**THE KING'S BENCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Centre**

BETWEEN:

creditor

- and -

debtor

- and -

garnishee

**NOTICE OF GARNISHMENT**

**to enforce a restitution order**

*(Section 14.5 of The Garnishment Act)*

|  |
| --- |
|  |
|  |
|  |

*(Name, address and telephone number of party filing)*

**THE KING'S BENCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Centre**

BETWEEN:

creditor

- and -

debtor

- and -

garnishee

**NOTICE OF GARNISHMENT**

**to enforce a restitution order**

TO:*(name and address of garnishee)*

THE DEBTOR OWES MONEY TO THE CREDITOR pursuant to a restitution order. The creditor claims that you owe or will owe a debt to the debtor. The creditor has had this notice of garnishment directed to you as garnishee in order to seize certain debts that you owe or will owe to the debtor.

1. YOU ARE REQUIRED TO PAY to the Court of King's Bench \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(name of judicial centre)*

at the following address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. WITHIN SEVEN DAYS after this notice is served on you, all debts due at the time of service, from you to the debtor, other than wages;
2. WITHIN SEVEN DAYS after they become payable, all debts that are accruing due as of the date of service of this notice on you; and
3. WITHIN SEVEN DAYS after they become payable, all wages that become due or payable by you to the debtor within one year after this notice takes effect. Under subsection 4(2) of The Garnishment Act, the garnishment of wages takes effect on the first Monday following the day it is served;

subject to the exemptions provided by *The Garnishment Act*. The maximum amount you are required to pay is not to exceed $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

CHEQUES MUST BE MADE PAYABLE TO THE MINISTER OF FINANCE

A NOTICE OF GARNISHMENT TO ENFORCE MAINTENANCE PAYMENTS TAKES PRIORITY OVER THIS NOTICE OF GARNISHMENT.

THIS NOTICE OF GARNISHMENT TAKES PRIORITY OVER A NOTICE OF GARNISHMENT ISSUED BY A GENERAL CREDITOR OR ANY DEBT OWED BY THE DEBTOR TO YOU.

2. IF YOU DO NOT PAY within 7 days after service of this notice on you, or if you pay an amount that is less than the maximum amount, you are required within that time to file with the court the garnishee's statement attached to this notice.

3. THIS NOTICE OF GARNISHMENT REMAINS IN EFFECT, with respect to garnishment of wages, until the earliest of the following occurs:

(a) the garnishee pays the amount shown into court;

(b) this notice if discontinued or revoked by the court;

(c) the debtor ceases to be employed by the garnishee;

(d) one year passes from the date this notice takes effect.

 IF YOU FAIL TO OBEY THIS NOTICE, THE COURT MAY MAKE AND ENFORCE AN ORDER AGAINST YOU for payment of the amount set out above and the costs of the creditor.

 IF YOU MAKE PAYMENT TO ANY PERSON OTHER THAN AS REQUIRED BY THIS NOTICE, YOU MAY BE LIABLE TO PAY AGAIN.

 IF THIS NOTICE OF GARNISHMENT BINDS WAGES AND THE DEBTOR CEASES TO BE EMPLOYED BY YOU, YOU MUST ADVISE THE COURT AND THE CREDITOR IN WRITING.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Issued by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Deputy Registrar

 address of court office

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

creditor's address debtor's FULL NAME and address

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

telephone number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*\*\*\*\*\*

TO THE CREDITOR, THE DEBTOR AND THE GARNISHEE

Any party can make a motion to the court to determine any matter in relation to this notice of garnishment.

**THE KING'S BENCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Centre**

BETWEEN:

creditor

- and -

debtor

- and -

garnishee

IF YOU DO NOT PAY THE AMOUNT REQUIRED BY THE ATTACHED NOTICE OF GARNISHMENT WITHIN THE 7 DAY PERIOD, YOU MUST COMPLETE AND FILE THIS STATEMENT IN THE COURT.

