

REPORT #8

ASSIGNMENT OF WAGES
1971

INSTITUTE OF LAW RESEARCH & REFORM

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INSTITUTE OF LAW RESEARCH AND REFORM

ASSIGNMENT OF WAGES

In November of 1970 the Institute undertook a preliminary investigation of the subject of wage assignments. On December 14th, 1970, the Attorney General asked the Board to undertake a study of the subject with a view to determining what legislation, if any, should govern wage assignments. The Institute accepted his request.

The Attorney General also suggested that the Institute undertake a similar study of garnishment of wages. We have not as yet embarked on this study. We thought that there was urgency in dealing with wage assignments and that the subject should be given priority. We also thought that in view of the revision of our garnishee rules, which contain most of the material that would normally be found in debt attachment legislation as of January 1st, 1969, we should not undertake so early a reexamination. Garnishment of wages is however a related subject, and we will make a recommendation in this Report that dismissal of an employee by reason of garnishment alone be prohibited by law.

The Rules Committee which drafted the present garnishee rules was of the opinion that the fixing of exemptions is a matter of government policy and not a legal question. We agree, and we do not propose a recommendation on the subject. We do note however that the last revision of the exemption provisions of the garnishee rules was in 1966.

We have examined the common law and legislation in other jurisdictions relating to assignment of wages. We have sought the opinions of loan companies, credit unions,

organized labour, employers, and the Debtors' Assistance Board. Where information has been provided to us, or representations have been made to us, we have used the information in the preparation of this Report.

Our primary recommendation will be that irrevocable assignments of wages to secure payment of indebtedness be abolished by legislation rendering them invalid. We will make an alternative recommendation for regulation of the use of wage assignments if they are not abolished. These recommendations will appear later in this Report.

While we use the word "wage" and the word "wages" throughout, we intend to include "salary" and "salaries" to the extent that there is any difference between these words. We think it impracticable and undesirable to try to make a distinction.

I. The Existing Law Relating to Wage Assignments

The right of a person to assign a future indebtedness, and the right of the assignee to enforce such an assignment, is clearly recognized in law.

An assignment of future wages, in whole or in part, is a valid and enforceable equitable assignment: Holy Rosary Parish (Thorold) Credit Union Limited v. Premier Trust, [1965] S.C.R. 503; Niagara Falls Credit Union v. International Nickel (1960), 23 D.L.R. (2d) 215; Traders Bank v. McKay (1909), 2 Alta. L.R. 31. The assignment of wages is but one species of a general class of future rights which are capable of assignment.

There appears only one significant exception: wages of a public servant are not assignable. Two bases are advanced for this proposition. Firstly, there is authority for the proposition that the Crown is not bound by assignments at all: Chipman v. R., [1934] Ex. C.R. 152; R. v. McCurdy (1891), 2 Ex. C.R. 311. This view has been questioned, at least in cases where there is no public policy to justify the bar: R. v. Cowper, [1953] Ex. C.R. 107. Secondly, it is said that it is contrary to public policy that the remuneration of a public officer designed to maintain his state of usefulness should be subject to assignment: Hobbs v. A.G. (1919), 7 W.W.R. 256 at 258. In Re Mirams, [1891] 1 Q.B. 594 (Cave J.) it was said that the court should be reluctant to assume the role of expounding public policy and that the exemption or exception should not be extended. In that case it was said that the rule was designed to protect the due discharge of the duties of a public office: that is, that if a public officer is to discharge his duty he should be paid. There seems to be little or no reason to differentiate between a public officer and a private employee in this respect.

II. Wage Assignments: Criticisms

We examined the criticisms of wage assignments. The objections that have been made to us are objections to wage assignments to creditors. Authorities to make deductions for pension plans, charitable organizations, bond or savings plans, voluntary union check-off and the like are not, here or elsewhere, the subject of objection. Nearly all these are of course revocable. Our discussion is directed to the problems of assignment of wages, whether present or future, to creditors.

The objections to wage assignments are summarized in the following paragraphs.

(a) A debtor may and sometimes does assign one hundred per cent of his wages. Although complete assignments appear to be rarely used, they are enforceable.

(b) A debtor, whether he be a public servant or not, should not, in the public interest, be permitted to mortgage his earning power and thus deprive himself of the ability to support himself and those dependent upon him.

(c) The debtor is not ordinarily in an equal bargaining position with his creditor, and he may not understand the consequences of what he has undertaken. Objections are frequently received that the documents assigning wages are incomplete, misunderstood, or delivered with conditions or assurances as to their use, which are not subsequently honoured.

