



Guidelines for the Processing of Garnishments

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Guidelines for the Processing of Garnishments

1. Effective date

1.1 These guidelines take effect on April 1, 2012.

2. Context

2.1 The guidelines elaborate on the Directive on Financial Management of Pay Administration which reflects obligations under the Garnishment, Attachment and Pension Diversion Act (GAPDA).

2.2 The Garnishment, Attachment and Pension Diversion Act provides for the garnishment or attachment of Her Majesty in right of Canada and for the diversion of pension benefits payable by Her Majesty in right of Canada under certain enactments.

2.3 Part I of the GAPDA allows for the garnishment of wages and other remuneration paid to government employees, as well as for the garnishment of fees paid to a contractor engaged as an individual under a contract for services.

2.4 Garnishment is a complex process that involves specific legislated timelines and a variety of different parties, departments and legislation, both federal and provincial.

2.5 Garnishment Registries as specified in the GAPDA Regulations receive and review all garnishment documents. They then forward the documents and instructions to departmental Human Resources and Compensation offices, who determine amounts and action the deductions through the Public Works and Government Services Canada payroll system. This information is then provided to the departmental finance office who then requisitions payment and produces and mails the remittance cheques. Thus, the timely remittance of garnishment moneys is a responsibility shared between the compensation and finance officers in departments.

3. Definitions

3.1 Definitions of terms used in these guidelines can be found in Appendix A.

4. Garnishee Contact

4.1 As per the Directive on Financial Management of Pay Administration, departments and agencies are to designate individuals in their organization as the "garnishee contact". Information such as the name, position title, telephone number, email and mailing addresses, and geographical area of responsibility of each garnishee contact is to be provided to the National Capital Region Garnishment Registry office located at the following address:

Garnishment Registry
Department of Justice
284 Wellington Street
Ottawa, Ontario
K1A 0H8
Email: GAPDA_LSAPD@justice.gc.ca

4.2 Upon receipt of the instructions from the Garnishment Registries, to assist in monitoring and to ensure timely and systematic processing of garnishments, it is recommended that garnishee contacts keep a log detailing the processing of garnishment documents with the following information:

- employee's full name and payroll;
- employee's status and dates;
- name of court or provincial or territorial maintenance enforcement program (MEP) to whom payment is payable and address where it must be sent;
- court file number or MEP case number, as applicable;
- date the application for garnishment was served on the Garnishment Registry office;
- expiry date of the garnishee summons;
- type of debt owed under garnishee summons (family support, commercial debt);
- amount owed under the garnishee summons and applicable exemptions/provincial garnishment percentage to be applied;
- in case of family support debt, ongoing support payment amount and total arrears amount;
- variations to amounts owed and dates received;
- dates the payments are sent to the court or the MEP;
- Length of time a payment is overdue and reason;
- Number of incidents of late payment;
- cheque amount;
- balance owing under the garnishee summons;
- if no money is garnisheed under this garnishee summons for the individual in a particular pay period, the reason why;
- date of receipt of a termination of the garnishee summons;
- date of termination of a garnishee summons and reason (termination notice, bankruptcy, debt paid in full);

- date file transferred to another department/agency (where applicable);
- cross-reference to other garnishee summons(es) received for same employee.

No action should be taken on a garnishment file unless the documents have been first served on the applicable Garnishment Registry and instructions received.

5. Confidentiality

5.1 Garnishment information is confidential and personal, classified as "protected B". Therefore, it is recommended that this information be kept separate from the employee's personnel file. In cases where the garnishee summons is still active, the garnishment file should be transferred with the personnel file where an employee transfers/is hired by another federal department/agency subject to GAPDA.

5.2 Any electronic exchange of information relating to a garnishment file outside departmental networks should be done through secured encrypted channels.

6. References

- *Garnishment, Attachment and Pension Diversion Act*
- *Garnishment and Attachment Regulations*
- Directive on the Financial Management of Pay Administration
- PWGSC Compensation Directive 1997-016 (May 27, 1997)
- PWGSC Compensation Focus, Spring 2010 - No. 76, Garnishment of Salaries and Other Remuneration

7. Enquiries

For a Specific file or GAPDA:

Enquiries concerning a specific file should be first directed to the garnishee contact, who in turn may contact the Garnishment Registry office that sent the initial documents if further information is required.

