THE USE, EFFECTIVENESS AND SOCIAL IMPACT OF WAGE GARNISHMENT: AN EMPIRICAL STUDY

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Introduction

Background to Study

The Institute of Law Research and Reform has been examining the remedy of wage garnishment as part of its project on exemptions from execution and wage garnishment. A working paper was issued in January, 1978 which raised, among other topics, the issue of whether wage garnishment ought to be abolished. Although we received a number of useful comments in response to that working paper, there was a concern that we did not have an adequate understanding of the social issues involved in this area of creditors' remedies and that this could only be obtained through social science research. In addition, we were aware that issues of creditors' remedies and the protection of debtors are often discussed in tones of invective, with the protagonists on each side of the debate basing their opinions on intuitive and speculative assumptions. Little research has been undertaken in Canada to determine the validity of the assumptions.

The study builds on existing work in this area and the purpose of this introduction is to describe existing literature and indicate the contributions made by earlier empirical studies. This will provide a background for setting out the objects and contributions of this study.

1. Existing Studies of Debtors in Trouble

Introduction

This study does not attempt to trace in detail the social history of the problem of debtor over-commitment However, it is perceived by most writers to be a social cost of the large growth in consumer credit in North America since World War II. Debt over-commitment may lead to legal action being taken against

individual and concern began to be expressed about the fairness and effectiveness of creditors remedies as used against consumer debtors.

An important article dealing with the problems of creditors remedies was published by Arthur Leff in 1970. Its title, "Injury, Ignorance and Spite" summarized the argument of many critics of creditors' remedies. Thus Leff began his essay by stating that, "the present American collection mechanisms and institutions are grossly inefficient, engendering huge amounts of unnecessary grief and loss for all participants".

Other commentators stressed the structural unfairness leading up to the use of creditors' remedies against consumers. It was argued by some that much of consumer adjudication is arbitrary; that many money judgments are obtained by default; that these factors increase the unfairness of the original transaction. It was agreed that creditors' remedies as exercised against consumers represented the conclusion of an inequitable process. (Ison: 1972, 1979).

In addition, various forms of social disruption began to be associated with the use of creditors remedies against consumers, and many commentators argued that the existing legal remedies designed for commercial transactions of a previous era, were quite inappropriate to contemporary consumer credit transactions (Caplovitz: 1973)

In particular, the remedy of wage garnishment as used against consumers began, during the 1960's, to receive close attention from commentators and a number of socially destructive effects began to be associated with the remedy. I will briefly outline the issues that developed around the remedy since they form a basis for this study.

Firstly, a connection was made between wage garnishment and employment problems. Involving the debtor's employer in the collection process, it was argued, posed grave dangers for the

debtor's employment. The employer would have to administer the garnishment order, calculate an exemption, and pay money into court. This might be expensive for the employer and the doubts that might be raised in the employer's mind as to the reliability of the employee who is garnisheed may cause him to discharge an employee. This was thought to be particularly true in small concerns which might find the administration of a garnishment order time-consuming and costly. In addition to job loss, it was argued that wage garnishment might well effect a debtor's status at his job, perhaps preventing promotion.

Second, certain studies made a connection between wage garnishment or creditors' remedies used against consumers and bankruptcy, deterioration of health, and marital discord.

Third, the very fact that wage garnishment cuts into a person's wages or salary upon which most people require 85 to 90% to live on from month to month, then cutting into that percentage may well lead to problems.

Fourth, it was argued that wage garnishment was used by certain types of higher risk, aggressive creditors, in particular finance companies, who calculated on using the remedy. They would know that a significantly high proportion of those whom they were lending to would default and so they counted on using the remedies. These aggressive individual creditors had a further effect which might be referred to as the "domino" effect. They would individually make full use of all their remedies against their debtors. The problem was, however, that usually a debtor had more than one creditor and this aggressive action by one creditor often had the effect of simply forcing the debtor to collapse on his other obligations or perhaps go into further over-extension by borrowing more money from another creditor.

Finally, and at a more general level, a connection was made by a number of commentators between over-commitment and inadequate

income. The argument was that those who are "poor" needed credit simply to exist. They required credit simply to live from month to month and to supplement their inadequate incomes. They were, therefore, not using credit as a carefully planned means of adjusting a balance between present and future needs and present resources. The low income consumer, however, was committing future income which he did not have because he did not have the higher income expectations of the middle-income consumer. He was thus caught in a vicious circle of rising credit obligations without rising income expectations.

In addition, the argument continued, the poor are much more prone to credit problems because they have much less discretionary income to deal with emergencies or changes of circumstances that may occur, they usually will have few liquid assets and often may not be able to predict with any great certainty what their future income will be because they are dependent on highly unstable sources of income.

In summary, therefore, an argument began to develop that credit contributed to be humiliation and despair of living at the bottom of our society. For all these reasons a number of commentators began to demand the abolition or restriction of these remedies in general and wage garnishment in particular.

However, other commentators denied these facts. They made the following arguments. First, it was argued that wage garnishment is a cheap and effective remedy and indeed the only effective remedy in a society where future income rather than assets is used as security for a loan.

Second, it was argued that it is the only practical means of executing a judgment where there is a small loan or debt.

Third, no injury will occur to the debtor, provided one retains the exemptions at a fairly highly level.

Fourth, the argument is made that the abolition of restriction of wage garnishment may restrict the amounts of credit available to marginal risks so that certain individuals will be pushed out of the credit market and may have to go to an illegal source to obtain money. The argument, therefore, is that a restriction of remedies would lead to denial of legitimate credit to poorer consumers and that the poor would be unable to buy the consumer goods they need. This argument has a long pedigree. In Scotland in 1870 when there was debate on the arrestment of wages, which is similar to wage garnishment, a proposed restriction on the remedy was attacked in the Glasgow Herald on the basis that this restriction would entirely destroy the credit of the working classes.

Finally, it was stated that abolition of wage garnishment was not an adequate solution because creditors would simply use other remedies, perhaps more harshly and, if they were denied all their remedies, might resort to illegal means to recover their debts. It was argued that the cost of the collection process would go up significantly if this cheap, effective remedy were abolished.

These arguments therefore stated that although the abolition of wage garnishment might appear laudable in the short-term, the real costs outweighed the immediate benefits of reform and one group whom we intended to benefit, i.e. the poorer consumer, would in fact be worse off.

II. Existing Empirical Studies

This section sets out the contributions made by existing studies in the debate on wage garnishment and debtors in default.

1. H. Jacob, Debtors in Court: The Consumption of Government Services (1969).

This was a study in four Wisconsin cities (Madison, Kenosha, Racine and Green Bay) to analyze the consumption of court services by creditors and debtors. 454 debtors were personally interviewed and creditors and employers were also sent written questionnaires. The sample of debtors was randomly drawn from court files and included those who had gone bankrupt as well as individuals who had had their wages garnisheed. These two groups were compared statistically with a control group of ordinary credit users.

The study noted that the consumption patterns of debtors did not differ significantly from that of ordinary credit users but that the debtors had to rely more on credit to consume since they had less cash. Jacob summarized his findings as follows:

> "Relatively few are poor as poverty is defined by social welfare agencies. Our data shows that debt delinquency is related to being in moderate income groups, working in blue collar occupations, being the head of a young household with many children, and incurring considerable uninsured medical expenses. It is also associated with a greater dependence on credit purchasing, especially for clothing."

In his study of creditors, Jacob found that certain creditors used wage garnishment much more frequently than others.

These were finance companies, retailers and the purveyors of medical services. These three categories accounted for almost half of all the garnishments reported. He also noted the underrepresentation of small business concerns, although the total indebtedness due to such firms may be considerable.

The study found that the three large users of wage garnishment were each organized in their own different ways to take advantage of garnishment actions. Thus wage garnishment favoured creditors with certain organizational features, for,

> "to make effective use of garnishment, a creditor needs to have his credit operations well organized. He must keep informed of his debtor's place of employment and payday. A creditor needs to be able to divert manpower to initiate the court proceedings and to afford the initial court ... Only these large creditors or those who employ outside specialists meet these relatively stringent requirements of the garnishment remedy. Small businessmen who do little of their business on a credit basis cannot afford the complications of the garnishment process. Businessmen and professionals who cannot alienate their customers or do not wish to also hesitate to use wage garnishment because they are aware of the bitterness it engenders",

and he concludes:

> "the demands channelled to the courts in garnishment cases thus are those of a limited but significant part of the business community. The businessmen involved become users of the court service only after private alternatives have failed and because no other collection procedures appear equally advantageous. They could not repossess the merchandise they had sold because conditional sales contracts were inappropriate; they did not require a security because most customers could offer none. Moreover, the heavy users of wage garnishment were organized in such a way that social barriers to court usage could be overcome. Users of wage garnishment are often organizationally insulated from customer backlash. They are given the information needed to use the courts and provided organizational incentives to maximize collection ... Consequently a relatively small group generates the demand for court action."

The study also concluded in relation to the garnishment process that the law did not function as officially stated; that wage garnishment was used to force a negotiated settlement with a debtor and that this was the expected outcome by the creditor.

The study did not analyse all possible consequences of wage garnishment on an individual debtor. It did, however, investigate certain specific consequences: the effect garnishment might have on other debts; the effect on the debtor's employment; the relationship between wage garnishment and marital instability; and the relationship between wage garnishment and bankruptcy. The study noted that 7% of debtors reported job dismissal on account of wage garnishment, and that marital instability and wage garnishment were not associated with one another, since most divorces and separations took place well before wage garnishment or substantially after it. The study also found no significant relationship between bankruptcy and wage garnishment.

Finally, the study indicated that 40% of creditors answering the questionnaire thought that they would have to alter their credit granting procedures if garnishment were not available. Fuel dealers and service establishments were particularly likely to restrict credit because they were usually small operations with little organizational ability to develop alternative collection procedures. Neither were, however, heavy users of garnishment. In other cases, the businessmen would restrict credit by, they claimed, eliminating loans to poor risks, insisting on larger down payments or requiring greater security. The study concluded that the availability of garnishment appears therefore to result in more credit to poor risks and is especially important to creditors who are badly organized to use alternative collection procedures.

2. D. Caplovitz, Consumers in Trouble, A Study of Debtors in Default

This was a study based on interviews conducted in 1967 with 1,331 default debtors sampled from court records in New York,

Chicago, Detroit and Philadelphia. The survey was limited to transactions for merchandise and personal loans, thereby excluding contracts for services.

The study investigated the characteristics of creditors and debtors involved in the dispute, the reason for default, the effect of differing creditors' remedies, the role of the courts and the consequences of the debt problem on the debtor's life.

Caplovitz concluded that debtors in default when compared to the general population and ordinary credit users in the area are in the lower middle range of income, are more prone to unemployment and have lower occupational status. These factors were major contributions to their default. In addition, the debtors were generally of poor education and younger than ordinary users of consumer credit. Caplovitz argued that these two factors contributed to default because "the poorly educated may have more difficulty budgeting their incomes and be more vulnerable to the pressures of unscrupulous salesmen", and young debtors are "generally in the early stages of the family life cycle, when consumer needs are greatest and income is relatively low". The inexperienced younger person may also be vulnerable to the "pitches" of unscrupulous salesmen. Caplovitz found that the primary reasons for the debtor defaulting were firstly loss of income nd secondby voluntary overextension. He also found a significant number of cases where the creditor's fraud or deception resulted in the debtor stopping payments.

He summarized in the following passage his findings on the social impact of debt problems.

> "Law suits against default debtors can result in job loss, undoubtedly in magnitudes greater than our debt data (19%), collected so soon after the debt problem, indicate. They can undermine health in at least two ways: by producing the psycho-somatic symptoms often associated with anxiety and worry, and by forcing the debtor to so skimp on his budget that he neglects health needs. They can interfere with

> the debtor's marriage as debt problems become a source of contention between spouses; and finally they force the debtor to lower his standard of living, a process that might well further undermine his health and marriage."

He indicated severe deficiencies in the court procedure and service of process as it affected default debtors stating that "the courts have been corrupted into collection agencies for creditors through the device of default judgments which enable creditors to use harsh collection practices without ever having to persuade judges of the merits of their cases".

Certain types of creditors were more prone to using garnishment than others and these same creditors (direct sellers, low income retailers, finance companies) were the ones who used high pressure tactics to sell their goods and resorted to strong measures to collect their debts. He indicates two classes of creditors:

> "One class consists of those who use high pressure tactics to sell their goods and resort to strong measures to collect their debts. The other class consists of creditor plaintiffs who are more ethical in their business dealings and less prone to resort to harsh collection measures. Perhaps because they are concerned with the good will of their customers and/or do not view default debtors as a source of profit. The picture that emerges from these findings is that garnishment is more often relied on by the less ethical creditor plaintiffs. If this analysis is correct, its implications are profound. It would seem that the law places a powerful collection weapon in the hands of those who least deserve it, those firms likely to engage in deception at the time of the sale and undue harassment from the debtor, perhaps because he feels that he has been cheated, stops making payments."

Caplovitz concluded his study by criticising existing legal doctrines and institutions in their application to consumer credit transactions. In particular, the doctrine of holder in due course, confession of judgment and cognovit notes, and repossession

and deficiency judgments, came under attack. He argued that the law has failed to keep abreast of the changes in consumer credit and that adapting doctrines from commercial law is quite inappropriate for consumer transactions. He proposed greater availability of legal services for consumers in trouble and suggested the creation of neighbourhood arbitration systems for consumer disputes.

It should be mentioned that Caplovitz did not interview creditors or employers involved in the collection process and that his research has been criticised for this omission (see Canadian Journal of Sociology).

3. M.J. Trebilcock and A. Shulman, The Pathology of Credit Breakdown (1976) 22 McGill Law Journal 415

This article synthesized a number of pieces of research. The central part of the research consisted of personal interviews with 100 debtors in Montreal who had had some form of enforcement action taken against them. In addition, there was an analysis of 500 closed court files randomly selected in which proceedings had been commenced at least two years previously. In both surveys, corporations, partnerships or sole traders were eliminated from the list of debtors so that the creditor-debtor relationship examined was confined to one where the creditor was either a business or private plaintiff and the debtor was a non-business debtor. The authors also conducted interviews with major categories of creditors.

The study summarizes the characterics of a debtor who has had court proceedings taken against him.

> "He would be a male debtor, probably between 25 and 45, married, with three dependants, with an annual income in 1972 figures of between $5,000 to $6,000, with debts between $2,000 and $3,000, having a level of education of high school or less, an unskilled labourer vulnerable to abnormally high employment and to a lesser extent marital breakdown."

The major conclusion of Trebilcock's analysis was that the reason for over-commitment was predominantly inadequate income

and that only policy responses addressing this issue were likely to have any effect. He did also indicate a lack of budgetary discipline and planning on the part of debtors
were able to give any useful quantitative measures of the effectiveness of each of the various collection steps pursued, suggesting that at that time collection was still fairly inefficient.

The study reported a job loss rate of 9% for debtors caused by wage garnishment. It also indicated that garnishment appeared to be an effective form of pressure on a debtor since in 35% of all garnishment cases, the debtor immediately settled the claim and the garnishment was lifted. Trebilcock and Shulman also argued that the exemptions from wage garnishment should be significantly higher than public welfare benefits, otherwise it would not be worth working for the difference.

4. Puckett, Wage Garnishment Practices in Ontario (1978), 28 University of Toronto Law Journal 95

We became aware of this research after commencing our study. It is of particular interest because it concentrates on the wage garnishment process and uses a similar research design. The research involved personal interviews with 110 debtors who had had their wages garnisheed, personal interviews with a random sample of creditors, and a mailed questionnaire to a group of employers.

Reference will not be made here to the details of the conclusions of the research as extensive references are made throughout the text of our report.

Puckett concluded:

(1) wage garnishment ought not to be abolished, and a creditor ought to have access to the wages of a debtor who wilfully or negligently persists in not paying his obligations;

(2) there ought to be greater protection for bank accounts into which wages are paid;

(3) prejudgment wage garnishments ought to be abolished;
(4) garnishment should only be permitted after a debtor has defaulted on a court ordered repayment scheme;
(5) the 70% wage exemption is an inadequate sum for a debtor to live on;
(6) the minimum exemption should be set by legislation but there should be discretion for a court to increase the exemption;
(7) employers should be given greater compensation for processing garnishments and there should be greater protection against dismissal;
(8) there should be greater protection against abusive collection tactics;
(9) there should be greater information on sources of help for the debtor in trouble.

It is not clear that there is always a connection in this study between the data and the conclusions. Howeve,r it provides a useful systematic comparison for our own study.

5. Scottish Research on Diligence (This term includes execution and wage garnishment.)

This was again a study which we became aware of while our research was in progress. The research is split into eight categories; reviews of creditors' policies; survey of court business; survey of the use of diligence; surveys of employers; survey of persons who have court action taken against them; individual interviews with debtors who have had diligence against them; reports of warrant sales executed in 1977; and the role of helping organizations in debt and diligence problems. This research will provide a useful comparative yardstick for our own research.

There are also a number of studies which should be mentioned which relate to particular areas of debt recovery. These will be grouped under national headings.

1. Canada

There have been a number of published and unpublished studies of particular areas of debt recovery in Canada. In 1967 the Canadian Welfare Council carried out a survey in Hamilton of consumer credit and the lower income family. Sir George Williams (now Concordia) University Sociology Department carried out a study of accounts buying and bailiff practices in low income neighbourhood of Montreal (1972). Professor Dunlop of the Faculty of Law, University of Alberta, has collected statistics on the enforcement of judgments in British Columbia as well as directing a pilot study on the parties and practices of wage garnishment in the provincial courts of B.C., Small Claims Division. Neither of these studies have been published. The Alberta Debtors' Assistance Board had carried out research on certain files of debtors under Part 10 of the Bankruptcy Act. Again this study is unpublished but is referred to in Trebilcock's study. There is also a published study of the operation of Part 10 of the Bankruptcy Act in British Columbia published by G. Gallins in 1971 6 U.B.C. Law Review 419. The research group in jurimetrics at the Faculty of Law, University of Montreal, studied the socio-economic profile of those individuals who used the special bankruptcy provisions for small debtors and also the Lacombe Law which permits certain debtors to consolidate their debts and to pay them over a long period. The study is entitled, Vivre ou Exister.

2. United States

In addition to the studies already mentioned, there have been a number of other empirical studies of wage garnishment. Brunn conducted a study of court files on wage garnishment in California (Wage Garnishment in California: A Study and Recommendations, 53 Calif. L. Rev. 1214 (1965)).

Grosse and Lean conducted an empirical study of wage garnishment in the State of Washington. They studied 187 randomly

selected garnishment files taken from Seattle District Court and conducted telephone surveys of selected groups of collectors, employers and union representatives. Schuchtman and Jantzer conducted an economic study of the effects of federal minimum exemptions from wage garnishment on non-business bankruptcy rates, 77 Commercial Law Journal 360 (1972). This study is often cited as indicating that there is a connection between harsh wage garnishment exemption statutes and bankruptcy.

The National Commission on Consumer Finance conducted an empirical study of the policies and procedures of credit granters in handling delinquent accounts. They found that with respect to unsecured credit, garnishment and wage assignment were perceived by creditors as the two most essential remedies. Small retailers appeared to lean more towards garnishment than large retailers. In general, they found that creditors regarded repossession and garnishment as superior to all other substantive sanctions.

Creditors interviewed perceived the principal reason for default on the part of debtors to be unemployment, followed by over-extension of credit relative to repayment capacity and illness of the debtor.

The Commission also conducted an econometric analysis of the hypothesis that where a given legal sanction is denied to creditors, rates of charge are likely to be higher and credit supplies are likely to be lower than would otherwise be the case (all other things being equal). The study concluded that this hypothesis is supported for legal prohibitions of garnishment, attorney's fees, waiver of buyer defence, holder in due course, and to a lesser extent and in a qualified way, wage assignment. (See the National Commission on Consumer Finance, Technical Studies, Volume V, p. 153.)

3. United Kingdom

In addition to the Scottish study on diligence, the Payne Committee referred to data collected under the Maintenance Orders

Act 1958 in discussing whether wage garnishment ought to be introduced as a general creditor's remedy. They concluded by noting that the analysis of the Maintenance Orders showed that the hopes of enforcing debts by means of attachment of earnings orders must not be exaggerated. They also noted that employers had complained about the present system of attachment of earnings because of the administrative difficulties in processing the orders and that for this reason small employers might tend to avoid the employment of men against whom such orders had been made.

There is also an important study entitled "Making People Pay" by Paul Rock. This study involved interviews with creditors, debt collectors, solicitors, bailiffs and debtors who had been imprisoned for non-payment of debt. The importance of the work is that it attempts to fit debt collection into the theoretical perspective of the sociology of deviance. Reference will be made to this study throughout our study. It is of special relevance to the section entitled "the social reality of debt collection."

4. Australia

The Australian Law Reform Commission in their recent report on Insolvency: the Regular Payment of Debts, include empirical research on non-business bankruptcy files in South Australia and New South Wales.

III. Objectives of Present Research Study

The objectives of this study are to analyze the use, effectiveness and social impact of the wage garnishment process and to propose reforms on the basis of that research. Our purpose is to understand the place of wage garnishment in the collection process and in the granting of consumer credit. We wanted to assess the transaction costs involved for both creditor and

debtor and to analyze the extent to which third parties (employers, the state) subsidize those costs.

The study may also be viewed as an attempt to understand the social reality of the wage garnishment process, and the perceptions and constructions of that process by those involved in it. It investigates the dynamics of the structure of that process, the roles of those involved in that process, and their portrayal of it to themselves and outside world. It is concerned with exposing the myths surrounding the process and the reason for the construction of these myths. It is thus a contribution to the study of the function of myth in social action. "Myth" represents a means by which men make use of elements in their sociocultural experience to mediate the contradictions with which social life confronts them.

In proposing reforms on the basis of our research (See Chapter VIII), we have attempted to assess the implications of alternative proposals by using both sociological and economic analysis. In assessing the implications of different reforms, we are sensible of the fact that it is difficult to view wage garnishment in isolation from other creditors' remedies or indeed from the granting of consumer credit. However, we also realize that the argument that small problems must be regarded as part of larger problems and that one ought not to pull at a strand of a web because one is not sure whether the web will hold without it, often conceals a latent Burkean conservativism and inertia. We are also aware of the fact that we live in what Richard Titmus has called "the age of the great simplifiers", and that the issue of reform of creditors' remedies is not usually as simple as popularly presented.

We have attempted therefore not to be overwhelmed by the supposed complexities of reform in this area, while noting where valid the warnings in existing studies of the pitfalls of reform.

The study is comprised of five main parts. Two court file surveys; personal interviews with debtors; personal interviews with creditors and telephone interviews of employers. In addition, we interviewed lawyers who had substantial collection practices and talked with officials of the Family Financial Counselling Services of the Department of Consumer and Corporate Affairs of the Government of Alberta. The details of the samples are found in Appendix A.

The next section documents in summary form the arguments and hypotheses in favour of and against the retention of wage garnishment. This section is inserted for easy reference for the reader as he assimilates the data in the report.

SUMMARY OF ARGUMENTS AND ASSUMPTIONS RE WAGE GARNISHMENT

The arguments in favour of the retention of wage garnishment are as follows:

1. Wage garnishment is the only practical means of executing on a judgment where there is a small loan or debt.

2. It is a cheap, effective remedy and has a number of advantages over the other principal creditors' remedy, execution and sale of the debtors' goods.

3. It is the only effective remedy in a society where future income rather than assets is used as a security for a loan.

4. No injury will be occasioned to the debtor provided the exemptions are high enough.

5. If wage garnishment were abolished, other remedies might be used more harshly.

6. Wage garnishment is a necessary protection for businessmen extending credit. This is part of the general argument that businessmen extend credit in reliance on the legal system permitting enforcement of money judgments.

7. The restriction of the remedy would lead to higher interest rates to the extent that the restrictions increased bad debt write-offs.

8. The abolition of wage garnishment may restrict the amounts of credit available to marginal risks so that certain individuals will be excluded from the credit market and may have to go to an illegal source to obtain money.

9. Abolition of wage garnishment would treat unfairly a person with a large salary and no assets.

10. A judgment creditor has a moral right to be paid his debts and the law should not therefore deny him this effective remedy which may be the only practical means of recovering on a judgment.

Finally, there is the "general deterrence" argument. This states that if wage garnishment were abolished then significantly more numbers of people would not pay their debts.

The arguments for the abolition of wage garnishment are as follows:

1. Wage garnishment causes problems for the debtor's employment. It is argued that loss of employment is a major effect of wage garnishment and that, in addition to job loss, wage garnishment might well affect the debtor's status at his job, perhaps preventing promotion.

2. Wage promotion may force the overburdened debtor into bankruptcy.

3. Wage garnishment may cause marital instability, deterioration in health and mental distress for a debtor.

4. Wage garnishment favours the individual aggressive creditor who uses the remedy at the expense of other creditors. Garnishment therefore prevents an orderly payment of debts to all creditors by favouring the creditor who is the first to get in with a garnishment order.

5. For most individuals, the wage packet is the principal source of income to meet current expenses. Even allowing creditors a small slice of that amount involves a hardship for the debtor.

6. Wage garnishment will encourage the low income earner to accept welfare since the difference between the public welfare benefits and the allowable exemption from garnishment will be so small that it will not be worthwhile to work for the difference.

7. Wage garnishment is used primarily as a threat. The danger with this is that a debtor may be induced to enter into an onerous repayment schedule or it may precipitate him to leave his job, go into bankruptcy, or take some similarly unwise action.

8. Wage garnishment is used most extensively by high risk lenders who count on using their remedies against the usually low income borrowers to whom they lend.

9. This group of borrowers are least able to protect themselves against the arbitrary quality of much consumer adjudication. They are also the most likely group to lose their jobs as a consequence of wage garnishment and to suffer the upset and distress associated with the remedy.

10. Creditors' remedies are connected with problems of poverty. It is argued that those who are poor need credit simply to exist, to supplement their inadequate incomes. They therefore do not use credit in the same way as the middle income consumer who uses it as a carefully planned means of adjusting a balance between present and future needs and present resources. The low income consumer is committing future income which he does not have because he does not have the higher income expectations of the middle income consumer. He is thus more liable to default on his credit obligations, to lose his job as a consequence of wage garnishment, and to suffer the upset and distress associated with the remedy.

11. The judicial system of creditors' remedies is not necessary to the vast majority of credit grantors who are able to collect their debts without recourse to the law. The argument is therefore that the state subsidizes a small number of creditors who could have avoided court action..

III. Summary of Main Themes

There are a number of themes which are crucial to an understanding of consumer debt collection and the issues for reform. The first theme is that of the repeat player creditor. The majority of creditors are "repeat players," that is, "a unit which has had and anticipates repeated litigation, which has low stakes in the outcome of any one case, and which has the resources to pursue its long run interests. The effect of this type of organisation on the formal and informal process of debt collection is fundamental. Over two thirds of creditors using the debt collection process are repeat players. The other themes are primarily of importance because they are examples of the effect of this fundamental distinction on the process. These other themes are: the relationship between the formal and informal collection process; the importance of symbolism to the debt collection process; and the organisation of the social reality of debt collection.