(d) There is reason to think that many employers have rules which result in the dismissal of an employee upon receipt of an assignment. For example, the City of Edmonton, a major employer, takes the position that if an employee cannot come to some other terms with his creditor, his discharge will be considered. Large employers of whom we made enquiries consider wage assignments to be a distinct nuisance. While some will tolerate assignment situations, nearly all say that they would be inclined to discharge if there were an unreasonable number.

(e) The assignment, it is said, is contrary to the general policy that creditors should share equally. Execution

creditors do, of course, share equally under the provisions of The Execution Creditors Act, whereas the person holding a wage assignment gets priority. We do not consider this objection important. We point out that a person taking any other form of security equally gets a priority.

(f) Assignments may frustrate arrangements for voluntary orderly payments of debt based upon some portion of the wages being available for distribution among various creditors.

(g) While the state ensures a minimum exemption from garnishee under the garnishee provisions of the Rules of Court, there is no regulation of the amount which can be taken by wage assignment. Under the existing Rules of Court the exemptions from garnishee for wages may be summarized as \$100 a month for an unmarried person with no dependents and \$200 a month for a married man plus \$40 for each dependent child.

III. The Use of Wage Assignments in Alberta

It is difficult to obtain statistical information as to the use of wage assignments or the extent of abuse arising out of their use. We are satisfied that the major use of wage assignments is by loan companies operating under The Small Loans Act and by credit unions. In this regard we should point out that nearly every company engaged in the loan business which responded to our request for information said wage assignments are not taken as primary security. These companies indicated that the machinery is used mainly for collection of delinquent accounts where loans are re-negotiated.

The figures used by the Joint Committee of the Senate and House of Commons on Consumer Credit show that in 1963 the largest grantor of credit was that segment of the financing industry which finances consumer sales. Generally speaking, these credit grantors rely on the item sold as security. Other substantial grantors of consumer credit are the loan companies, the credit unions, the banks and the life insurance companies. The life insurance companies invariably rely on their policies for security, and the banks do not appear to place any heavy reliance on wage assignments.

Collection agencies also use the assignment as a collection tool, often in lieu of judgment and garnishment, and frequently as a form of debt consolidation.

We are satisfied that the abolition or regulation of wage assignments would not have any significant effect upon the initial granting of credit by the small loan companies. We say this because of the representations made to us and the statistical information which is available to us. In 1969, according to the report of the federal Superintendent of Insurance, out of 1,350,000 small loans made in Canada, only 3,300 were based on wage assignments as primary security.

There are numerous instances where wage assignments have taken more than could have been taken by a judgment creditor under garnishee proceedings. There are also a significant number of cases where an employer has discharged an employee because of wage assignments, and a significant number of cases where there has been a threat of loss of employment through the use of a threat to serve a wage

assignment. In one case brought to our attention, a single employer of 600 employees had 40 employees who were either subject to wage assignments or garnishment and another 75 with financial difficulties which had come to the attention of the employer. This was admittedly an unusual case, but gives some illustration of the extent to which an employer may become subjected to the problems arising out of the financial entanglements of his employees.

The main criticisms that have been voiced to us have been directed towards small loan companies, collection agencies, and, to a somewhat lesser extent, credit unions. In other words, the primary objection is to wage assignments to creditors.

IV. Legislation and Recommendations Elsewhere

We have examined legislation pertaining to wage assignments in some other jurisdictions. We have also examined legislation with respect to the discharge of employees as a consequence of garnishment. We believe that the attitude of employers towards wage assignments and the resulting dismissal of employees, causes the most significant criticism of wage assignments. We think that on this point garnishment and assignment of wages create a common problem.

1. Wage Assignments

In Ontario, The Wages Act, R.S.O. 1960, Chapter 420, sections 6 and 7, as amended, deals with garnishment of wages and assignment of wages. As it stood in the 1960 revision the Ontario Act exempted 70% of wages from garnishment and included a 1959 amendment which extended this same exemption to wage assignments. An amendment in 1960-61

(Chapter 103) made it clear that a contract providing for an assignment of more than the non-exempt portion of one's wages was invalid. In 1968 (Chapter 142) a further amendment rendered invalid all assignments of wages except in the case of credit unions. Credit unions can still take an assignment of up to 30% in Ontario. The Ontario Legislative Committee on Consumer Credit recommended abolition of wage assignments for three reasons. One was that some credit grantors took continuing or "blanket" assignments, the equivalent of garnishee without a judgment. The second was that employers strongly objected to wage assignments. The third was that a creditor who takes an assignment gains an advantage over other creditors.