For questions related to these Guidelines:

Enquiries concerning these guidelines should be directed to your Corporate Compensation Manager or Financial Officer, who in turn, may contact:

Compensation and Labour Relations
Office of Chief Human Resources Officer
Treasury Board Secretariat
Interpretations@tbs-sct.gc.ca

Appendix A - Definitions

In these guidelines, the following definitions apply:

Applicant (*requérant*)

the creditor, or someone on behalf of a creditor or a maintenance enforcement program who has submitted an application with supporting documents under GAPDA;

Contractor (*entrepreneur*)

for purposes of these guidelines means any person (not including corporations) engaged by any organization listed under schedules I and IV the *Financial Administration Act* (FAA) receiving garnishable fees under a contract for services, to which the person is a party;

Employee (*employé*)

for purposes of these guidelines means any person employed in an organization listed under Schedules I and IV of the *Financial Administration Act*;

Garnishment, Attachment and Pension Diversion Act (GAPDA) (*Loi sur la saisie-arrêt et la distraction de pensions (LSADP)*) is the Act that provides for the garnishment or attachment of moneys owed to employees and contractors;

Garnishment and Attachment Regulations (GAPDA Regulations) (*Règlement sur la saisie-arrêt et la distraction de pensions (Règlement sur la LSADP)*)

the regulations respecting garnishment and attachment proceedings;

Garnishee Contact (*agent de saisie*)

the person designated in an organization or agency responsible for the receipt and processing of a garnishment proceedings;

Garnishable Amount (*montant saisissable*)

is the fixed or calculated amount taking into consideration the excluded deductions as set out in the GAPDA Regulations to determine the moneys to be sent to the court or maintenance enforcement program;

Garnishable Fees (*honoraires saisissables*)

includes all moneys payable as fees, honoraria or similar payments to a contractor for performing a service, office or position, except where a contract specifically differentiates between fees and expenses (i.e. travelling expenses), the specified expenses

are not included;

Garnishee Log (*registre des saisies-arrêts*)

is a departmental record of all garnishments received;

Garnishee summons (*bref de saisie-arrêt*)

for purposes of these guidelines, is defined as a document or court order issued by a court or MEP for garnishment of moneys payable to a judgment debtor to enforce a commercial debt or family support order or judgment and setting out the obligations of Her Majesty;

Garnishable Moneys (*sommes saisissables*)

means moneys authorized to be paid by Her Majesty by or under such Acts of Parliament or provisions thereof or programs there under excluding the deductions set out in the GAPDA Regulations;

Garnishment Registry (*greffe de la saisie-arrêt*)

the office identified in the GAPDA Regulations to receive service of garnishment documents under GAPDA;

Garnishable Salary (*traitement saisissable*)

means the gross pay payable to an employee for performing the regular duties of a position or office, and any amount payable as an allowance, special remuneration, payment for overtime or other compensation or gratuity and includes maternity, parental and educational allowances excluding deductions set out in the GAPDA Regulations (Refer to Section 5 of the Garnishment and Attachment Regulations);

Judgment Debtor (*débiteur judiciaire*)

means a person named in a garnishee summons in respect of whom garnishable moneys are sought to be garnished under the GAPDA;

Mandatory Deductions (*retenues obligatoires*)

those contributions made automatically from an employee's salary as a result of legislation that **cannot cease** and **do not** form part of salary for garnishment purposes. (Refer to Section 5 of the Garnishment and Attachment Regulations)

- deductions for debts due to the Crown under the FAA such as salary overpayment, repayment of Canada Student Loans and income tax arrears;

Maintenance Enforcement Program (MEP) (*Programme d'exécution des ordonnances alimentaires (PEOA)*)

a provincial or territorial agency responsible for enforcing family support orders and agreements;

Voluntary Deductions (*retenues facultatives*)

those deductions that are voluntary as chosen by the employee and **do** form part of salary for garnishment purposes and can cease if the net amount of pay is insufficient to satisfy the garnishee summons. (Refer to Section 5 of the Garnishment and Attachment Regulations).

Appendix B - Steps in the Garnishment Process

A - Initial Garnishment - illustrative dates are provided

Steps	Date	Process	OPI	Action
1.	May 6, 2010	Documents served on Garnishment Registry	Provincial Court	Garnishment Registry reviews the documents served to ensure compliance with GAPDA. If in compliance, Registry forwards the Garnishment summons to the Department where it is believed the employee works based on the application. If not in compliance, documents returned to applicant
2.	May 21, 2010	The Crown is bound to act on the Garnishee Summons	DOJ	Departmental actions: 1. Determine if individual is an employee of department; if not, attempt to identify which department/agency is responsible and forward on the documents on for action and advise the Registry; 2. If employed, notify the employee 3. Enter information in the garnishment log; 4. Calculate the garnishable salary taking into account the deductions to be made as per the Garnishment & Attachment Regulations, the applicable provincial garnishment law or other existing garnishment actions against the same employee already in place; 5. Determine which voluntary deductions should be suspended if the net amount of the employee's pay is insufficient to satisfy the amount garnishable; 6. If no moneys can be garnished or if debtor is not an employee, advise the Court or the provincial maintenance enforcement program accordingly as well as the Registry.
3.	June 9, 2010	End of first pay period	Department	Departments cannot garnish at the end of the first pay period.
4.	June 23, 2010	End of second pay period	Department	Garnished amount required to be deducted from this pay, at the end of the second pay period.

