Law Reform Commission Canada

Commission de réforme du droit du Canada

REPORT

the exigibility to attachment of remuneration payable by the crown in right of canada

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REPORT

on

THE EXIGIBILITY TO ATTACHMENT

of

REMUNERATION PAYABLE

by the

CROWN IN RIGHT OF CANADA

130 Albert Street
Ottawa, Ontario
K1A 0L6

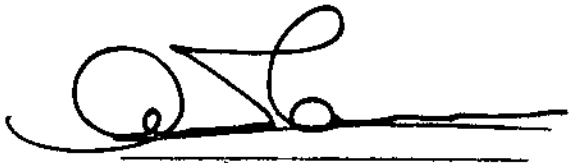
November 30, 1977

The Honourable S. Ron Basford, P.C., M.P.
Minister of Justice and
Attorney General of Canada
House of Commons
Room 511-S
Ottawa, Ontario
K1A 0A6

Dear Mr. Minister:

In accordance with the provisions of Section 16 of the Law Reform Commission Act, we have the honour to submit herewith our report with our recommendations on the study undertaken by the Commission on the exigibility to judicial attachment of remuneration payable by the Crown in Right of Canada.

Yours respectfully,



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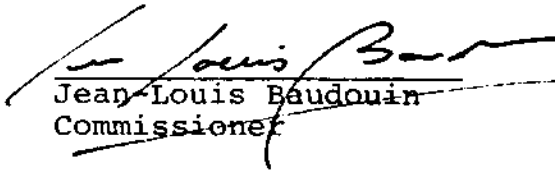

Jean-Louis Baudouin
Commissioner

REPORT ON THE EXIGIBILITY TO ATTACHMENT OF REMUNERATION PAYABLE BY THE CROWN IN RIGHT OF CANADA

The subject of this informal Report is the abolition of the immunity from garnishment of wages, salaries and other remuneration paid by the Crown to its federal employees, appointees and others.

This Report is an 'informal' one, in that it is not printed for wide distribution, but it is not on that account any less of a Report presented pursuant to Section 16 of the Law Reform Commission Act, and it will be referred to as such in the Commission's next Annual Report which will relate our activities for the period June 1st, 1977 to May 31st, 1978.

The studies and recommendations reported herein proceed from at least two projects comprehended by our approved programme. They represent a supplement to our project on Family Law, as we shall demonstrate; and they are comprehended in our 'umbrella' project on the Ongoing Modernization of the Laws of Canada.

During the course of the past year, and even earlier, during the course of this Commission's studies on enforcement of maintenance orders in our Family Law project, we have received from the public at large as well as from the Bar and other law reform agencies in Canada, both oral and written complaints about this privileged immunity asserted by the Crown in Right of Canada on behalf of its employees, appointees and others who receive remuneration. Although implementation may require detailed consideration by the Department of Justice in consultation with other departments, agencies and emanations of government, the basic reform which we recommend is clear and it is for that reason in particular that we report in this informal manner. However, the Commission does underline the concern, and will now also express its recommendations about the priority of implementation of the proposed abolition of this immunity.

The Immunity

It is a rule of public policy that salaries payable by the Crown out of national funds are not subject to attachment or other methods of execution. For example, in Flarty v. Odlum (1790) 3 Times Reports 681, the question being the assignability of the half pay of a lieutenant in a reduced infantry regiment, Lord Kenyon, C.J. stated:

> Emoluments of this sort are granted for the dignity of the State and for the decent support of those persons who are engaged in the service of it. It would be highly impolitic to permit them to be assigned, for persons who are liable to be called out in the service of their country ought not to be taken from a state of poverty... It might as well be contended that the salaries of the Judges, which are granted to support the dignity of the State and the administration of justice, may be assigned.

It should be noted that at least in the instance of family maintenance, the exigencies of public policy are confronted with competing states of poverty: - that is, if the question of the poverty of a maintenance debtor, who is also a public servant, arises at all.

It is anomalous and inequitable that the earnings of (say) a provincial employee are exigible to garnishment, but those of an employee of Canada remain immune. That anomaly is not diminished, either, by contrast with the plight of an ordinary judgment debtor whose remuneration is derived from a private employer. The special privilege which this immunity accords is, then, an aberrant blemish on the rule of law. Persons whose remuneration is payable by the Canadian state ought to stand on the same footing as others in this regard. Therefore, our prime and paramount recommendation is: THAT ALL EXISTING IMMUNITY FROM GARNISHMENT, RECEIVERSHIP OR OTHER ATTACHMENT OF SALARY, WAGES OR OTHER REMUNERATION PAYABLE BY THE CROWN AND BY THE GOVERNMENT OF CANADA BE ABOLISHED. The effect of this recommendation, if implemented, would be simply to place all those who receive such remuneration in the same relationship to their lawful creditors as are all other remuneration earners in Canada.

Priority of Implementation

A foreseeable ramification of implementation of our recommendation would be the signification of a variety of garnishment orders from a variety of courts in a variety (if not all) of the provinces and territories of Canada, for the collection of a variety of commercial and maintenance debts. Since the remuneration of a government employee would be seen by judgment creditors to be a reliable source, one could foresee garnishing orders for the maximum amount over the provincial exemptions coming along to catch the pay of one and the same debtor every pay-period until the debt would be satisfied. Equally, one can imagine section heads and other supervisory staff applying pressure upon the debtor to make some suitable arrangement with the creditor for regular payments so as to avoid the irk and disruption of fortnightly garnishing orders.