In Manitoba, legislation on this subject goes back to The Assignment of Wages Act, 1912, Chapter 13. It is now found substantially unchanged in The Law of Property Act, R.S.M. 1970, Chapter L90, sections 32(1) to (4). There was also a 1966-67 amendment, which now appears as section 32(5). Section 32 may be summarized as follows:

- (1) an assignment of future wages in consideration of a loan of less than \$200 is invalid unless the employer accepts it in writing;
- (2) subsection (1) does not apply where the indebtedness is for necessities;
- (3) where the debtor is married, the consent of his wife is necessary to its validity;
- (4) unless the debt exceeds 95% of the wages assigned, an assignment given in consideration of a present loan is invalid;

- (5) unless a county court judge orders otherwise, an assignment for an amount greater than the amount subject to attachment (the equivalent of garnishment in Alberta) under The Garnishment Act is invalid to the extent of the excess;
- (6) assignment includes "order" and wages includes "salary".

The American Uniform Consumer Credit Code, by sections 2.410 (Credit Sales) and 3.043 (Loans), expressly prohibits wage assignments to secure the repayment of an indebtedness. Each of these sections also contains the following sentence: "This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable."

The joint Committee of the Canadian Parliament on Consumer Credit, in a 1967 report, recommended that wage assignments to collection agencies be prohibited because they lead to harassment of the poor and unsophisticated. That Committee recommended that wage assignments to credit grantors be allowed only if the assignment is contained in a separate document. Presumably they wanted to ensure that the debtor understands the nature of the particular agreement that he is making.

2. Dismissal for Assignment or Garnishment of Wages

There is extensive legislation relating to dismissal by reason of garnishment of wages.

Article 650 of the Quebec Code of Civil Procedure reads: "No employer shall, on pain of all damages, dismiss

or suspend an employee merely because his salary or wages have been seized by garnishment."

Section 3b of The Employment Standards Act, Ontario, 1968, provides: "No employer shall dismiss or suspend an employee upon the ground that garnishment proceedings are or may be taken against that employee."

Section 37 of the Manitoba Employment Standards Act provides:

- (1) No employer shall discharge or terminate the employment of an employee solely because the employer has been served with a garnishing order against the wages, salary or other remuneration of an employee.

In British Columbia, by a 1971 amendment to The Attachment of Debts Act, it is provided:

- (1) No employer shall dismiss an employee or terminate a contract of employment of an employee solely by reason of the service of a garnishing order upon that employer issued under this Act in respect of that employee.
- (2) An employer who contravenes subsection (1) is guilty of an offence and is liable upon summary conviction to a fine of not more than 500 dollars, or to imprisonment for a term of not more than 3 months or to both such a fine and such imprisonment.
- (3) In addition to the penalty imposed under subsection (2), the employer shall, upon conviction, forthwith reinstate the employee in his employment on the terms and conditions that were in effect before the termination of employment.

The United Kingdom forbids garnishment of wages of servants, labourers or workmen by 33 and 34 Vict. Chapter 30. This Act apparently applies only to inferior courts.

There has been considerable discussion of both wage assignments and garnishment in the United States. Garnishment is generally not forbidden, though exemptions of 100% for wage earners are permitted in some states. Three different approaches to the problem of dismissal have been considered in the United States.

- (1) prohibition of discharge by reason of wage assignment or garnishment;
- (2) encouragement of the use of orderly payments of debt arrangements; and
- (3) prohibition of assignments.

Section 1674 of the United States Consumer Credit Protection Act provides that no employer may discharge any employee by reason of the fact that his earnings have been subjected to a garnishment for any one indebtedness. The Uniform Consumer Credit Code, section 5.106, prohibits discharge of an employee for wage garnishment. New York and Connecticut have similar statutes.

The California Law Revision Commission, in March of 1971, recommended the adoption of legislation providing that there be no discharge by reason of a threat of garnishment for one judgment. That recommendation goes on to provide that, in addition to any penalties, wages should be reinstated at least up to a period of 30 days.

V. Recommendations

1. Abolition of Wage Assignments

The first question we have considered is whether or not the law relating to wage assignments should be reformed.

Abuse of the right to take wage assignments as security for the payment of indebtedness is possible. We are persuaded that there is evidence of abuse and a continuing risk of further abuse. We therefore believe that the law should be reformed.

