

LAW REFORM COMMISSION



COMMISSION DE RÉFORME DU DROIT

REPORT

ON

THE ENFORCEMENT OF JUDGMENTS:

PART I: EXEMPTIONS UNDER "THE GARNISHMENT ACT"

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Report #28

The Manitoba Law Reform Commission was established by "The Law Reform Commission Act" in 1970 and began functioning in 1971.

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The subject of this Report is an important portion of the general field of creditors' remedies and the enforcement of judgments. On December 20, 1973 and in subsequent correspondence the Attorney-General requested that the Manitoba Law Reform Commission review "*The Garnishment Act*",¹ "*The Executions Act*"² and "*The Judgments Act*"³ of Manitoba with particular reference to:

. . . the provisions relating to the personal exemptions for debtors, having in mind the current economical conditions and the applicability to modern conditions of the kind, nature and value of the exemptions in these statutes.

The need for re-valuation and revision of these statutory provisions is clear. The combination of the passage of time and the attendant inflation within the economy has had the total effect, in many cases, of producing exemptions which no longer provide the protection originally intended by the Legislature. Social and technological changes have had no less an effect in contributing to a progressive degeneration in the effectiveness and relevance of these provisions to the modern condition.

The exemption provisions should not, however, be considered in isolation. Their review necessitates a consideration of the various enforcement remedies of which the law of exemptions is but an aspect. It is the intention of this study, then, to review the operation of the garnishment, executions and judgments legislation as well.

For the sake of both convenience and logic this study is divided into parts. In this report, the first of our proposed series, we deal only with exemptions from garnishment which is the attachment of debt. Exemptions from the attachment of property other than money, both real and personal, are more conveniently dealt with separately, in

two later papers, because unlike the equivalent exemptions from garnishment, their consideration involves some review of the marital property regime which came into force in Manitoba in 1978. Upon completion of the exemption portions of this study we propose to issue a fourth and final paper in which we will, among other things, review the operation and mechanical aspects of the three attachment procedures themselves. The fact that the later parts of this study have yet to be completed does not, we think, preclude the making of final recommendations for changes to the exemption provisions of "*The Garnishment Act*" at this time.

In October 1977 the Commission issued a Working Paper setting out tentative recommendations seeking comments and criticisms. We received only two responses, neither of which was negative. Rather they suggested expansion of some of our recommendations and clarification of some minor points.

¹C.C.S.M. c. G20.

²C.C.S.M. c. E160.

³C.C.S.M. c. J10.

PART I - "THE GARNISHMENT ACT"

In its simplest terms garnishment is a device which (being ancillary to the main suit) aids in securing a judgment by allowing a creditor to reach property of his debtor which may be in the hands of a third party.⁴ In Manitoba the remedy is confined to the recovery of money and is available both before and after judgment. In both cases the usual procedure, which is governed by our Queen's Bench Rules, involves the submission by the creditor of an *ex parte* application supported by his affidavit, indicating:

- (1) the status of his claim or judgment against the defendant and the extent to which it is unsatisfied; and
- (2) his belief that the third party garnishee is within Manitoba and is indebted or liable to the defendant.

Because the wage packet or pay cheque is perhaps the major asset of most families, and the source from which necessities must be purchased, wage garnishment, which is a special type of garnishment, is treated differently than other garnishments. More confined in its scope, it is not available until there has been judgment in the matter. This restriction on the availability of wage garnishment is a reflection of the fact that with its more serious consequences to the debtor this special remedy is unwarranted and unjustified before the merits of the creditors' claim have been established. In the case of its use after judgment, legislative exemptions have been provided which are intended to protect the debtor's means of supporting himself and his

⁴Cannon & Cardwell, "Garnishment in Florida: Analysis Assessment and Proposals", 19 *U. Fla. L.R.* 19 (1966).

family and as such place a portion of his wages beyond the reach of the creditor. These amounts have been predetermined and statutorily enacted.

The key provisions of "*The Garnishment Act*" which are intended to limit and reduce the harshness of wage garnishment and as such concern us in this study follow:

s. 5 Subject as herein provided service of garnishment process on a garnishee binds any debt due or accruing due from the garnishee to the defendant or judgment debtor and all wages that become due or payable at any time within seven days after service of the process. (emphasis added)

s. 6 Except as in this Act otherwise provided, seventy per centum of any wages due or accruing due by an employer to an employee is exempt from seizure or attachment under a garnishing order issued out of any court; but in no case shall the amount of the exemption allowed under the section be less than

- (a) in the case of a person without dependants one hundred dollars per month or pro rata for a shorter period; and
- (b) in the case of a person with one or more dependants one hundred and sixty-five dollars per month or pro rata for a shorter period.

s. 8 Notwithstanding any other provision in this Act, where the wages of a person are seized or attached by virtue of, or under

- (a) a court order for alimony or maintenance; or
- (b) a duly executed separation agreement; or
- (c) the Wives' and Children's Maintenance Act;

the exemption allowed to that person is one hundred dollars per month or pro rata for any part of a month.

s. 9(2) A creditor who has initiated proceedings by way of seizure or attachment of the wages of a person under this Act or a debtor affected may make an application in writing supported by affidavit to the clerk of the court . . . for an increase or decrease, as the case may be, of the amount of exemption set out under section 6.