5.	July 8, 2010	Department makes payment	Department	Departments are obligated to pay garnisheed amounts within 15 days after the second pay period.
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B - Subsequent Garnishments

1. Ongoing: Each subsequent payment to be made within 15 days of the end of each pay period where debt remains owing, no termination of garnishment is received and where the garnishee summons has not expired. Any additional payments outside regular pay periods made to employee are also subject to garnishment.

Appendix C - Procedures Required of Creditors and Courts

Procedures Required of Applicants

When an applicant intends to garnishee an employee's salary or individual contractor's fees, a garnishee summons is obtained and is served on the appropriate Garnishment Registry office together with a copy of the applicable order or judgment and required application.

Service of Documents

The Garnishment Registries receive all garnishment documents required under Division I, Part I of the GAPDA as specified in the Regulations and:

- determine the completeness and validity of the application form, the court order and the garnishee summons received;
- once validated, forward the required documents, via secure encrypted electronic channels such as encrypted email where possible, to the appropriate garnishee contact in departments or agencies where the application indicates the employee/contractor is working with written instructions;
- send any subsequent documents received relating to an original garnishee summons to the appropriate garnishee contact;
- provide additional advice as required to the departmental garnishee contact on legal requirements to assist in the processing of the garnishee summonses.

Appendix D - Garnishment Procedures for Federal Employees

Garnishment Procedures for Federal Employees

Receipt of Garnishee Summons

On receiving the garnishment documents from a Garnishment Registry, the garnishee contact determines immediately if the judgment debtor is an employee of the department or agency. Where such determination is made, the garnishee contact:

- enters information on the garnishment log;
- informs the employee immediately that a garnishee summons has been received. If the employee disputes the garnishment, explain that Her Majesty is required by law to remit the garnishable moneys until the amounts owed under the summons are paid or the summons is withdrawn by the applicant.

Where it is determined that the judgment debtor is not an employee, the garnishee contact should make reasonable efforts to determine if the judgment debtor is a contractor or employee of another federal department or agency falling under the GAPDA. Where such determination is made, the garnishee contact should transfer the file promptly to the appropriate garnishee contact and advise accordingly the Garnishment Registry that sent the documents.

Where the judgment debtor is not an employee or contractor of Her Majesty, the garnishee contact advises the appropriate Court or MEP within fifteen days as set out in the garnishee summons and the appropriate Garnishment Registry.

Where the garnishment documents are received directly by a department or agency, they should be returned immediately to the applicant for service on the appropriate Garnishment Registry as set out in the GAPDA Regulations.

Response Time

The garnishee summons binds Her Majesty 15 days after the day on which the documents are served on a Garnishment Registry.

In the case of a federal employee, the following money is bound by a garnishee summons:

- the garnishable salary to be paid on the last day of the second pay period next following the pay period in which Her Majesty is bound by the garnishee summons; and, when the garnishee summons has a continuing effect, the garnishable salary to be paid on the last day of each subsequent pay period or at the time of any other remuneration;
- the garnisheed moneys by way of a cheque are to be sent to the court or the MEP office, indicated in the garnishee summons, within 15 calendar days after the last day on which the money was garnisheed (see Appendix A), together

with the response form as required by the applicable provincial law. Failure to comply within the above time limits could increase the risk of liability and/or negative attention for the federal government.

Where no money is owed to a federal employee during a particular pay period for a particular reason or an employee is no longer employed by Her Majesty, the response form as required by the applicable provincial law should be sent to the court or the MEP office indicated in the garnishee summons indicating the reasons why no garnishable moneys will be sent. In these circumstances, a copy of such response must be provided to the appropriate Garnishment Registry.

Procedures to Withhold and Remit Amount to the Court or the MEP

Note:

When garnishment documents are served in accordance with the GAPDA, the garnishee summons is binding on the Crown, according to the garnishment laws of the province from which it was issued, even when the employee who is the judgment debtor resides or works outside that province.

Validity Period of a Garnishee Summons

Where during the validity period of a garnishee summons, an employee is not in receipt of salary / remuneration during a particular pay period, the garnishee contact advises the court or MEP, with a copy to the Garnishment Registry office, why no moneys are being garnished by completing the applicable provincial response form. The court or MEP, with a copy to the Garnishment Registry, is also to be informed when the final payment under a garnishee summons is submitted.