We are satisfied that there is a public interest in the maintenance of a wage earner and his dependents. The provision of exemptions in garnishee proceedings is justifiable on this ground. We are confident, too, that there is a public interest in seeing that employment is not unreasonably terminated. We are also convinced that if the state is entitled to ensure the due discharge of its employees' functions by refusing to recognize wage assignments, other employers should be able to do the same.

We unanimously believe that the use of wage assignments should either be abolished or regulated. We are divided in opinion between abolition and regulation. A majority favour abolition. Part of that majority are strongly influenced by the difficulties in the way of imposing effective regulation. These difficulties will become apparent later in this Report. On balance, we recommend that the assignment of wages to creditors be abolished by legislation. In order to effect such abolition, the legislation should declare assignments of wages to secure indebtedness to be invalid.

We recognize that a wage earner may find that the only "security" he can give is his future income. He may be prepared to charge it so that he can obtain cash in hand or other advantage. He may have a thoroughly acceptable motive for doing so. We believe however that creditors rely infrequently on wage assignments as the sole or primary form of security.

We recognize also that if creditors are prevented from making use of wage assignments, they may make greater use of other collection devices, including the taking of judgments and subsequent execution and garnishment procedures.

We believe nevertheless that the abuses of the use of wage assignments, and the adverse consequences of such use, are sufficient to justify the legislation which we propose. We suggest that, to the extent that it is available, the delinquent debtor might well be better brought within orderly payment of debts legislation found in Part X of the Bankruptcy Act, R.S.C. 1970, Chapter B-3.

The Canadian Consumer Loan Association, an association of credit grantors, prepared a proposal for us after consultation with the Debtors' Assistance Board. We think that the machinery proposed by the Association would be too cumbersome, and we do not think that it is sufficient to satisfy the criticisms which we have outlined. We include the proposal as Appendix A for purposes of information.

We have considered whether or not an exception should be made for credit unions. This was done in Ontario, although it has not been done elsewhere. We find it difficult to make any exception for them. Three points may be made in favour of their exclusion. In the case of "company credit unions" the

employers do not find the administrative task overburdening, since there is a regular deduction for one payee. Secondly, the credit unions are said to be "non profit" organizations. Thirdly, there is some measure of government supervision.

We point out also that not all credit unions are single employer unions. Indeed, it seems that more and more are unrelated to employment, as we see credit unions of neighborhood, ethnic and religious affiliations. Many of them are "near banks" acting as sophisticated grantors of credit. We think that the critical question with respect to exemption for any class of creditor is: "Will assignments to them cause the same social problems?" We think that assignments to credit unions will cause the same problems, subject to some mitigation by reason of a number of credit unions which operate in relation to a single employer. However, in the case where the credit union is not one related to a single employer, the difficulties arising from the attitude of employers towards wage assignments will still remain. The use of a revocable authority or assignment as we later recommend should suffice.

Accordingly we do not recommend any exception for assignments of wages to credit unions.

We have considered whether or not an exception should be made for revocable assignments. We are divided in opinion. A majority favours permitting them.

Such an assignment or authority would permit arrangements to which neither the employer nor the employee objects. We note that the Debtors' Assistance Board indicated that the use of assignments where both employer and employee do not object is not the source of problems. It appears to the majority of our Board that such arrangements would not be subject to the

same objections made to irrevocable assignments. The minority felt that employees might not appreciate the right to revoke, or might be subject to pressures not to exercise the right.

The majority are of the opinion that revocable authorizations to deduct from wages, whether to creditors or others, should be permitted, and that legislation to the general effect of sections 2.410 and 3.403 of the U.S. Uniform Consumer Credit Code would be desirable. It must be clear that any such assignment or authority is revocable at any time until the employer has actually paid. We are of the view that such authorities or assignments should only be permitted if they are expressed to be so revocable, and any legislation should ensure their revocability.

We are all of the view that revocable authorities which permit an employer to deduct payments to charitable organizations, voluntary union check-offs, parking charges, and bond or savings plans, should be permitted. Indeed some of these deductions are not assignments "to secure repayment of an indebtedness" and so are not within our proposed abolition of assignments at all.

RECOMMENDATION #1

THAT AN ACT BE PASSED TO REFORM THE LAW
RELATING TO ASSIGNMENTS OF WAGES, WHICH
TERM SHOULD BE DEFINED TO INCLUDE SALARIES.