s. 9(5) No order shall be made by a clerk under subsection (4) . . . which

- (a) has the effect of increasing the exemption allowed under section 6 to more than ninety per centum of the wages due or accruing due; or
- (b) reduces the wages of the employee in the case of a person without dependants to an amount less than one hundred dollars per month or pro rata for a shorter period and in the case of a person with one or more dependants, to an amount less than one hundred and sixty-five dollars per month or pro rata for a shorter period.

s. 10(1) Where a garnishment order has been made against the debtor, he may apply to the clerk of the court . . . for a release of the garnishment and for the payment of the judgment by instalments and, if the clerk deems it proper in all the circumstances of the case, he may make the order, fixing therein the amounts and times of payment, and so long as the debtor is not in default under the order, no further garnishment of the debtor's wages shall be had in respect of the judgment debt.

It will be noted that in Manitoba the amounts of the exemptions available are automatically determined by the statute unless either the creditor or debtor should apply for a variation under sections 9 or 10. Some jurisdictions follow a different procedure, requiring the exemptions to be determined, in each case, by the courts at the time judgment is pronounced. We believe that the Manitoba approach is preferable. Those jurisdictions which require a judicial determination in each

case of the proportion of his wages which a debtor can reasonably be expected to pay provide systems, which, understandably, are time-consuming and costly and which very often result in strain on the administration of justice. More importantly, provisions of this kind do not, we think, provide the protection of our guaranteed minimum exemption. We are of the opinion that the real protection afforded by the Manitoba exemption is its universal availability to all debtors, not only those financially able or well enough advised to seek it. Thus, in addition to facilitating the operation of the garnishment process and thereby reducing its expense, the Manitoba provisions wisely combine the certainty of set exemptions with the flexibility of subsequent judicial modification only when needed.

Our comparative review of similar legislation in other Canadian, Commonwealth and American jurisdictions indicates that these provisions vary substantially not only in their enforcement procedures but in the amounts which they exempt and the exemption formulas they employ. A number of these jurisdictions, notably New Brunswick, South Australia and New Zealand do not permit wage garnishment in any form.⁵ Although by no means excluded from our initial consideration, the provisions of these jurisdictions have been rejected by us as possible models for an updated Manitoba statute. They are undesirable, we think, in that the utility of this relatively cheap and effective collection device, if limited in its use and with adequate exemption safeguards provided, will far outweigh the potential ill effects

⁵As to New Brunswick, see *Garnishee Amendment Act*, S.N.B. 1971, c. 36. As to New Zealand, see the *Wage Protection Act*, S.N.Z. 1964, c. 58. For South Australia we were referred to Draft Thirteenth Report of the Law Reform Committee of South Australia (undated) 16-17.

consequent upon its abolition.⁶

The statutes of those jurisdictions which permit wage garnishment and which we have studied can, for the most part, be grouped according to the exemption formulas which they employ. The review of these formulas has involved us in very considerable study; our concern being not only with a determination of the value of the exemptions which ought to be set in Manitoba but with a desire to see enacted legislation which will not, in short course, become obsolete. In the course of this comparative review we have attempted to examine critically the legislation from the perspectives of those persons most likely affected by a system of judgment enforcement which attaches wages; among them, the creditor, debtor and employer.

The two general categories in which most exemption statutes can be said to fall are:

- (1) those which fix a specific dollar amount as the total exemption; and
- (2) those which exempt a set percentage of the debtor's wages.

⁶A proper analysis of all the various reasons upon which this conclusion is based would add considerable length to this Report. We have rejected that approach well aware that this issue must be the underlying question in any consideration of exemptions from garnishment. Many of the reasons which compel us to recommend retention of the remedy are the same as those which we have had to consider on the issue of the amount to be exempted. Our answer to that question and reasons for so recommending are provided later in this Report at pp. 18-21.

Once enacted, the group 1 statutes require constant legislative attention and revision so that they will continue to provide protection to the degree originally intended. They are generally of an earlier time period and many jurisdictions, having first enacted a specific dollar exemption, have subsequently amended their statutes to provide for an exemption of the group 2 variety.

Those statutes which exempt a percentage of wages are much more desirable. Computation of an exemption which is based on a percentage as opposed to a specific dollar amount is simple and uniform, regardless of whether an employee is paid on a weekly, monthly or other basis. Aside from the convenience which it provides to the employer who is charged with making the deduction, the principal advantage of this type of statute is its adaptability to economic change without amendment. Thus the Ontario Legislature, for example, has avoided the necessity of repeated revision by expressing its exemption exclusively in percentage form.⁷ Where, however,

⁷"The Wages Act", S.O. 1970, c. 20, provides as follows:

Seventy per cent of any debt due or accruing due to any mechanic, workman, labourer, servant, clerk or employee for or in respect of his wages is exempt from seizure or attachment, provided that if a creditor or any such mechanic, workman, labourer, servant, clerk or employee, who has initiated proceedings . . . desires to contend that having regard to the nature of the debt and the circumstances of the debtor, it is unreasonable that as much as 70 per cent of such debtor's wages should be exempt, the judge may in any particular case, upon a hearing of the matter, reduce such percentage of exemption.