Transfer of an Employee or Termination of a Garnishee Summons

If an employee moves to another organization covered under Part 1, Division 1 of GAPDA, the garnishee summons is still in effect. Arrange to transfer the active garnishment file immediately to ensure that no garnishee payments are missed in any pay period. The Garnishment Registry office is to be notified, in writing, of the employee's organization change.

If an employee retires or moves to a private or a public organization not covered by Part I, Division 1 of the GAPDA, notify in writing the Garnishment Registry and the appropriate court or MEP of the termination date and provide details as to when final garnishment payments will follow. Note that severance payments are subject to garnishment.

Judgment Debtor is Not an Employee or a Contractor

If the department cannot identify satisfactorily the judgment debtor based on the information provided, the garnishee contact informs the Garnishment Registry immediately, as Section 6 of the Act continues to bind Her Majesty 15 days after the day the documents are served.

If the judgment debtor is not or is no longer an employee or contractor with the department or agency, the garnishee contact should make reasonable efforts to determine whether the judgment debtor is employed within another department or agency falling under Division I, Part I of GAPDA. Where another department or agency is identified, the garnishee contact should immediately transfer the documents to the other organization and inform the Garnishment Registry.

If it is determined that the judgment debtor is not or is no longer an employee or contractor of a department or agency falling under Division I, Part I of GAPDA, the garnishee contact should within fifteen days advise the Court or the MEP accordingly, with a copy to the Garnishment Registry.

Appendix E - Payroll Calculations of Garnishable Salary

Example 1 - Calculations for a Commercial Debt

- ongoing garnishment summons received by the Garnishment Registry- December 9, 2010 for debt of \$400.00;
- in Ontario, a maximum of 20% of the garnishable salary for a commercial debt may be garnished, however, a lesser fixed dollar amount may be requested by the court;
- summons is binding fifteen days thereafter- December 24, 2010 (in pay period # 1 December 23, 2010 to January 5, 2011);
- must be actioned for pay period # 3 ending February 2, 2011 (second pay period following pay period in which summons becomes binding);
- the moneys must be in the hands of the court no later than on February 17, 2011 (within 15 days after February 2, 2011).

Note:

In the case of a continuing garnishee summons, any supplementary payments (e.g. overtime or retroactive pay) received during the pay period are subject to garnishment, if required to satisfy the judgment;

If the garnishable salary of the employee changes as the result of a variation in the gross salary or an extra duty payment, the garnished amount is re-calculated and adjusted accordingly;

A garnishee summons may indicate either a fixed amount or percentage to be garnisheed per pay.

Example 2 - Calculation for a Family Support Payment

- ongoing garnishment summons received by Garnishment Registry from a MEP- December 9, 2010 for \$400.00 per month, with no arrears;
- in Quebec, a maximum of 50% of the garnishable salary for family support payments, however, a lesser fixed dollar amount may be requested by the court;
- summons is binding on December 24, 2010 (in pay period # 1; December 23, 2010 to January 5, 2011);
- must be actioned for pay period # 3 ending February 2, 2011 (second pay period following pay period in which summons becomes binding);
- the moneys must be in the hands of the MEP no later than on February 17, 2011 (within 15 days after February 2, 2011).

Example 3- Calculation of the garnishable salary over two pay cycles

- add garnishable salary for each pay period: $\$1,068.71 + \$1,062.85 = \$2,131.56$;
- divide total garnishable salary by 2: $\$2,131.56$ divided by 2 = **$\$1,065.78$ bi-weekly**;
- multiply by 50%: $\$1,065.78$ multiplied by .50 = **$\$532.89$ per pay period**;
- the amount to be remitted to the court is \$200.00 per pay period because the garnishment summons is for \$ 400.00 per month;
- prepare the pay transaction for the on-going garnishment deduction for \$ 400.00 per month in the pay system (with the appropriate codes for family support no arrears).

Note:

Where there is more than one active garnishee summons, the family support garnishee summons takes precedence over commercial debts. Garnishment on the commercial debt would only occur in a pay period if the garnishable amount under a family support garnishee summons amounts to less than the maximum allowed under provincial garnishment law for commercial debts

Any supplementary payments (overtime or retroactive pay) received during the pay period are also subject to garnishment, if required to satisfy the judgment.

A garnishee summons for family support payments may indicate a fixed percentage of the garnishee amount pay deduction is to be forwarded to the court or MEP on an on-going basis.