RECOMMENDATION #2

THAT THE PROPOSED ACT:

- (1) DECLARE INVALID ALL IRREVOCABLE ASSIGNMENTS OF WAGES, GIVEN TO SECURE REPAYMENT OF AN INDEBTEDNESS;
- (2) DECLARE THAT IT DOES NOT AFFECT REVOCABLE AUTHORITIES WHICH ARE REVOCABLE BY THE ASSIGNOR OR GRANTOR AT ANY TIME PRIOR TO ACTUAL PAYMENT BY THE EMPLOYER;
- (3) DO NOT EXCEPT ASSIGNMENTS MADE IN FAVOUR OF CREDIT UNIONS.

2. Regulation as an Alternative to Abolition

We are of the opinion that if legislation does not invalidate assignments of wages to creditors, the use of wage assignments must, as an alternative, be regulated in order to prevent abuse.

(1) Assignments in blank. We believe that a creditor should not, by taking assignments directed "To Whom it May Concern" or in blank, be able to follow a wage earner from job to job. We believe that the likely result of such harassment will be that the wage earner will not be able to keep a job and that he will be terrorized to an extent which should not be permitted by public policy.

We therefore recommend that a wage assignment should be invalidated unless it is specifically and expressly directed to a named employer.

(2) Service of Wage Assignment. We believe that it should not be open to a creditor to withhold indefinitely

a wage assignment given to secure the payment of an indebtedness. We therefore recommend that such a wage assignment should be declared invalid unless served upon the employer within 30 days from the date of its execution.

(3) Protection of employer. An employer who receives an assignment of wages which is apparently regular should not be put in jeopardy if it should afterwards appear that the name of the employer or the date of execution was inserted after execution of the assignment. We therefore recommend that the legislation provide that an employer who makes payment to an assignee in good faith and in accordance with the terms of an assignment apparently complete and regular on the face of it shall be discharged from liability to the employee to the extent of such payment.

(4) Exemptions. Wage assignments should be subject to the same exemption as the wage earner receives under garnishment provisions in force at the time of service of the wage assignment. It would be impractical to have this amount fluctuate once the assignment has been served, because the employer upon whom it is served is not in a position to be kept informed as to changes in assignments from time to time. We think that the legislation should require that any assignment of wages would be inoperative to affect wages of the assignor up to the garnishment exemption in force at the time of service of the assignment.

We have considered the possibility of a percentage exemption. However, such an exemption would not achieve the desired aim of ensuring that some minimum is available for the employee's own needs. An exemption should ensure that the basic needs of the employee and his dependents

can be met out of the money that comes into his hands. The wage earner who earns that minimum, under present garnishment exemptions, can take it home. Under a percentage system he might not be able to.

We have also considered a suggestion that assignments be permitted only in the amount of the monthly payment due from the employee to the creditor. We do not think that this specification is necessary, particularly in view of our recommendation that assignments have the same exemption as a garnishee.

If there are regulatory provisions, we do not believe that they should vary with the amount of the debt, the amount of the wage, or the type of creditor. We think that any regulatory provision should be based upon the consideration of the basic required exemption.

(5) Service of Statement of Exemptions. We think that legislation should require that the assignee (creditor) serve upon the employer a statement that the assignment is subject to the exemptions provided by law. We think that the legislation should also provide that a creditor (assignee) who serves an assignment or notice of assignment without giving such statement is guilty of an offence punishable upon summary conviction.

We recognize some infirmities in this proposal. A wage assignment is not perfectly analogous to garnishee. The garnishee summons is a statutory document which attaches a single debt at a single time. It can and does incorporate exemption provisions. More important there is judicial control so that the monies are paid into the hands of the

Clerk of the Court and not directly to the creditor. Furthermore, garnishee is operative on behalf of all creditors.

RECOMMENDATION #3

THAT IF RECOMMENDATION #2 BE NOT IMPLEMENTED, AND AS AN ALTERNATIVE THERETO, THE PROPOSED ACT:

- (1) DECLARE THAT A WAGE ASSIGNMENT GIVEN TO SECURE THE PAYMENT OF AN INDEBTEDNESS SHALL BE INVALID UNLESS:
 - (i) IT IS SPECIFICALLY AND EXPRESSLY DIRECTED TO A NAMED EMPLOYER;
 - (ii) IT IS SERVED UPON THAT EMPLOYER WITHIN 30 DAYS OF THE DATE OF ITS EXECUTION; AND
 - (iii) IT IS EXPRESSED TO BE TAKEN AS SECURITY FOR A SPECIFIC DEBT;
- (2) DECLARE THAT AN EMPLOYER WHO IN GOOD FAITH MAKES A PAYMENT TO AN ASSIGNEE IN ACCORDANCE WITH THE TERMS OF AN ASSIGNMENT APPARENTLY COMPLETE AND REGULAR ON THE FACE OF IT IS DISCHARGED TO THE EXTENT OF SUCH PAYMENT FROM FURTHER OBLIGATION TO THE ASSIGNOR;
- (3) DECLARE THAT AN AMOUNT OF WAGES EQUIVALENT TO THAT WHICH WOULD BE EXEMPT FROM ATTACHMENT BY GARNISHEE SUMMONS IN THE PAY PERIOD IN WHICH THE ASSIGNMENT IS SERVED SHALL BE EXEMPT FROM THE OPERATION OF THE ASSIGNMENT;
- (4) DECLARE THAT IN EACH PAY PERIOD THEREAFTER WHILE THE ASSIGNMENT REMAINS IN FORCE THERE SHALL BE AN EQUIVALENT AMOUNT OF WAGES EXEMPT FROM THE OPERATION OF THE ASSIGNMENT;
- (5) DECLARE THAT THE ASSIGNEE SHALL SERVE UPON THE EMPLOYER ALONG WITH THE ASSIGNMENT OR NOTICE THEREOF A STATEMENT THAT THE ASSIGNMENT IS SUBJECT TO SUCH EXEMPTIONS AS ARE PRESCRIBED BY LAW, AND THAT AN ASSIGNEE WHO SERVES AN ASSIGNMENT OR NOTICE WITHOUT SUCH STATEMENT SHALL BE GUILTY OF AN OFFENCE PUNISHABLE UPON SUMMARY CONVICTION.

3. Dismissal by Reason of Wage Assignment or Garnishment

We have said earlier that we believe that legislation should prohibit the dismissal of employees by reason of garnishment. We have said also that the problems created by wage assignments and garnishment, insofar as dismissal is concerned, are common problems. Therefore, while a discussion of dismissal by reason only of the service of an assignment or assignments of wages would naturally come within the discussion of regulation of use of wage assignments, we propose to discuss this subject along with the subject of dismissal by reason of garnishment.

We appreciate that employers find garnishment to be a nuisance to them. They are obliged to satisfy themselves as to the employee's exemptions and make a deduction which results in a payment into court. To the extent that large employers are dealing with computerized payrolls, there are often difficult mechanical problems. There is a cost involved to the employer, and the compensation allowed to him by the Rules of Court, namely \$5.00, rarely covers the work involved. He may often have to consult his solicitor as to the relevant exemptions.

Then, too, an employer may have legitimate reasons for dismissing an employee who has financial difficulties. If that employee is in a position of trust or confidence, or if he is one who must be bonded, his financial stability is a matter of genuine concern, and the employer who is aware of pressure from creditors may have just cause for reappraising the employability of the particular employee. There may even come a point where the administrative burden is excessive.

In our view, however, arbitrary dismissal cannot be justified. Our study has caused us to feel grave concern for the situation of employees whose wages are subject to wage assignment or garnishment and who find themselves faced with dismissal.

The law does recognize garnishment or attachment as being a legitimate means of enforcing a judgment. For the purpose of this discussion we accept that state of the law. We have not undertaken a study of the much larger subject of the enforcement of money judgments. Some useful work is under way in other jurisdictions, and there may have to be some reappraisal in the future of the recommendation we make with respect to garnishment. Nevertheless, we believe that the problem of arbitrary dismissal by reason of garnishment is of sufficient importance to warrant our present recommendation in an attempt to eliminate this problem.

We appreciate also that assignments of wages cause employers problems and concerns similar to those of garnishment of wages. Again, we think that arbitrary dismissal cannot be justified, and we feel the same concern for employees faced with dismissal.

We therefore recommend the enactment of legislation which prohibits termination of the employment, alteration of the terms of employment to the detriment of the employee, or suspension of the employee by his employer by reason of garnishment alone, or by reason of wage assignment or assignments alone.

We stress that our recommendation is not for legislation in relation to the general right of an employer to

discharge an employee, whether with or without cause. Rather, it is intended to ensure that an employee's employment should not be terminated solely because his creditor (or more than one creditor) has acquired the right to garnishee wages or to receive wages under an assignment or assignments. An employer should still be able to dismiss or take other appropriate action for a legitimate reason, for example, financial instability which jeopardizes the employee's usefulness.