as in Ontario, the exemption is not coupled with a minimum exempt amount the protection intended to be afforded to the debtor may be nullified. It is the small wage earner who likely will receive insufficient protection. No matter how meagre his earnings the creditor will be able to obtain some portion of them in satisfaction of his claim. To illustrate, consider the case of a debtor who being unable to work full time earns \$100 per month. Assuming the Ontario statute, which provides a flat 70% exemption applies, the debtor would only be entitled to retain \$70.00 of his monthly salary. The injustice and inadequacy of the Ontario statute and others like it is clear. Thirty percent of the debtor's wage will be liable to garnishment, and that is so, whether or not the 70% which he is permitted to retain for himself is \$70.00 or \$700.00.

In the interests of preventing the hardship which would otherwise be imposed on the low income debtor left with insufficient means to support his family, even the percentage exemption statutes should provide some minimum flat amount below which earnings are not subject to garnishment. Yet even if the statute should provide such a minimum dollar exemption it would doubtless become obsolete with the passage of time. For unless the Legislature is willing to amend this amount when necessary, this type of statute, certainly no less than the fixed dollar variety, will become hopelessly out of date as the economy fluctuates between inflation and deflation. This, of course, is the formula which our current statute employs in the fixing of wage exemptions in Manitoba. It is also what we believe to be the basic error of our law that, while on the one hand wisely exempting a percentage of the debtor's wages, it also exempts, albeit as a minimum, a specific dollar amount.

An examination of the various revisions of the Manitoba Act since 1924 illustrates the problems caused by specific monetary limits. "The Garnishment Act" was originally enacted in 1924 section 4 of which read as follows:

s. 4 Subject to the provisions of the next following sections, any debt due or accruing due to a mechanic, laborer, servant, clerk or employee for wages or salary shall be exempt from seizure or attachment under process, issued either out of the Court of King's Bench or out of any of the County Courts, to the extent of the sum of thirty dollars in the case of widows and widowers without dependent children, and unmarried persons who are not supporting dependent brothers or sisters under the age of eighteen years, or a dependent parent or parents, grandparent or grandparents, and sixty dollars in the case of all other persons. If at the time of the process taking effect upon the garnishee there is less than one month's salary (emphasis added)

In 1952, twenty-eight years after its enactment this provision was amended to exempt 75 and 125 dollars respectively. Such was the state of the law until 1967 when, as a result of the recommendations of a special committee of the Legislature, the legislation was repealed and a new Act was passed. Since 1967 there has been one amendment to the statute but none revising the monetary limits of 100 and 165 dollars thought to have been appropriate some twelve years ago.

The minimum wage exemption is based on a conception of the minimum amount upon which the debtor can reasonably be expected to live. It has as its object the protection of the very low income debtor who is the one most frequently and seriously affected by changes in the cost of living. As such the exemption ought to be revised at frequent intervals to reconcile it with economic change. What the preceding brief history of our exemption provisions aptly demonstrates

is that the legislative process, being a relatively slow and inflexible one, has failed to provide the debtor with this minimal but essential protection. It has proved a poor vehicle for conveying a policy of current, fair and adequate protection of the wage earner for it cannot be expected that exemption limits, no matter how generous when first enacted, will always be kept current by legislative revision.⁸ With legislative lag so evident in the updating of exemption provisions it is clearly time that this legislation be overhauled and reformulated. What is needed is a revision of the law which, irrespective of the extent of the protection it may now provide (a consideration of which follows), will employ an exemption standard ever responsive to changing times.

As early as 1972, this Commission had occasion to consider the matter of wage exemptions and in particular the very issue of the relevance and effectiveness of these amounts years after their enactment. The Commission was then engaged in a survey of the Statutes of Manitoba to determine whether the sums of money to which they variously referred adequately reflected contemporary economic conditions. The conclusions and recommendations formulated as a result of that general project, (designated *Computerized Selection of Sums in Manitoba Statutes*) were ultimately contained in our informal report #4C forwarded to the Attorney-General in early 1975. While the Commission considered the provisions of "*The Garnishment Act*", the final report contained no specific

⁸Abrahams and Feldman, "The Exemption of Wages From Garnishment: Some Comparisons and Comments", 3 *De Paul L. Rev.* 153 (1954).

recommendations concerning its reform for during the course of the project the matter of exemptions under that Act, "The Exemptions Act" and "The Judgments Act" was earmarked for specific study. Nevertheless many of the recommendations contained in informal report #4C are of general application and portions of it bear reproducing here. A general statement of the problem initially dealt with in that report follows:

One has only to think of the spectacular inflation that has gripped most of the Western economies in just the last two or three years to realize how rapidly a fixed sum of money can become an unrealistic measure of the worth it was intended to convey. The larger effect of this is, of course, a progressive and accelerating obsolescence in those statutes containing such fixed sums, an obsolescence which will eventually, and in some cases rapidly, undermine their effectiveness and relevance as expressions of the intent of the Legislature.