1. The Repeat Player and the One Shotter in the Garnishment Game

Galanter outlines the advantages of the repeat player over the one shotter. These include:

(1) the ability to structure the transaction in advance;

(2) the ability to develop expertise and have ready access to specialists;

(3) the opportunity to develop useful relationships with institutional incumbents e.g. court personnel;

(4) economies of scale and low start up costs for any case;

(5) the RP must establish and maintain credibility as combatant;

(6) the ability to play the odds and play for rules as well as immediate gains.

A repeat player is not only interested in the decision in an instant case, but also how the decision will affect future cases;

(7) the ability to discern which rules are likely to have an impact in practice and which are likely to remain symbolic commitments. They can trade off symbolic defeats for tangible gain.

Since an impact in practice ("penetration") depends partly on the resources of the parties (knowledge, attentiveness, expert services, money), R.P.'s are more likely to be able to invest the matching resources necessary to secure the penetration of rules favourable to them (Galanter: pp. 98-103).

The one shotter, on the other hand, comprise "those who have occasional recourse to the courts, are usually smaller units than R.P.'s, whose stakes in any given case may be either high relative to total worth (injury victim) or small and unmanageable (the consumer)." Their claims are often therefore too large (relative to his size) or too small (relative to the cost of remedies) to be managed routinely and rationally.

The repeat player and the one shotter are of course "ideal types" and not every real world repeat player will enjoy all these advantages. (Galanter cites the alcoholic derelict as one repeat player who enjoys few of the advantages that may accrue to the R.P.) One should therefore assume that these ideal types are at the opposite ends of a continuum.

If we apply Galanter's scheme to consumer collection and garnishment, the result is most illuminating both for an understanding of the process and for assessing the prospects for reform of that process.

Repeat player creditors are able to structure the initial transaction, be it loan or retail credit. They have the form contract, the opportunity to check the applicant's credit and the ability to take security. The application for credit will often

provide information on the debtor which can be used for decision making at a later date if the debtor defaults. Both large department stores and finance companies indicated that if legal or other enforcement action was contemplated, a careful appraisal of the application would be made in order to assess the likelihood of recovery from the debtor's income or assets. The higher the perceived risk, for example, the finance company debtor, the greater will be the planning in advance for controlling the debtor who might default (see: Jacob, p. 81).

Once a debtor has defaulted a bureaucratic process of collection begins which may end almost immediately or which may be relatively protracted.

This process is, for the repeat player, a series of pre-determined moves, which depend on the reaction of the debtor to the initial move by the creditor. Paul Rock has described this process in Making People Pay and a number of sections of this report develop ideas from that work.

The repeat player creditor "adapts" collection procedure to the legal system and the legal rules in collection. This is especially interesting because the organisation of collection and the theory of a legal suit for debt are antithetic. The former is organised around "bureaucratic rationality," whereas the latter is organised around a personal confrontation within the confines of due process. The legal process appears costly, cumbersome and most dangerously "incalculable" (Weber: On Law in Economy and Society, M. Rheinstein (ed.) p. 350) when viewed through the laws of "bureaucratic rationality. We don't all have to be Realists to admit that the personal preferences of the judge may affect a decision.

Interviews with creditors confirm these views. Many talked generally about the costly, cumbersome nature of the legal process,

the inefficiency of lawyers and enforcement agents such as the sheriff. Their comments, in response to questions concerning reform of the process, almost uniformly concerned the need for greater speed, efficiency, standarisation and less cost (why do we need lawyers?) in the court process. Our file survey indicates that if the legal process operated as it was devised to, it would, in fact, be even more costly and cumbersome. This means that the "one shotter" creditor is most liable to be disappointed.

The repeat player creditor has, however, as the report will indicate, "adjusted" and adapted the legal process as far as possible to a model of bureaucratic rationality. This not only demostrates the advantages of a repeat player but it also indicates the flexibility of legal institutions. Creditors have not had to pass special legislation to adapt the rules of law to the mass market of consumer credit. They are able to do this without going through a public forum. Thus they use existing legal institutions to serve their interests without being seen to do so. (McManus: 1977). This does not mean that "the rules are explicitly designed to favor R.P.'s", but rather "that ... they have successfully articulated their operations to pre-existing rules." (Galanter: p. 123). This is an important point because wheatever individual public legislative reforms are passed, one must realise that if one wishes to really effect the practice of collection one must understand the relationship between the formal rules and the informal process of collection and the manner in which the two interact.

Other examples of the advantages of the repeat player creditor are the following. The author noted how the employees of repeat player creditors were able to develop useful relationships with the institutional incumbents. For example, court personnel would aid employees to certain repeat player creditors to fill in garnishee summons after the employee had obtained a small claims court judgment. The importance of this fact is not only that it permits a creditor to significantly reduce his costs but that the "one shotter" creditor in a small claim is actually discouraged

from serving a garnishee summons. (See file survey p. .) It is also important because it indicates that any changes in rules if they are to "penetrate" to the level of everyday application must take account of this possible institutional bias towards the repeat player. (See also Ison: 1972 p. 21.)

Most repeat player creditors have continuing relationships with particular legal firms which process collection in bulk presumably reducing the overall cost to the repeat player creditor. It would also appear that collection may be carried out by certain legal firms for creditors almost as a "loss leader." If the law firm does the collection work then the creditor will give it other legal work, for example, mortgage work.

The repeat player creditor is also concerned with credibility. Thus a prime fear of many creditors is that if they are soft in collection, then "it will get around" that they can be taken for a ride. Thus it may be important to sue to maintain credibility.

Two important points to grasp from these remarks are therefore that garnishment is for the repeat player part of a larger bureaucratic system which has certain organising conceptions of debtors and the collection process and that each debtor is not an individual but simply a case which must be fitted into the overall structure and organisation of the collection routine. The imperative of cost means that there is always a pressure to routinise in collection.

2. The Formal and Informal Process of Collection

The most important way in which repeat player creditors have adjusted to the formal debt collection system is by not using it. The informal collection system which is "appended" to the formal legal process collects at least 95% of delinquent accounts. However, this does not mean that the formal system is of no importance to informal collection.

The success of the informal collection system depends in part on an appeal to public values and public perceptions concerning debt and debtors. A collector will implicitly or explicitly appeal both to the value that one ought to repay debts and to the public perception of delinquent debtors as a group which lacks moral qualities. (Rock: p.). This reflects the ambivalent nature of collection as being both assimilative and coercive. Thus a debtor can always return to the normal community by paying his debt. In addition, as the career of the delinquent debtor proceeds, the creditor uses the symbolism of law and the possible effects of legal action to coerce the debtor.

The law is also symbolic of certain public values, for example that debts ought to be repaid. By threatening legal action the creditor is implying that a debtor has challenged important public values. The creditor is not therefore simply enforcing his own interest but is also enforcing these public values as represented by the law. We develop this aspect of the law as symbol in the introduction to the creditor interviews. It is sufficient to note at this point that it is important to R.P. creditors not simply to influence rule-making in an instrumental fashion but also to be extremely interested in the maintenance of particular public values and public perceptions of debtors and debt collection.

Thus, for example, there is a concern to show that the interests of the creditor are interests of the public as a whole. Although most creditors are large impersonal organisations they are concerned to identify with individual values, for example, pacta sunt servanda, that the individual debtor should repay the individual creditor. Notwithstanding the large bureaucratised nature of most creditors, they tend to stress the individual values of fault and responsibility. It might therefore be expected that any trend towards "no-fault" debt collection (Adler, Wozniak) would meet strong resistance from collectors. Such a

trend would undermine the symbolic values on which collection is dependent, the public perception of debtors and the legitimacy of debt collection. Symbolism is also important to the social organisation of debt collection and I turn now to this important theme.

3. The Social Reality of Debt Collection

Much of the argument in relation to wage garnishment and creditors' remedies is animated by particular perceptions of the actors involved in the process. A debtor, for example, may be typified as unfortunate, inadequate or irresponsible. There is also the image of the "deadbeat" debtor. Creditors and collectors may be portrayed as evil or sinister or aggressive. ("The Bill Collector will hever be high on anyone's list of favorite people." Calgary Herald May 25 1978.)

These typifications are of enormous importance because not only do they help us to understand existing policies in this area but they will also provide the foundation for future policy making. If, for example, the majority of debtors are "inadequate", then some form of social work response might be expected rather than the continuation of existing legal remedies. If, on the other hand, the majority of garnisheed debtors are simply unfortunate, the victim of changed circumstances since they incurred the debt, then there ought to be a simple, painless method for them to repay the debt minimising the coercive social control aspect of debt collection.

It became apparent as the study proceeded that two of our most important tasks were to assess the degree to which debtors fitted previous typifications in the literature and at a more general level to investigate the extent to which the social reality of debt collection fitted the constructions of that process by the actors involved.

It is not an exaggeration to state that debt collection is "devoted largely to the maintaining of a particular vision of social reality", and that those involved in the process, creditors, debtors, lawyers, debt counsellors each have particular visions of the process and the individuals involved. Even the members of the public who rarely meet the protagonists involved will have a vision of the process. The question is to what extent these "social constructions" of the process involve myths or distortions. It is also important to attempt to understand what purpose these myths play in the process and what importance they have for the actors involved. It is in this sense that this study follows a traditional aim of sociological analysis namely to "demystify the world and to lay bare the myths and idelogies which distort our visions of reality". (Rex: 1972.)

It may be useful at this point to introduce some of the existing perceptions of debtors in trouble. The best place to start is with Paul Rock's study, Making People Pay.

He describes the manner in which differing participants in the debt collection process typify the defaulting debtor and use these typifications as a basis for action. He identifies four different groups as originators of typifications of default debtors: collectors, legislatures, the public and social work culture.

Collectors define debtors for the purpose of collection as feckless, unfortunate or professional.

Lawyers and legislatures, he argues tend to make a twofold division: the innocent and the dishonest, with each requiring separate treatment.

> "At the outset we should distinguish between the honest defaulter, who enters into a contract with every intention of doing his best to fulfill it, and the dishonest one who hopes to defraud his creditor by whatever means."
>
> Crowther Committee Report, para. 3.7.7.

Honest debtors could be further subdivided into those who were unfortunate and those who were "inadequate". Thus the Payne Committee at para. 980 state that:

> "We have received a considerable amount of evidence from those engaged in welfare and social services that many of the debtors ... are inadequate men."

and the Crowther Committee on Consumer Credit:

> "Some of them are inadequate people who never quite face up to reality, are incapable of managing their own affairs and never seem to be able to predict the consequences of what they are doing".

This concept of "inadequacy" reflects what Rock calls the social work culture which tends to locate the problem of the debtor in the personality and immediate social network of the debtor. As we indicate in our study this seems to be the general approach towards debtors of the Family Financial Counselling Services of the Government of Alberta. There is also sometimes in the social work typification the suggestion that the debtor's behaviour is outside his control. Rock argues that because personality is regarded as the dominant factor in the creation of problems, treatment is designed to alter the individual's personality rather than the social structures.

The danger, of course, is that "inadequate" is a relative term and that the debtor may simply be viewed as inadequate from a middle class culture viewpoint. In addition, there is in this

approach the danger of "blaming the victim". This concentrates on the defects of the victim and ignores the continuing effect of environmental and social forces on the debtor. Thus Rock comments that:

> "In its most crass form, the treatment orientation assumes that adaptation is possible in almost every situation because the personality is the critical variable. .... Nobody should become overwhelmed by debt because the adjusted person will tailor his expenditure in a sensible manner. A seemingly insoluble financial problem will thus become proof of the debtor's poor adjustment."

Rock, however, suggests that indebtedness may be in fact a reasonable response by the debtor to particular events citing economists who argue that anyone would dissave and go into debt if he were provided with certain information and enjoyed a certain personal history. Thus debt can be construed as a normal consequence of normal causes, these causes being located in social structure rather than the personalities of the people who contract the debt.

> "The root of the trouble seems once again to be traceable to the habit of confusing economic difriculties with personal failure or misconduct."

Rock concludes his section on typification by noting that the two conceptions of debtors, the social control and the social work conception, are struggling for domination in fashioning enforcement policies. He states:

> "The social control ethos argues that defaulters are culpable persons who should be exposed to deterrent and punitive methods and control. The social work ethos is based on hard determinism and points to treatment as the only model of social action. Lawyers and legislatures appear to straddle both positions contending that there are innocent and dishonest debtors to whom different policies are appropriate."

Rock suggests that the notion of inadequacy is beginning to supplant the definition of debtors as roques and spendthrifts.

He also found that the public's perception of the default debtor reflected a "theme of simplicity". Thus although individuals knew little about the process, they were all confident in their characterisation of the actors involved, although there was disagreement as to the stereotype of a defaulter. Rock suggests that a conclusion to draw is that "Everybody should know what a defaulter "is" but everybody does not know".

Recent commentators in North America are divided over whether the problems of the default debtor ought to be located in structural social conditions or the individual personality of the debtor. Thus Grosse and Lean comment that most debtors drift into debt trouble through lack of planning and through the purchase of consumer goods they cannot afford. They do, however, also suggest that debt problems are caused by changes in circumstances outside the control of the debtor. They also hint that debtors are a "special" category of individuals. Thus they mention that the importance of the threat of wage garnishment as a club in collection may be exaggerated but "the small minority of consumers with which collection agencies deal may be acutely aware of the possibility of wage garnishment".

A number of other studies stress the connection between debtor over-commitment and poverty or lower income stressing this as the important structural determinant of the debtor's problems. Thus Trebilcock states:

> "Regulation of the debtor-creditor relationship will not touch the heart of the problem of over-commitment, insufficient income."

Even Trebilcock, however, is not quite sure that this is the heart of the problem, for he states earlier that:

> "The reason why many debtors are financially distressed is that they lack budgetary self discipline."

Similarly, even writers like Caplovitz seem to suggest that an important cause of debtor over-commitment is irrational behaviour by the debtor, that is, he engages in compensatory consumption and is more self-indulgent and engages in less planning and careful shopping than the middle class buyer (c.f. Trubek, McNeil: 1979).

In an important work published in 1975, Allan Andreasen criticised the argument that those who are poor and over-committed are also in some way inadequate because they are irrational and self-indulgent. He suggests what Rock had also suggested, namely that given the structural disadvantages of the poor, for example, insecurity, limited education and life experiences, their use of credit was a quite rational respose to their situation. He also stresses that the poor do not use instalment credit any more often than non-poor families, that the amount of their debts is usually less than non-poor families but represents a much higher proportion of their total income and that being in debt for the poor may have important secondary consequences that it doesn't have for the non-poor. Without romanticizing the poor, he does stress the Brechtian values of fatalism and present orientation which are often associated with the poor.

One of the most important articles in this area is that of Gerald Fortin in 1966. His argument is that credit is a way for the poor to supplement their income and act as if they are not poor. Credit is an attempt by the poor to try and reach the

accepted norm of consumption in a society. However, this use of credit by the poor leads to chronic indebtedness because they are committing future income to present needs. Since most would not have the rising income expectations of the middle and upper classes, future income would be already too low to meet future needs and therefore they would need increased amounts of credit. He thus saw the poor caught in a vicious circle of debt.

He also argued that the standard norm of consumption within a society was partly a product of the forces of production which needed continually to create consumer demand for goods. This Galbraithian style argument allied with the previous comments led Fortin to view the problems of credit and poverty to be identical.

> "It is thus without any desire of following the poverty cult that I say that to find a solution to the evils of modern credit is really to find a solution to the existence of poverty in an economy of abundance or to find a solution to the problems of a society which is not yet modern. ... It is because the poor are the main users of credit that one cannot eliminate the bad effects of credit without eliminating poverty."

Fortin did not view the problem as being capable of solution by such simple measures as more education for the consumer, restricting credit to the poor, or even supplementing the income of the poor. Giving the poor more income, he argued, would not solve the problem unless everyone were given enough to meet the norm of consumption created in a particular society. He thus hypothesized that the solution required systemic changes in our production and value systems.

The importance of his article is its demonstration of how a particular individual problem, debt over-commitment, cannot be regarded in isolation from the dominant value systems and ideology of a particular society. He also suggests that the irrational behaviour of the poor in the market place may well be caused by the poverty which makes planning not only difficult but psychologically impossible.

Academic literature in this field has in recent years therefore stressed typifications of the debtor as unfortunate, inadequate or simply the victim of a severe income deficiency caused by social structure.

Official documents continue to use the dichotomy of the honest debtor (unable to pay) and the possibly dishonest debtor (unwilling to pay). Thus the Australian Law Reform Commission stated in its recent paper on debt recovery and insolvency:

> "The law must recognise that there are numerous reasons for debt default, many of which, including unemployment, illness and innocent miscalculation, involve no suggestion of dishonesty."

There is also a perception developing of the debtor as a "spendaholic" as a person with an allergy which must be cured. This seems to combine elements of the "feckless" and "inadequate" typification, and clearly implies that the debtor is a suitable case for treatment.

The Social Reality of Debt Collection: A Summary of our Findings.

We found certain similarities to previous studies when we analysed the typifications of garnisheed debtors by the actors involved in the process.

Creditors stressed the typifications of a default debtor as being either unfortunate or feckless (imprudent) and minimised the importance of the professional debtor as a reason for defaulting. Yet there is a certain ambivalence underlying creditors' perceptions of the default debtor. When they discussed legal remedies they were hesitant to accept any restriction in the coercive aspect of debt collection, and a number raised the spectre of professional "hard core" or "quasi-criminal" debtors against whom the remedies were necessary.

It may be argued that this in part reflects the ambivalence of debt collection. Thus debtors are always "conditional deviants." They can always come back into the normal debt paying community, right up until garnishment. However to reduce the coercive element in debt collection would undercut both the symbolic values on which collection maintains its legitimacy and the implication that a debtor ought to treat these values as important.

In addition there is the feeling, perhaps justified by creditors that the legal remedies prevent the innocent default debtor from becoming deviant. This seems to be based on the argument that "poeple will miss fewer trains ... if they know the engineer will leave without them rather than delay even by a few seconds."*

The perception of the possibly deviant debtor against whom garnishment action is taken may also legitimate to the collector and lawyer the tough measures of garnishment. Since debt collection is perceived to be at best slightly sordid and at worst rather sinister, an assertion of moral superiority may be important to justify collection work. Thus lawyers, although knowing little about debtors or their circumstances, saw significant numbers of debtors as deviant and tended to interpret the debtors's responses in the light of this label. This is similar to Rock's finding that "collectors may be so committed to a classification that they will exaggerate the deviant characteristics displayed by debtors."

The "social work" perception of debtors was most pronounced in the interviews the author had with employees of the Family Financial Counselling Service. They tended to view the prime reason for debtors defaulting as being "money management." Although they admitted that they had a number of low income individuals on their programme they argued that even poorer individuals should trim their sails and not spend their money

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* Duncan Kennedy, Form and Substance in Private Law Adjudication, 89 Harv. L. Rev. 1685, 1698.

on unnecessary items. Their basic premise is that debt over-committment is an individual problem reflecting either inadequate planning by the debtor or irresponsibility. They view their task as "adjusting" the debtor to the values of thrift and money management. They clearly view debtors in trouble as imprudent, and possibly irrational, suggesting for example that the reason for their financial difficulty is that they buy luxury goods or take vacations to the Bahamas instead of saving money. In a number of respects their approach relfects one of "blaming the victim."

Although they argue that debt reflects personal inadequacy or a disease like alcoholism, which presumably could occur to anyone,*their statistics on the Orderly Payment of Debts Plan indicate clearly that over two-thirds of the individuals on the plan are lower than average income and/or are in blue collar occupations which may be unstable. Unemployment was ranked as one of the most important causes for their debt difficulties.

In addition a number of the debtors on the Orderly Payment of Debts Plan appear to have chronic debt problems which may be linked to larger structural problems. To expect them to adjust and to meet the generally highly unrealistic repayment schemes for their debts* is an inadequate response.

I have introduced the dangers in the perception of a debtor as "inadequate", and the approach of the F.F.C.S. confirms previous studies. It is an important issue because any proposal for reform must determine what role a social work agency like the Family Financial Counselling Service must play in reform, which in turn will be influenced by a perception of the debtor, which in turn may be influenced by their perception.

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* "It's difficul- to define who gets ensmared in the credit web" stated an employee. (Edmonton Journal: November 21, 1978).

* See text.

CHAPTER 3: COURT FILE STATISTICAL SURVEY: AN ANALYSIS OF THE USE AND EFFECTIVENESS OF THE GARNISHMENT PROCESS

Introduction

The purpose of the court file survey is to provide baseline statistics on the use and effectiveness of the remedy of wage garnishment, in the context of the remedies available to a creditor against a consumer debtor.

It also provides background data to the debtor, creditor and employer interviews. We have used each of these four data sources as a reference point for the other. For example, the debtor, creditor and employer interviews supplement the data from the court files on the crucial issue of analyzing the effectiveness of wage garnishment as a remedy against consumer debtors.

File survey #1 contains 622 cases of garnishment randomly sampled over a period of 15 months from the garnishee summons "cash book". Matrimonial cases and those where the defendant was a corporation were removed from the sample. 506 cases involved wage garnishment alone and 80 involved bank account garnishment alone. We decided to include the bank account garnishments in our analysis since we reasoned that it would provide useful statistical data on the percentage of creditors who attempted to seize the debtor's bank account rather than his pay packet. In addition, we thought that it would be useful to include the bank account group in the sample for interviewing because then we would be able to compare the additional social impact of wage garnishment on debtors in default with the general impact of the collection process on a debtor in default. We also were interested in establishing why a creditor garnisheed a bank account rather than the wages of the debtor.

1. Analysis of Creditors Using Garnishment and Wage Garnishment

Tables 1 and 2 indicate the creditor type and nature of the debt for the total sample.

Table 1

Category Label	Absolute Freq	Relative Freq (PCT)	Adjusted Freq (PCT)	Cum Freq (PCT)
Bank	81	13.0	13.3	13.3
Finance Co.	113	18.1	18.1	31.1
Credit Union	31	5.0	5.0	36.2
Dept. Store	57	9.2	9.3	45.5
Retailer	85	13.5	13.6	59.2
Trust Company	2	0.3	0.3	59.6
Government	9	1.4	1.5	61.0
Oil Company	28	4.3	4.4	65.5
Renter: G&S	42	6.8	6.8	72.3
Renter: Housing	24	3.9	3.9	76.3
Professional Services	21	3.2	3.3	79.5
Utilities	15	2.4	2.4	82.0
Individual	62	9.9	9.9	92.3
Other	49	7.8	7.8	100.0
	622	100	100	100

Table 2

Category Label	Absolute Freq	Relative Freq (PCT)	Adjusted Freq (PCT)	Cum Freq (PCT)
Bank Loan	64	10.6	10.9	10.9
Bank Credit Card	14	2.3	2.3	13.2
Fin. Co. Loan	113	17.5	18.0	31.2
Credit Union Loan	31	5.0	5.1	36.4
Student Loan	1	0.2	0.2	36.5
Retail Credit	161	25.6	26.5	62.8
Gas Credit Card	17	2.6	2.6	65.5
Car Damage	16	2.6	2.6	68.1
Utility Services	18	2.9	3.0	71.1
Professional Services	22	3.4	3.5	74.5
Housing Rental	26	4.2	4.3	78.8
Gen. Services	45	6.8	6.9	85.8
Workmen's Compensation	4	0.6	0.7	86.4
Insurance Payments	8	1.3	1.3	87.8
Other	78	11.9	12.2	100.0

Table 3 indicates those creditors using wage garnishment.

Table 3

These data indicate that the heaviest users of garnishments and wage garnishment in particular are retail creditors and finance companies. Thus, finance company loans and retail credit account for 44.3% of all garnishments. These data confirm the findings of previous studies (Trebilcock: 1975; Jacob 1967; Jablonski: File survey #2 shows that department stores have overtaken other retailers in the number of garnishments. Does this suggest that department stores make greater use of garnishment because they are better organized for collection? (Unfortunately, we don't know the proportion of cases where the creditor was a collection agent suing in the name of the principal.)

The relatively high percentage (10.0) for individuals suing is misleading. 25% of these cases involved automobile damage and 25% appeared to be explicable on examination as cases involving business debts. Only about 30% appeared to be unambiguous claims by individuals.

The supervisor of Consumer Credit in Alberta in his annual report for 1978 indicated that of the total outstanding consumer credit, banks hold 64%, credit unions 15%, while consumer finance and sales finance companies 8.5%. The balance of 12.5% is held by retail organizations 7%, and by trust companies, life insurance companies and other credit card holders 5.5%. These figures might suggest that finance companies and retail creditors make greater use of garnishment than justified by their respective shares of the market. However, these figures may be misleading for retail credit because presumably the figures on consumer credit in Alberta reflect volume of credit not number of accounts. One would expect the total volume of retail credit to be lower than loan credit with a large number of fairly small retail credit accounts. Credit unions and banks appear to be under-represented for their market share.

The overwhelming majority of those cases of professional services are comprised of lawyers.