Although we are aware that the recommended legislation may be difficult to enforce, we think that legislation to this end would at least have the effect of preventing employers from operating on the arbitrary principle that garnishment or assignment of wages necessarily results in discharge.

The consequence of regulatory legislation such as we propose may well be that in the case where employment is terminated or otherwise adversely affected because of garnishment or because of an assignment or assignments of wages, the employer will, in the result, be compelled to show that there were other reasons for the discharge or other action. We do not think that this is unreasonable. We are somewhat strengthened in this view by the fact that other jurisdictions have found such legislation desirable. The potential difficulties of enforcement are equally present under other legislation. In sum, we think that the passage of such legislation would at least have a salutary effect in curbing arbitrariness.

The legislation should provide that a contravention is an offence punishable upon summary conviction. If the

legislation is to give a fair measure of protection to the employee, there should also be a civil remedy. The employee should be entitled to elect one of two remedies:

- (1) Reinstatement in the employment of which he has been wrongfully deprived together with recovery of all wages and other benefits as though his employment had not been interrupted but had run continuously and an award for any additional damage actually suffered by him; or
- (2) where he does not seek reinstatement, an award for all damage actually suffered by him.

We believe that these sanctions would best be administered by a judicial tribunal. The issues are the kinds which are best decided in the light of viva voce evidence and cross examination. Furthermore, we believe that damages should be assessed by a court. We recognize that the procedure should be summary and expeditious and we recommend that both summary conviction and civil proceedings should be brought before a provincial judge under a procedure similar to that provided by The Masters and Servants Act. Such proceedings are often taken by laymen without the intervention of lawyers. In many instances unions would probably be involved in supporting their members. In others, legal aid would be available. However, if the total claimed by the employee should exceed the amount within the jurisdiction provided under the Masters and Servants Act, the civil proceedings should be taken in the District or Supreme Court as is appropriate.

RECOMMENDATION #4

THAT IF RECOMMENDATION #2 BE NOT IMPLEMENTED, AND AS AN ALTERNATIVE THEREOF IN ADDITION TO RECOMMENDATION #3, THE PROPOSED ACT:

- (1) PROHIBIT AN EMPLOYER FROM TERMINATING THE EMPLOYMENT, OR ALTERING THE TERMS OF THE EMPLOYMENT TO THE DETRIMENT OF THE EMPLOYEE, OR SUSPENDING THE EMPLOYEE BY REASON ONLY OF AN ASSIGNMENT OR ASSIGNMENTS OF WAGES;
- (2) PROVIDE THAT AN EMPLOYER WHO CONTRAVENES THE PROHIBITION IS GUILTY OF AN OFFENCE PUNISHABLE UPON SUMMARY CONVICTION AND IN LIEU THEREOF OR IN ADDITION THERETO MAY BE REQUIRED:
 - (a) TO REINSTATE THE EMPLOYEE IN THE EMPLOYMENT OF WHICH HE HAS BEEN WRONGFULLY DEPRIVED TOGETHER WITH ALL WAGES AND OTHER BENEFITS AS THOUGH THE EMPLOYMENT HAD NOT BEEN INTERRUPTED BUT HAD RUN CONTINUOUSLY AND TO COMPENSATE FOR ANY ADDITIONAL DAMAGE ACTUALLY SUFFERED BY THE EMPLOYEE; OR,
 - (b) IF THE EMPLOYEE DOES NOT SEEK REINSTATEMENT TO COMPENSATE FOR ALL DAMAGE ACTUALLY SUFFERED BY THE EMPLOYEE;
- (3) PROVIDE THAT THE PROCEEDINGS RESULTING FROM SUCH TERMINATION, ALTERATION OR SUSPENSION SHALL BE BEFORE A PROVINCIAL JUDGE AND SUBJECT TO THE PROCEDURE UNDER THE MASTERS AND SERVANTS ACT, UNLESS THE EMPLOYEE SHALL CLAIM DAMAGE IN EXCESS OF \$500 IN WHICH CASE THE CIVIL PROCEEDINGS SHALL BE COMMENCED AND CARRIED ON IN THE DISTRICT COURT OR THE SUPREME COURT.