And later a three-part solution dependent upon the nature of the individual provision:

Periodic review of statutory sums by the concerned governmental departments has apparently begun over the past few years and is laudable. There are a few cunning techniques which can be employed in the expression of some sums and which will help avoid the periodic enactment of changes.

Thus the fixing of a sum could be:

- (a) expressed as a percentile where the amount to be yielded is related to a sum which ordinarily reflects the trends and state of the economy, or wages and income; in this way the percentage established by the Legislature will remain relevant; or
- (b) delegated to an appropriate body which alone, or by and large, is concerned, so that,

for example a membership fee instead of being specified, might lawfully be set and varied by vote of two-thirds of the membership on some formal occasions; or

(c) in a few cases, deleted and dealt with by regulation where the sum is small and the change would also be small, such as fishing licence fees.

The proposals which the Commission outlined in 1975 are not without precedent. The enactment of exemption formulas which have been designed to solve the problem of legislative inability regularly to reconsider exemption laws can be found in the statutes of a number of jurisdictions. The present Prince Edward Island wage exemption, as provided by section 17 of "*The Garnishee Act*",⁹ is an example of one jurisdiction's attempt to enact a flexible exemption which will overcome the obsolescence of specifically enacted sums. Section 17, in part provides:

s. 17(2) There is exempt from garnishment of wages . . . sums in such amounts and for such purposes as shall be more particularly set forth in regulations.

17(3) The amount of exemption . . . shall be calculated . . . on the basis of an exemption for each "item of need" prescribed by regulation and in no case shall the exemption under this section leave the judgment debtor with less income than he would receive if he were wholly dependent for his income on payments made under the Welfare Assistance Act, R.S.P.E.I. 1974, Cap. W-14.

⁹R.S.P.E.I. 1974, cap. G-2.

The somewhat different approach of the collective American jurisdictions is also worth noting here. The provisions of the *Uniform Consumer Credit Code*¹⁰ provide an example of an exemption formula which is in no way dependent upon an intended revision whether it be undertaken by the Legislative Assembly itself or, as in the case of Prince Edward Island, more readily by Order-in-Council. In this case the wage exemption has been tied to the minimum hourly wage, a factor which fluctuates with changes in the economy thus providing automatic self-adjustment in the wage exemption. Section 5.105(2) of the Code provides the following double test:

- (2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment . . . may not exceed the lesser of
 - (a) 25 per cent of his disposable earnings for that week, or
 - (b) the amount by which his disposable earnings for that week exceed forty times the Federal Minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act . . . , in effect at the time the earnings are payable.

To help formulate an exemption provision which would be appropriate to the Manitoba experience the Commission considered these sections, the Prince Edward Island legislation, and variations of both. We were of the opinion that in the case of an exemption from wage garnishment there was good reason for fixing that amount in a statute rather than by regulation.

¹⁰ See U.C.C.C. ss. 5.104(2), 5.104(4); see also R.C.C. Cuming, "Protection of Consumer Borrowers", Vol. 33, No. 2, *S.L.R.* 75 for a discussion of its provisions.

The statutes which are published during and after Legislative sessions are more accessible to the public (and its legal advisers) than are regulations and Orders-in-Council which can be passed at any time and without the attendant publicity and accessibility of statutory enactments. In Prince Edward Island the Prothonotary of the Supreme Court or a Clerk of the County Court calculates the amount of the wage exemption. In Manitoba, however, it is the employer who is charged with calculating and making this deduction. Accessibility to and familiarity with the legislation then is essential. Furthermore in Manitoba what an individual is entitled to receive under "*The Social Allowances Act*"¹¹ is determined by a calculation based on a large number of variables, the designated amounts for each of which are from time to time set by regulation or are at the discretion of the Director. We are of the opinion that the employer ought not to have imposed upon him the responsibility for making a deduction which in many cases will be arrived at only after protracted calculation. It is in the interests of both creditor and debtor alike that the duties imposed upon the employer by the garnishment process be minimized or certainly be no greater than under the present legislation.

Because of the nature of the garnishment process and welfare procedure in Manitoba we are not convinced that the Prince Edward Island legislation would be appropriate for enactment here. Moreover, we are not certain that changes to regulatory legislation would necessarily be made as frequently as desirable. Like the framers of the

¹¹C.C.S.M. c. S160.

Uniform Consumer Credit Code the solution which we have chosen to recommend would be to incorporate the minimum wage provisions of "*The Employment Standards Act*"¹² into section 6 of "*The Garnishment Act*". The minimum monthly wage (based on a forty hour week) would then provide an adjustable base to which the minimum monthly exemptions would be tied. Unlike other economic indicators which we considered, such as the Consumer Price Index, the minimum wage factor is particularly appropriate in this context. The employer already charged with the obligation to pay to each of his employees wages at a rate not less than that prescribed by the minimum wage board is already well aware of what that rate may, from time to time, be. If this information is not well publicized or readily available, it could easily be confirmed in a notice to the employer served with each garnishing order. Thus the minimum wage standard seems the obvious choice because in addition to providing current protection to the wage earner it will provide the certainty and accessibility essential to the employer.