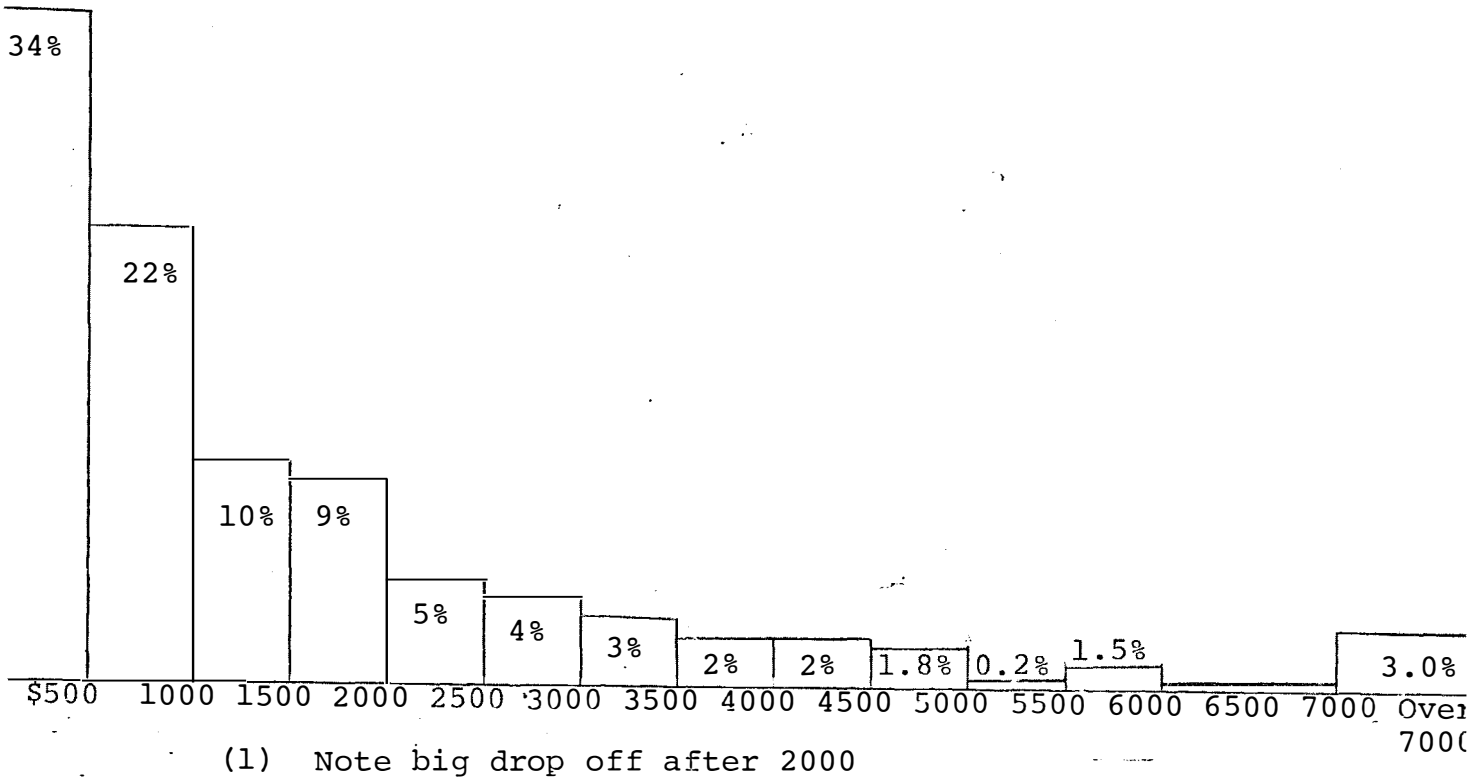
If we were to use the distinction between those creditors who have only occasional recourse to the courts (one shotters and repeat players (those who are engaged in many similar litigations over time) it could be argued that certainly creditors in over 66% of cases are repeat players.

2. Amount of Debts Claimed in Garnishment Actions

The following tables indicate the distribution of the amount of debts claimed:

	No.	%	Cum. Pt.
0 - 49	7	1	1
50 - 99	14	2	3
100 - 199	51	8	12
200 - 299	56	9	21
300 - 399	44	7	28
400 - 499	38	6	34
500 - 749	93	15	49
750 - 999	45	7	56
1000 - 1249	39	6	62
1250 - 1749	58	9	72
1750 - 1999	30	5	76
2000 - 2499	30	5	81
2500 - 2999	24	4	85
3000 - 3499	18	3	88
3500 - 3999	15	2	90
4000 - 4999	29	5	95
5000 - 5999	10	2	97
6000 - 6999	3	0	97
7000 - 7999	4	1	98
8000 - 8999	1	0	98
9000 - 9999	1	0	98
Over 10000	12	2	100
	622	100	

Table 4

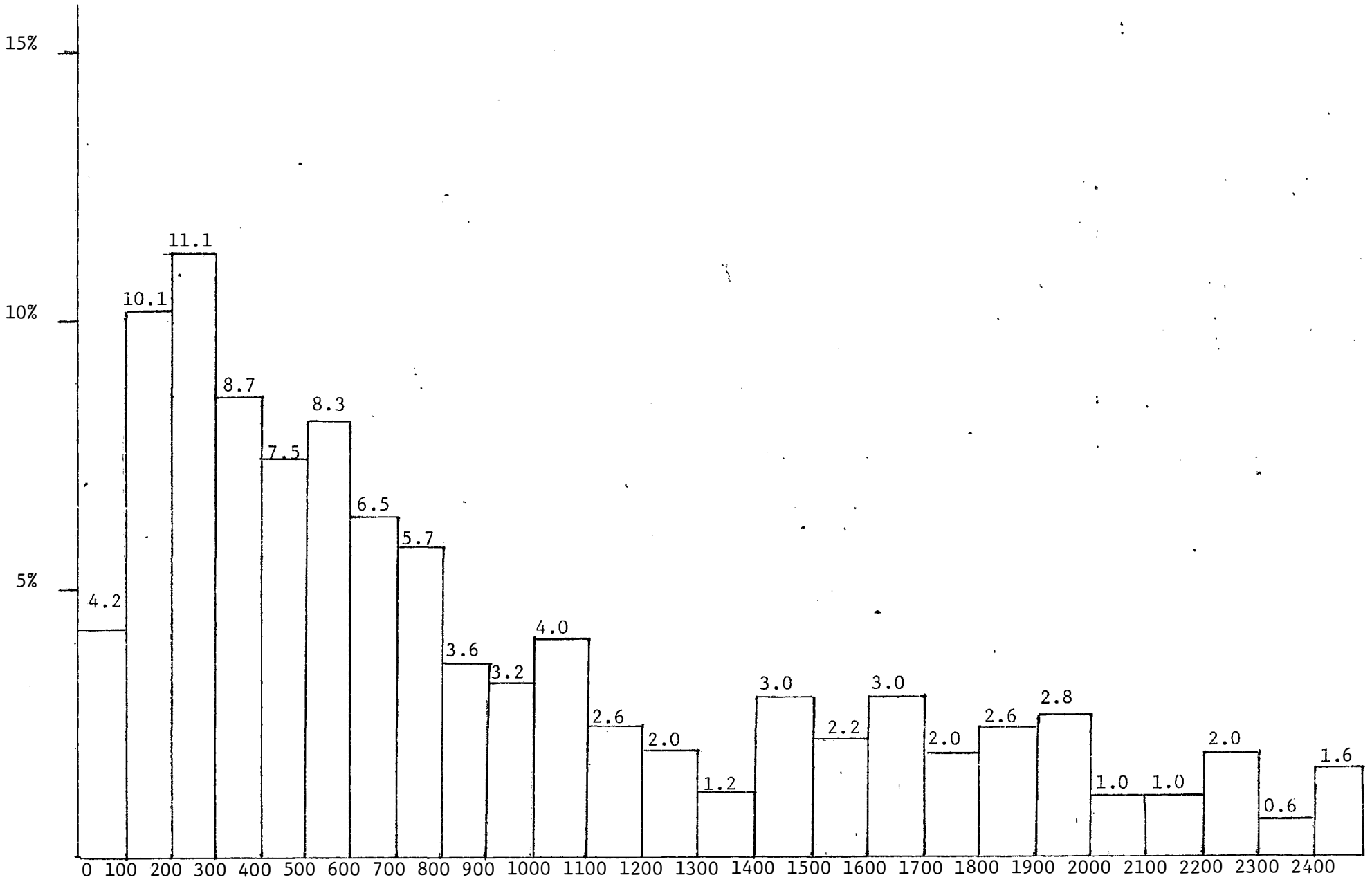


(1) Note big drop off after 2000

(2) Large drop off after 1000 - 56% of debts were under $1000

30% of the debts claimed fall between $100 and $500, 49% under $750, 56% under $1000 and 76% under $2000. Only 3% of debts claimed fall under $100, and only 10% were for debts over $3999. The largest cluster of debts were for amounts between $500 - $749 (15%).

The following histogram of claims up to $2500 (506) indicates clearly how garnishment is particularly popular in claims from $100 to $799. The insignificant percentage of debts sued for under $100 suggests that this figure represents a threshold below which garnishment is not deemed to be worthwhile.


15%
10%
5%
4.2
10.1
11.1
8.7
7.5
8.3
6.5
5.7
3.6
3.2
4.0
2.6
2.0
1.2
3.0
2.2
3.0
2.0
2.6
2.8
1.0
1.0
2.0
0.6
1.6
0 100 200 300 400 500 600 700 800 900 1000 1100 1200 1300 1400 1500 1600 1700 1800 1900 2000 2100 2200 2300 2400

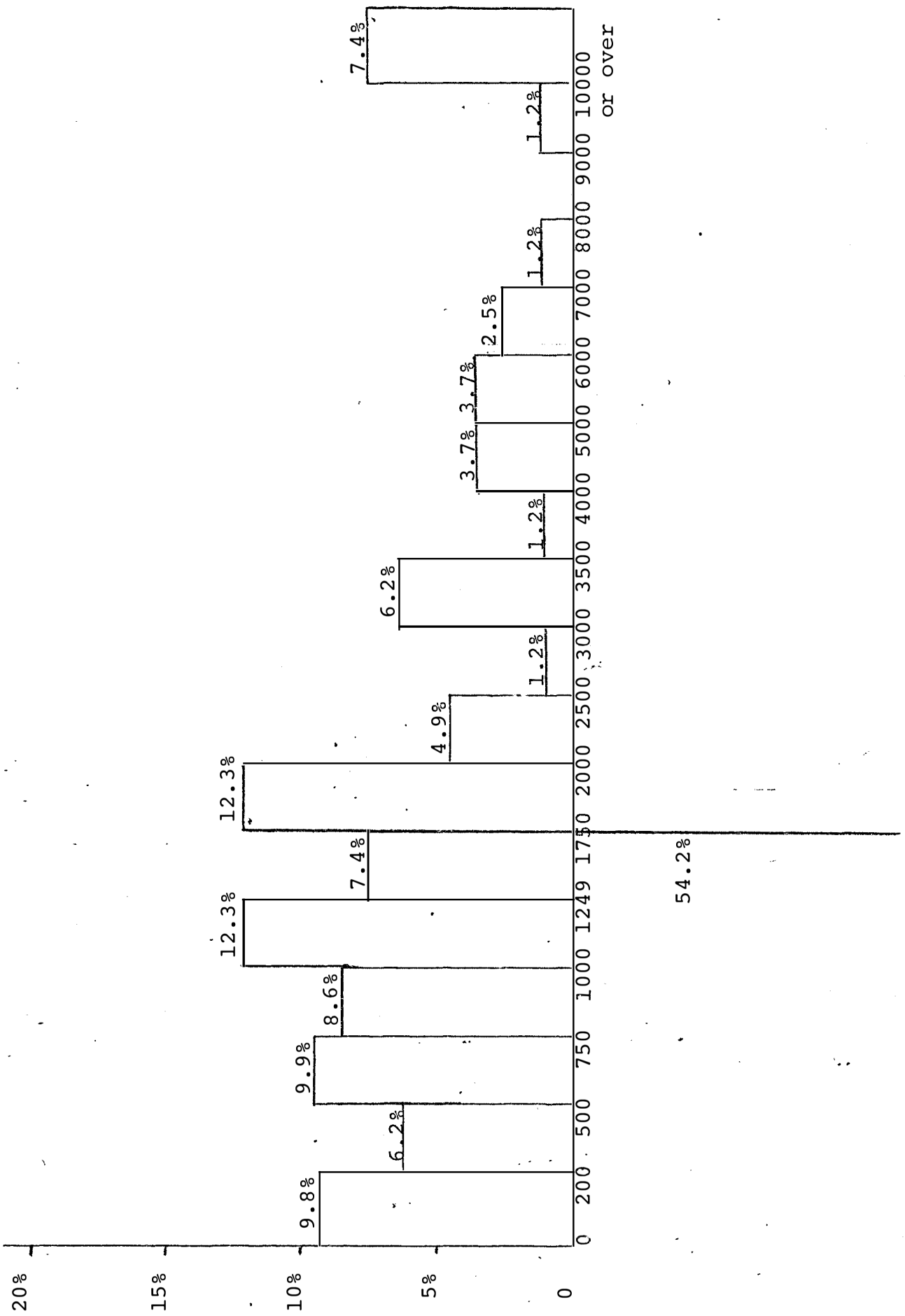
It also indicates a gradual sloping off from $800 to $1399 and then a plateau of claims from $1400 to $2000 and then another sloping off. The histogram suggests therefore two general types of claim, the small claim represented primarily by retail credit and the larger claims (over $1400) represented by bank and finance company loan claims.

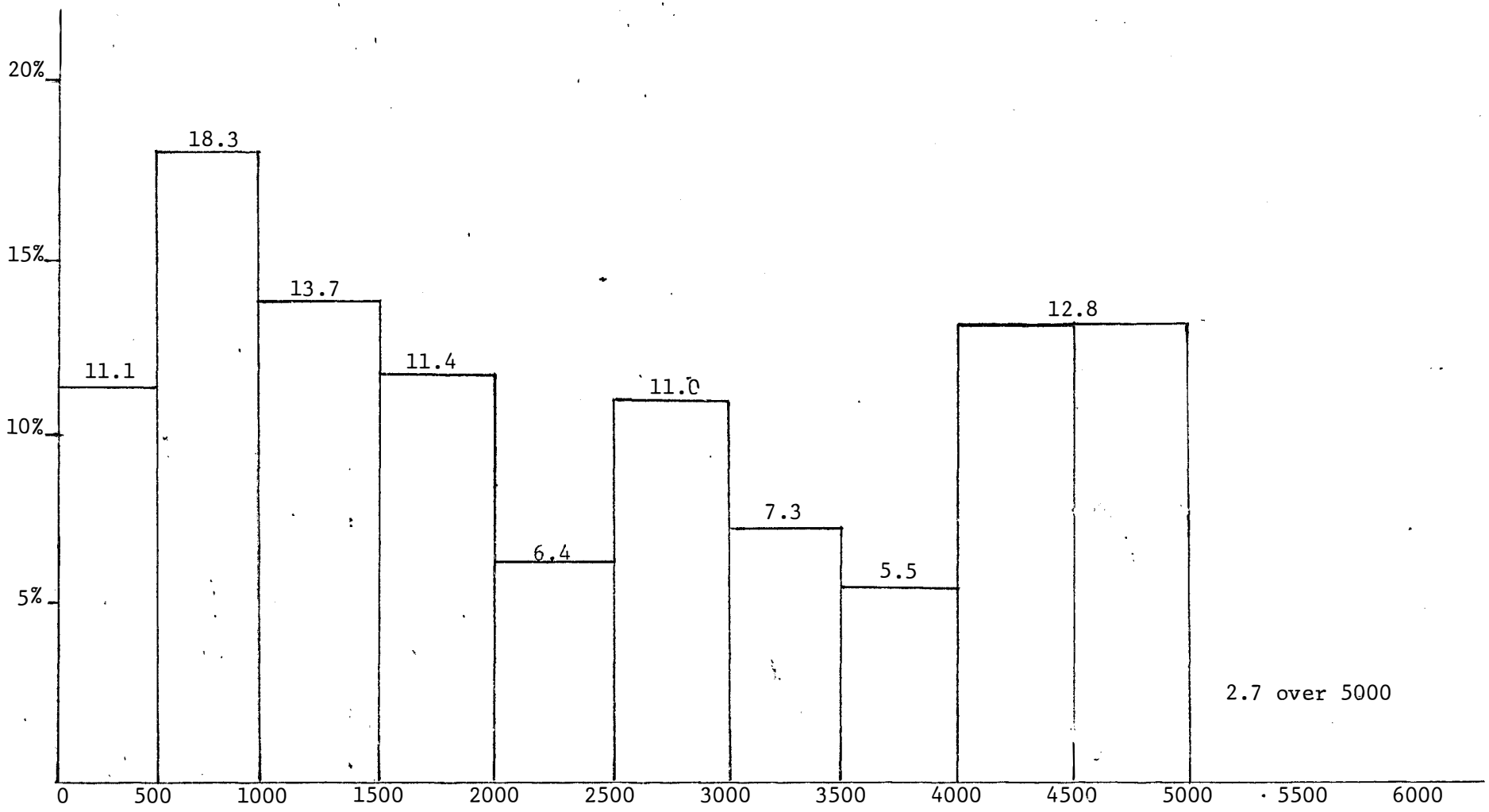
The following tables indicate the amount of debts claimed, broken down by creditor type.

The following tables indicate the amount of debts claimed, broken down by creditor type.

Table 5

Bank: Amount of Debts Claimed





Finance Company

Table 6

Retailer: Amount of Debt Claimed

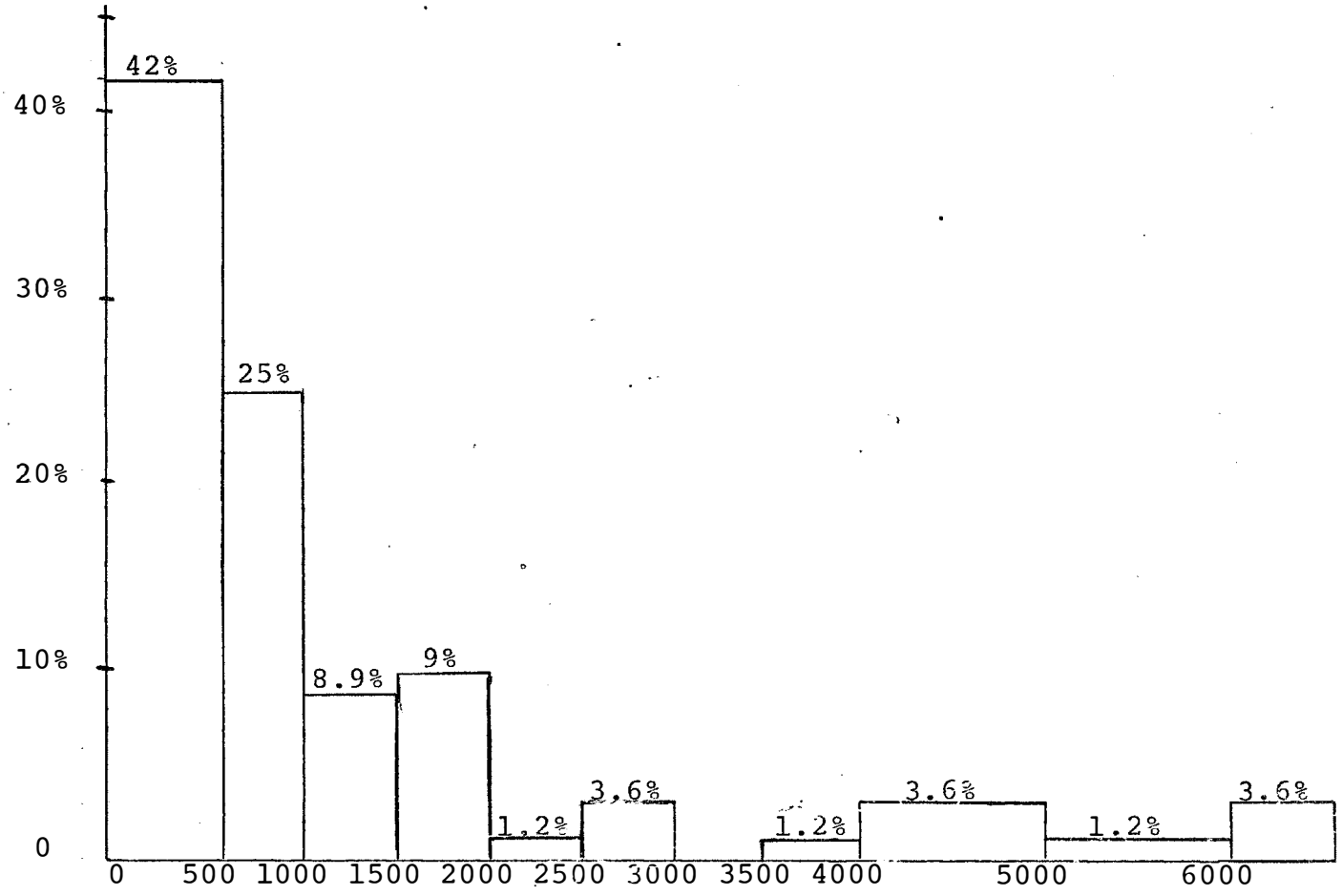
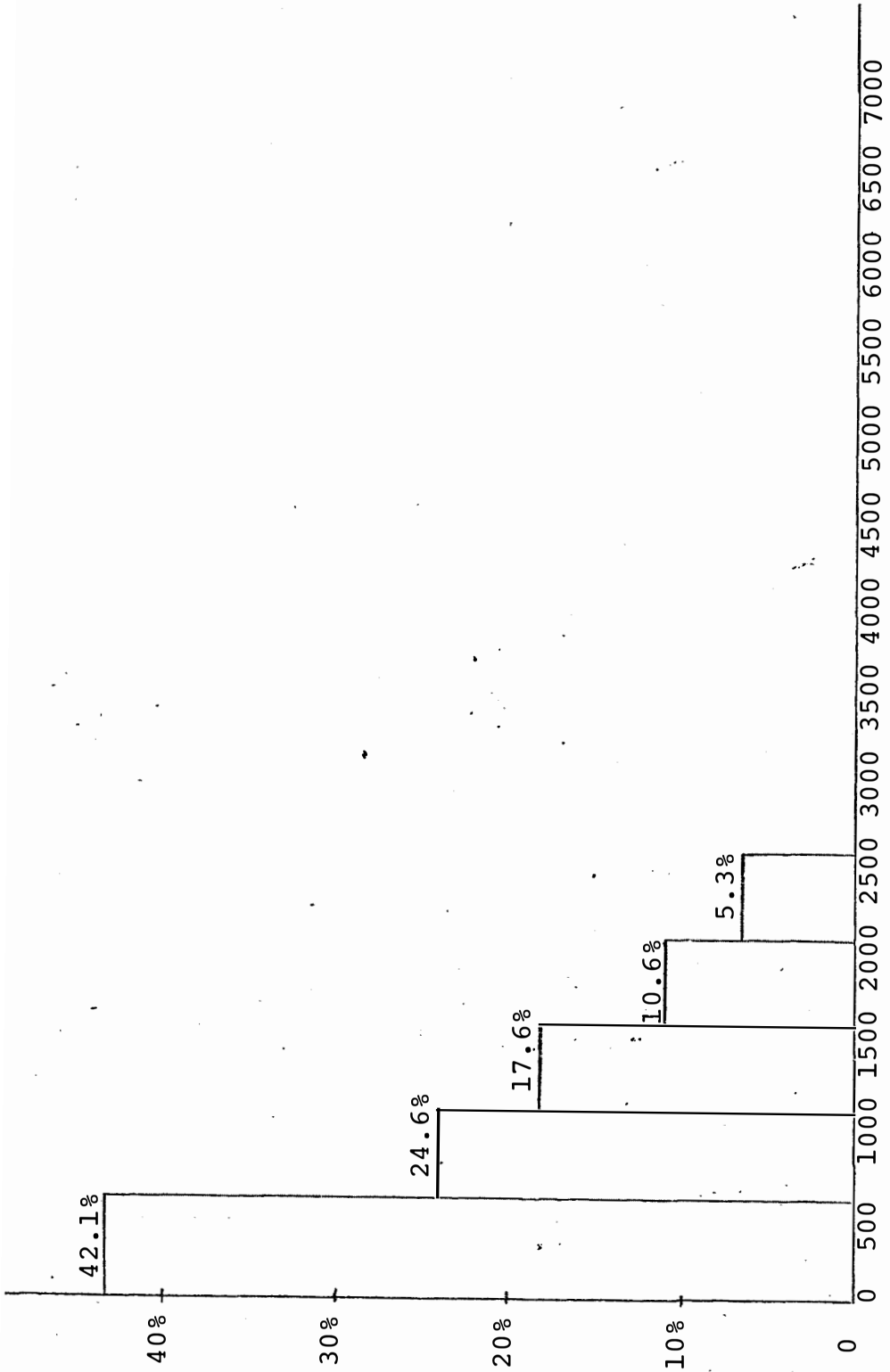