RECOMMENDATION #5

THAT AN ACT BE PASSED WHICH WOULD:

- (1) PROHIBIT AN EMPLOYER FROM TERMINATING THE EMPLOYMENT, OR ALTERING THE TERMS OF THE EMPLOYMENT TO THE DETRIMENT OF THE EMPLOYEE, OR SUSPENDING THE EMPLOYEE BY REASON ONLY OF GARNISHMENT OF THE EMPLOYEE'S WAGES;
- (2) PROVIDE THAT AN EMPLOYER WHO CONTRAVENES THE PROHIBITION IS GUILTY OF AN OFFENCE PUNISHABLE UPON SUMMARY CONVICTION AND IN LIEU THEREOF OR IN ADDITION THERETO MAY BE REQUIRED:
 - (a) TO REINSTATE THE EMPLOYEE IN THE EMPLOYMENT OF WHICH HE HAS BEEN WRONGFULLY DEPRIVED TOGETHER WITH ALL WAGES AND OTHER BENEFITS AS THOUGH THE EMPLOYMENT HAD NOT BEEN INTERRUPTED BUT HAD RUN CONTINUOUSLY AND TO COMPENSATE FOR ADDITIONAL DAMAGE ACTUALLY SUFFERED BY THE EMPLOYEE; OR,
 - (b) IF THE EMPLOYEE DOES NOT SEEK REINSTATEMENT, TO COMPENSATE FOR ALL DAMAGE ACTUALLY SUFFERED BY THE EMPLOYEE;
- (3) PROVIDE THAT THE PROCEEDINGS RESULTING FROM SUCH TERMINATION, ALTERATION OR SUSPENSION SHALL BE BEFORE A PROVINCIAL JUDGE AND SUBJECT TO THE PROCEDURE UNDER THE MASTERS AND SERVANTS ACT, UNLESS THE EMPLOYEE SHALL CLAIM DAMAGE IN EXCESS OF \$500 IN WHICH CASE THE CIVIL PROCEEDINGS SHALL BE COMMENCED AND CARRIED ON IN THE DISTRICT COURT OR THE SUPREME COURT.

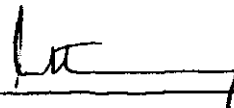
VI. Acknowledgements

We wish to acknowledge with thanks the comments and suggestions made by the companies and other bodies


which provided information or made representations and which appear in Appendix B.

W. F. Bowker
R. P. Fraser
G. H. L. Fridman
Wm. Henkel
W. H. Hurlburt
H. Kreisel
J. D. Payne
W. A. Stevenson

by



VICE-CHAIRMAN



DIRECTOR

October 14, 1971

NOTE: Dr. Kreisel is a member of the Institute but is not a lawyer and has no responsibility for the contents of this report.

APPENDIX A

CANADIAN CONSUMER LOAN ASSOCIATION

RECOMMENDATIONS RE WAGE ASSIGNMENTS
IN THE
PROVINCE OF ALBERTA

- 1) Definition of a Wage-Assignment
 - (a) May only be used to collect accounts which are three or more instalment payments in default.
 - (b) May not be used as security for a credit advance.
 - (c) Does not apply to voluntary payroll deductions such as savings, charitable donations or pensions.
- 2) Wage assignments should be subject to same restrictions as apply to garnishees with respect to exemptions.
- 3) Wage assignment to be submitted through Central Registry or other government agency within 30 days of being signed by debtor.
- 4) Government agency to send 5-10 days' notice to debtor that wage assignment to be presented.
- 5) Wage assignment to be presented to employer by government agency at conclusion of debtor's notice period.
- 6) Employer to remit seizable portion of debtor's wages directly to creditor.
- 7) Creditor required to report debt balance to debtor, government agency and employer every three months.
- 8) Creditor to return legal papers to debtor within 5 days of account paid in full and advise employer and government agency by copy of covering letter. Employer to return wage assignment to debtor upon receipt of the letter.
- 9) Instalment contract may not be refinanced while wage assignment is in force.
- 10) (a) Wage assignment may be withdrawn by written notice to debtor, government agency and employer,

OR

(b) Wage assignment to be withdrawn by written notice to government agency. Government agency to notify employer and debtor.

APPENDIX B

The following provided information or representations to us. Certain other information was obtained on a confidential basis.

The Debtors' Assistance Board, Province of Alberta
(Mr. Philip Gibeau)

The Alberta Federation of Labour

Beneficial Finance Company of Canada

Niagara Finance Co. Ltd.

Tri-State Financial Group

Avco Financial Services

Sterling Finance Corporation

Canadian Acceptance Corporation Limited

Laurentide Financial Corporation Ltd. (Vancouver)

Household Finance Corporation of Canada
(Mr. Arthur J. Bray, Toronto)

Canadian Consumer Loans Association (Toronto)

Credit Granters' Association of Alberta

Credit Granters' Association of Edmonton

Credit Bureau of Edmonton Ltd.