This statement need not be completed if the garnishee pays the full amount required by the notice of garnishment within the prescribed time.

**GARNISHEE'S STATEMENT**

*(Circle the applicable numbers and complete the paragraphs)*

1. I do not owe any debt due or payable to the debtor.

2. (a) I acknowledge that I owe or will owe the debtor the sum of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_, payable on

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. *(date) (describe nature of debt and terms of payment)*

 (b) I owe the sum of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and am concurrently paying this sum into Court. (*for use when the garnishee pays into court less than the maximum amount set out in the Notice of Garnishment)*

3. I am not the debtor's employer.

4. I acknowledge that I am the debtor's employer and that the debtor is paid wages as follows:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| $ |  |  | $ |  |  |  |  |  |
|  | *Gross amount of pay before deductions* |  |  | *Net amount of pay after deductions* |  | *Date of next pay day* |  | *Pay period* |

5. I have been served with another Notice of Garnishment against the debtor, the details of which are as follows:

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|   |  |  |  |  |  |  |  |  |
|  | *Name of Creditor* |  |  | *Name of court and judicial centre* |  | *Date of notice* |  | *Date of service* *on garnishee* |

6. I reside outside Manitoba and object on the ground that service outside Manitoba was improper on the following grounds:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(particulars of your objections)*

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Date Signature of or for garnishee

 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

 *(Name of garnishee)*

 *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

 *(Address)*

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(Telephone)*

**THE KING'S BENCH**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Centre**

BETWEEN:

creditor

- and -

debtor

**AFFIDAVIT FOR GARNISHMENT**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of the \_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

 *(name of creditor) (city, town, etc.) (name of city)*

in the Province of Manitoba, MAKE OATH AND SAY:

1. I have knowledge of the facts herein deposed to, except where same are stated to be based upon information and belief.

2. An order was pronounced on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_, whereby the

 *(date) (month) (year)*

 above-named debtor was ordered to pay to the above-named creditor the sum of $ \_\_\_\_\_\_\_\_\_\_\_ and the same is still wholly unsatisfied.

3. Payments in the following amounts have been made: $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

4. That as of this date $ \_\_\_\_\_\_\_\_\_\_\_\_\_ remains payable, including interest plus $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ garnishment costs for a total amount of $ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

5. I am informed and believe that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

 *(name of garnishee)*

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is or will become indebted to the

 *(address of garnishee)*

above-named debtor, and that this debt is in the nature of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. My source

 *(wages, bank account)*

of this information is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 *(i.e. personal knowledge, disclosure, etc.)*

Sworn (or Affirmed) before me at the

\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the Province of Manitoba,

this \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_ , \_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Signature of Deponent

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Registrar for King’s Bench, or

A Commissioner for Oaths in and for

The Province of Manitoba

My Commission expires: \_\_\_\_\_\_\_\_\_\_\_\_\_

**MEMORANDUM TO GARNISHEE**

*(pursuant to section 12 of The Garnishment Act)*

The Judgment Debtor resides at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(address of Debtor)*

and is employed by you at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*(name of workplace/employer)*

in the capacity of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 *(employment title, i.e. labourer, clerk, engineer, etc. or unknown)*

IF THE NOTICE OF GARNISHMENT IS ISSUED WITH RESPECT TO A FINE, A FORFEITED RECOGNIZANCE ORDER, A RESTITUTION ORDER, OR A CLAIM FOR BOARD OR ROOM, COMPLETE THE FOLLOWING:

 This Notice of Garnishment is issued with respect to:

 [ ]  a forfeited recognizance order [ ]  an order imposing a fine

 [ ]  a restitution order [ ]  a claim for board or room or both, where a judge has ordered no exemption

***Please refer to Sec. 14.5 on this memorandum\****

*The Garnishment Act* provides:

 **4(1)** Subject to this Act, service of a garnishment order on a garnishee binds

 (a) any debt due or accruing due at the time of service from the garnishee to the defendant or judgment debtor, other than wages; and

 (b) all wages that become due and payable from the garnishee to the judgment debtor within one year from the date the garnishment order

 takes effect.