We therefore recommend:

1. That the threshold exemption provided by s. 6 of "*The Garnishment Act*" continue to be expressed as a per centum of the debtor's wages but that this section be amended and the minimum exemption now be expressed in terms of a percentage of the minimum wage.
2. That the exemption provided by s. 8 of "*The Garnishment Act*" be amended and similarly expressed in terms of a percentage of the minimum wage.

¹²C.C.S.M. c. E110.

Having formulated these recommendations the Commission resolved to propose a further revision of the law which would increase the amount of the protection currently provided to the debtor and his family. Unquestionably the present limitations of \$100 and \$165 require increasing. On the basis of the formula proposed in Recommendations #1 and #2 these amounts when converted would roughly be the yield of an exemption based on 20% and 35% of the minimum monthly wage. It is toward increasing these converted percentages and their present yields that the remaining study of "The Garnishment Act" exemptions has been directed.

In order to determine the degree of the exemption to be accorded from garnishment the interests of society in general as well as the individual viewpoints of the creditor, debtor and employer must be considered. The polarization of these various interests serves to illustrate the extreme importance of the proper adjustment of the wage exemption. According to one writer¹³ the criteria of satisfactory recommendations for law reform in this area would be that their implementation results in a statute which:

- (1) preserves enough of the debtor's wages to ensure that he shall have the means to maintain a decent standard of living both for himself and his dependents without resort to public assistance, and
- (2) at the same time permits a creditor to collect his debt as simply and rapidly as possible.

The difficulty which these objectives present is that they necessitate unflinching compromise at every point in the

¹³ Ricketts, "Wage-Exemption Statutes - Garnishment - Assignment of Wages", 11 *Neb. L.R.* 342 (1933).

consideration of the law of debt collection; making ever more difficult the answer to the underlying question: "How much ought to be exempted?".

There are strong arguments to be made on behalf of those who would deplore the continuation of garnishment in its present form. While they may acknowledge that retention of the remedy is necessary, proponents of this belief advocate substantial exemptions and strict limitations on its use. This position is based on a belief that for most wage earners the monthly wage packet is the principal source of the means to purchase the immediate necessities of life. It has, for example, been estimated that in an inflationary economy the average wage earner needs from 85% to 90% of his salary just to meet current expenses and that any legislation which exempts less than 90% of wages from garnishment might properly be characterized as anti-social.¹⁴ Our present legislation provides much less protection than that and one may be hard put to believe that a debtor could maintain himself and his family on that amount of money.

Recent empirical and statistical research has indicated that there is some correlation between harsh garnishment laws and various forms of social disruption in the lives of debtors and their families.¹⁵ Thus, inadequate exemptions may force the debtor closer to personal and financial ruin. They may ultimately cause him to avoid the harshness of the garnishment process and his

¹⁴Segal, "Wage Garnishment in New Mexico" (1971) 1 *New Mexico L.R.* 388; see also Brunn, "Wage Garnishment in California: A Study and Recommendations", 53 *Calif. L.R.* 1214 (1965).

¹⁵Schuchman and Jantscher, "Effects of the Federal Minimum Exemptions from Wage Garnishment in Nonbusiness Bankruptcy Rates" 77 *Comm. L.J.* 360 (1972).

creditor's claim by leaving his employment and perhaps even by fleeing the jurisdiction. As some observers have related the rate of applications for personal bankruptcy to the degree of harshness of wage garnishment laws, it is also predictable that some debtors would forever avoid their debts by declaring bankruptcy. In all of these cases the result is the same. The debt will ultimately remain unsatisfied and the creditor and society in turn will bear the losses occasioned thereby. In the case of resort to public assistance the burden on society is doubled.

Having reviewed the errors of an exemption set too low, the Commission had also to consider the likely effects of legislation which exempts an amount which is, on the other hand, too generous.

From the creditor's viewpoint a disproportionately high exemption might considerably reduce the effectiveness of wage garnishment as a significant remedy. Any substantial increase in the exemption provisions will in turn create a substantial increase in the number of garnishing orders required to collect a given debt. Creditors are all too aware of the expense already involved in the garnishment process. With the cost of disbursements set at \$10.00 per order and legal fees calculated on orders issued, such an increase would place the cost of the remedy far out of proportion to the amount recovered. Cost of service may also be substantial so that in many cases the procedure would not be worth undertaking.

There is much to be said on behalf of those who believe that wage garnishment must be retained as a meaningful creditor's remedy. This position is based on the belief

that the most effective means a creditor may have to enforce payment of his debt should not be further eroded in view of the role he plays in our economic system of credit financing.¹⁶ If too much is exempted whole classes of persons may be entirely immunized from garnishment. The credit of these persons will be restricted, for the creditor, knowing that he may have difficulty if he is forced to resort to law to collect his debt, will be reluctant to advance them credit.¹⁷ Thus a statute such as the *Uniform Consumer Credit Code*, which would completely protect from garnishment persons earning monthly amounts of up to the minimum wage may be undesirable, because by immunizing him, the person of small means may be denied needed credit.