Thus presented, the foreseeable ramifications of implementation of our recommendation may give pause to early or full-blown implementation. The better to brace the government against such problems of administration, Parliament may wish to proceed with implementation gradually and by stages. After all, just as the Crown may, as it now does, assert the totality of the present immunity, so we think, it could maintain a partial and progressively diminishing immunity.

If not instantaneous abolition of the immunity, where should it be first withdrawn? For this Commission, the answer is apparent. It is based on one of the conclusions expressed in the Commission's 1976 Report on Family Law: it is in the realm of maintenance. IF THERE BE NOT INSTANTANEOUS ABOLITION OF THE IMMUNITY, IT SHOULD BE FIRST WITHDRAWN TO ACCORD ACCESS TO THE REMUNERATION OF FEDERAL EMPLOYEES AND APPOINTEES BY MAINTENANCE CREDITORS. In the realm of the maintenance obligation, the immunity can not save the public servant from a state of poverty so much as it can inflict a state of poverty on that person's lawful dependents.

However, in so selectively withdrawing the immunity, Parliament could surely prescribe terms in order to avoid a multiplicity of writs. The terms so prescribed may require the amendment of some provincial statutes providing for the attachment of wages, but may well be in accord with some existing provincial provisions.

Clearly, the Parliament of Canada cannot require any province to amend its garnishment statute, nor do we recommend that Parliament attempt to do so. We do recommend, however, that Parliament enact the minimal and reasonable terms upon which provincial attachment of wages laws would become effective to cut through that heretofore absolute immunity. In effect, the 'offer' of withdrawal of the immunity would be extended by Parliament to be 'accepted' (or not) by each province by means of whatever provincial amendments might be necessary.

Indeed, whether provincial garnishment laws be up-to-date or out-of-date in terms of personal exemptions and procedure, is constitutionally none of our business. In recommending the abolition of the immunity, at least in relation to maintenance enforcement, we recognize that those who would lose their actual privilege in this regard would be subject to the operation of provincial laws on the same basis as other debtors in the province or territory in which the family maintenance debt is enforceable. The terms which we propose are designed simply to minimize complexity and achieve equality. We recommend as follows:

IN WITHDRAWING THE IMMUNITY IN REGARD TO MAINTENANCE DEBTS, THE NEW LAW SHOULD PROVIDE THAT:

1) THE GARNISHING, ATTACHING OR RECEIVING ORDER BE SERVED ON A SPECIFICALLY DESIGNATED MINISTER, OFFICE OR OFFICER OF THE GOVERNMENT OF CANADA, EITHER PERSONALLY OR BY POST;

2) PURSUANT TO THE LAW OF THE PROVINCE OR JURISDICTION UNDER WHICH THE GARNISHING ORDER IS MADE, THE ORDER IS TO BE AN ON-GOING ONE, SUCH THAT THE GARNISHEE IS TO DEDUCT AND REMIT AUTOMATICALLY THE SUM EXACTED FOR MAINTENANCE EACH PAY PERIOD FOR SO LONG AS THE DEBTOR BE ENTITLED TO REMUNERATION, OR UNTIL FURTHER ORDER OF THE COURT;

3) THE SUMS SO DEDUCTED ARE TO BE REMITTED TO THE COURT WHICH MADE THE ORDER, OR TO THE DESIGNATED OFFICE OR OFFICER OF THE PROVINCE OR JURISDICTION IN WHICH THE ORDER WAS MADE; AND

4) THE PERSONAL EXEMPTIONS AND OTHER RIGHTS TO APPEAL, VARIATION OR DEFERRAL OF THE DEBTOR WHO IS IN RECEIPT OF REMUNERATION FROM THE CROWN IN

RIGHT OF CANADA BE NO DIFFERENT FROM THOSE OF OTHER MAINTENANCE DEBTORS WITHIN THE PROVINCE OR TERRITORY WHERE THE GARNISHING ORDER WAS MADE.

Since the Government of Canada permits the automatic deduction of medicare and blue cross payments from remuneration for the security of the employee or appointee's family, it should equally permit the automatic deduction of court-ordered maintenance. After all, to the extent that the maintenance debtor is compelled to abide by the terms of the maintenance order, all other taxpayers are relieved of the burden which is the maintenance debtor's own duly adjudged responsibility! There is absolutely no reason why the maintenance debtor whose remuneration comes from the taxpayers should be any less exigible to maintenance garnishment than other taxpayers. Again, there is absolutely no reason why such a person, through the assertion of an archaic immunity, should be any more capable of casting personal responsibility for family maintenance upon all other taxpayers, through welfare aid, than any other maintenance debtor.

Because the immunity is so well rooted and known, it is presently a useless gesture to attempt to garnish remuneration payable by the Crown in Right of Canada. Therefore nobody (so far as we know) makes the attempt. Therefore, we cannot determine the dimensions of the problem, if any. The Commission however considers that it is enough to know that this archaic immunity accords a notional or actual privilege to some persons which cannot be asserted by others with the same kind of responsibilities. That, we recommend, is reason enough to abolish it, either at once or at least by inexorable and progressive stages.

This is an informal Report made in accordance with the provisions of Section 16 of the Law Reform Commission Act.