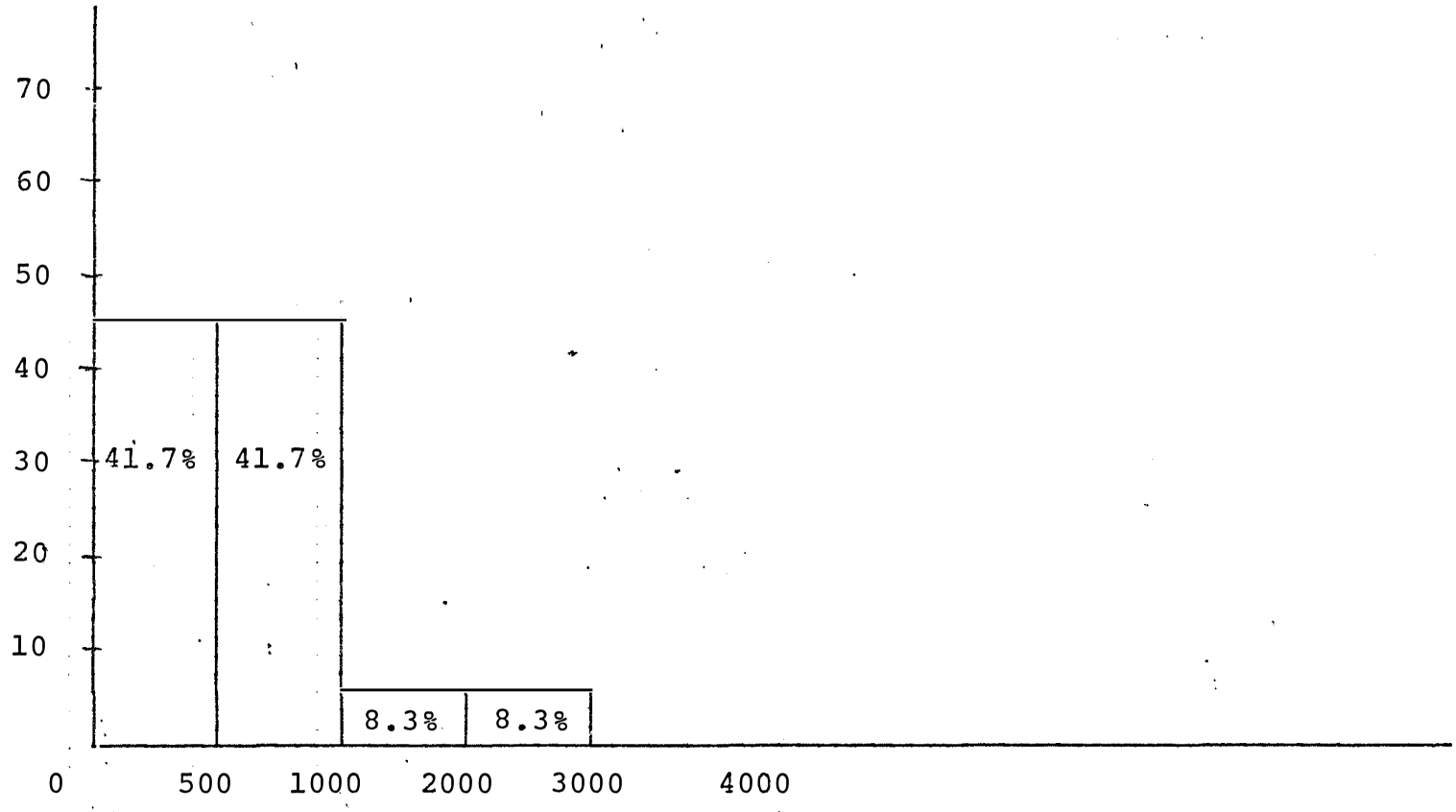
Table 7

Department Stores: Amount of Debt Claimed

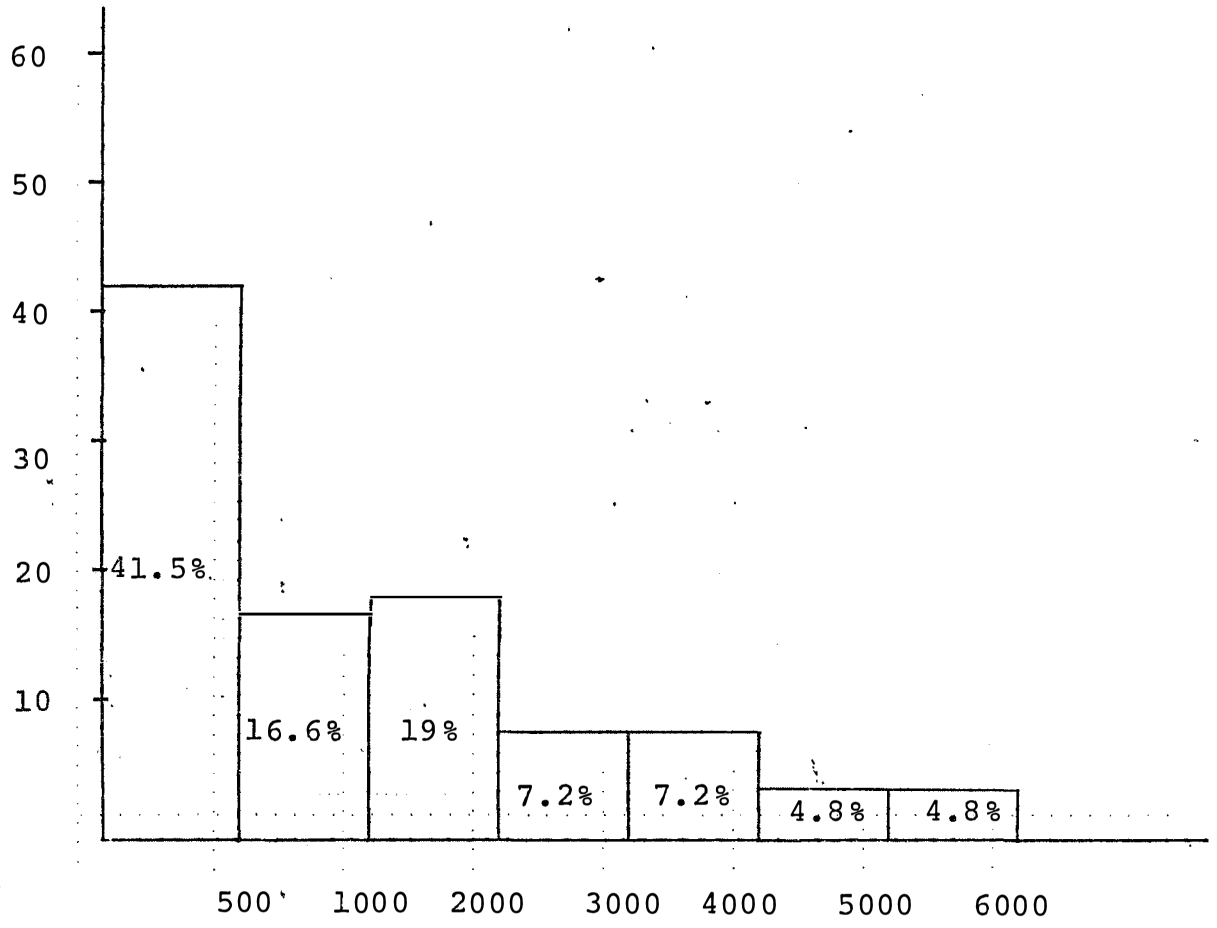


(1) 66.6% department store claims under $1,000 (64.8% under $750)

(2) Nothing over $2500

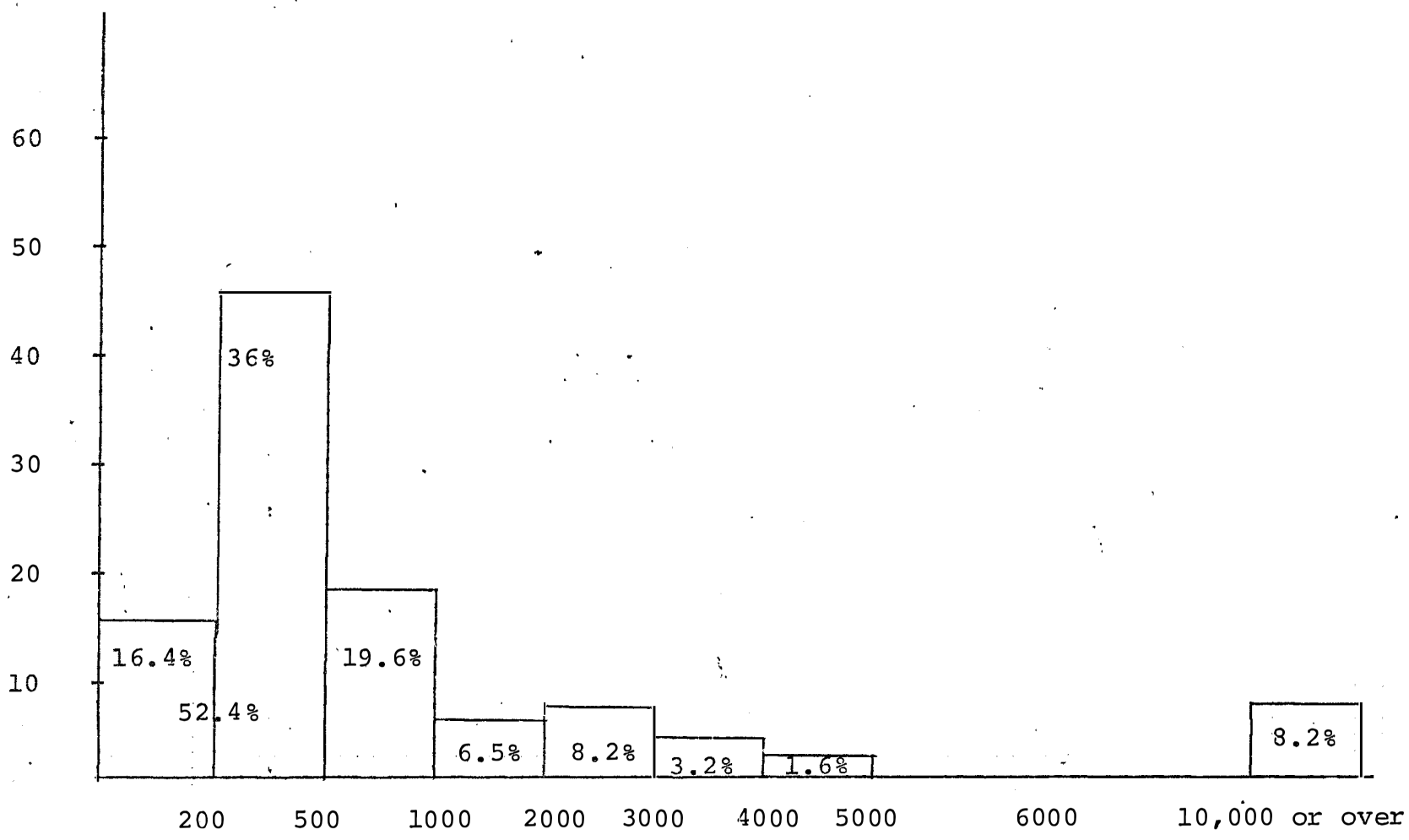

70
60
50
40
30
20
10
41.7%
41.7%
8.3%
8.3%
0
500
1000
2000
3000
4000

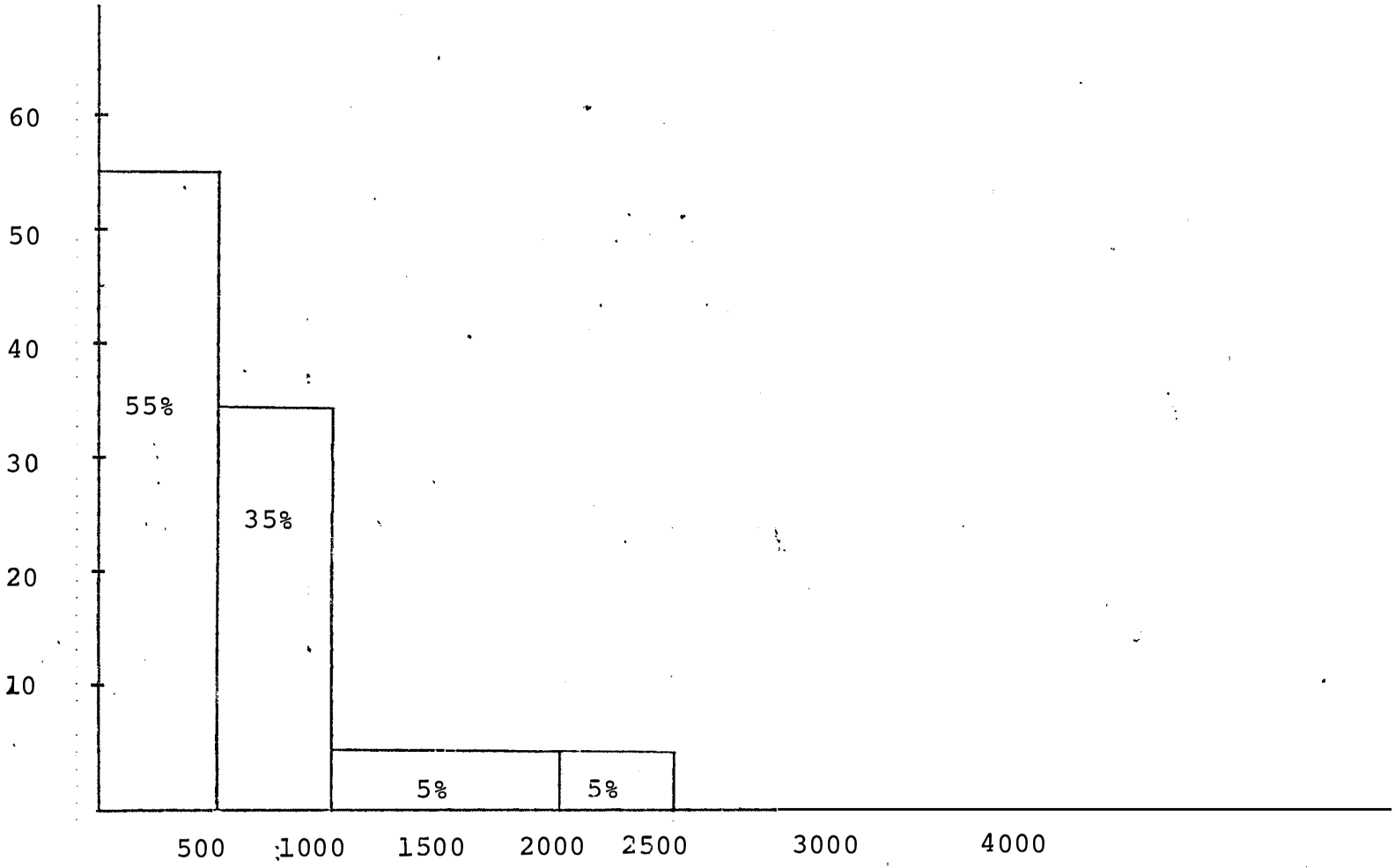
RENTER - GOODS AND SERVICES TABLE 9



INDIVIDUALS

TABLE 10





(1) 42.9% under $300
(2) 90% under $1000

The following comments may be made about these data.

1. The majority of all claims, except those of banks and finance companies, are for amounts less than $1000.

Over 40% of all retail claims are for amounts under $500, and 52.4% of individual claims are under $500. 55% of claims for professional services are for amounts under $500. There are no department store claims over $2500.

2. It is interesting to note that 14% of the banks' claims are over $5000, whereas only 2.7% of the finance companies' claims are above this amount. Apart from this, banks and finance companies have similar percentages.

3. Of actions by utilities, 33.3% were under $200, 20% under $299 and 20% under $399. Thus, almost 75% of utilities actions were under $400. This high instance of garnishments for such small amounts coupled with the data that in 28.3% of utility actions money which has been paid into court has not been paid out of court, might suggest that an important reason for legal action by utilities is "symbolic deterrence".

3. Number of Different Garnishees for Wages and Bank Account

The following tables indicate the number of different employers garnisheed for wages and the number of bank account garnishments.

Table 12

Garnishees of Wages

	Absolute Freq.	Adjusted Freq. (PCT	Cum. Freq. (PCT
1.	372	73.5	73.5
2.	102	20.2	93.7
3.	24	4.7	98.4
4.	7	1.4	99.8
5.	1	0.2	100.0
	506	100.0	

Table 13

Garnishees of Bank Accounts

	Absolute Freq.	Adjusted Freq. (PCT)	Cum. Freq. (PCT)
1.	135	84.4	84.4
2.	18	11.2	95.6
3.	7	4.4	100.0
	160	100.0	

These data show that approximately 13% of creditors use both wage and bank account garnishment. In 20.2% of wage garnishment cases the creditor served a summons on more than one employer. This figure can be partially explained by a creditor attempting to garnish both spouses where they have jointly signed a loan or contract. Thus, in 18.2% of the cases it appeared that the debtors were married. It might also suggest that the employment of a debtor is unstable and /or that a creditor is uncertain as to the debtor's place of employment. Thus, for example, although there are only 11 cases where two debtors were being sued by retailers, there were 21 cases of retailers serving two employers with garnishee summons.

Finance companies and banks accounted for 44.8% of the cases where there were two garnishments. 40% of finance company cases involved two debtors (spouses or cosignors), whereas only 20.3% of bank cases and 13.3% of retail cases involved two debtors

4. Pre-judgment Garnishment

Pre-judgment garnishment was applied for in only 2% of all actions. 75% of these cases involved an attempt to garnish wages and 50% of the cases also involved an attempt to garnish a bank or savings account.

The amounts claimed in the pre-judgment garnishments were as follows:

Table 14

Amount Claimed	%	
0 - 299	33.3	(3)
300 - 399	8.3	(1)
750 - 999	8.3	(1)
1250 - 1749	16.7	(2)
2000 - 2999	16.7	(2)
3500 - 3999	8.3	(1)
5000 - 5999	8.3	(1)

The high percentage of small claims (41.6% under $400) is intriguing because of the fact that most lawyers interviewed stated that pre-judgment garnishment was rarely applied for because of the cost involved. Why therefore would pre-judgment garnishment be taken out on such small claims?

In order to answer that question it is necessary to examine those data on the use of pre-judgment garnishment by creditors.

Table 15

Creditors using Pre-judgment Garnishment

	Frequency	%
Banks	1	8.3
Finance Companies	1	8.3
Housing Rental	4	33.3
Individual Loan	3	25.0
Individual Sale	1	8.3
Retailer	2	16.7
	12	100.0

In addition, it is of interest that both the finance company and bank claim were over $3000 and $5000 respectively. No department stores used pre-judgment garnishment. These data indicate that none of the large repeat player creditors appear to have made significant use of pre-judgment garnishment. This might suggest that where collection is organized in a bureaucratic fashion, and when cost is an imperative of the collection process, then it is only an exceptional case involving both a large amount and presumably a high chance of success, that this extraordinary remedy would be used. Thus, the bank and the finance company both recovered significantly high amounts on pre-judgment garnishment ($2,282 and $3,560 respectively).

The high percentage of small creditors, and in particular housing rental cases, may be explained by several facts. Firstly, a small creditor may feel morally outraged and, without the bureaucratic restraint of the large creditor, will want to go after the debtor "for all he's got." He may well view the debtor as a quasi-criminal. Second, if he is an individual creditor then he must catch the debtor before the debtor moves too far. The creditor will not have the organization to track him. In addition, the creditor in the housing rental cases will assume that someone who has not paid the rent is liable to have moved or to be on the move.

The creditors' interviews with small businessmen who rented property confirm some of these conclusions. Thus, one creditor stated that garnishment was used for "midnight moyers." They stated that pre-judgment garnishment was effective against those individuals because one could do something within a week. However, if one had to wait for a judgment then the person would have probably gone and the creditor would have lost contact. This creditor also commented that it usually cost more to recover than the amount being sued for.

In summary, therefore, the rental claims, most of which appear to have been made by small businessmen or individuals and the other small claims in which pre-judgment garnishment was applied, for example, an employer suing an employee for a loan of $100, suggest that moral outrage and perhaps "spite" are important factors in these claims. This might explain the use of a costly procedure which in a significant number of cases did not result in any money being paid into court.

The following table indicates the amounts paid into court on pre-judgment garnishments.

Table 16

Amounts Paid into Court on Pre-judgment Garnishments

Amount	Frequency	Percentage	
0	4	33.3	(Rental, employer loan, loan)
75 - 99	1	8.3	(Sales)
100 - 149	1	8.3	(Individual loan)
300 - 399	1	8.3	(Rental)
400 - 499	1	8.3	(Rental)
600 - 699	1	8.3	(Sales)
Over 1000	3	25.0	(Bank, Finance Company, Retail Sale)

When compared with post judgment garnishment, pre-judgment garnishment is slightly more effective. However, apart from the reliability of using such a small sample, one must speculate whether the individual creditor will have the resources to use the garnishment as part of a continuing pressure on the debtor to settle. Pre-judgment garnishment for these creditors may therefore often be like a shot in the dark, perhaps often without a knowledge of the debtor's circumstances.

Conclusions on Pre-judgment Garnishment

1. Pre-judgment garnishment is not used by major bureaucraticized creditors and is not used to any significant extent by retailers. The high costs of the remedy preclude its use except where there is a large amount outstanding and a high probability of recovery.

2. Pre-judgment garnishment appears from our evidence to be used by one shot rather than repeat players.

3. It appears to be slightly more effective in getting money paid into court than post-judgment garnishment.

We made a number of comments on pre-judgment wage garnishment in our Working Paper on Exemptions from Execution and Wage Garnishment. In particular we commented at page 52 of the Working Paper that one of the disadvantages of pre-judgment wage garnishment was that

> "it can be used as a powerful lever by the creditor to force the debtor into an inequitable repayment scheme."

Our data does not suggest that this is occurring on any scale in Alberta. However, the bank account and finance company cases demonstrate that it could be used in this way and that the evils of pre-judgment garnishment are also applicable to bank account garnishments where there is, it should be remembered, no exemptions.

Irrespective of the moral outrage or other feelings of the creditor, there is still the basic argument which we state on page 52 that the central disadvantage of pre-judgment wage garnishment is that

> "the debtor has no opportunity to state his case until after the garnishment has been made. Such a procedure seems contrary to notions of natural justice, due process, and equity. It may result in a debtor being garnisheed notwithstanding that he has a good defence to the action."

II. Recovery Analysis: The Effectiveness of Garnishment

Part 1

The following tables indicate the total amount paid into court on all garnishments, the total amount paid in on wage garnishments, and the total amount paid in on bank account garnishments.

Table 1

Total Amount Paid Into Court

	Frequency	%	Cum. Pct.
0 -	368	59	59
1 - 99	48	8	67
100 - 199	39	6	73
200 - 299	33	5	78
300 - 399	22	4	82
300 - 499	22	4	86
500 - 599	16	3	88
600 - 699	11	2	90
700 - 799	11	2	92
800 - 899	3	0	92
900 - 999	8	1	93
1000 - 1499	21	4	97
Over 1500	20	3	100
	622	100	

Table 2

Wage garnishment: Total Amount Paid into Court

	Frequency	%	Cum. Pct.
0	319	61	61
1 - 99	27	6	67
100 - 199	31	5	72
200 - 299	27	6	78
300 - 399	16	3	81
400 - 499	18	3	84
500 - 599	14	3	87
600 - 699	13	2	89
700 - 799	10	2	91
800 - 899	3	1	92
900 - 999	7	1	93
1000 - 1499	19	4	97
1500 - 1999	7	1	98
2000 - 2999	7	1	99
Over 3000	2	1	
	520	100	100

Table 3

Bank Account Garnishment- Total Amount Paid Into Court

Amount	Frequency	%	Cum. Pct.
0	96	61	61
0 - 99	24	16	76
100 - 199	9	6	82
200 - 299	6	4	86
300 - 399	7	4	90
400 - 499	4	3	93
500 - 599	2	1	94
600 - 699	1	1	95
700 - 799	1	1	96
800 - 899	0	0	96
900 - 999	1	0	96
1000 - 1499	1	1	97
1500 - 1999	1	1	98
2000 - 2999	2	1	99
Over 3000	1	1	
	154	100	100

Comparison of the tables on wage garnishment and bank account garnishment indicate that wage garnishment appears to be more effective than bank account garnishment in getting money paid into court. This confirms the data from the creditors' interviews concerning their perception of the use and effectiveness of different remedies. Thus, 82% of bank account cases recover less than $200, compared to 72% for wage garnishment. Neither remedy, however, can be considered particularly effective in terms of total money paid into court since in 59% of all cases no money was paid into court and in 71% of cases, under $200 was paid into court.

The following table indicates the amounts paid into court cross-tabulated with the amounts claimed in the actions.

AMOUNT PAID INTO COURT

Amount claimed	0		1 - 49		50 - 99		100 - 199		200 - 299	
0 - 499	(129)	64%	(6)	3%	(8)	4%	(24)	11%	(18)	8%
500 - 999	(81)	59%	(5)	5%	(6)	5%	(4)	4%	(8)	6.5%
1000 - 1999	(72)	59%	(6)	5%	(4)	4%	(7)	5%	(2)	1.9%
2000 - 2999	(32)	59%	(1)	2%	(2)	4%	(3)	4%	(2)	4%
3000 - 3999	(16)	49.5%	(3)	9.5%	(0)	0.0%	(0)	0.0%	(1)	3.3%
4000 - 4999	(19)	65.5%	(0)	0.0%	(1)	3.4%	(1)	3.4%	(1)	3.4%
5000 - 4999	(3)	30%	(2)	20%	(1)	10%	(0)	0.0%	(0)	0.0%
6000 - 6999	(2)	66.7%	---		---		---		---	
7000 - 7999	(3)	75%	---		---		---		---	
8000 - 8999	(1)	100%	---		---		---		---	
9000 - 9999	(1)	100%	---		---		---		---	
Over 10,000	(9)	75%	(1)	8.3%	---		---		(1)	8.3%

Amount claimed	300 - 399	400 - 499	500 - 599	600 - 699	700 - 799
0 - 499	(8) 4%	(9) 4%	(4) 2%	(1) 0.5%	---
500 - 999	(7) 6%	(2) 1.5%	(4) 3%	(3) 2%	(3) 2%
1000 - 1999	(5) 4.8%	(7) 5%	(9) 7.5%	(8) 7%	(2) 1.9%
2000 - 2999	(1) 1.8%	(2) 4%	(2) 4%	(0) 0.0%	(2) 4%
3000 - 3999	(1) 3.3%	(1) 3.3%	(1) 3.3%	(0) 0.0%	(0) 0.0%
4000 - 4999	(1) 0.0%	(0) 0.0%	(1) 3.4%	(1) 3.4%	(3) 10.3%
5000 - 5999	(0) 0.0%	(1) 10%	(0) 0.0%	(0) 0.0%	(1) 10%
6000 - 6999	---	---	---	---	---
7000 - 7999	---	---	---	---	---
8000 - 8999	---	---	---	---	---
9000 - 9999	---	---	---	---	---
Over 10,000	---	---	(1) 8.3%	---	---

Amount claimed	800 - 899		900 - 999		Over 1000	
0 - 499	---		---		(1)	0.5%
500 - 999	(1)	0.8%	)6)	5%	(8)	6.5%
1000 - 1999	(1)	0.8%	(2)	1.9%	(11)	9%
2000 - 2999	(0)	0.0%	(0)	0.0%	(7)	13%
3000 - 3999	(1)	3.3%	(0)	0.0%	(9)	30%
4000 - 4999	(0)	0.0%	(0)	0.0%	(2)	6.9%
5000 - 5999	(0)	0.0%	(0)	0.0%	(2)	20%
6000 - 6999	---		---		(1)	33.3%
7000 - 7999	---		---		(1)	25%
8000 - 8999	---		---		---	
9000 - 9999	---		---		---	
Over 10,000	---		---		---	

In 33% of cases where the amount sued for was between 0-499, at least $50 was paid into court, and in 31% of cases where the amount claimed was between $500 - $999 over $200 was paid into court. The data suggest that where garnishment is taken on claims over $2000 the garnishment will either reap a little or a lot. Thus in 30% of cases where the amount sued for was $3000 - $3999 over $1000 was paid into court.

2. Amount Paid into Court Broken Down by Creditor Type

The following tables show the amounts paid into court broken down by creditor types.

Table 21

Amount	Bank	Finance Co.	Credit Union	Dept. Store	Retailer	Trust Co.	Gov't	Oil Co.	Renter G.&S.	Renter Hous.
0	53.5	50.5	56.7	57.1	59.1	100.0	87.0	50.0	48.7	50.0
01 - 99	11.4	3.9	13.3	12.6	9.0	0.0	0.0	8.4	15.4	9.0
100 - 199	5.1	4.8	10.0	10.8	1.3	0.0	0.0	2.5	2.6	4.5
200 - 299	3.8	5.7	6.7	1.8	6.3	0.0	0.0	8.3	7.7	13.6
300 - 399	3.8	6.7	3.3	1.8	2.5	0.0	12.5	0.0	2.6	0.0
400 - 499	2.5	3.8	3.3	3.6	2.5	0.0	0.0	4.2	5.1	18.1
500 - 599	0.0	5.7	0.0	5.4	0.0	0.0	0.0	4.2	2.6	5.4
600 - 699	0.0	2.9	3.3	1.8	3.8	0.0	0.0	8.3	2.6	0.0
700 - 799	2.5	1.9	3.3	0.0	5.1	0.0	0.0	0.0	2.6	0.0
800 - 899	2.5	0.0	0.0	0.0	1.3	0.0	0.0	0.0	0.0	0.0
900 - 999	2.5	1.0	0.0	3.6	2.5	0.0	0.0	0.0	2.6	0.0
Over 1000	12.7	13.3	0.0	1.8	6.3	0.0	0.0	4.2	7.7	0.0

Table 21 (cont'd)

Amount	Professional Services	Utilities	Collection Agent	Individual	Other
0	69.2	50.0	0.0	57.7	71.4
01 - 99	0.0	7.1	0.0	7.6	4.8
100 - 199	7.7	21.4	0.0	11.6	9.6
200 - 299	15.4	14.3	0.0	3.8	2.4
300 - 399	0.0	7.1	0.0	3.8	2.4
400 - 499	7.7	0.0	100.0	3.8	0.0
500 - 599	0.0	0.0	0.0	1.9	2.4
600 - 699	0.0	0.0	0.0	0.0	0.0
700 - 799	0.0	0.0	0.0	0.0	2.4
800 - 899	0.0	0.0	0.0	0.0	0.0
900 - 999	0.0	0.0	0.0	0.0	0.0
Over 1000	0.0	0.0	0.0	9.6	4.8

Banks and finance companies have a slightly lower rate of total failure in getting money paid into court than department stores, retailers and individuals. They are, in addition, the only creditors who recover more than $1000 in a significant number of cases. In almost 25% of cases finance companies recovered more than $500. In addition, government and trust companies have a high rate of failure. There is in general a relatively high rate of failure among professional creditors (53.5% banks, 50.5% finance companies, 56.7% credit unions, 57.1% department stores and 59.1% retailers).