 **4(2)** For the purpose of garnishment of wages under clause (1)(b),

 (a) service of a garnishment order after 5 p.m., or at any time on a holiday, is deemed to have occurred on the next day that is not a holiday; and

 (b) a garnishment order takes effect on the first Monday following the day it is served.

 **4.1** For the purpose of garnishment of wages under clause 4(1)(b), a garnishment order remains in effect until the earliest of the following occurs:

 (a) the garnishee pays the amount shown in the garnishment order into court;

 (b) the garnishment order is discontinued under section 4.4 or revoked by the court;

 (c) the judgment debtor ceases to be employed by the garnishee and notice is provided by the garnishee in accordance with sec. 4.3;

 (d) one year passes from the date the garnishment order takes effect.

 **4.2(1)** Notwithstanding any other Act or any regulation made under an Act, if wages are garnished under clause 4(1)(b) the garnishee shall, subject

to subsections (2) and (3), remit any amount payable under the garnishment order to the court that issued the order, as long as the order remains in effect.

 **4.2(2)** If garnishment orders of different priority under this Act are served on a garnishee attaching wages, the garnishee shall first comply with the

payment request in the higher priority order, as long as that order remains in effect. If any wages can be garnished after the payment request in the higher priority order has been satisfied, the garnishee shall remit into court any amount payable under a lower priority garnishment order.

 **4.2(3)** If garnishment orders of equal priority under this Act - other than garnishment orders to enforce maintenance orders as defined in section 13

are served on a garnishee attaching wages, the garnishee shall first comply with the payment request in the garnishment order that was served first as long as that order remains in effect. When it is satisfied, the garnishee shall remit into court any amount payable under the later garnishment order.

 **4.3** Where wages are garnished under clause 4(1)(b) and the judgment debtor ceases to be employed by the garnishee while the garnishment

order is in effect, the garnishee shall give written notice to the court that issued the order and mail a copy of the notice to the garnishor.

 **4.4** A garnishor who serves a garnishment order may discontinue it by filing a notice of discontinuance in the court that issued the order. The

garnishor shall

 (a) forthwith after filing the notice of discontinuance, serve a copy of it on the garnishee, who is from the time of service no longer required to

 comply with the garnishment order; and

 (b) deliver or mail a copy of the notice of discontinuance to the judgment debtor.

 **5** Except as in this Act otherwise provided, 70% of any wages bound under section 4 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 this section be less than

 (a) in the case of a person without dependants $250., or such greater amount as may be prescribed by regulation, per month or pro rata for a

 shorter period; and

 (b) in the case of a person with one or more dependants $350., or such greater amount as may be prescribed by regulation, per month or pro

 rate for a shorter period.

 **6** Where a debt is contracted for board or room or both and, in the opinion of a judge of the court in which the action is brought, the exemption

under this Act is not necessary for the support and maintenance of the debtor, or of his family or dependants depending upon him for support, the debtor has no right of exemption of any part of his wages, and the judge may order that no exemption be allowed.

**8(1)** In this section, and in sections 9 and 10, "clerk" means

 (a) where the Court of King's Bench has jurisdiction in the matter

 (i) if the garnishing proceedings in the matter were begun in The City of Winnipeg, the Registrar of that court, and

 (ii) if the garnishment proceedings in the matter were begun in any other judicial centre, the deputy registrar of the court for the judicial centre in

 which the proceedings were begun; and

 (b) where the Provincial Court (Family Division) has jurisdiction in the matter, the clerk of the Provincial Court (Family Division).

 **8(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 by such

proceedings may make an application in writing supported by affidavit to the clerk of the court having jurisdiction in the matter for an increase or decrease, as the case may be, of the amount of exemption allowed under section 5 or 7.