Appendix F - Checklist for Federal Employees

1. Determine if judgment debtor is an employee or a contractor
2. Start a garnishment log and checklist
3. Open a confidential garnishment file with the name of the employee or contractor
4. If the judgment debtor is an employee:
 - determine the validity period of the garnishee summons;
 - determine the date when the garnishment is binding;
 - determine which pay cheque/direct pay deposit is garnishable;
 - calculate the garnishable salary;
 - determine if any voluntary deductions should be suspended;
 - determine amounts to be paid to the court or the maintenance enforcement program (MEP) and to the employee;
 - notify the employee of the garnishment and confirm in writing;
 - initiate the required pay transaction in the pay system;
 - if necessary, suspend voluntary deductions and direct pay deposit; ensure that the employee has been consulted;
 - if necessary, advise Finance to hold the pay cheque or request a recall or intercept on direct pay deposit;
 - if manual intervention is required on initial garnishment recovery, requisition two cheques (one for the court or MEP and one for the employee);
 - make arrangements for a cheque to be issued to the court or MEP within 15 days after the moneys have been garnisheed with the necessary information on the cheque stub (full name of employee and complete Court file number or MEP case number as applicable);
 - complete the necessary response form to accompany the cheque;
 - reinstate the direct deposit, as required;
 - ensure that the employee's cheque/direct deposit is available on pay day and send the cheque to the court or the MEP office as indicated in the garnishee summons within the required time limits together with the applicable provincial response form;
 - where required, make arrangements for future cheques to go to the court or the MEP office indicated in the garnishee summons;
 - B.F. to stop the garnishment deduction in the appropriate pay period, if applicable.

Appendix G - Judgment Debtor is a Contractor

Upon receipt of the garnishment documents from a Garnishment Registry:

- determine if the judgment debtor is a contractor within the department/agency;
- immediately notify those responsible for administering the contract that a garnishee summons was received and that no moneys are to be paid to the contractor without first getting clearance from the garnishee contact. When a common service agency has entered into a contract on behalf of a client department, the client department administers these procedures;
- immediately inform the Garnishment Registry that the judgment debtor is a contractor as the time limits for acting on a garnishee summons are more stringent in the case of a contractor and the amount that may be seized is different than that for an employee;
- determine the amount payable to the Court or the MEP. All fees are garnishable except moneys specifically identified in the contract as cost reimbursements;
- immediately inform the contractor that a garnishee summons was received requiring the department or agency to pay to the court or the MEP some or all of the contractor's fees.

During the period between the date the garnishee summons is served on the Garnishment Registry and the date Her Majesty is bound by the garnishee summons (15 days after service of documents); authorize only payments to the contractor for services already performed. No advance payments may be made without prior clearance from Garnishment Registry, even if called for under the contract.

Withhold all garnishable fees becoming payable on the fifteenth day following the day on which Her Majesty is bound by the summons, (i.e. the thirtieth day after receipt of the garnishee summons), and

- When the summons has continuing effect, withhold any garnishable fees that subsequently become payable;
- When the summons has no continuing effect, withhold any additional garnishable fees that become payable in the following 30 days, except for the amounts that are payable in this 30 day period that became owing after the first 14 days of this period.

Garnisheed moneys are to be delivered to the court or the MEP office indicated in the garnishee summons within 15 calendar days after they are garnisheed. The cheque stub should clearly identify the name of the contractor and the applicable court file number or MEP case number.

Response Time

Contractors: the garnishable fees payable on the fifteenth day following the day on which Her Majesty is bound by the garnishee summons, as well as any that become owing in the next 14 days; and, when the garnishee summons has a continuing effect, any garnishable fees becoming payable after that fifteenth day.

The garnisheed money is to be delivered to the court or the office indicated in the garnishee summons within 15 calendar days after the day on which the money was garnisheed. Failure to comply within the above time limits could increase the risk of liability and/or negative attention for the federal government.

Appendix H - Checklist for Contractors

For use by garnishee contacts and others involved in the garnishment process upon receipt of a garnishee summons:

- notify the Garnishment Registry immediately that the judgment debtor is a contractor so that the Garnishment Registry can provide you with the appropriate instructions relating to garnishment of contractor's remuneration;
- notify the contractor;
- withhold all payments to the contractor except those payable for services already performed during the first 15 days after the garnishee summons was served on the Department of Justice;
- take action to ensure all fees will be made payable to the court or MEP office indicated in the garnishee summons until the garnishee summons is satisfied or terminated;
- make arrangements for a cheque to be issued to the court or MEP within 15 days after the moneys have been garnisheed with the necessary information on the cheque stub (full name of contractor and complete Court file number or MEP case number as applicable).