3. Amount Paid into Court as a Percentage of the Amount Claimed

Another way of presenting the recovery rate (money paid into court) is to look at the mean recovery as a percentage of the total amount claimed. The following tables indicate this general relationship and also broken down by creditor type.

Banks and finance companies have a slightly lower rate of total failure in getting money paid into court than department stores, retailers and individuals. They are, in addition, the only creditors who recover more than $1000 in a significant number of cases. In almost 25% of cases finance companies recovered more than $500. In addition, government and trust companies have a high rate of failure. There is in general a relatively high rate of failure among professional creditors (53.5% banks, 50.5% finance companies, 56.7% credit unions, 57.1% department stores and 59.1% retailers).

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Table 22 Amount Paid into Court as a Percentage of Amount Claimed

%	No.	%	Cum. Pct.
0	368	59	59
0 - .009		2	61
.01 - .04		3	64
.05 - .09		3	67
.10 - .14		2	69
.15 - .19		2	71
.20 - .29		3	74
.30 - .39		3	77
.40 - .49		3	80
.50 - .59		2	82
.60 - .69		2	84
.70 - .79		1	85
.80 - .89		1	86
.90 - .99			86
1.00 - 1.09		3	89
1.10 - 1.19		3	92
1.20 - 1.29		2	94
1.30 - 1.39		1	95
1.40 - 1.49		2	97
1.50 - 1.59		1	98
1.60 - 1.69			98
1.70 - 1.99		1	99
over 2.00		1	100

71% of cases paid into court less than 20% of the amount claimed, 74% less than 30% and 80% less than 50%. It is interesting to note that in 14% of cases more than 100% of the amount claimed was paid into court. Garnishment may however be more effective as a remedy for getting money paid into court in smaller claims. Thus, when we analysed the recovery rate on claims between 100 - 799 (293 cases) we found that although garnishment recovered nothing in

60% of cases, total recovery of the debt occurred in 23% of cases, over 50% of the debt was paid into court in 29% of cases, and over 30% in 32% of cases.

Another way of presenting the recovery rate (money paid into court) is to look at the mean recovery as a percentage of the total amount claimed. The following table indicates this relationship broken down by creditor type.

Table 23

Recovery as percentage of amount claimed broken down by creditor type

	%	Number of actions	Standard Deviation
All actions	0.28	(611)	
Bank	0.41	(81)	1.49
Finance company	0.22	(109)	0.38
Credit union	0.11	(31)	0.27
Department store	0.35	(57)	0.60
Retailer	0.28	(84)	0.49
Trust company	0.00	(2)	0.00
Government	0.05	(9)	0.16
Oil company	0.34	(27)	0.47
Renter, goods and services	0.28	(42)	0.55
Renter, housing	0.29	(24)	0.49
Professional services	0.21	(20)	0.46
Utilities	0.38	(15)	0.54
Collection agent	0.50	(2)	0.72
Individual	0.33	(61)	0.63
Other	0.21	(47)	0.49

Although the standard deviation on these percentages is fairly high they do indicate that there is not an enormous difference in recovery rate between creditors. The mean recovery rate for all actions was 0.28%. This is a slightly higher recovery rate than suggested in previous studies (Dunlop: 1972).

If a creditor is a repeat-player, then the mean average return over all the actions is not too unreasonable. However, for the one-shot player at garnishment it may be little consolation to know that there is a 59% chance that nothing will be paid into court.

4. Discontinuances of Action and Satisfaction Pieces

In addition to analysing amounts paid into court on garnishment, a further measure of effectiveness of the remedy is to analyse those cases in which a discontinuance of action or satisfaction piece may have been issued on the action. If this has happened then one may presume that the debtor has either repaid the debt or come to some form of settlement with the creditor.

Table 20

Discontinuance of Action or Satisfaction Piece?

		%
Yes	86	14.3
No	515	85.5

In 49.4% of cases where a discontinuance of action or satisfaction piece had been granted, no money had been paid into court. This is an initial indicator that garnishment is more effective as a lever to coerce a settlement than is suggested by the amounts paid into court.

5. Number of Garnishments

The following tables indicate the distribution of the number of wage garnishments and bank account garnishments.

Table 24

Distribution of the number of wage garnishments

1.	236	47.0%
2.	125	25.0%
3.	62	12.0%
4.	36	6.0%
5.	17	3.0%
6.	13	2.9%
7.	7	1.8%
8.	2	0.8%
9.	4	1.2%
10.	2	0.8%
16.	1	0.5%
40.	1	0.5%
	506	100.0%

Table 25

Distribution of the number of bank account garnishments

1.	103	68.5%
2.	27	20.0%
3.	11	8.0%
4.	2	1.5%
7.	1	1.0%
8.	1	1.0%
	145	100.0%

These data indicate that in 72% of cases there are no more than two wage garnishments. The wage garnishments decrease in steps of 50% from 1 to 5 garnishments. There are more than 3 wage garnishments in only 16% of cases. In over two-thirds of bank account garnishments, there is only one garnishment, suggesting that bank account garnishment is a one-shot affair.

When we investigated the number of garnishments broken down by creditor type we found that of total garnishment actions the following data represent the percentage of creditors' actions where they garnisheed a debtor's wages more than four times: banks - 19.6%, finance companies - 27.5%, credit unions - 20.0%, department stores - 11.4%, retailers - 17.6%, trust company - 0.0%, oil company - 8.4%, rental of goods and services - 8.7%, rental of housing - 5.3%, individuals - 13.7%, utilities - 6.7%, professional services - 0.0%, collection agent - 0.0%, and other - 0.0%.

Finance companies, followed by banks, make the heaviest use of four or more garnishments, reflecting perhaps the larger amount for which they sue. (The one case of 40 garnishments is accounted for by a renter of goods and services!)

The following table gives another rough indication of the average number of wage garnishments broken down by creditor type.

Table 26

Number of Wage Garnishments

Code	Value Label	Sum	Mean	Std Dev	Variance
		1137	2.1056	2.4263	5.8868
1.	Bank	183	2.4079	2.1552	4.6447
2.	Finance company	288	2.8235	2.4632	6.0676
3.	Credit union	65	2.1667	1.6418	2.6954
4.	Department store	98	1.8491	1.4464	2.0922
5.	Retailer	146	2.1159	1.7024	2.8981
6.	Trust company	5	2.5000	0.7071	0.5000
7.	Government	9	1.0000	0.5000	0.2500
8.	Oil company	44	1.8333	1.2394	1.5362
9.	Renter: G&S	92	2.6286	6.6425	44.1227
10.	Renter: Housing	33	1.7368	0.9335	0.8713
11.	Professional services	12	1.0000	0.4264	0.1818
12.	Utilities	19	1.2667	1.0998	1.2095
13.	Collection agent	3	1.5000	0.7071	0.5000
14.	Individual	81	1.5882	1.2357	1.5271
15.	Other	59	1.4390	0.8958	0.8024

These figures are a rough estimate because of the standard deviation. Apart from the renter of goods and services, the only creditors with an average above 2 are the professional creditors, banks, finance companies, credit unions, and retailers. The trust company statistics are of little use because there were only two cases.

1. Number of Wage Garnishments Cross-tabulated with Amount Paid into Court

The following table indicates the amounts paid into court on wage garnishment cross-tabulated with the number of wage garnishments.

Table 27

Number of Wage Garnishments

Total		236	125	62	36	17	13	7	2	4
Amount paid into court	0	1	2	3	4	5	6	7	8	9
0	100.0	77.4	59.7	51.6	22.2	23.5	7.7	28.6	0.0	0.0
		(182)	(74)	(32)	(8)	(4)	(1)	(2)	(0)	(0)
1 - 49		1.7	3.2	1.6	5.6	0.0	0.0	0.0	50.0	0.0
50 - 99		1.7	3.2	4.8	1.8	5.9	0.0	0.0	0.0	0.0
100 - 149		3.4	2.4	1.6	0.0	0.0	7.7	0.0	0.0	0.0
150 - 199		2.6	7.3	1.6	2.8	5.9	0.0	0.0	0.0	0.0
200 - 299		5.1	5.6	4.8	0.0	11.8	23.1 (3)	0.0	0.0	0.0
300 - 399		1.3	3.2	3.2	8.3	0.0	7.7 (1)	28.6	0.0	0.0
400 - 499		1.7	4.0	6.5	8.3	11.8	0.0	0.0	0.0	0.0
500 - 599		0.9	2.4	9.7	0.0	11.8	7.7	0.0	0.0	0.0
600 - 699		2.6	0.8	1.6	13.9	-.0	0.0	0.0	0.0	0.0
700 - 799		0.4	3.2	1.6	8.3	0.0	7.7	0.0	0.0	0.0
800 - 899		0.0	0.8	1.6	0.0	5.9	0.0	0.0	0.0	0.0
900 - 999		0.4	0.8	0.0	2.8	0.0	15.4	14.3	50.0	0.0
Over 1000		0.0	0.0	3.2	9.7	25.0	23.5	28.6	0.0	12.1

These data on the number of garnishments may include cases where more than one employer was garnisheed since we did not distinguish in this question between successive and multiple garnishments. However, it is interesting to note that complete failure to get money paid into court only goes below 50% after three wage garnishments and in almost 25% of the cases involving four or five garnishments there is still complete failure. 77.4% of cases where there was one wage garnishment resulted in no money being paid into court.

5. Analysis of cases where money is paid into court but not paid out of court

If money is paid into court then one might assume that it would be paid out of court for the benefit of the debtors' creditors. The following table however, suggests that in a number of cases this does not happen.

Table 28. Payment Analysis Where Money Paid Into Court

	Frequency	%
Total paid out of court	192	82.1
% paid out of court	21	9.4
None paid out of court	21	9.4
	234	100.0

In 18% of cases the total paid into court is not paid out. This is a curious phenomenon for which there was initially no apparent explanation. Broken down by creditors, those cases where no money was paid out of court represented 23.8% banks, 4.8% finance companies, 19.0% credit unions, 9.5% department stores, 19.0% retailers, 9.5% renters, 4.8% utilities, 4.8% individuals, and 4.8% of others. Of those cases where a percentage was paid out, 33.3% involved banks, 33.3% finance companies, 5.6% retailers, 5.6% department stores, 11.1% oil companies, 5.6% renters of goods and services, and 5.6% utilities.

Of all cases therefore where money was paid into the court but the total was not paid out of court 30.6% represented banks, 14.2% finance companies, 36.4% credit unions, 13.0% department stores, 19.2% retailers, 18.2% oil companies, 17.7% renters of goods and services, and 28.3% utilities, and 5.0% of individual cases, and 9.1% of others.

Thus banks and utilities have the highest percentage of claims where money is paid into court but not paid out of court.

One possible explanation for this curious phenomenon can be found in an analysis of the amounts paid into court which have not been paid out of court. Thus, of cases where no money was paid out of court, in 38% of these cases the money paid into court was under $50 and in over 60% of cases money paid into court was under $100; 19.0% represented $100 to $200 paid into court; 9.5% - $200 to $299; and 9.5% represented cases of over $1000. The majority of these cases may be explained by the fact that the lawyer has presumably not deemed it worthwhile to get such a small amount of money paid out of court.

A number of lawyers and creditors complained about the difficulties of getting money paid out of court, in particular referring to the requirements of service on the debtor where money is paid into court (Rule 471 (3), Alberta Rules of Court). A lawyer may be even more reluctant to attempt to get money paid out of court if he is not the only creditor and will have to share the small amount with other creditors.

Another explanation may be that a debtor, under the impact of the initial garnishment, may have settled the debt but not have attempted to get his/her money paid out of court.

A further explanation may be that it is difficult for a creditor to get money paid out of court without the assistance of a lawyer and the high percentage of bank cases where money has not

been paid out of court are those where employees of the bank have pursued a small claim in court. These employees, however, would usually not know the procedure for substitutional service and therefore the money may well remain in court.

The high percentage for utilities may be explained by arguing that the utility as we noted earlier may be concerned primarily with symbolic deterrence.

However, the significant percentage of cases where more than $100 was still remaining in court and the small number of cases where over $1000 is still in court is disquieting.

In addition, it might be submitted that these data indicate the cumbersome and costly nature of the process (service, etc.) for a one-shot creditor with a small debt. It also indicates that if the garnishment process functioned as it was supposed to do then it would be costly.

Part 2: The Costs of Recovery

Introduction

We were interested in obtaining data on the cost of garnishment and the legal process preceding garnishment. The data presented here represent only those costs of legal action and garnishment which a creditor may be able to charge the debtor with. They do not take into account the costs which the creditor will have to pay to his lawyer, nor do they take into account the public costs of subsidising the legal process. Although there is always the possibility in theory that a creditor could by contract insert a provision which made the debtor liable for all costs (solicitor and client costs), it would appear that in practice this is rarely used.*

In addition, it would appear from the court files that many lawyers do not make a proper provision for costs when filling out garnishee summons. We are concerned that these data on costs may be unreliable because they have not been fully documented in the court files. They may therefore under-represent the cost of garnishment action.

The following tables indicate in dollar bands the costs and the costs and interest (where applicable) before and after judgment.

Costs before judgment

	No.	%	Cum. Pct.
0	5	1	1
1 - 24	101	17	18
25 - 49	72	12	30
50 - 99	89	16	46
100 - 149	214	37	83
150 - 199	70	12	95
200 - 249	13	2	97
250 - 299	9	1	98
300 - 399	3	1	99
Over 400	6	1	100
	582	100	

54% of costs before judgment are over $100 and 37% of costs fall between 100 and $149. Prejudgment interest may add a significant percentage to claims. Thus, in 35% of cases costs and interest on judgment are over $150 whereas this is true for costs alone in only 17% of cases.

Cost and Interest Before Judgment

	No.	%	Cum. Pct.
0	5	1	1
1 - 24	96	16	17
25 - 49	68	12	29
50 - 99	78	12	42
100 - 149	132	23	65
150 - 199	64	11	76
200 - 249	33	5	82
250 - 299	25	4	86
300 - 399	33	6	92
400 - 499	19	3	95
500 - 599	7	1	96
600 - 699	11	2	98
Over 700	12	2	100
	583	100	

The following table indicates the costs after judgment.

	No.	%	Cum. Pct.
0	115	28	28
1 - 24	84	21	49
25 - 49	64	14	65
50 - 99	72	18	83
100 - 149	25	6	89
150 - 199	13	3	92
200 - 299	19	5	97
300 - 399	3	1	98
Over 400	10	2	100

These data are clearly unreliable since the estimated cost of one garnishee summons is $25. The significant number of cases where no provision for costs was made suggest possible poor practice on the part of those lawyers garnisheeing. These data therefore probably under-present the costs of garnishment after judgment.

It might also be suggested that if garnishment is used to coerce a settlement then the creditor may simply drop the costs after judgment.

It is interesting to note that we discovered that although only approximately 10% of cases from 0 - 499 have pre-judgment costs over $100, almost 47% of cases between 500 - 749 have costs over $100 and 70% of cases between 750 - 999 have costs over $100. For claims between 1000 and 1999 90% of cases have costs over $100.

The sharp increase in costs once a claim goes over $500 and $749 indicates the partial subsidy of the costs of legal process through the Small Claims Court and District Small Claims Court procedure.

The following table indicates the amount claimed in the actions broken down into dollar bands and cross-tabulated with the total costs and interest on the action broken down into dollar bands.

The Tables on the following pages indicate the average costs of action before and after judgment broken down by creditor type, and the average costs of action and interest before and after judgment broken down by creditor type.

- - - - DESCRIPTION OF SUBPOPULATIONS

Q13 COST OF ACTION TO JUDGMENT BROKEN DOWN BY
Q1 CREDITOR TYPE

CODE	VALUE LABEL	SUM	MEAN	STD DEV	VARIANCE		N
		59958.0000	104.0938	106.5361	11349.9355	(	576)
1.	BANK	10092.0000	126.1500	75.5429	5706.7367	(	80)
2.	FINANCE CO.	12819.0000	120.9340	86.4839	7479.4718	(	106)
3.	CREDIT UNION	4139.0000	133.5161	75.9144	5762.9914	(	31)
4.	DEPT STORE	4836.0000	84.8421	42.2610	1785.9925	(	57)
5.	RETAILER	7584.0000	94.8000	81.7151	6677.3519	(	80)
6.	TRUST COMPANY	330.0000	165.0000	7.0711	50.0000	(	2)
7.	GOVERNMENT	385.0000	64.1667	61.1046	3733.7667	(	6)
8.	OIL COMPANY	2180.0000	87.2000	39.8529	1588.2500	(	25)
9.	RENTER: G&S	4458.0000	117.3158	199.5198	39808.1679	(	38)
10.	RENTER: HOUSING	2048.0000	85.3333	56.1788	3156.0580	(	24)
11.	PROFESS'L SERVICES	1104.0000	64.9412	56.4208	3183.3088	(	17)
12.	UTILITIES	748.0000	49.8667	27.7176	768.2667	(	15)
13.	COLLECT'N AGENT	128.0000	64.0000	79.1960	6272.0000	(	2)
14.	INDIVIDUAL	5764.0000	110.8462	215.5338	46454.8386	(	52)
15.	OTHER	3343.0000	81.5366	69.0033	4761.4549	(	41)

These data indicate that the average costs of action to judgment are significantly higher for loan claims than for retail claims.

- - - D E S C R I P T I O N O F S U B P O P U L A T I O N S -
Q16 COSTS OF ACTION AFTER JUDGMENT BROKEN DOWN BY
Q1 CREDITOR TYPE

CODE	VALUE LABEL	SUM	MEAN	STD DEV	VARIANCE		N
		25960.0000	64.5771	125.0319	15632.9878	(	402)
1.	BANK	4262.0000	77.4909	114.4398	13096.4768	(	55)
2.	FINANCE CO.	8659.0000	98.3977	152.4491	23240.7251	(	88)
3.	CREDIT UNION	1689.0000	73.4348	126.4662	15993.7115	(	23)
4.	DEPT STORE	1217.0000	28.9762	35.1321	1234.2677	(	42)
5.	RETAILER	4258.0000	83.4902	151.7952	23041.7749	(	51)
6.	TRUST COMPANY	0.0	0.0	0.0	0.0	(	2)
7.	GOVERNMENT	283.0000	70.7500	83.9102	7040.9167	(	4)
8.	OIL COMPANY	762.0000	34.6364	54.7579	2998.4329	(	22)
9.	RENTER: G&S	817.0000	32.6800	36.5271	1334.2267	(	25)
10.	RENTER: HOUSING	578.0000	48.1667	72.3210	5230.3333	(	12)
11.	PROFESS'L SERVICES	228.0000	28.5000	28.2438	797.7143	(	8)
12.	UTILITIES	20.0000	3.3333	5.1640	26.6667	(	6)
13.	COLLECT'N AGENT	0.0	0.0	0.0	0.0	(	1)
14.	INDIVIDUAL	1685.0000	51.0606	172.2035	29654.0587	(	33)
15.	OTHER	1502.0000	50.0667	139.8773	19565.6506	(	30)

DESCRIPTION OF SUBPOPULATIONS

Q15 TOTAL: COST & INTEREST ON PREJUDGMT BROKEN DOWN BY
Q1 CREDITOR TYPE

CODE	VALUE LABEL	SUM	MEAN	STD DEV	VARIANCE		N
		92229.0000	160.9581	176.1505	31029.0087	(	573)
1.	BANK	16164.0000	202.0500	184.4678	34028.3772	(	80)
2.	FINANCE CO.	28912.0000	272.7547	223.3832	49900.0345	(	106)
3.	CREDIT UNION	7736.0000	249.5484	197.9579	39187.3226	(	31)
4.	DEPT STORE	6046.0000	107.9643	73.6231	5420.3623	(	56)
5.	RETAILER	10165.0000	127.0625	127.1542	16168.1859	(	80)
6.	TRUST COMPANY	505.0000	252.5000	17.6777	312.5000	(	2)
7.	GOVERNMENT	385.0000	64.1667	61.1046	3733.7667	(	6)
8.	OIL COMPANY	2383.0000	91.6538	46.8888	2198.5554	(	26)
9.	RENTER: G&S	5690.0000	153.7838	218.8154	47880.1742	(	37)
10.	RENTER: HOUSING	2058.0000	85.7500	56.4063	3181.6739	(	24)
11.	PROFESS'L SERVICES	1083.0000	67.6875	57.0856	3258.7625	(	16)
12.	UTILITIES	748.0000	49.8667	27.7176	768.2667	(	15)
13.	COLLECT'N AGENT	128.0000	64.0000	79.1960	6272.0000	(	2)
14.	INDIVIDUAL	6506.0000	125.1154	198.3012	39323.3590	(	52)
15.	OTHER	3720.0000	93.0000	79.2688	6283.5385	(	40)

Note the extent to which the interest adds to the costs in the case of loan credit, particularly for finance company loans.

- - - D E S C R I P T I O N O F S U B P O P U L A T I O N S - - - - - - - - - - - - - - - - - -

Q18 TOTAL: COST & INTEREST AFTER JUDGMT BROKEN DOWN BY
Q1 CREDITOR TYPE

CODE	VALUE LABEL	SUM	MEAN	STD DEV	VARIANCE		N
		25354.0000	63.2269	119.3319	14239.8809	(	401)
1.	BANK	4262.0000	77.4909	114.4398	13096.4768	(	55)
2.	FINANCE CO.	8048.0000	92.5057	131.3267	17246.6947	(	87)
3.	CREDIT UNION	1689.0000	73.4348	126.4662	15993.7115	(	23)
4.	DEPT STORE	1217.0000	28.9762	35.1321	1234.2677	(	42)
5.	RETAILER	4258.0000	83.4902	151.7952	23041.7749	(	51)
6.	TRUST COMPANY	0.0	0.0	0.0	0.0	(	2)
7.	GOVERNMENT	283.0000	70.7500	83.9102	7040.9167	(	4)
8.	OIL COMPANY	762.0000	34.6364	54.7579	2998.4329	(	22)
9.	RENTER: G&S	822.0000	32.8800	36.3540	1321.6100	(	25)
10.	RENTER: HOUSING	578.0000	48.1667	72.3210	5230.3333	(	12)
11.	PROFESS'L SERVICES	228.0000	28.5000	28.2438	797.7143	(	8)
12.	UTILITIES	20.0000	3.3333	5.1640	26.6667	(	6)
13.	COLLECT'N AGENT	0.0	0.0	0.0	0.0	(	1)
14.	INDIVIDUAL	1685.0000	51.0606	172.2035	29654.0587	(	33)
15.	OTHER	1502.0000	50.0667	139.8773	19565.6506	(	30)

1. Relationship of Costs on Action to Amount Paid into Court

An important discovery was that in over two thirds of cases, the total costs and interest on the action exceeded the amount paid into court.

In the 189 cases where the amount paid into court exceeded the costs and interest on the action, the following table shows the percentage which the costs and interest represented.

%	Number	%	Cum. Pct.
0 - .09	38		
0.10 - 0.19	39		
0.20 - 0.29	36		
0.30 - 0.39	29		
0.40 - 0.49	15		
0.50 - 0.59	9		
0.60 - 0.69	7		
0.70 - 0.79	10		
0.80 - 0.89	3		
0.90 - 0.99	3		
	189		

The following table indicate the total costs and interest before and after judgment stated as a percentage of the amount claimed in the action.

Costs and Interest Before and After Judgment stated as a Percentage of the Debt Claimed

0	38	6	6
0.01 - 0.49	97	16	22
0.5 - 0.99	99	16	38
0.10 - 0.149	102	18	56
0.15 - 0.19	79	13	69
0.20 - 0.29	88	14	83
0.30 - 0.39	52	8	91
0.40 - 0.49	17	3	94
0.50 - 0.74	19	3	97
0.75 - 0.99	5	1	98
Over 100%	14	2	100
	622	100	100

Thus in 38% of cases costs were under 10% of the debt claimed, in 62% they were over 10%, in 44% of cases over 15% of the debt and in 31% of cases over 20% of the debt.

We were interested in further analyzing these data broken down by creditor type and the following table represents this analysis.

Costs of recovery: conclusions

1. These data indicate that costs may add a significant amount to a debt (68% over $100) both before and after judgment.

2. They indicate also that as an absolute amount, costs are significantly higher for suing on amounts over $1,000 and that interest on loans adds significantly to the amount owed.

3. The subsidisation of court costs by the Small Claims process means that costs are significantly less where this process is taken advantage of.

4. Point 3 means that in general the costs for suing on loans over $1,000 are significantly higher than for small retail credit claims. In addition, since the probable costs of one garnishment are $25 approximately, and since loan creditors will have to use a number of garnishments if they wish to liquidate the debt through the court process, then this also adds to their cost.

5. A creditor with a small claim may therefore be able to keep costs down, at least until the first garnishment.

IV. Other Remedies Being Pursued by the Creditor in Addition to Garnishment

1. Seizure and Sale of Debtors' Assets

It is argued by many commentators that wage garnishment is the most popular and effective creditors' remedy against a consumer, especially where the debt is for a small amount (under $1,000). We were interested in obtaining data on the number of cases where a creditor pursued other remedies in addition to garnishment. We therefore took a random sample of 100 from the 622 court files and checked with the Sheriff's Office for any action taken against the debtor's personal property in the principal action.

We also gathered data in these 100 cases on any repossessions under conditional sales or chattel mortgages and documented any other writs of execution filed by other creditors within one year of judgment in the principal action.

The following table indicates whether any seizure action was initiated on the writ of execution.

Action taken on writ of execution.