Besides those it would have on the creditor and our system of credit granting, there are a number of additional undesirable effects which too powerful an exemption law would create. Garnishment at the very least can be a humiliating experience. The necessity for multiple levies would undoubtedly heighten that humiliation. They will also add to the debtor's expense. Costs which are initially borne by the creditor

¹⁶ This position is based on our belief that it is only the rare creditor who, knowing he can rely on the full extent of the law to collect his debt, recklessly advances credit. Thus we think that as a class creditors have an undeniable right to be paid. In our consideration of this right we were reminded that the creditor very often is an individual, whose claim, founded in negligence, is one for personal injuries. If the debtor is employed but is otherwise 'judgment proof' wage garnishment may be the only way in which the creditor can satisfy his claim.

¹⁷ See Gudgel, "Debtors Exemptions in Personal Property Proposals for Modernization", 52 Ky. J. 456; see also Karlen, "Exemptions from Execution", 22 Bus. Lawyer 1167 (1967).

become part of the costs recoverable from the debtor. Thus where the creditor pursues his remedy it is the debtor who will ultimately suffer the burden of increased multiple garnishments.

Beyond the issue of the increase in direct cost to the debtor lies the larger issue of what results an increase in multiple garnishment might have on the debtor's employment. An increase in multiple garnishment generates additional costs to the employer and demands on his time. These, we think, may well serve to increase the possibility of the debtor being fired.¹⁸

The preceding discussion illustrates the importance of compromise and adjustment in the determination of the wage exemption. Considerable thought by the individual Commissioners and hours of discussion amongst the Commission as a whole have been devoted to finding a satisfactory compromise of the opposing interests. A majority of the Commission is of the opinion that the present seventy percent exemption is both adequate and in accord with our earlier stated objectives. Retention of the seventy percent figure seems justifiable because the rule is not a hard and fast one. Section 9(2) of the present Act enables a debtor to seek a variation of the statutory exemption from

¹⁸Section 37 of "The Employment Standards Act" prohibits the dismissal of an employee solely because his pay has been garnished. Notwithstanding that it is intended to prevent firing it would seem that the section could hardly act as a bar to the employer's conduct. An employee would likely encounter considerable difficulty if he sought to prove that he was dismissed because of garnishment rather than absenteeism, poor attitude, etc.

seventy percent up to ninety percent of his wages thus permitting the courts to raise this figure where garnishment of the normal amount is unduly burdensome to the judgment debtor. Similarly the creditor may obtain an order enabling him to garnish in excess of the permitted amount provided the wages of the debtor are not reduced below the basic minimum amounts as they are now set by section 6.

The interaction of section 9 then with the basic threshold exemption of section 6 would seem to strike a balance between the various interests of creditor and debtor and we therefore conclude that the current basic 70% exemption does not require amendment. What change we do propose however is an increase in the basic minimum exemptions. Again, selection of an appropriate figure has required some compromise on our part. A majority of the Commission recommends (the minority feels exemptions should be much higher particularly those concerning a person with dependents):

3. That the basic or threshold exemption provided by section 6 of "*The Garnishment Act*" continue to be set at seventy percent of disposable earnings.
4. That the minimum exemption provided by section 6(a) of "*The Garnishment Act*" for a person without dependents be increased from one hundred dollars per month to an amount equal to fifty percent of the minimum monthly^{ly} wage in effect at the time.

5. That the minimum exemption provided by section 6(b) of "The Garnishment Act" for a person with one or more dependents be increased from one hundred and sixty-five dollars per month to an amount equal to seventy percent of the minimum monthly wage in effect at the time.²⁰

6. That the exemption provided by section 8 of "The Garnishment Act" for a person whose wages are attached by virtue of an order for alimony or maintenance etc. be increased from one hundred dollars per month to an amount equal to fifty percent of the minimum monthly wage in effect at

¹⁹ The minimum wage in Manitoba is presently set at \$2.95 per hour. The following table which records the amendments since 1970 demonstrates that, unlike the wage exemption, the wage factor is subject to constant revision.

\$1.50	October 1, 1970	July 1, 1974	\$2.15
\$1.65	November 1, 1971	January 1, 1975	\$2.30
\$1.75	October 1, 1972	October 1, 1975	\$2.60
\$1.90	October 1, 1973	September 1, 1976	\$2.95

In our discussions with the Employment Standards Branch of the Department of Labour we were also advised that the minimum monthly wage is normally determined by the following calculation "min. wage x hourly week x 4.33, being weeks per month", so that we have based our exemption on $(\$2.95 \times 40 \times 4.33) = \510.94 per month at the present time. An exemption based on fifty per cent of the minimum wage would be the equivalent of \$255.47 at the present time.

²⁰ *Supra* n. 18. An exemption based on seventy per cent of the minimum wage would be the equivalent of \$357.66 at the present time

the time.

