Plan payments, which had been electronically transferred into O's account. Metro applied for an order under rule 60.08 of the Rules of Civil Procedure requiring CIBC to pay all amounts it paid from O's account since the notice of garnishment was served.

Held, the motion should be dismissed with costs.

Both the Old Age Security Act and the Canada Pension Plan provide that benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void. This exemption from seizure was not lost merely because of the modern convenience of electronic depositing. The only money in O's bank account came from pension funds, and the account was thus exempt from garnishment.

Cases referred to

Bonus Finance Ltd. v. Smith, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544, 16 C.B.R. (N.S.) 87 (H.C.J.); Foley v. Hill (1848), [1843-60] All E.R. Rep. 16, 2 H.L. Cas. 28; Wayfarer Holidays Ltd. v. Hoteles Barcelo (1993), 12 O.R. (3d) 208, 18 C.P.C. (3d) 36 (Gen. Div.)

Statutes referred to

Canada Pension Plan, R.S.C. 1985, c. C-8, s. 65(1)
Old Age Security Act, R.S.C. 1985, c. O-9, s. 36(1)
Pension Benefits Act, 1965, S.O. 1965, c. 96, ss. 21(1)(b), 22b [enacted 1967,
c. 72, s. 1]
Rules and regulations referred to
Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 60.08(16)

MOTION under rule 60.08 of the Rules of Civil Procedure requiring payment
pursuant to a notice of garnishment.

Jacqueline P. Wigle, for creditor.

Rita A. Chrolavicius, for debtor.

Anne C. Thomas, for garnishee.

O'BRIEN J.: -- Metropolitan Toronto ("Metro") seeks an order under rule 60.08 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 requiring C.I.B.C. to pay all amounts it paid from the debtor's account in one of its branches since notice of garnishee was served on it October 30, 1992.

The issue involved is the exemption from garnishee, of funds payable to the debtor under the Old Age Security Act, R.S.C. 1985, c. O-9, and the Canada Pension Plan, R.S.C. 1985, c. C-8.

Metro obtained default judgment against the debtor in the amount of \$12,218.90 for food, lodging and other services rendered to the debtor while he was a resident of Cummer Lodge, a home for the aged operated by Metro. The debtor was in that institution from May 1990 until May 1992. He now resides in a similar facility operated by Extendicare Nursing Homes, a privately operated facility.

The debtor is confined to a wheelchair and is totally blind. His only source of income is from Old Age Security benefits, Canada Pension Plan and Guaranteed Income Supplement. He has no assets. He deposes he has \$112 remaining each month for personal and telephone expenses after paying his nursing home costs.

When he was in the Metro facility his only income was from two disability pensions and totalled \$1,126 per month.

He apparently entered into an agreement with Metro to pay for some or all of the cost of his care while in the Metro facility. Metro obtained a default judgment against him on September 28, 1992 on the basis payment was not made. Metro then served a notice of garnishment on the garnishee in connection with an account the debtor had with that bank. Service on the garnishee was October 21, 1992; at that time the balance in the debtor's account was minus 43 cents.

The garnishee responded to the notice of garnishee by writing to Metro on November 30, 1992. The bank's manager advised it would not be remitting funds pursuant to the notice as all funds credited to the debtor's account were pension funds from Old Age Security and Canada Pension Funds and were exempt

from seizure. He agreed to remit any funds other than from those sources, which were deposited. He has since deposited there were no such funds.

Since that time the maximum balance in the debtor's account has never exceeded the sum of \$1,124. The funds are received from the plans and deposited electronically in the debtor's account, according to his instructions; monthly payments are made to the Extendicare facility where he now resides. There is never any significant surplus of funds in his account.

Exemptions under the Applicable Acts

Both Acts provide benefits payable shall not be assigned, charged, attached, anticipated or given as security and any transaction purporting to do so is void.

These provisions are contained in the Acts as follows: Old Age Security Act, s. 36(1); Canada Pension Plan, s. 65(1).

Metro's counsel concedes the exemptions apply so long as the money is in the possession of the debtor, and also concedes the funds are not subject to garnishee at the source from the Federal Government. She argues, however, the exemption is lost when the funds are electronically deposited with the garnishee.

Counsel relies on a number of authorities which hold that when a customer pays money into a bank account the money ceases to be that of the customer and in its place the relationship of creditor/debtor is created which merely entitles the customer to the return of an equivalent amount when demanded: see *Foley v. Hill* (1848), [1843-60] All E.R. Rep. 16 at p. 19, 2 H.L. Cas. 28.

Counsel argues that when the deposit was made in this case the money ceased to be the debtor's and any exemption from garnishee was lost.

I do not accept that argument. The funds payable to the debtor in this case are pension funds intended to be paid to him over an extended period and are designed to provide for his infirmity and disability. I reject the submission that the exemption, otherwise available, is lost merely because of the modern convenience of electronic depositing. Such a result in my view would be unreasonable on the facts of this case. Here, the bank records clearly indicate the only money ever deposited into the debtor's account with the garnishee bank came from pension funds, exempt from garnishee.

A somewhat analogous situation was dealt with in *Bonus Finance Ltd. v. Smith*, [1971] 3 O.R. 732, 21 D.L.R. (3d) 544 (H.C.J.), per Houlden J. In that matter, a judgment creditor attempted to garnishee pension funds payable from a fund registered under the Pension Benefits Act, 1965, S.O. 1965, c. 96. Crown Trust was the administrator of the trust funds. Section 21(1)(b) of the Act provided pension benefits did not confer on the employee (the judgment debtor) any right or interest in the pension benefits capable of being assigned or alienated and s. 22b provided moneys payable under the plan were exempt from seizure or attachment.

Houlden J. refused the garnishee order relying on the exemption provisions contained in the Act.

I conclude the exemption continued in this case notwithstanding the deposit.

I dismiss this application on this basis.

If I am wrong on this point, I would also dismiss the application on the basis of discretion available under rule 60.08(16) and on the basis the relief sought is an equitable remedy. On the facts of this case I conclude it would be inequitable to grant the garnishee order: see *Wayfarer Holidays Ltd. v. Hoteles Barcelo* (1993), 12 O.R. (3d) 208 at p. 212, 18 C.P.C. (3d) 36 (Gen. Div.).

In my view, the garnishee acted commendably in refusing to honour the garnishee and taking the risk that by paying the monthly pension funds out to a nursing home it would face this type of application.

The garnishee could have taken the position that it was bound to keep the money until the garnishee proceedings were dealt with. At the very least this would have caused great inconvenience to the debtor, and might well have led to his removal from the home. The garnishee notice was served in October 1992. This matter was finally heard in April 1995.

The arrangements under provincial legislation were not explored in detail on this motion, it may be the legislation prevents expulsion of a resident for non-payment; that is not clear.

The garnishee notice was served by Metro on October 30, 1992. The matter was finally heard April 12, 1995.

The motion is dismissed. Costs payable to debtor and garnishee fixed at \$1,500 each.

Motion dismissed.