No action taken	63	63.0
Action taken	12	12.0
No writ filed	25	25.0
	100	100.0

The most surprising data were that in 25.0% of cases, no writ of execution was filed. Two explanations are possible for this. Firstly a creditor does not necessarily need to have a writ filed against a debtor in order to get money paid out of court on a garnishee. He may do so by a judge's order. Second the creditor may have little expectation of recovering anything through seizure of property; especially if the

garnishment is being used primarily as a lever to coerce settlement. Filing a writ of execution is a relatively simple task and the significantly high percentage of cases where one was not filed suggests a lack of interest by creditors in seizing personal property under a general writ of execution. This hypothesis appears to be substantiated both by the following table which shows that in 88% of cases no action was taken on the writ and also by our creditors interviews.

Action taken on writ of execution

Actual seizure	6	6.0
Seizure instructed	6	6.0
No action taken	88	88.0
	100	100.0

Thus in 6.0% of cases seizure was instructed but not actually carried out and in 6.0% of cases seizure was actually carried out. In no case was there any record of a sale of the debtor's goods taking place. Of the 6 cases where items were seized, 3 were automobiles, 1 furniture, 1 a winch and 1 shares.

(1) Repossession under conditional sale and chattel mortgage.

In 9 (or 9.0% of) cases (of the 100) the debtor was subject to the possibility of repossession and sale because of seizure under a conditional sale. These were all at the instance of creditors other than the one in the principal action. 8 of the 9 cases concerned the repossession of automobiles.

In addition, (out of the 100), 8 creditors repossessed goods under chattel mortgages, 7 of these being other creditors than the creditor who was garnisheeing. Of those 8 cases, 5 represented seizure of an automobile, 1 household appliance, and 2 were mobile homes.

As part of our study of the extent to which debtors were "repeat players," we also gathered data on the number and amount of other writs of execution filed within one year of judgment of the principal action.

Writs of Execution Filed Within One Year of Judgment in Principal Action

0	61	61.0
1	23	23.0
2	6	6.0
3	5	5.0
4	3	3.0
5	1	1.0
6	1	1.0
	100	100

Amount of Debts Claimed in Other Writs of Execution

0 - 499	11	29.0
500 - 999	2	5.0
1,000 - 1,999	4	11.0
2,000 - 2,999	3	8.0
3,000 - 3,999	3	8.0
4,000 - 4,999	4	10.0
5,000 - 7,499	3	8.0
7,500 - 9,999	5	12.0
Over 1,000	3	8.0

These data indicate that the majority of debtors have no other writs against them but that there is a significant minority (16%) with 2 or more writs against their property.

Finally, we gathered data on the number of cases where the writ of execution was still subsisting against the debtors property. In 90.5% of cases where a writ had been filed, it was no longer subsisting against the debtor.

Of those cases where no writ was filed, the debt sued for was in 47.5% of the cases under $500, 70% under $1,000 and 90% under $2,000. In those cases where no action was taken on the writ 27% were for claims under $500, 52% under $1,000, 86.3% under $2,000. In cases where action was taken on the writ 33.3% were for debts under $500, 49% under $1,000, 57.3% under $2,000, 65.6% under $3,000. 33% of cases where action was taken were therefore for debts over $3,000. This compares with 4.0% for cases where no no writ was filed and 6.4% for cases where no action was taken.

We also cross-tabulated the action taken on the writ of execution with the amount paid into court on garnishment. In those cases where no action was taken, 45.8% of cases resulted in no money being paid into court, 6.8% $1 - $99, 15.3% $100 - $199, 15.3% $200 - $499, 10.2% $500 - $749, 1.7% $750 - $999 and 5.1% over $1,000.

In those cases where action was taken on the writ, 66.7% resulted in no money being paid into court, 16.7% $1 - $99, 8.3% $400 - $499, and 8.3% $800 - $899.

Where no writ of execution was filed, 55% represented no money paid into court, 11% $1 - $99, 9% $100 - $199, 12% $200 - $499, 11.8% $500 - $999, 5.9% over $1,000.

The breakdown by creditor type of cases where action was taken on the writ of execution was as follows:

1 (Bank, Finance Company, Department Store, Renter Goods and Services, Professional Services)

2 Credit Union, Individual

3 Retailer

Summary

1. Creditors make little use of their power to seize personal property under a writ of execution where they are also garnisheeing and if they do attempt seizure will do so only where the debtor owns individual items of a relatively large value, for example, automobiles. This is also reflected in seizures under chattel mortgages and conditional sales.

2. The fact that no sale was carried out of goods seized suggests either that the debtor validly objected to seizure or that he came to a settlement with his creditor. Seizure may also function therefore as a lever to coerce settlement.

3. These data do not include cases of voluntary repossession where a debtor voluntarily gives up the secured item. We do not have statistics on this phenomenon.

2. Appointment for Examination in Aid of Execution

This procedure, which permits a creditor to examine the debtor as to his means and circumstances, was applied for in only 6.0% of all cases.

The amounts sued for in those 37 cases were: $100 - $499, 13.5%; $500 - $999, 21.6%; $1,000 - $1,999, 21.6%; $2,000 - $2,999, 14.5%; $3,000 - $4,999, 21.6%; $6,000 - $6,999, 2.7%, and over $10,000, 5.4%.

Thus over 62% of cases were for amounts over $1,000 and 29.8% were for debts over $3,000.

3. Applications under Rules 481(1), 484 and 485 of the Alberta Rules of Court

(1) Rule 481(1)

This procedure allows any person claiming to be interested in the money attached to apply to court to set aside the garnishee summons or for an order for the speedy determination of any questions in the action or in the garnishee proceedings or for such other order as may be just.

Our data indicated that there were no applications under this section.

(2) Rule 484

This rule applies to the situation where a husband and wife are both in receipt of wages and salary. It permits a creditor to apply to court to have the exemption reduced which one or both of them would be otherwise entitled to under Rule 483.

There were no applications under this section.

(3) Rule 485

This rule sets out the special procedure to be used against absconding debtors, and applies to debts of $200 or upwards.

There were no applications under this section.

V. Other Consequences for Debtors

1. Bankruptcy

Only 7 or 1.2% of debtors went bankrupt according to the court files. When we checked with the Sheriff's files on 100 debtors we discovered an additional bankrupt. We suspect therefore that our percentage is an underestimate. However, it would appear that very few debtors went bankrupt.

When we cross-tabulated bankruptcy with the nature of the debt, we discovered the intriguing fact that 4 or 57.1% of the debtors who went bankrupt were sued for finance company loans, 1 for a bank loan, and 2 for retail credit.

2. Orderly Payment of Debts

Only 4 or 0.7% of debtors went on the Orderly Payment of Debts plan under Part X of the Bankruptcy Act. Again we are concerned about the reliability of this figure and think that it may underestimate the number.

Two of these debtors were sued for finance company loans, 1 by a department store and one by a renter of goods and services.

VI. Court Where Action Brought

We were interested in analysing the use of differing courts by creditors. In Alberta a creditor will usually have a choice between the District Court for claims over $1,000, the District Court (Small Claims) procedure and the Small Claims Court for claims below that amount. The Small Claims Court Act

increased the jurisdiction of the small claims court from $500 to $1,000 effective January 1st, 1977. 65% of our cases began before 1977 and we note below the change in pattern of court use between File Survey #1 and File Survey #2.

The following table indicates the courts where the action was brought.

District	381	61.3
Supreme Court	14	2.3
Small Claims	44	7.1
District Small Claims	164	26.4
Missing data	19	3.1
	622	100.0

We also obtained data in File Survey #2 on the use of differing courts and the following table represents these data.

File Survey #2 was conducted on files from November, 1978 to approximately the end of January, 1979.

File Survey #2 - Court Where Action Brought

District Court	110	62.1
Supreme Court	3	1.7
Small Claims	39	22.0
District Small Claims	22	12.4
Missing data	3	1.7
	177	100.0

There is a sharp contrast between these data concerning the use of the Small Claims court procedure. Although only 7.1% of creditors were using small claims in File Survey #1, 22% are using the procedure in File Survey #2 and only 12.4% are using the District Court (Small Claims) procedure. Those creditors who appeared to be making heavier use of the small claims procedure were banks, finance companies and department stores.

Percentage of Selected Creditors Suits in Small Claims Court

	File Survey #1	File Survey #2
Finance Companies	9.3	39.4
Department Store	3.5	52.0
Retailer	7.2	12.5
Bank	2.5	17.6
Credit Union	0.0	0.0
Oil Company	3.7	0.0
Individual	13.0	20.0
Professional Services	6.7	0.0
Housing Rental	4.2	16.7

Distribution of creditors suit in different courts: File Summary #1

In File Survey #1, 75.9% of Bank Claims brought in District Court, 6.3% Supreme Court, 2.5% Small Claims, 15.2% District Small Claims.

80.4% of Finance Company claims brought in District Court, 9.3% Small Claims, 10.3% District Small Claims.

57.9% Department Store claims brought in District Court, 1.8% Supreme Court, 3.5% Small Claims, 36.8% District Small Claims.

62.7% Retail Claims District Court, 7.2% Small Claims, 30.1% District Small Claims.

Oil Company - 59.3% District, 3.7% Small Claims, 37% District Small Claims.

Professional Services - 47.4% District Court, 5.3% Supreme, 0.0% Small Claims, 47.4% District Small Claims.

Utilities - 33.3% District, 6.7% Small Claims, 60.0% District Small Claims.

Individual - 33.3% District, 11.1% Supreme, 13.0% Small Claims, 42.6% District Small Claims.

The following table indicates a similar analysis in File Survey #2.

	District Court	Supreme Court	Small Claims	District Court Small Claims
Bank	79.4	0.0	17.6	2.9
Finance Company	54.5	3.0	39.4	3.0
Credit Union	100.0	0.0	0.0	0.0
Department Store	40.0	0.0	52.0	8.0
Retailer	75.0	0.0	12.5	12.5
Trust Company	100.0	0.0	0.0	0.0
Government	75.0	0.0	0.0	25.0
Oil Company	100.0	0.0	0.0	0.0
Renter G. & S.	50.0	0.0	0.0	50.0
Professional Services	0.0	12.5	0.0	87.5
Utilities	71.4	0.0	0.0	28.6
Collection Agent	0.0	0.0	100.0	0.0
Individual	46.7	6.7	20.0	26.7

The advantage to the creditor of using the small claims procedure is of course that he can process a large number of claims at one time in a bureaucratic manner. In addition, the appearance in court can be done by an employee of the company without the intervention of a lawyer. The rise in the use of the Small Claims court may be partly explained as we have noted by the raising of its jurisdiction to $1,000. A number of creditors appear however to still use the District Court Small Claims procedure. One reason for this, which was stated by one creditor, is that one does not need to personally appear in court and prove one's claim if the debtor does not file a defence. One may simply get a default judgment over the counter at the Clerk of the Court's office.

The Small Claims Court procedure is heavily subsidised by government. Commentators in both Canada and the U.S. have criticized its deformation from a "people's court" into a debt collection agency. However, two recent studies (Project Omega: 1977; Spevakow, 1978) in Alberta argue that it serves a useful purpose since it permits an individual defendant to "fight his case through a cheap and non-complex procedure." However, this argument is based on the assumption that individual defendants will actually appear in court. Our debtors' interviews suggest not, and it is well known that, for a number of reasons, very few individual debtor defendants defend actions for debt. Any reforms aimed at making the Small Claims Court more "efficient" and rational will therefore tend to lead to greater use by creditors whose collection procedures are "bureaucratically rational", and who are always searching for methods to reduce the cost of collection.

The following table indicates the nature of judgment in the cases in File Survey #1.

Default	358	57.6
Consent	13	2.1
Disputed	30	4.8
Other	59	9.5
No Data	162	26.0
	622	100.0

The overwhelming majority of "no data" cases represent small claims court actions. The court files do not record the nature of the judgment for small claims. It may confidently be asserted that in most small debt claims, the debtor will not appear thus raising the percentage of default judgments to a level similar to that encountered in other studies. (Based partly on personal observation of the author.)

The Small Claims court procedure thus allows the repeat player creditor to reduce his costs of collection. Repeat players are also able to build up relationships with court personnel so that they can for example help them to process a large number of claims. Court personnel will be able to help employees of repeat players fill out garnishment forms after judgment. One shotter creditors do not have this advantage and it is interesting to note that in the Information Sheet for Small Claims litigants, under the heading "Garnishee Process" it is stated "This is a complicated matter and a Solicitor should be consulted." This may clearly discourage the one shotter creditor from using the process.

VII. Time

We collected data on the time (computed in days) of the actions from statement of claim to judgment, from judgment to first garnishee summons and from the first garnishee to the last garnishee on record.

Statement of Claim to Judgment

	No.	%	Cum. Pct.
0 - 29	82	18	18
30 - 59	151	32	50
60 - 89	87	18	68
90 - 119	39	8	76
120 - 149	31	7	83
150 - 189	15	3	86
190 - 219	14	3	89
220 - 249	10	2	91
250 - 299	13	3	94
300 - 399	17	3	97
over 400	13	3	100
	482	100	

Judgment to first garnishee summons

	No.	%	Cum. Pct.
0 - 9	99	18	18
10 - 19	72	13	31
20 - 39	95	17	48
40 - 59	65	11	59
60 - 89	42	8	67
90 - 119	39	7	74
120 - 149	18	3	77
150 - 199	29	65	82
200 - 249	20	4	86
250 - 299	16	3	89
300 - 399	14	2	91
400 - 499	145	3	94
500 - 999	21	4	98
Over 1000	13	2	100
	557		

First garnishee to last garnishee

	No.	%	Cum. Pct.
0	75	19	19
1 - 9	15	4	23
10 - 19	28	7	30
20 - 29	28	7	37
30 - 59	40	11	48
60 - 89	30	7	55
90 - 119	29	7	63
120 - 149	20	5	68
150 - 199	20	5	73
200 - 249	29	6	80
250 - 299	17	4	84
300 - 399	20	5	89
400 - 499	9	3	92
500 - 749	16	4	96
750 - 999	6	1	97
Over 1000	11	3	100
	391		

In 50% of cases documented, the time from statement of claim to judgment was over 60 days, and in 24% of cases over 120 days. In 18% of cases the time was under 30 days.

In 31% of cases garnishment occurred within 19 days of judgment and in 48% of cases within 39 days of judgment.

In 26% of cases however garnishment did not occur until at least 120 days after judgment and in 11% of cases, over 300 days from judgment.

The following table indicates the time from the first to the last activity on the file.

First to last Activity on file

	No.	%	Cum. Pct.
0 - 29	25	4	4
30 - 59	38	6	10
60 - 99	62	11	21
100 - 149	75	12	33
150 - 199	56	10	43
200 - 249	45	7	50
250 - 299	47	8	58
300 - 349	43	7	65
350 - 399	30	5	70
400 - 499	55	9	79
500 - 599	31	5	84
600 - 699	20	3	87
700 - 799	15	3	90
800 - 899	11	2	92
900 - 999	9	2	94
1000 - 1499	22	3	97
1500 - 1999	9	2	99
over 2000	7	1	100
	600	100	

Thus 33% of cases took up to approximately 5 months, 50% of cases over 8 months, 30% over 13 months and 10% over 2 years. The largest cluster appears between 3 months and 6 months.

File Survey. Conclusions. (See also conclusions at pp.)

1. One conclusion is clear. In the majority of cases garnishment does not result in an orderly repayment of a debt over time through the court process. A number of factors suggest that it may be primarily used to coerce a settlement. Firstly, repeat players would presumably not continue to use it if its sole purpose was to get money paid into court, since it clearly does not do that in 60% of cases and in 77.4% of cases where there was one wage garnishment, no money was paid into court.

   The few cases where there are more than two garnishments suggest that it is a powerful lever on the debtor to do something immediately about the debt, whether it is to make a settlement, leave a job (Jablonski:) or even skip. (For development of the conclusion see Employment and wage garnishment pp. .)

2. However, notwithstanding these general comments, garnishment may be more effective for certain categories of claims. Thus, a number of facts suggest that garnishment may be effective for small claims between 100 - 799 (approximately).

   Firstly, the recovery rate appears to be higher as an absolute amount than in larger claims. Second, the costs of action are significantly less for claims under 500 and even under 749, through the subsidisation of the Small Claims Court process. (The subsidy now reaches to debt claims up to $1,000.) Third, fewer garnishments are needed for the small amounts being sued for.

   It is not surprising therefore that for these reasons among others retail creditors deemed wage garnishment to be their most essential collection tool.

3. Garnishment would not appear to be a particularly cost/effective tool for liquidating a large loan debt over $1,500. Although in a significant minority of cases (12.7, and 13.3%) banks and finance companies do recover over $1,000 through the garnishment process, it is a costly process both before and after judgment.

   The high use of garnishment by finance companies relative to their share of the market suggests that an important purpose of garnishment may be to coerce a debtor into a settlement. The high cost of legal process for recovering a finance company loan and the high risks with whom they deal, may account for the fact that finance companies appeared to have the most organised and cost conscious collection system.

4. An imperative of the garnishment process is cost. This is documented by the few cases of prejudgment garnishment, the rare use of examinations in aid of execution, the total absence of applications under rules 481(1), 484 and 485 and the trend towards use of the Small Claims Court by repeat player creditors.

5. The mean average return on money paid into court for the repeat player creditor, along with the settlements which he can make with the debtor after garnishment, (see Creditors interview pp.) suggest that garnishment is for the repeat player, more effective than indicated by the court file statistics. However for the one shot creditor, the process may be costly and ineffective.

Thus an analysis of the individual claims suggests that in the majority of cases where an individual was a plaintiff suing for a small claim under $500, no money was paid into court.

In addition, given the fact the Small Claims court manual discourages individuals from using garnishment after obtaining a small claim judgment then the one shotter individual is most likely to be frustrated.

Debtors' Interviews

Introduction

These interviews with 30 garnisheed debtors were conducted from January to March, 1979 in Edmonton and were sampled from two separate court file surveys. 5 debtors came from the court file survey #1 and 25 from court file survey #2. The latter sample represents a response rate of approximately 18% if we include all debtors whom we attempted to contact and a 40% response rate, in terms of debtors contacted. The details of the sample are discussed in Appendix A.

We are, of course, aware of two criticisms that might made of our sample, that it is biased because of the debtors we did not contact and that it is too small a sample from which to draw inferences of statistical validity.

We decided to stop interviewing after we had obtained 30 interviews because we felt that we had established the different typologies of debtors (see: Towards a Typology of the Garnisheed Debtor). If we had continued interviewing we felt that we would have been repeating earlier interviews and reinforcing any already existing biases in the study. The interviews which we did conduct were in depth and detailed and lasted approximately two hours.

In addition, it is important to stress that these debtors' interviews were only part of the study and we were able to cross-reference our debtors' findings with those from the employers, creditors and the file survey. In addition, we were able to compare basic demographic characteristics, number of debts, and actions instituted against those we interviewed with statistics on those whom we were unable to interview and no significant differences appeared between the groups. We were also able to compare the demographic data on those interviewed with a random sample of 80 debtors who were on Orderly Payments of Debts under Part X of the Federal Bankruptcy Act.

Another important reference was the existing studies of debtors in default and debtors who had been garnisheed. In

particular we refer repeatedly to Puckett and Caplovitz. The former was particularly useful because it was a study of wage garnishment practices in Ontario. We learned of this research after we had begun our study. His study focused on interviews with 110 garnisheed debtors. We were able to check our findings with his. Of special importance is that both our study and Puckett's used a number of Caplovitz's questions and categories on central issues of the study, for example, the reasons for the debtor's default. We are thus comparing responses by debtors to exactly the same question. The fact that all studies obtained similar responses to such questions suggests that there has developed a relatively powerful body of data on these central issues.

For these reasons, we think that our data and especially our inferences should not be underestimated. There is also one final point to consider. Debtors are the only individuals who experience the debt collection process from beginning to end. Other individuals may be able to tell us what they think the garnishment process is like, but the debtors are after all the only individuals who experience what it is like to have one's wages garnisheed. It is not something which individuals who have experienced it are liable to want to talk about. (It is not surprising that it is difficult to obtain a sample of debtors.) Public knowledge of the process is therefore liable to be dependent on other sources for their perception of the reality of debt collection and garnishment. To that extent the public vision may be distorted, and only through talking to the individuals involved and publicising their perceptions and problems will we be able to attempt to obtain a balanced vision of the reality of the process.

I Demographic Characteristics of Debtors

1. Sex

76% of debtors were male, 23% female. The court file survey showed that 91.5% of debtors were male and 8.5% female. These figures may be compared with Trebilcock's study which indicated that 84% of debtors were male and 15.5% female, and the Alberta Orderly Payment of Debts study which indicates that 83.3% of debtors were male.

The Edmonton Area Survey conducted by the population research laboratory in the Department of Sociology at the University of Alberta showed the male-female proportion in the Edmonton population to be 47% male to 52% female. There is therefore a greater proportion of male debtors (c.f. Curran, The Legal Needs of the Public, p. 109).

2. Income

Table 1 shows the total household income of debtors for 1978. These data may be compared with the results of the Edmonton area survey. Their statistics for total household income are illustrated in Table 2.

TOTAL HOUSEHOLD INCOME 1978 - DEBTORS INTERVIEWED

Category Label		Percentage
$ 5,000 - 7,499	1	3.3
7,500 - 9,999	1	3.3
10,000 - 12,499	1	3.3
12,500 - 14,999	9	30.0
15,000 - 17,499	3	10.0
17,500 - 19,999	4	13.3
20,000 - 22,499	5	16.7
22,500 - 24,999	1	3.3
27,500 - 29,999	3	10.0
Over 29,999	2	6.6
	100	100.0

EDMONTON AREA SURVEY -
TOTAL HOUSEHOLD INCOME OF RESPONDENTS 1978

Category Label	Absolute Frequency	Percentage
No Response	57	13.0
Under $1,999	2	0.4
$ 2,000 - 3,999	8	0.18
$ 4,000 - 5,999	14	3.2
$ 6,000 - 7,999	24	5.5
$ 8,000 - 9,999	20	4.6
$10,000 - 11,999	19	4.3
$12,000 - 17,499	56	12.8
$17,500 - 22,499	64	14.6
$22,500 - 29,999	65	14.8
$30,000 - 34,999	78	17.8
Don't Know	33	7.5

The debtors in our study have a slightly lower than average household income with the largest cluster between 12,500 to 14,999. The majority of debtors are therefore in the middle to lower middle income groups with minorities in the low income and upper income groups. These findings may be compared to the findings of Caplovitz and Jacob who found that those in the lower middle range of income are most likely to default. The data in the latter study also confirmed our data that few of the delinquents had poverty level incomes. Trebilcock's data are a little unclear on this issue but appear to show a lower than average income as do Puckett's. This last study also suggests that although the majority of debtors garnisheed are in the lower than average income bracket, few are at the poverty line, at least as officially established.

(1) Income related to number of dependents

We cross-tabulated the income of the debtors to the number of their dependents.

The results are shown in Table . The table shows that the overwhelming majority of those earning between $12,500 and $20,000 had two or more dependents. This is therefore an additional burden on their lower than average income. Only one debtor, however, appear to fall below the poverty line as officially defined by Statistics Canada.

3. Marital Status

65.5% of debtors were married, 10.3% were living common law, 13.8% were divorced, 6.9% were single and 3.4% were widowed. The Edmonton area survey showed that 58% of respondents were married, 21% were single, 5.9% were divorced, 3.6% were living common law and 6.6% were widowed. The sample of debtors therefore had a significantly higher proportion of individuals who were divorced or living common law and a significantly lower number of single individuals.

4. Age

51% of debtors were 33 or under, 27% were 34 to 40, 18% were 41 to 50, 3% were 50 or over. 72% of the sample were 30 or over. It is significant to note also that 23% of debtors were between 30 and 33 and that 26% were between 21 and 27.

The Edmonton area survey showed that 45% of respondents were 33 or under, 12% were 34 to 40, 14% were 41 to 50, and 29% were 50 or over. The sample of debtors are therefore younger than the general population.

Statistics Canada, in its 1970 survey of consumer finances, indicated that families in the 25-34 age group owed more in terms of other personal debt and mortgage debt on homes than any other group and that families with heads in the 24 and under age group had the highest average consumer debt. Our data therefore show the relationship between the period of heaviest credit use in the life of an individual and debt delinquency.

We cross-tabulated the age of the debtor with the number of their dependents. This provided interesting data. Thus 50% of debtors under 24 had no dependents (three) and 50% had one, three and four dependents respectively. Six out of seven debtors

aged between 30 and 33 had two or more dependents and four out of this group had three or more dependents. Of two debtors who were 27, one had two dependents and one had no dependents.

These data therefore confirm those previous studies (Jacob and Caplovitz) which concluded both that default debtors are younger than the general population and that debt delinquency "occurs most frequently in the early years of career building and family raising". (Jacob, p. 50). The critical years for debt overcommitment are 21 to 33 with 30 to 33 being a critical time for a family and under 25 being a critical time for an individual. There is a gradual sloping off to 40 and a sharp decline over the age of 50.

5. Occupation

60% of debtors were skilled or unskilled blue collar workers, 13.3% were clerical workers and 20% were executive or managerial. The overwhelming majority of this last group were salesmen. These figures should be compared with the following data from court file #2, The Edmonton Area Survey and the Orderly Payment of Debts Survey.

PRINCIPAL DEBTOR'S OCCUPATION - FILE SURVEY #2

Category Label		Percentage	Cumulative Percentage
Unskilled	54	31.0	31.0
Skilled	51	29.3	60.3
Salesman	24	13.8	74.1
Other	13	7.5	81.6
Combination	12	6.9	88.5
Clerical	11	6.3	94.8
Supervisory	5	2.9	97.7
Exec-Managerial	2	1.1	98.9
Homemaker	2	1.1	100.0

Orderly Payment of Debts: Client Profile

CATEGORY LABEL	ABSOLUTE FREQ	RELATIVE FREQ (PCT)	ADJUSTED FREQ (PCT)	CUM FREQ (PCT)
Prof'l - Scientific	1	1.2	1.3	1.3
Managerial	3	3.7	3.8	5.1
Clerical	12	15.0	15.4	20.5
Sales	5	6.3	6.4	26.9
Teach'g-Relig'n-So S	1	1.2	1.3	28.2
Skilled Trades	21	26.2	26.9	55.1
Unskilled Trades	34	42.5	43.6	98.7
Artistic-Recrea'n	1	1.2	1.3	100.0
	2	2.5	MISSING	100.0
	80	100.0	100.0	

EDMONTON AREA SURVEY - OCCUPATION OF RESPONDENT

Category Label		Percentage	Cumulative Percentage
No Response	10	2.3	2.3
Mnrl Admin	28	6.4	8.6
Sci Eng Math	20	4.5	13.2
Soc Sci	9	2.0	15.2
Teaching	22	5.0	20.2
Medicine Health	33	7.5	27.7
Art Lit Rec	9	2.0	29.8
Clerical	98	21.1	50.9
Sales	30	6.8	57.7
Service	45	10.2	68.0
Farm Hort Anml Husb	6	1.4	69.3
Forestry	3	0.7	70.0
Mining Oil Gas	1	0.2	70.2
Processing	9	2.0	72.3
Machining	13	2.0	75.2
Fab Assemb Rep	6	1.4	76.6
Construction	32	7.3	87.9
Transpt Eq Oprtng	18	4.1	88.0
Materials Handling	10	2.3	90.2
Other Crafts Eq Op	7	1.6	91.8
Not Clssfd	3	0.7	92.5
NA	33	7.5	100.0

Two points may be noted from these data. Over 70% of debtors have lower than average occupational status and it may be presumed little opportunities for upward mobility. Their positions and income may be unstable.