In the interests of reducing the negative effects of similar increases in their exemption statutes a number of jurisdictions have enacted a continuing or perpetual garnishing order which, in effect, allows a judgment creditor to levy against the wages of the debtor until such time as the debt is satisfied. Because a continuing lien eliminates the necessity for repeated garnishments it will reduce the overall cost of the procedure which, as we have seen, would otherwise endanger the debtor's credit, employment and finances. Section 17(5) of "*The Garnishment Act*", R.S.P.E.I. 1974, c. G-2 then is of particular interest to this study of wage exemptions. It provides that:

s. 17(5) Where it appears to a judge that a judgment debtor is in receipt of a regular salary or wages, the judge may make an order for the attachment of future accruing wages or salary, after making the exemptions herein above referred to and such judge may make an order for the payment into court to the credit of the attaching creditor of the balance of the wages or salary as and when the same accrues due until the debt due from the judgment debtor to the attaching creditor and costs are paid and satisfied. (emphasis added)

In their recent "*Working Paper No. 18, The Enforcement of Judgments: The Attachment of Debts Act*", the Law Reform Commission of British Columbia proposed the implementation of a continuous order which would augment rather than replace the present immediate writ. The use of the continuing order would be confined to certain situations:

- (1) Where there is some connection between the judgment debtor and the garnishee whereby a "debt due" is likely to come into existence; and
- (2) Where an "immediate" garnishing order is inappropriate.

The British Columbia Commission was of the opinion that the term of this order should be long enough to allow the discharge of the judgment and no longer. Notwithstanding the desire for complete satisfaction of the debt they were of the feeling that there should be some maximum term which would limit all garnishing orders. Accordingly they have recommended the maximum term be set at two years.

The British Columbia recommendations are of particular interest here because they call for the enactment of a dual system which would employ both an immediate and a continuing garnishing order. This is not unlike the nature of the present Manitoba provisions. Section 14 of our own legislation provides for a single "everlasting" garnishing order against wages in the case only of a claim for alimony or maintenance. The enactment of section 14 was in fact, the result of a recommendation which this Commission made in 1972. In addition to having priority over all other garnishing orders this single order continues to operate so long as the judgment debtor remains in the garnishee's employ and the garnishing order remains in force. When the Commission recommended this amendment (considered rather radical at the time) we believed that it was warranted by the very special nature of the maintenance obligation. It was, and is, our opinion that the enforcement of maintenance should be accorded select treatment and priority over all other debts. We posit two paramount

reasons for this belief:

- (1) Human material needs and human dignity are both served in justice when the person who is morally and legally responsible for maintenance, and who has the financial means to pay it, actually does pay it; and
- (2) to the extent that the person responsible does not pay maintenance, we taxpayers have to maintain the needy spouse and children.²¹

We believe that the operation of a continuing garnishing order should be confined to the special area of maintenance enforcement. The provisions of the Prince Edward Island legislation and others like it which enact perpetual garnishing orders for all judgment debts have been the object of our criticism not only for this reason but also because they put a premium on early suit and garnishment rather than negotiation between the parties.

We are of the opinion that the current limited range of wage garnishment statutes such as the Manitoba legislation (we refer here to the seven day factor provided by section 5) is a reflection of the fact that wage garnishment was intended as a "one-shot" remedy, the utility of which is based on its potential coercive effect to cause the debtor to make some other arrangements with his creditor.²² Section 10 of the Manitoba statute provides for what these

²¹ Taken from a letter dated July 27, 1977 written by F.C. Muldoon, Q.C., who was then Chairman of this Commission, to W.H. Hurlburt, Q.C., of the Alberta Institute of Law Research and Reform.

²² (notes), "State Wage Exemption Law and the New Iowa Statutes - A Comparative Analysis", 43 *Iowa L.R.* 555 (1958).

alternative arrangements might be. Under that section the judgment debtor may apply for an order releasing the garnishment and providing for the payment of the judgment by instalments. Once such an order is made and so long as the debtor is not in default under it no further garnishment of the debtor's wages is permitted in respect of that particular judgment. Where however a judgment or garnishment order is issued against the judgment debtor in some cause other than the one in which instalment payments have been ordered the creditor will no longer be bound by the arrangement. Provisions such as our section 10 which would permit a debtor to block the use of his creditor's remedy by entering into an instalment payment arrangement reflect a recognition that garnishment is justifiable only as a last resort. Its use ought to be preceded and if possible avoided by negotiation and agreement between the parties.

Another feature of the limited garnishing order and which causes us to favour it over a continuing one is that it permits more than one creditor to levy against a debtor's wages. In the case of the British Columbia recommendations for a continuing order one judgment creditor could conceivably levy against the wages of the judgment debtor to the exclusion of all other creditors for as long as two years. We believe that such a restriction would cause a creditor to act as rapidly as possible in obtaining a garnishing order in lieu of negotiating a payment program.

The District Court Act and The Courts of Petty Sessions (Civil Claims) Act (New South Wales) provide for the issue of a garnishing order which is limited to continuous operation for four weeks after the order is served. Similarly there are some jurisdictions in the United States which provide that the initial order will continue for

periods of sixty or ninety days. We think that this type of order which is located somewhere between an immediate and an everlasting one and which has most of the virtues and few of the vices of either is the appropriate compromise for enactment in Manitoba. Its enactment will enable the debtor to benefit from the greater exemptions which have been recommended by offsetting their possible deleterious effects in reduced costs and inconvenience to the creditor, employer and debtor alike. At the same time it should continue to encourage the use of the instalment procedure or, in the alternative, private negotiation which will give the employee protection against garnishment and which provides for the amortized payment of his debt. Accordingly we recommend that the duration of a garnishing order be extended to a period of one calendar month commencing on the day after service.

