

The Road to Recovery

Katherine Henshell

Before I begin, let me say that I love my job! I love the field of law in which I practice! I find it especially satisfying when money starts rolling in for my clients from judgment enforcement proceedings. On any given day, I could have as many as twenty cheques come in from enforcement offices across Ontario on behalf of my clients' files.

I spend most of my day focusing on Rule 60 of the Rules of Civil Procedure. In particular, I concentrate on the process of garnishment and I find it to be a very effective judgment collection tool. I successfully use the tool of garnishment against debtor's wages and/or salary, commissions and bank accounts.

In this article, I would like to clearly explain how to effectively issue notices of garnishment against judgment debtors in attempts to recover judgments for your clients.

There are slight differences in enforcement procedure between Ontario Superior Court of Justice and Ontario Small Claims Court. For the purposes of this article I will limit my comments to garnishment procedure against individuals in the Ontario Superior Court of Justice. Listed below is a step-by-step checklist of the procedure to follow.

1. Before you Commence

In my office, it is a policy to confirm a tangible judgment enforcement

method against every defendant before we issue the statement of claim. This includes confirming the defendant's employment information (proper legal company name and address, payroll contact name and the defendant's name for payroll purposes) and/or confirming the defendant's banking information (proper legal bank name and address of the main branch where the defendant's account is situated). Preliminary research is the key to uncovering the aliases that the defendant uses to get paid and/or operate his bank accounts. Catching any dual identity before the claim is issued will save your client time and money by avoiding a motion to amend the pleadings to include the defendant's aliases. Also, keep in mind that your client may not be the only creditor to whom the defendant owes money and that many defendants adopt the policy of using multiple names.

2. Issuing the Notice

Rule 60.08 speaks to the proper documents required to issue a notice of garnishment. You must file the garnishment with the court where the proceeding was commenced (Rule 60.08(4)). In addition, remember that each notice of garnishment shall name only one debtor and one garnishee (Rule 60.08 (6.1)). For example if husband and wife are listed as defendants and you would like to garnish the wife's wages then name only the wife as defendant/debtor on all of the garnishment paperwork.

To issue a notice of garnishment you will need:

- i. Notice of Garnishment (Form 60H) with Garnishee Statement attached (Form 60I) (three copies);
- ii. Requisition for Garnishment (Form 60G) (two signed copies);
- iii. Affidavit (one copy) (as prescribed in Rule 60.08(4)); and
- iv. Filing fee of \$100.00

Once issued, the court where you commenced the legal action will forward a copy of the notice of garnishment and requisition for garnishment to the proper sheriff's office.

After securing the judgment it is extremely important to act it on almost immediately. For example, it is policy in my office to file for default judgment and issue a notice of garnishment on the same day. I have even been known to serve the notice of garnishment on the defendant's payroll or banking institution on my way back to the office from the courthouse. Quick, precise planning and organization is the key to effective judgment enforcement.

Barristers' Court Attire

EMIL FUSARO

Custom Tailor
For Ladies & Gentlemen

84 John Street South
Hamilton, Ontario, Canada
L8N 2C1
Tel (905) 522-9113



3. Serving the Notice

After the notice of garnishment is issued, you must serve both the defendant and the garnishee. The defendant needs to be served with a copy of the notice of garnishment and a copy of the prescribed affidavit (Rule 60.08(7)(a)) and the garnishee needs to be served with a copy of the notice of garnishment with garnishee's statement attached (Rule 60.08(7)(b)). Service can be by personal service or an alternative to personal service or by ordinary mail (Rule 60.08(8)). If the garnishee is a financial institution, the notice of garnishment must be served at the branch where the debtor's account is situated (Rule 60.08 (10)).

The notice of garnishment is enforceable for six years after it is served on the garnishee.

After service is effected on the debtor you must send a copy of the affidavit of service of the notice of garnishment and prescribed affidavit to the sheriff of the region where the defendant resides. When the sheriff's office receives your affidavit of service they can start to distribute monies to your office.

4. Waiting for the Money

When the sheriff's office receives a payment from the garnishee, they check for multiple creditors, and if there are none, they typically hold that payment for approximately thirty days before they distribute to your office. Provided that they have the affidavit of service, they will make regular distributions to your office until the garnishment is satisfied in full. When the amount owing under a

garnishment has been paid you must serve a notice of termination of garnishment (Form 60J) on the garnishee and on the sheriff (Rule 60.08(20)).

The above is a step-by-step breakdown of the garnishment process, but what happens when that process experiences some bumps in the road? Stay tuned for Part II, which will deal with issues of non-remitting garnishee companies, garnishment entitlements, improperly named defendants, priority creditors and multiple creditors.

Katherine Henshell can be contacted at: (905) 639-6990.

There are many valued volunteers who are members of the standing committees within the structure of the Hamilton Law Association. They strive to represent our membership consistently and effectively. The mandates of each committee can be found on our website at www.hamiltonlaw.on.ca under Standing Committees. We encourage our members to contact the Chair or Vice chair of the applicable committee should you have any issues or concerns.

Membership, Fundraising and Finance Committee

Chair: **Andrew Spurgeon**, Ross & McBride LLP
Telephone: (905) 526-9800
Email: aspurgeon@rossmcbride.com
Vice Chair: **John Lewis**, Martin, Martin, Evans, Husband
Telephone: (905) 525-4545
Email: jlewis@martinlaw.org

Professional Issues Committee

Chair: **Philip Clay**
Telephone: (905) 528-4242
Email: dolaw@interlynx.net
Vice Chair: **Dale Parayeski**, Agro, Zaffiro, Parente, Orzel & Baker LLP
Telephone: (905) 527-6877
Email: parayesk@agrozaaffiro.com

Services & Benefits Committee

Chair: **Allen Wynperle**, The Law Office of Allen Wynperle
Telephone: (905) 777-0300
Email: wynperle@sympatico.ca
Vice Chair: **David Elliot**, Agro, Zaffiro, Parente, Orzel & Baker LLP
Telephone: (905) 527-6877
Email: delliot@agrozaaffiro.com

Continuing Legal Education Committee

Chair: **Joseph Sullivan**, Sullivan Pavoni Patton DiVincenzo
Telephone: (905) 529-1939
Email: jsullivan@luchaklaw.com
Vice Chair: **Allen Wynperle**, The Law Office of Allen Wynperle
Telephone: (905) 777-0300
Email: wynperle@sympatico.ca

Family Law Committee

Chair: **Caroline Brown**
Telephone: (905) 540-8999
Email: cbrownlaw@cogeco.ca
Vice Chair: **Carm Runco**, Legal Aid Duty Counsel (Family Court)
Telephone: (905) 645-6276
Email: runcoc@lao.on.ca

Real Estate Committee

Chair: **Norman Watson**, Simpson & Watson
Telephone: (905) 527-1174

Library Excellence Committee

Chair: **Michael O'Brien**, Sullivan, Festeryga, Lawlor & Arrell
Telephone: (905) 528-7962
Email: mobrien@sfl-a.com