Those involved in sales were over-represented in our sample when compared with the general population. The Edmonton area survey showed only 6.8% of individuals to be involved in sales. The clerical classification was under-represented in our sample, the Edmonton area survey showing that 21% of individuals were involved in clerical occupations. It also appears from the Orderly Payment of Debts statistics that although the skilled and unskilled trades are similar percentages to the file survey, there is a higher percentage of clerical occupations on Orderly Payment of Debts. This may suggest that these latter individuals may have stable but lower paid jobs and/or that they are being supported by another person.

The Edmonton area survey showed that blue collar occupations accounted for approximately 21% of occupations. This shows the large over-representation of this group in our sample.

6. Education

60% of our sample had not completed high school, 23.3% had completed high school and 16% had gone on to further education after high school. These data differ from both Trebilcock's and Puckett's data, which showed that over 60% and 76% respectively of those interviewed had not completed high school. Our figures are similar to those obtained by Caplovitz who indicated that 39% of default debtors had graduated from high school.

The Edmonton area survey showed that 32% of individuals had not completed high school and 68% had graduated from high school.

7. Residence

63.4% of debtors rented accommodation and 33.3% owned a house and 3.3% owned a condominium. The Edmonton area survey shows that 51.8% of individuals owned their homes and 47.5% rented. Almost 2/3 of the debtors interviewed therefore do not own one of the most important appreciating assets in Alberta, a home or apartment. Thus, the home exemption under the Exemptions

Act will be irrelevant to 2/3 of those debtors.

Puckett's study indicated that 74% of debtors rented accommodation.

We also obtained data on residential mobility. 14.5% had not moved residence in the past five years, 42.9% had changed addresses once or twice, 28.6% had moved three to four times, 10.7% had moved five to six times and 3.6% had moved six or more times. Thus 85.7% of debtors had moved at least once in the past five years and 42.9% had moved three times. These figures suggest a slightly higher mobility than indicated in previous studies. Thus Trebilcock noted that 69.9% of respondents had moved homes at least once during the previous five years.

II Consumption Patterns and Attitudes

1. Attitudes Towards Credit

None of the debtors thought that the use of credit cards was a good thing. 46.7% thought that they were good with qualifications, for example, for travelling. However, almost all of this group stressed that one had to be careful in their use. 16.7% thought that the use of credit cards was bad with qualifications and 30% thought that they were bad. 3.3% were uncertain, and 3.3% did not respond.

(a) Credit Card Use

30.4% of debtors had never used credit cards in the past year, 30.4% seldom used them, 8.7% used them somewhat often and 30.4% used them frequently. Thus, over 60% of debtors either never or seldom used credit cards.

Of those individuals using credit cards, 50% had used two credit cards, 31.3% had used one, 12.5% had used three, and 6.3% had used four.

We asked about the payment habits of those who used credit cards. 35.7% stated that they paid the full balance when due, 28.6% stated a combination of the full amount and less than the full amount, 14.3% stated greater than the minimum

monthly balance but less than the full amount and 21.4% stated the minimum amount every month. These figures may be compared with the figures of a well known credit card company. Over 50% of individuals using this card pay off the full balance every month.

(b) Credit Use

Of those debtors responding, 30% had bought one item on credit in the previous year, 20% had bought two, 6.7% had bought three, 6.7% had bought four and 36.7% had bought no goods on credit. Buying on credit was defined as including the use of a credit card where one did not pay off the balance owing for the goods when the balance was due.

2. Debt Pattern Related to Income

We asked a number of questions concerning past debt pattern, present debt pattern and the debtors' opinion of their future. We asked initially "During the past twelve months, what has been the pattern of your debts in relation to your ability to pay these debts?" 32.9% thought their debts had built up at a faster rate than their ability to pay, 32.1% thought they had built up at the same rate and 32.1% thought that they had built up at a slower rate. 3.6% did not know.

In addition, we asked the important question, "Considering basic needs, do you and your dependants find it possible to satisfy these needs on the basis of your present income?" (Basic needs were defined as food - shelter - household operation - clothing - transportation - personal care - babysitting - medical prescriptions - recreational and entertainment needs.) 66.7% stated yes, and 33.3% stated no. Of that 33.3%, 16.7% stated yes, and 33.3% stated no. Of that 33.3%, 16.7% stated that they supplemented their income with credit, 10% stated that they supplemented it with savings and 3.3% didn't know.

We also cross-tabulated the household income of the debtors by the number of dependants by the amount that the debtors had to pay monthly on necessary expenditures. These data suggest

that those debtors with a household income under $20,000 had limited discretionary income over and above their necessary income. There may be some difficulty in accepting the reliability of these figures. However, there was probably a tendency as much to under-estimate necessary expenditures as to over-estimate necessary expenditures.

(1) Ability to meet needs in future

We asked the following question: Looking ahead, taking inflation into account, do you think that one year from now, you (and your dependants) will be better off financially, or worse off, or just about the same as now?

48.3% of the debtors thought that they would be better off, 23.3% thought they would be about the same, 20% did not know, and 6.7% thought that they would be worse off.

The following data was obtained from the Edmonton area survey in response to the same question: 52% thought that they would be better off; 37% thought that they would be about the same; 5.2% thought that they would be worse off; and 4.1% did not know. There is therefore a significantly larger number of debtors who do not know what their position will be in a year and a larger proportion who thought that they would be worse off. The "do not know" response may reflect the insecurity of many debtors.

MONTHLY EXPENDITURES RELATED TO NUMBER OF DEPENDANTS

We wished to obtain information on basic expenditures of the debtors so that we could relate these data to the present levels of exemptions from wage garnishment in the Alberta rules of court. We asked the debtors therefore the following question. There are certain expenditures that everyone has to make every month. Could you list the appropriate monthly amounts you have spent on those items during 1978? The items are: Shelter (Mortgages, Taxes and necessary home repairs, Utilities, Food, Personal Care, Clothing, Transportation, Medical Prescriptions, Child Care, Maintenance or Child Support, Entertainment and Recreational Needs.

Basic monthly expenditures/No. of Dependants

66% (2) of debtors with 1 dependant required $900 - 999 per month for necessary expenditures, 33.3 (1) $500 - 599.

Debtors with two dependants: 2 - $700 - 799, 1 - $800 - 899, 1 - $900 - 999, 1 - $1,300 - 1,399, 1 - $1,400 - 1,499, 1, $2,400 -

Debtors with three dependants: 2 - $500 - 599, 1 - $600 - 699, 1 - $700 - 799, 1 - $1,400 - 1,499, 1 - $1,600 - $1,699, and 1 - $1,800 - 1,899.

Debtors with four dependants: 1 - $800 - 899, 1 - $1,000 - 1,099, 1 - $1,900 - 1,999.

Debtors with five dependants: 1 - $700 - 799, 1 - $1,100 - 1,199.

Of those individuals who had no dependants 3 required $500 - 599, 2 required $700 - 799, 1, $800 - 899 and 1, $1,600 - 1,799.

The present exemptions for wage garnishment in the Alberta Rules of Court are $300 for a single person, $400 for a married person and $80 for each dependant child. Dependant in our data would include a spouse.

We also obtained data on total monthly expenditures, which would include any instalment payments being made. The following table indicates data on this.

Total Monthly Expenditures/No. of Dependents

0 dependants	1 - $500 - 599, 1 - $700 - 799, 4 - $800 - 899, 1 - $2,200 -
1 dependant	1 - $500 - 599, 1 - $1,100 - 1,299, 1 - $1,300 - 1,399
2 dependants	2 - $700 - 799, 1 - $1,000 - 1,099, 1 - $1,100 - 1,299, 1 - $1,400 - 1,499, 1 - $1,500 - 1,599, 1 - $2,800
3 dependants	1 - $600 - 699, 2 - $700 - 799, 1 - $900 - 999, 1 - $1,600 - 1,799, 1 - $1,800 - 1,899, 1 - $1,900 - 1,999
4 dependants	1 - $1,000 - 1,099, 1 - $1,300 - 1,399, 1 - $2,200 - 2,299
5 dependants	1 - $700 - 799, 1 - $1,100 - 1,199

These data indicate the inadequacy of the present exemptions. They also suggest that there ought to be a closer scrutiny of the individual needs and circumstances of a debtor.

III Summary

The data therefore indicate that debtors who have their wages garnisheed are mainly males drawn from the middle to lower middle range income category. There are a significant minority of debtors in higher income levels (over $22,500) whose earnings are unstable.

The majority of debtors are in blue collar occupations, which carry little chance of upward mobility or income potential and/or are unstable or seasonal if, for example, the debtor is a self-employed tradesman. They also have lower educational qualifications than the general population.

Debtors are younger than the general population, and are liable to have heavier financial commitments because of the number of their dependants and/or the significantly higher number of debtors who had experienced marriage breakdown.

IV Debtors' Experience of the Debt Collection Process

Introduction

Debt collection is divided into a number of discrete compartments with differing individuals (collection agents, lawyers) occupying the role of collector at differing stages in the process. Debtors are often the only individuals, therefore, who have experienced the debt collection process from beginning to end.

1. The Initial Transaction

The following tables indicate the categories of creditors garnisheeing the debtors interviewed and the categories from the file survey:

GARNISHEEING CREDITORS - DEBTORS' INTERVIEWS

		Percentage
Finance Company	5	16.7
Bank	5	16.7
Other	3	10.0
Services	3	10.0
Store Credit Card	4	13.3
Retail Credit	3	10.0
Individual	2	6.7
Gas Credit Card	2	6.7
Credit Union	2	6.7
Bank Credit Card	1	3.3
	30	100.0

FILE SURVEY - NATURE OF CREDITOR GARNISHEEING

Category Label		Percentage
Bank	34	19.2
Finance Company	34	19.2
Department Store	26	14.7
Retailer	16	9.0
Individual	15	8.5
Credit Union	8	4.5
Professional Services	7	4.5
Oil Company	7	4.0
Utilities	7	4.0
Renter: Housing	6	3.4
Other	5	2.8
Government	4	2.3
Trust Company	3	1.7
Renter: G&S	3	1.7
Collection Agent	1	0.6
	177	100.0

In our debtor interviews, retail credit and store credit cards, when added together, account for the largest number of creditors suing (23.3%) and banks and finance companies each accounting for 16.7% of creditors garnisheeing. A similar distribution is indicated in the file survey.

The supervisor of Consumer Credit in Alberta in his annual report for 1978 indicated that of the total outstanding consumer credit, banks hold 64%, credit unions 15%, while consumer finance and sales finance companies 8.5%. The balance of 12.5% is held by retail organizations 7%, and by trust companies, life insurance companies and other credit card holders 5.5%. These figures might suggest that finance companies and retail creditors make greater use of garnishment than justified by their respective shares of the market. However, these figures may be misleading for retail credit because presumably the figures on consumer credit in Alberta reflect volume of credit not number

of accounts. One would expect the total volume of retail credit to be lower than loan credit with a large number of fairly small retail credit accounts. Credit unions and banks appear to be under-represented for their market share.

Table indicates the nature of the debt in our interviewed sample and from the file survey:

NATURE OF DEBT ON WHICH GARNISHMENT ACTION WAS TAKEN

		Percentage
Money borrowed	7	29.2
Credit card	5	20.8
Services purchased	4	16.7
Instalment purchased	4	16.7
Other	3	12.5
Combination of above	1	4.2
	30	100.0

NATURE OF DEBT - FILE SURVEY #2

Category Label		Percentage	
Retail Credit	44	24.9	24.9
Financial Company Loan	33	18.6	43.5
Bank Loan	28	15.8	59.3
Other	14	7.9	67.2
Professional Services	8	4.5	67.2
Bank Credit Card	7	4.5	71.8
Credit Union Loan	7	4.0	75.7
Automobile Damage	7	4.0	79.7
Utility Services	7	4.0	87.6
Housing Rental	7	4.0	91.5
Gas Credit Card	6	3.4	94.9
Student Loan	4	2.3	97.2
General Services	4	2.3	99.4
Workmen's Compensation	1	0.6	100.0
	177	100.0	

The relatively high proportion of credit card debts in our interviewed sample (20.8%) is interesting to compare with earlier studies as it reflects the growth in the use of credit cards in recent years.

The amount of the original debt can be broken down as follows: 23.3% had debts of 0 - $499; 20%, $500 - $999; 13%, $1,000 - $1,499; 13.3, $1,500 - $1,999; 10%, $2,000 - $5,000; 3.3%, $5,000 - $10,000; and over $10,000, 13.3%. 3.3% did not know the amount of the original debt. The majority of debts over $5,000 were personal loans for business debts, the business subsequently failing. 70% of the original debts were for under $2,000.

The amount of debt sued for is as follows: 20%, 0 - $499; 16.7%, $500 - $999; 20%, $1,000 - $1,499; 10%, $1,500 - $1,999; 10%, $2,000 - $2,999; 3.3%, $4,000 - $4,999; 3.3%, $5,000 - $9,999; 6.7%, $10,000 - $14,999; and 10%, $20,000 and above. The debts therefore do not appear to have decreased between the time they were incurred and the time that the debts were sued for. 76% of debts sued for fell below $2,000.

The file survey indicates a lower level of debts sued for.

FILE SURVEY #2 - AMOUNT OF DEBT SUED FOR

		Number	Percentage	Cumulative Percentage
$ 0 - 49	1	1	1	1
$ 50 - 99	2	1	1	2
$ 100 - 199	3	10	6	8
$ 200 - 299	4	10	6	14
$ 300 - 399	5	12	7	21
$ 400 - 499	6	12	7	28
$ 500 - 749	7	22	12	40
$ 750 - 999	8	21	12	52
$1,000 - 1,249	9	13	7	59
$1,250 - 1,749	10	22	12	71
$1,750 - 1,999	11	7	4	75

		Number	Percentage	Cumulative Percentage
$ 2,000 - 2,499	12	15	8	83
$ 2,500 - 2,999	13	8	5	88
$ 3,000 - 3,499	14	1	1	89
$ 3,500 - 3,999	15	2	1	90
$ 4,000 - 4,999	16	4	2	92
$ 5,000 - 5,999	17	4	2	94
$ 6,000 - 6,999	18	2	1	95
$ 7,000 - 7,999	19	2	1	96
$ 8,000 - 8,999	20	4	2	98
$ 9,000 - 9,999	21	1	1	99
$10,000 and over	22	3	2	101
		177	100	

75% of debts sued for in the file survey were therefore under $2,000 and 52% were under $1,000. 24% of debts sued for fell between $500 - 999.

(1) Default on Loans

The following table gives a distribution of the reasons for borrowing for those debtors who defaulted on a loan:

LOANS: REASONS FOR BORROWING

Business	3	30.0
Automobile	2	20.0
Miscellaneous Purchases	1	10.0
Entertainment Appliances	1	10.0
Investment	1	10.0
Household Furniture	1	10.0
Education	1	10.0

30% had used it for business purposes and 20% to buy an automobile. In addition we asked why the debtor had picked the particular loan agency and the results are summarized in the following table:

REASON FOR PICKING LOAN AGENCY

Easy lenders	3	33.3
Other	2	22.2
Been there before	2	22.2
No success elsewhere	1	11.2
Long-term repayments	1	11.1
	9	100.0

33.3% of debtors therefore borrowed because the particular loan agency was an easy lender, and 11.1% borrowed from a particular loan agency because they had had no success elsewhere.

40% of the loan agencies did not take any security for the loan, 30% had a co-signor, 10% a chattel mortgage, and 20% a combination of security devices. Thus, almost half of the loans were unsecured and co-signing seems to be an important security. This may suggest that the lender regards having two debtors to look to as a better security than one debtor's property and/or that the debtor may not have significant amounts of property that would make it worthwhile for the creditor to realize on. A number of loan creditors indicated that co-signing was a useful security device for younger debtors and marginal risks.

(2) Satisfaction with Goods and Services

We were concerned to find out whether those individuals who had bought goods and services on credit were satisfied with their purchase. A number of consumer commentators have suggested that dissatisfaction may be a significant reasons for consumers defaulting on loans. (Ison: 1977).

Of the four debtors who had bought goods on credit, three were satisfied with the commodity and one was not satisfied, claiming seller deception. Of those purchasing services on credit, two out of three were not satisfied with the service because of seller deception and inferior quality of goods. Of those who had borrowed money, one out of seven was not satisfied with the quality of the goods purchased. Of those who had bought goods or services on a credit card 3.3% or one out of 5 was not satisfied with the quality of the goods.

2. Reasons for Default

An important part of the debtor's interview was concerned with establishing the reasons why the debtor had initially defaulted on the loan. To obtain this information we used a similar question to the one used in both the Caplovitz study and the study by Puckett. Our question was: What were the main reasons why you stopped making payments on the debt? What was the most important reason? Were there other secondary reasons?

For those readers who have any difficulties with our classification scheme they are referred to pages 49 to 174 of Caplovitz' "Consumers in Trouble".

It is, of course, difficult for individuals to specify which among a number of factors caused the default and so our question allowed the debtor to rank a number of reasons. The following table show the first and second reason given by debtors for stopping making payments on the debt.

REASON FOR DEFAULT

Debtors' mishaps and shortcomings	No.	First Reason	No.	Second Reason
Loss of income	12	40.0	2	9.1
Voluntary overextension	3	10.0	3	13.6
Involuntary overextension	-	0.0	2	9.1
Marital Instability	3	10.0	-	0.0
Debtors' third parties	1	3.3	1	3.3
Debtors irresponsibility	1	3.3	1	4.5
Creditor may be implicated				
Fraud, deception	1	3.3	2	9.1
Payment misunderstandings	4	13.3	7	31.8
Partial late payment	-	0.0	1	4.5
Item returned to creditor	-	0.0	-	0.0
Harassment by creditor	1	3.3	1	4.5
Unsatisfactory goods/or services	1	3.3	1	4.5
Other	3	10.0	-	0.0
	30		22	

It is clear that a large percentage of debtors perceived loss of income to be the single most important reasons for their default. Other significant reasons were marital instability and payment misunderstandings.

Before analysing in greater detail the reasons for default it may be instructive to note the perceptions of those creditors interviewed of the reasons why debtors default on their payment obligations.

CREDITORS - PERCEPTION OF REASONS FOR DEBTOR DEFAULTING

	Reason Number			
	1	2	3	4
Loss of income	11	9	5	1
Voluntary overextension	16	7	3	2
Marital instability	2	8	8	3
Lack of intention to repay	1		1	8
	30	24	17	14

CREDITORS - PERCEPTION OF REASONS WHY DEBTORS FAIL TO PAY BY CREDITOR TYPE

#1 Reason for Default	Banks	Credit Union	Retail Credit	Finance Companies	Other
Loss of income	5		4	3	1
Voluntary overextension	1	2	5	1	4
Marital instability				1	
Lack of intention to repay				1	
Other					1

The majority of creditors therefore stressed voluntary overextension as a primary reason and a large minority noted loss of income as an important factor. It is also instructive to note that the vast majority of loan creditors as opposed to retail creditors, viewed loss of income as the primary reason for default.

The creditor perceptions will be discussed in greater detail at a later point. It is sufficient to note at this point that even

if the creditors' perceptions suggest that debtors may have underestimated their own imprudence, the general conclusion appears from both interviews that a major reason for default is an unfortunate change of circumstances for the debtor. In addition, overextension, while suggesting imprudence on the part of the debtor ought not to be confused with lack of intention to repay which consistently ranked extremely low in creditors perception of reasons for default.

3. Analysis of Reasons for Default

(1) Loss of income

This classification could be further subdivided into 3 main categories. Firstly a number of debtors had had a business failure. They had attempted to start their own business and it had not been successful. Second, the debtor had been laid off and did not have the money to pay. Third, the debtor had been injured thereby causing an interruption in income. In one of these cases, although the debtor was insured, the insurance payments were not sufficient to permit him to continue making payments on the debt. One other case worth mentioning is where one spouse was laid off work and the other spouse's income was insufficient to meet their payments.

(2) Voluntary overextension

This occurred not where debtors had incurred a high number of debts in absolute terms, but simply expressed as a ratio relative to their income. Overextension occurred sometimes because of bad financial management, often coupled with loss of income as a secondary reasons.

Thus one debtor who was a commission salesman stated:

> " In ____ I went on commissions. The monthly amount varies and I did not take into account the fluctuating income. I spent too much in a high income month and got caught in a bind in a low income month even though we were not heavy spenders, because we carried previous debt. I suppose it was mismanagement on my part ..... then I was laid off."

(3) Payment misunderstandings

This is an important category. 13.3% of debtors gave it as a primary reasons for default and 31.8% mention it as a

secondary reason. The following are examples of cases which fell under this heading. One debtor thought that he had paid off the debt (student loan) when the bank stopped making the monthly deductions. One debtor missed one payment and then made more regular payments but found that the amount of the debt did not seem to be decreasing and when he contacted the loan company they did not give him satisfaction. One debtor did not even know that there was a debt until he was garnisheed because his former wife had used his charge card and one debtor had signed an N.S.F. cheque and then attempted to make an arrangement with the creditor which the creditor would not accept. One debtor did not understand his responsibility as a co-signor.

These cases may be regarded as implicating both creditor and debtor and they demonstrate the problems of communications between creditor and debtor. It is probably true, for example, that the creditor, when a debtor missed a payment was legally entitled to compute additional interest charges. However, creditors also have a legal obligation to explain clearly to the debtor that this will happen. (See s. 11(1)(h) Credit and Loan Agreements Act R.S.A. 1970 c. 73, s.1).

This category demonstrates not only how an initial payment misunderstanding may turn a debtor who is able and willing to pay into a disgruntled debtor but also the general problem of communication breakdown between creditor and debtor. They prompt the question: what dynamic in the system of debt collection caused these debtors to be shuttled through to garnishment? Could such action have been avoided?

I will take up these important issues again in a later section entitled: Communication breakdown in the debt collection process.

(4) Marital Instability

This contributed directly to debtors being garnisheed in three cases. In one case the debtor's ex-spouse, after separating, had incurred charges on a credit card and left the other spouse the bill. The debtor "blocked" the account but it was too late

and he was held responsible for the charges. The debtor did not feel responsible for the debt because he had not incurred it. There was initial communication with the creditor, then the debtor did not hear from the creditor for two years, then they contacted the debtor again, demanded payment, sued him and garnisheed his wages.

In another case the debtor and his spouse had had an arrangement that each would pay half of the loan. The other spouse defaulted and the debtor did not have enough money to continue making the payments.

In another case the spouse of the garnisheed debtor had bought encyclopaedias against the wishes of the garnisheed spouse. They had subsequently separated and the spouse who had bought the encyclopaedias stopped payment and the company sued the other spouse as co-signor. This was also therefore a case of co-signing.

(5) Fraud, Deception, and Unsatisfactory Goods and/or Services

It is of interest to note that 6.0% of debtors implicated the creditor either because of fraud and deception or unsatisfactory goods and services. The debtor who had received unsatisfactory merchandise stated:

> "The merchandise was unsatisfactory, the drawers didn't fit, legs broke - sold junk. I asked them to replace it but they wouldn't and I said I would not pay more until they gave me other merchandise or settled about the balance of payments. They pressed for the remaining payments."

(6) Other

4. Comparison with Previous Studies

Given the small size of our sample we were interested in comparing our data with previous studies. Since we used a similar classification to Caplovitz, this provided a useful comparison. The following table indicates the results of Caplovitz' analysis.

CAPLOVITZ - REASONS FOR DEFAULT

	first reason	*second reason*	*third reason*	*total reasons*	*total individuals*
Debtor's mishaps and shortcomings					
Loss of income	43	18	10	24	48
Voluntary overextension	13	23	32	17	25
Involuntary overextension	5	12	7	7	11
Marital instability	6	4	5	5	8
Debtor's third parties	8	4	6	6	9
Debtor irresponsibility	4	2	—	4	5
Creditor may be implicated					
Fraud, deception	14	13	15	14	19
Payment misunderstandings	7	3	—	6	8
Partial late payments	—	15	6	5	7
Item returned to creditor	[a]	6	14	2	4
Harassment by creditor	—	1	5	1	1
All other (miscellaneous)	1	—	—	[a]	[a]
Total percent	101	101	100	101	145
N	(1,320)	(570)	(110)	(2,000)	(1,326)

[a] Signifies less than ½ of 1 percent.

One immediately notices that we reported a similar percentage of debtors reporting loss of income as the primary reason for default. Caplovitz indicates a higher percentage for fraud and deception, although there is less difference when one adds our percentage of unsatisfactory goods and services to the fraud and deception of category.

Puckett, in his study, used a slightly different set of response categories, although he used the same question. The following is the result of Puckett's data compared to our data.

Distribution of Debtor Reason for Not Paying Debt

Reason	Puckett		Institute
Life circumstance	44		50.0
Imprudent	26		13.3
Creditor implicated	22		23.2
Third party	6		3.3
No reason	2	Other	10.0
	100%		100.0%

These data indicate a higher percentage of debtors in our study reporting life circumstance as a primary reason for default, and a higher percentage of imprudent debtors in Puckett's study.

5. Reasons for Default Related to total Household Income

Caplovitz found that loss of income was a much greater hardship for the relatively poor and contributed to their defaults more often than those of higher income. Our data, while not conclusive, indicate that this pattern may also be present in our sample.

PRIMARY REASON FOR DEFAULT RELATED TO TOTAL HOUSEHOLD INCOME

	Under $10,000	$10,000-$14,999	$15,000-$19,999	$20,000-$24,999	Over $27,50
Debtors' Mishaps and Shortcomings					
Loss of income	1	7	1		3
Voluntary overextension			1	2	
Marital instability			1		1
Debtors 3rd parties		1			
Debtor irresponsibility				1	
Creditor May be Implicated					
Fraud Deception			1		
Payment misunderstandings	1	2	1		
Harassment		1			
Other			1	1	1

Caplovitz also noted that voluntary overextension, the mark of the imprudent debtor, turns out to be a more frequent reason for default among higher income debtors. There is a possible similar trend in our data if one includes debtor irresponsibility with voluntary overextension.

Those earning under $15,000 had more payment misunderstandings and harassment. These suggest that those with lower incomes (under $15,000) have greater difficulty in coping with changed circumstances, and negotiating a solution to their problems.

6. Reasons for Default Related to Type of Creditor

Loss of income was the major reason for default by debtors borrowing money from banks and finance companies, with one finance company debtor noting harassment as a reason for default. Retail credit and store credit cards accounted for a higher proportion of cases of payment misunderstandings and unsatisfactory goods and services.