 **8(3)** The clerk of the court shall, within three days after the receipt of an application in writing under subsection (2), notify the persons affected by

the application of the date on which he will consider the matter, which date shall not be later than seven days after the receipt of the application.

 **8(4)** On the date fixed by the clerk, he shall hear the matter, and after considering all the evidence adduced before him and having regard to the

circumstances relating to the matter, may make an order

 (a) confirming; or

 (b) increasing; or

 (c) reducing; the exemption allowed under this Act.

 **8(5)** No order shall be made by a clerk under subsection (4) or by a judge under subsection (8) which

 (a) has the effect of increasing the exemption allowed under section 5 or 7 to more than 90% of the wages bound under section 4; or

 (b) reduces the wages of the employee to an amount less than the exemption to which he is entitled under section 5 or 7.

 **8(6)** Any person affected by an order made under subsection (4) may, not later than 14 days from the date of the order, by a notice of motion,

appeal the order to a judge in chambers in the court having jurisdiction in the matter.

 **8(7)** The notice of motion mentioned in subsection (6) shall be served by the appellant

 (a) on the clerk of the court whose order is being appealed; and

 (b) on every other person affected by the appeal; at least 3 days before the date fixed for the hearing of the appeal.

 **8(8)** The judge hearing the appeal may confirm, or, subject to subsection (5), vary the order appealed against.

 **8(9)** Where the amount required to be paid under a garnishment order against wages under clause 4(1)(b) is varied under subsection (4), the

garnishor shall obtain an amended garnishment order that complies with the varied order and serve it on the garnishee and the judgment debtor.

 **9(1)** Subject to sections 13.7 and 14.7, a debtor against whom a garnishing order has been made may apply to the clerk of the court in which the

action is brought for the 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 or she 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.

 **9(2)** An order made under subsection (1) may be made ex parte, but the clerk may vary it at any time upon the application of the debtor or creditor

with at least three days notice in writing to the other party.

 **9(3)** Forthwith after an order is made under subsection (1), a copy thereof shall be sent by prepaid mail by the clerk of the court to the judgment

creditor or his agent.

 **9(4)** Upon an application to a judge for the purpose, an order made under subsection (1) may be varied by the judge.

 **14.5 Subject to subsection 13.5(1) (priority of garnishment orders to enforce maintenance orders), a garnishment order issued to enforce a forfeited recognizance order, a restitution order or an order imposing a fine has priority over any other garnishment order served on the garnishee and any debt owed by the judgment debtor to the garnishee.**

 **14.6(1)** A collection officer may enforce a forfeited recognizance order or an order imposing a fine by garnishing money that is held jointly by the

judgment debtor and one or more other persons, and where such a garnishment order is served on a garnishee, (a) all the money is presumed for the purpose of the garnishment order to be owned by the judgment debtor; and (b) the garnishment order binds all the money owing or payable by the garnishee to the judgment debtor on the day of service.

 **14.6(2)** When a garnishment order referred to in subsection (1) is served, the garnishee must be provided with at least two copies of the

garnishment order, and the garnishee shall without delay deliver or mail a copy of the garnishment order to each person who holds the garnished money jointly.

 **14.6(3)** Notwithstanding clause (1)(a), the judgment debtor or any person who holds money jointly with the judgment debtor may apply to the court

that issued the garnishment order for an order that (a) the interest of the judgment debtor in the garnished money is less than the amount garnished; and

(b) the part of the garnished money in excess of the judgment debtor's interest be distributed to the other joint holder or holders in accordance with their interests.

 **14.6(4)** In a proceeding under subsection (3), the burden of establishing that the interest of the judgment debtor is less than the amount garnished

is on the person who makes the application.

 **14.6(5)** Notice of an application made under subsection (3) must be served on the collection officer and each person who holds the garnished

money jointly within 21 days after the garnishment order is served on the garnishee.

 **14.7** Section 9 does not apply to a garnishment order obtained to enforce a forfeited recognizance order, a restitution order or an order imposing a

fine.