The subject of the one day limbo period following the service of a garnishing order before its effective date was raised by one of our correspondents who urge eliminate this aspect of our recommendation or alternatively to clarify the need for this hiatus. We explained that this provision has been inserted in order to avoid possible conflicts concerning the liability of an employer to the judgment creditor which might arise when the service of the garnishing order occurs on the day on which an employee is paid. For example, some pay cheques may be issued by head offices in locations other than those of the employee's work place. In other cases wages may be deposited directly into an employee's personal bank account and if a garnishing order is served on the pay-day, there may be insufficient time following its receipt by an employer at one location to

prevent the subsequent payment on that day by another without the required deduction. The grace period which we recommend would, we think, more clearly and fairly determine the liability of the employer at a time after receipt of a garnishing order. We therefore recommend:

7. That section 5 of "*The Garnishment Act*" which provides that service of garnishment process binds all wages that become due or payable within seven days after service be amended so that the duration of a garnishing order be extended to a period of one calendar month commencing on the day after service.

Discussions with practitioners and our own experience have led us to conclude that the debtor's desire to avoid garnishment has resulted, at least up until now, in the payment of as much money to judgment creditors as the actual levies themselves, and at easier terms for the debtor. We have therefore endeavoured to maintain the overall balance of the previous legislation which forced both parties to negotiate the arrangement most suitable to themselves. That this is not only desirable but is the legislative intent of "*The Garnishment Act*" is clear from the provisions of section 10. Reference has already been made to this section which, in the event that some agreement cannot be made, permits the debtor alone to seek a judicial release of the garnishment and an order for payment of the judgment by instalments.

The provisions of section 10 apparently are not widely used. Statistics supplied by Mr. Grey Richardson, Master and Referee of our Court of Queen's Bench, indicate that in any given year as few as six such applications

are received in the County Court and that none has been received in the Court of Queen's Bench. A review of the files to determine the frequency of the use of the variation provisions of section 9 produced similar figures. While this might appear to be a complete failure of the legislation and indeed a misapprehension by the Commission as to the direction which reform should take, we think it is not. Rather we think that the near absence of applications under these sections is an indication that the system works well and that effective use is being made of private bargaining. We are of the opinion that this system, which was intended to combine the certainty of charted exemptions with the possibility of judicial tailoring in exceptional individual cases, should be better known. In our Working Paper we therefore suggested that notices be printed on the front of all garnishing orders so that the existence of sections 9 and 10 of "*The Garnishment Act*", which provide a method for increasing the exemption from garnishment as well as a method for releasing a garnishment on terms, might be more particularly brought to the attention of the judgment debtor.

Although that recommendation seemed to attract a generally favourable response from our readers, one correspondent wrote to suggest that a further notice of the availability of inexpensive legal advice should be considered as a possible addition to it. According to this reader, there is a common and apparently frequent problem among many people whose wages are garnished. They do not think anything can be done about it, and they do not seek advice.

We agree that the availability of legal assistance should be publicized and have been persuaded to recommend:

8. That notices be printed on the front of all garnishing orders so that the existence of Legal Aid, the Lawyer Referral Service, and of sections 9 and 10 of "The Garnishment Act" may be more particularly brought to the attention of the judgment debtor.

This is a Report pursuant to section 5(3) of "The Law Reform Commission Act", dated this 8th day of January 1979.



R. Dale Gibson, Commissioner



C. Myrna Bowman, Commissioner



R.G. Smethurst, Commissioner



V. Werier, Commissioner



Sybil Shack, Commissioner



Kenneth R. Hanly, Commissioner

SUMMARY OF RECOMMENDATIONS

1. That the threshold exemption provided by s. 6 of "*The Garnishment Act*" continue to be expressed as a per centum of the debtor's wages but that this section be amended and the minimum exemption now be expressed in terms of a percentage of the minimum wage.
2. That the exemption provided by s. 8 of "*The Garnishment Act*" be amended and similarly expressed in terms of a percentage of the minimum wage.
3. That the basic or threshold exemption provided by s. 6 of "*The Garnishment Act*" continue to be set at seventy percent of disposable earnings.
4. That the minimum exemption provided by s. 6(a) of "*The Garnishment Act*" for a person without dependents be increased from one hundred dollars per month to an amount equal to fifty percent of the minimum monthly wage in effect at the time.
5. That the minimum exemption provided by s. 6(b) of "*The Garnishment Act*" for a person with one or more dependents be increased from one hundred and sixty-five dollars per month to an amount equal to seventy percent of the minimum monthly wage in effect at the time.
6. That the exemption provided by s. 8 of "*The Garnishment Act*" for a person whose wages are attached by virtue of an order for alimony or maintenance etc. be increased from one hundred dollars per month to an amount equal to fifty percent of the minimum monthly wage in effect at the time.

7. That section 5 of "*The Garnishment Act*" which provides that service of garnishment process binds all wages that become due or payable within seven days after service be amended so that the duration of a garnishing order be extended to a period of one calendar month commencing on the day after service.
8. That notices be printed on the front of all garnishing orders so that the existence of Legal Aid, the Lawyer Referral Service, and of sections 9 and 10 of "*The Garnishment Act*" may be more particularly brought to the attention of the judgment debtor.