V. Summary of Conclusions on Reasons for Default

1. The data show that change of life circumstances causing loss of income after the debtor has incurred the debt is the single most important reasons given by debtors for default. These data are extremely strong when taken along with the findings of previous studies.

2. Those debtors who voluntarily overextend themselves usually miscalculate their earning power.

3. There are a very small percentage of irresponsible debtors.

4. There are a significant number of cases where the creditor is implicated in the default either because of fraud and deception or unsatisfactory goods and services.

5. The high percentage of cases where payment misunderstandings contributed to default suggests deficiencies in communication between debtor and creditor. These data are interpreted further in this report. They are a significant contribution to the findings of existing studies.

2. The legal process

We asked whether the debtor had ever filed his story with a court. 90% stated no and 10% yes. This confirms the well documented conclusion that almost all debt collection actions are by default.

We asked in addition why individuals had not filed their story with a court.

17.9% didn't know that they were being sued, 10.7% stated that they thought that they had a defence but did not think that it would do any good, 10.7% did not think it worthwhile because they did not think they had a defence. 7.1% didn't know that they were supposed to go to court, 7.1% did not know what to do. 3.6% stated that they thought the debt was settled, 3.0% could not afford to lose a day's pay, and 3.0% forgot. Of the 35.7% citing other reasons, three had attempted to go to court but got the dates mixed up, one thought someone else would pay and two had made arrangements but were still garnisheed.

The statistics on service raise the issue of "sewer service". We make no conclusions on this issue since a debtor may have received a summons without realising the significance of it.

These statistics indicate that the high percentage of default judgments cannot simply be accounted for by the fact that there is a just debt which the debtor knows he owes. On the contrary a significant number of debtors thought that they had a defence or that the debt was being take care of.

Those debtors who thought that they had a defence often used the term "defence" in a non-legal sense. Thus they felt that if they told their story to a judge then some arrangement could be worked out.

VI Default to Garnishment

Garnishment comes at the end of the debt collection process and does not immediately follow default by the debtor on his payments. One important part of the study was to chronicle the factors which propelled a debtor from default to garnishment and to ascertain what knowledge and understanding a debtor had of what was happening to him and what sources of aid and advice he turned to.

It became apparent as the interviews of creditors had debtors progressed that an important theme was going to be the nature of communications between creditor and debtor in the period leading up to garnishment. This theme is so important that we have devoted a separate section of the report to its analysis. This present section, for the sake of continuity, documents these data on this section.

1. Pre-judicial Debt Collection

Only 10% of debtors reported no contact with the creditor before garnishment. We asked if the creditor outlined those consequences which would happen to them if they did not pay the debt. Of those responding, 51.9% stated no, 48.1% stated yes. Of those who stated yes, 42% stated that the creditor was vague or general as to consequences. These data lend support to Rock's argument that much of collection is an exercise in "controlled anxiety": that ambiguous threats are important features of collection. By not outlining the consequence in detail the creditor leaves the debtor to speculate on what might happen to him. Given the popular image of debt collectors this may be a somewhat unsavoury picture.

A significant number of debtors reported harassment of various kinds by the creditor or his agent. This topic will be considered later under the heading of harassment in the collection process.

These data also suggest a degree of fatalism and confusion in a number of debtors, who were not really sure what was happening to them or what they had to do to defend the action, or what the implications were of receiving a summons. This was partly reflected in the fact that a number of debtors had attempted to go to court but had been confused as to the date or time of their appearance. Thus one stated:

"I wanted to tell my story - and went to court, but my case was "remanded" to another day and I got the dates mixed up - the creditor didn't."

The majority of those who did file a story with the court either personally or through a lawyer were from the upper income brackets (over $25,000).

VII Garnishment

The following table indicates the number of wage and bank account garnishments:

Wages	26	92.9
Bank Account	2	7.1

Two debtors therefore were not in fact garnisheed although a garnishee summons was issued. Of those who were garnisheed 75.0% learned of the garnishment from their employer, 14.3% from the service of legal service and 10.7% from other means.

The following table indicates that 63% of debtors responding had not been garnisheed previously for other debts.

No	17	63%
Yes	10	37%

The majority were therefore, at this stage, "one shot" players. 37% represents, however, a significant minority who are "repeat player" debtors. We also asked the question: Has anyone ever indicated that he would take action against you for any other debts? 67.9% indicated yes and 32.1% indicated no. The possible ambiguity in this question does not detract from the fact that this, together with data on previous garnishment, suggests a significant number of "repeat players" in our sample. We shall take up this theme later in section X where we make a systematic analysis of the other legal actions taken against the debtor.

(1) Number and Amount of Debts at Time of Garnishment

The following tables indicate the number and amount of other debts of the garnisheed debtor (excluding mortgages) at the time of garnishment.

NUMBER OF DEBTS AT GARNISHMENT

Debts	No. of Debtors	Percentage
1	11	38.5
2	7	26.9
3	4	15.4
4	2	7.7
6	2	7.7
12	1	3.8
0	2	7.7

AMOUNT OF DEBTS AT TIME OF GARNISHMENT

Amount	No.	Percentage
0	2	7.7
Under 400	4	15.4
1,000 - 1,499	3	11.5
1,500 - 1,999	3	11.5
2,000 - 2,999	3	11.5
3,000 - 3,999	3	11.5
4,000 - 4,999	1	3.8
7,000 - 7,999	1	3.8
9,000 - 9,999	1	3.8
10,000 - 14,999	4	15.4
20,000 and over	1	3.8

The majority of debtors therefore had two or less debts at the time of garnishment, 34.6% had three or more debts and 11.5% had six or more.

The amount of the debts at the time of garnishment indicates a significant minority of debtors with over $10,000 in debts, but the majority of debtors (57.6%) with debts less than $2,999.

These levels of debt are however significantly lower than the statistics on levels of debt for those individuals on Alberta Orderly Payment of Debt Orders.

Orderly Payment of Debts: Client Profile - Total Amount of debts owing.

	No.	%	Cum. Pct.
0 - 1999	1	1.3	1.3
2000 - 2999	2	2.6	3.9
3000 - 3999	6	7.8	11.7
4000 - 4999	10	13.0	24.7
5000 - 5999	13	16.9	41.6
6000 - 6999	6	7.8	49.4
7000 - 7999	5	6.5	55.9
8000 - 8999	4	5.2	61.1
9000 - 9999	5	6.5	67.6
10000 - 10999	5	6.5	74.1
11000 - 11999	3	3.9	78.0
12000 - 12999	6	7.8	85.8
13000 - 13999	2	2.6	88.4
14000 - 14999	0	0.0	88.4
15000 - 19999	6	7.8	96.2
Over 20000	3	3.9	100.1
	77	100.0	100.1

50% of debtors on O.P.D. had more than $7000 in debts at the time of making the consolidation order, and over 25% had more than $10000 in debts.

2. The Immediate Outcome of Garnishment: Garnishment as a Collection Device

It is often argued that the benefit of garnishment from a creditor's viewpoint is that it forces a recalcitrant debtor to make a settlement of the debt.

We therefore asked whether the debtor discussed the garnishment with the creditor after receiving notice of the garnishment.

DISCUSSION WITH CREDITOR AFTER GARNISHMENT?

Category	Number	Percentage
No contact	8	29.6
Debtor contact creditor and came to an arrangement	8	29.6
Debtor contacted creditor but no arrangement	6	22.2
Creditor contacted debtor but no arrangement	1	3.7
Creditor contacted debtor and came to arrangement	3	11.1
Other	1	3.7

In 40% of the cases therefore there was contact between creditor and debtor and an "arrangement" was made. In addition, we asked if the debtor had now paid off the debt. 58.6% replied yes and 41.6% stated no. Over 75% had paid off or were making payments on the debt. Of the remainder one had gone on O.P.D. and one had gone into personal bankruptcy.

It is interesting to note that even the majority of those individuals who felt that they ought not to pay the debt, came to an arrangement with their creditor after garnishment. Thus one individual stated:

> "I paid the debt only to keep my name clean for business or credit purposes. Otherwise I would have fought it all the way."

Another debtor stated that the drastic effect on her pay packet caused by the garnishee made her come to an arrangement, notwithstanding that the debtor felt that there was a valid defence to the claim.

VIII. Social Consequences of Garnishment: Impact on the Debtor

Introduction

Many critics of wage garnishment have drawn attention to the adverse social consequences of the remedy. Loss of employment, default on other obligations, bankruptcy, marital problems and deterioration in health have all been linked to the remedy.

We were therefore concerned to document what consequences, if any, were experienced by the sample of debtors. We asked the question: Did you experience any consequences of being garnisheed? What was the most important consequence? Which of the secondary consequences was most important? In addition we drew up a list of possible consequences and asked the debtor to indicate if he had experienced any of them. This list was used for the categories in Table .

1. Primary Consequences

We drew up a multiple ranking list for this variable.

The following table indicates the primary consequences of wage garnishment as perceived by the debtor.

CONSEQUENCES OF GARNISHMENT

Consequences Pertaining to Employment	1	%	2	%
Loss of employment	2	6.6	-	-
Conditions placed on employment	1	3.3	-	-

	1	%	2	%
Consequences for Debt Management				
Default on other obligations	6	19.9	5	26.3
Necessitates further over-extension	4	13.3	2	10.5
Consequences for Marital Stability				
Contributes to marital tensions	1	3.3	3	15.8
Contributes to separation	-	-	-	-
Contributes to divorce	-	-	-	-
Other Consequences				
Reliance on welfare and/or unemployment assistance	-	-	-	-
Impairs physical and mental health	2	6.7	1	5.3
Goes to Debtors' Assistance Board	1	3.3	1	5.3
Bankruptcy	-	-	-	-
No significant consequences	7	23.3	4	21.1
Other	6	19.7	3	15.8

The relatively high figure for no significant consequences may be misleading. Two of the seven debtors had avoided having anything taken from their pay cheque because the garnishee had not been served on the date they were paid. Two had settled the debt immediately after the garnishment, one borrowing money from an employer and one from a credit union in order to pay off the debt. Thus of those in this group who were actually garnisheed, 50% paid off the debt, and 50% had to borrow money to pay off the debt although they did not warrant being classified as "more over-extension".

Significant data from this table are that 6.6% of debtors were laid off because of the garnishment. What is more intriguing is that a significant number of debtors stated that although they were not fired, it was "well known" that individuals were fired on account of garnishment. Certain debtors named particular firms which it was alleged had a policy of either immediately firing a garnisheed employee or asking for the resignation of the employee.

Almost 20% of the debtors cited default on other obligations as a primary consequence of the garnishment and 26.3% stated this to be a secondary consequence. In a number of cases, debtors were unable to meet their rental obligations and were required to move residence. Debt problems may thus contribute to the relatively high number of times our sample had moved residence.

13.3% went into further over-extension in order to pay off the debt. 3.3% had conditions placed on their employment, 3.3% went to see the Debtors' Assistance Board and in 6.7% of the cases the health of the debtor was impaired.

The "other" category included the following consequences: embarrassment at work and nervous tension, credit rating gone, and the necessity to take two jobs in order to pay off the debt.

In addition, we asked whether the debtor was left with sufficient income for basic needs after the garnishment. (Basic needs are defined as food/shelter (includes rent or mortgages, taxes and necessary home repairs, utilities, household operation,) clothing, transportation, personal care, baby sitting, medical prescriptions, recreational and entertainment needs.) Of the debtors to whom this question was applicable 50% stated yes and 50% stated no.

Sufficient Income After Wage Garnishment to Meet Basic Needs?

	Number	Percent
Yes	13	50%
No	13	50%

This figure underestimates the income problems caused by garnishment because, of the 50% who stated yes, two had to borrow money to survive.

Those debtors in the lower income group with a number of dependents were hardest hit by garnishment. One debtor with two dependents was left with $250 at Christmas to live on and pay the rent, and another was left with $40 to live on for a month after paying the rent. One debtor with three dependents survived on $30 for a week by eating bread with milk and honey.

Of the twelve debtors who had two or more successive garnishments, 66.7% stated that the additional garnishments made worse the problems mentioned in the initial default, 33% stated that they did not. Of that 66.7% (3) 42.9% mentioned further default on other obligations (1) 14.3% mentioned impaired health and 3 (42.9%) mentioned other consequences.

2. Bankruptcy

Shuchtman and Jantzer in their 1972 study indicated that there is a connection between harsh wage garnishment exemption statutes and bankruptcy rates, and Brunn, although admitting that "the extent to which wage garnishments contributes to bankruptcy cannot be measured precisely", also argued that "the number of individual bankruptcies in a state is affected by the leniency or harshness of its garnishment laws."

We did not find a significant relationship between wage garnishment and bankruptcy. Our study therefore confirms Jacobs findings and Puckett's study which indicated no significant relationship between wage garnishment and bankruptcy. Only one debtor had gone bankrupt. 96% of the debtors sampled had never gone into bankruptcy.

We also asked debtors if they had considered personal bankruptcy as a solution to their problem. 62% of the debtors had not even considered personal bankruptcy as a solution. Of the 37.9% who did consider it, the majority of this group were

concerned that it would affect their credit rating and they were unsure of what was involved in the whole process of bankruptcy. The stigma of bankruptcy was also mentioned by two as an important factor. One debtor in reply to the question "Did you ever consider personal bankruptcy?" stated: "Never! You're ruined for life if you do."

The one person who did go bankrupt had been referred by the D.A.B. The general impression from the interviewees was that the majority were not willing to take the initiative and take such a large step as going into bankruptcy. They required an intermediary, either a lawyer or some other person to inform them of the advantages and disadvantages of the process.

These statistics, and the lower than average bankruptcy rate in Alberta as indicated by the 1978 report of the supervisor of consumer credit in Alberta throw doubt on the statement which was made by a number of creditors that large numbers of debtors are going bankrupt and that there is no point in leaning too hard on a debtor because he will go bankrupt.

Bankruptcy is accepted as part of the business world. It may be that it ought to be made more available for certain consumers. We advert to this later in our recommendations for changes.

Summary of General Comments of Debtors on Consequences of Garnishment

Three themes recurred in the debtors' general comments on what had happened to them. These were firstly, a desire for greater communication and more warning as to what was going to happen; second, more understanding of the process and finally the process ought to be less harsh so that one has enough to live on. Representative samples of comments were:

"Garnishment causes too much hardship. ...when you're down they slap you in the face. You should be able to talk it over and make a reasonable arrangement."

"People when served a summons should be told what to do - they usually don't know what to do. ...there should be a compulsory face to face meeting between creditor and debtor rather than telephone."

"More communication is necessary. ...the legal jargon is misleading ... why not make it more simple."

"Garnishment is too harsh ... no one can live on the exemptions."

Conclusions

1. Garnishment does have a powerful impact on a debtor's finances, causing significant numbers to default on other obligations, and leaving 50% with less than sufficient income to meet basic needs.
2. The impact of garnishment is made worse by the inadequate level of the present exemptions in the Rules of Court and because garnishment often comes as a surprise to a debtor who knows little about the process of garnishment.
3. Garnishment does lead to individuals being discharged from their employment. (See also section, wage garnishment and employment.)

3. Knowledge of Helping Agencies and Advice

Introduction

In this section, we asked questions concerning the debtor's knowledge of the Family Financial Counselling Services of the Alberta Department of Consumer and Corporate Affairs.

In addition, although we did not specifically ask about the use of lawyers or other sources of advice we were able to gain some general information on this topic by analysing various sections of the interview. This topic forms the second part of this section.

(1) The Family Financial Counselling Service and the Orderly Payment of Debts

The Family Financial Counselling Service of the Alberta Department of Consumer and Corporate Affairs operate a number of programs to help the over-committed debtor. In addition to counselling individuals with debt problems and educating individuals in financial management, they may also negotiate with creditors of a debtor and administer the Orderly Payment of Debts programme under Part X of the Federal Bankruptcy Act. Under this scheme a debtor is required to repay his debts over a period of up to three years, or longer with the consent of the creditors. The advantages of the scheme are that the Department draws up a budget for the debtor which will permit him to have a realistic repayment schedule. The debtor then makes voluntary payments every month and the Department distributes these funds among his various creditors. While the Order is in force individual creditors under the Order are not permitted to take any enforcement action against the debtor.

The study was interested in establishing the number of sampled debtors who went to the Debtors' Assistance Board as a consequence of garnishment. We also wanted to find out what knowledge debtors had of this possible source of aid and advice and if they viewed the Board as a solution or solvent to their debt problems.

(a) Knowledge of the Debtors' Assistance Board

Our first question concerned knowledge by the debtor of the Family Financial Counselling Service. 63.3% of debtors had heard of it and 36.7% had not.

Knowledge of Family Financial Counselling Services (Debtors Assistance Board)

Yes	19	63.3%
No	11	36.7%
	30	100.0

Of those who had heard of it, 25.0% heard through advertising, 62.5% through other channels, such as employer and 12.5% had heard through a friend.

Of those who had heard of the Board, 50% contacted it and 50% did not. The reasons for not contacting the Board were either that debtors did not feel they had sufficient debts to warrant contacting the Board or that they did not perceive themselves as the type of "inadequate" person whom they assumed the D.A.B. serves. Thus one debtor stated:

"I don't really need that kind of help - it's for people who can't manage their affairs",

and

"it would be for desperate people".

This perception was particularly prevalent among the minority of higher, unstable income group of salesmen.

42.9% (3) of these who contacted the Board found it extremely useful in helping to solve their debt problems, 28.6% (2) found it not useful and 14.3% (1) gave other reasons as a response.

For those who had not heard of the details of Orderly Payment of Debts, the interviewer explained the programmes to the debtors and then asked them whether they thought that these programmes would have been a solution to their problem. 76.5% stated that it would not have been useful at all, 17.6% stated that it would have been extremely useful and 5.9% stated it would have been moderately useful.

The 76.5% who thought that the D.A.B. programmes would not be at all useful cited similar reasons to those mentioned above by the group who had heard of the Board but did not contact it.

Thus one debtor stated:

"It would not have been really helpful - I can cope with paying my debts and in paying them off,"

and another,

"I can cope with my own problems"

and

"I don't think it would really be applicable to me."

Conclusion

The Orderly Payment of Debts programme was known to the majority of debtors but is perceived to be applicable only to possibly inadequate persons or those with large numbers of debts.

(2) Lawyers

Only a small number of debtors (15%) appear to have had a lawyer involved in their problems and in the majority of cases the lawyer was not involved until after the garnishment had been served.

Those who used lawyers were not individuals who were dissatisfied with goods or services or in general those who thought they had a good defence. The majority of those who had lawyers negotiate for them were from the middle and upper income brackets.

One hypothesis which is suggested by our data is that those individuals who felt that they had a defence did not perceive it as a "legal" defence and did not think the services of a lawyer were warranted for their defence. In addition, they may not have been able to afford legal representation.

In response to our question: Do you think there was a reason why you should not have to pay the debt? ... 72.4% stated no. Of the 27.6% who stated yes, three had complained of unsatisfactory goods and services and one felt that he ought not to have to pay the full amount of a loan which he had co-signed.

IX Other Legal Action Against the Debtor - File Survey #2

We were interested in gathering information on the number of debtors who were "repeat players". We were able to analyse the court records from File Survey #2 for other legal actions instituted against the debtors in our sample. The following tables indicate actions instituted within one year of the garnishment, actions instituted one to two years of the garnishment, and actions instituted over two years from the garnishment in the present action.

TABLE — NUMBER OF ACTIONS INSTITUTED WITHIN ONE YEAR

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	85	48.0	
1	29	16.4	
2	25	14.1	
3	13	7.3	
4	7	4.0	
5	8	4.5	
6	5	2.8	
7	1	0.6	
9	2	1.1	
12	1	0.6	
17	1	0.6	
TOTAL	177	100.0	

TABLE NUMBER OF ACTIONS INSTITUTED ONE TO TWO YEARS

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	127	71.8	
1	29	16.4	
2	11	6.2	
3	6	3.4	
4	2	1.1	
6	1	0.6	
7	1	0.6	
	177	100.0	

TABLE NUMBER OF ACTIONS INSTITUTED OVER TWO YEARS

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	96	54.3	
1	31	17.5	
2	13	7.3	
3	8	4.5	
4	7	4.0	
5	8	4.5	
6	4	2.3	
7	5	2.8	
8	1	0.6	
9	1	0.6	
10	3	1.7	
	177	100.0	

These data indicate that 48% of debtors had no other actions instituted against them within one year of the principal action, 71.8% had no actions instituted against them within one to two years of the principal action, but only 54% had no actions instituted against them over two years from the principal action. 14.2% of debtors had 4 or more actions instituted against them within one year of the principal action, 2.3% had four or more within two years, and 16.5% had four or more actions instituted over two years from the principal action.

It must be noted that these data covered all actions against a debtor, not simply those involving debt claims. However, the majority of claims were in the nature of a debt, as evidenced by the following tables which indicate the nature of the actions instituted within one year, and the nature of the creditor.

TABLE BANK LOAN

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	153	86.4	
1	17	9.6	70.8
2	7	4.0	100.0
	177		

TABLE BANK CREDIT CARD

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	174	98.3	
1	3	1.7	100.0
	177		

TABLE FINANCE COMPANY LOAN

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	164	92.7	
1	10	5.6	76.9
2	2	1.1	92.3
3	1	0.6	100.0
	177		

TABLE CREDIT UNION LOAN

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	169	95.5	
1	6	3.4	75.0
2	1	0.6	87.5
3	1	0.6	100.0
	177		

TABLE STUDENT LOAN

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	177	100.0	100.0

TABLE RETAIL CREDIT

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	140	79.1	
1	26	14.7	70.3
2	8	4.5	91.9
3	2	1.1	97.3
5	1	0.6	100.0
	177		

TABLE GAS CREDIT CARD

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	171	96.6	
1	3	1.7	50.0
2	3	1.7	100.0
	177		

TABLE AUTOMOBILE DAMAGE

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	173	97.7	
1	3	1.7	75.0
2	1	0.6	100.0
	177		

TABLE UTILITY SERVICE

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	172	97.2	
1	4	2.3	80.0
10	1	0.6	100.00
	177		

TABLE PROFESSIONAL SERVICES

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	160	90.4	
1	16	9.0	94.1
20	1	0.6	100.0
	177		

TABLE HOUSING RENTAL

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	173	97.7	
1	4	2.3	100.0
	177		

TABLE GENERAL SERVICES

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	168	94.9	
1	8	4.5	88.9
2	1	0.6	100.0
	177		

TABLE WORKMEN'S COMPENSATION

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	177	100.0	100.0

TABLE INSURANCE PAYMENTS

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	177	100.0	100.0

TABLE MAINTENANCE AND CUSTODY

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	174	98.3	
1	3	1.7	100.0
	177		

TABLE BUSINESS SERVICE

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	171	96.6	
1	4	2.3	66.7
2	2	1.1	100.0
	177		

TABLE LIEN

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	175	98.9	
1	2	1.1	100.00

TABLE FORECLOSURE

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	161	91.0	
1	10	5.6	62.5
2	5	2.8	93.8
7	1	0.6	100.1
	177		

TABLE GOVERNMENT

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	174	98.3	
1	3	1.7	100.0
	177		

TABLE CRIMINAL

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	174	98.3	
1	3	1.7	100.0
	177		

TABLE RENTAL OF GOODS-SERVICE

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	167	94.4	
1	7	4.0	70.0
2	1	0.6	80.0
5	1	0.6	90.0
10	1	0.6	100.0
	177		

TABLE OTHER

Code	Absolute Frequency	Relative Frequency	Cumulative Frequency
0	151	85.3	
1	17	9.6	65.4
2	3	1.7	76.9
3	4	2.3	92.3
4	1	0.6	92.9
10	1	0.6	93.5

Bank loans, finance company loans and retail credit are most heavily represented. It is also worth noting the relatively high number of foreclosure actions.

We also obtained data on the percentage of debtors who were being garnisheed during the subsistence of the principal action. The following table indicates the results.

Table — Number of Other Cases Where Debtor is Being Garnisheed During Subsistence of Principal Action

Code	Number	Percentage
0	147	83.1
1	22	12.4
2	4	2.3
3	3	1.7
4	1	0.6
	177	

The following table indicates the number of garnishments recorded in these other cases.

Table — Number of Garnishments in Those Cases Where the Debtor is Being Garnisheed During the Subsistence of the Principal Action

Code	Number	Percentage
1	11	34.0
2	8	24.0
3	5	19.0
4	3	10.0
7	3	10.0
	30	

In addition, the following table indicates the amount of debt represented by those actions instituted within one year of the principal action.

Amount of Debt in Actions Instituted Within One Year

1 - 499	12	14.5
500 - 999	13	15.0
1,000 - 1,499	6	7.0
1,500 - 1,999	6	7.0
2,000 - 2,999	7	7.5
3,000 - 3,999	5	6.0
4,000 - 4,999	4	5.0
5,000 - 7,499	9	9.0
7,500 - 9,999	5	6.0
10,000 - 14,999	9	9.0
15,000 and over	7	8.0
	83	100.0

These data suggest the following conclusions.

1. The majority of debtors do not have recurring debt suits.

2. There are, however, a significant minority of debtors who do have recurring debt suits.

3. Although the majority of debtors may not be repeal players, the majority of debtors are being sued for more than one debt at the same time. (See Table) and a significant minority (14.2%) have 4 or more actions being instituted against them at a similar time.

4. A significant percentage (17%) of debtors are being garnisheed in separate actions during the subsistence of the principal action.

5. The data on the amount of debts involved in other actions instituted within one year along with the fact that the majority of debtors are one-shotters suggest that the majority of debtors may be able if given a "breathing space" to extricate themselves from their debt problems.

6. There do appear, however, to be a minority who may have recurring debt suits. For example 24% of debtors had 2 or more actions instituted against them over two years from the institution of the present action. An immediate question in relation to this minority group is - how are they still able to obtain credit?

7. Note the almost non-existent percentage of criminal cases.

At this point it may be useful to draw attention to a number of issues arising from the debtors' interviews. I will then attempt to sketch typologies of the garnishment debtor.

X Issues arising from debtors interviews

1. Knowledge and understanding of debtor

The majority of debtors were uncertain of the steps which they ought to take to solve their debt problem. Two party negotiation with the creditor appears to have not been an effective method of solving their problem or grievance. Although we did not ask debtors about all possible sources of third party advice, it is clear that for the majority of debtors lawyers were not perceived as appropriate for solving their problems. Those who were satisfied with the initial transaction were not interested in vindicating their legal rights but in resolving their problems in an expedient manner. (Mayhew: 1973, 14 Table 1). There did not seem to be a perception of lawyers as useful negotiators on their behalf, perhaps because few debtors thought that they had a "legal" defence.

The fact that most debtors had little understanding of the legal process or what could happen to them may have caused unwise action on their part, for example, coming to an unrealistic settlement with their creditor.

These comments reinforce our later comments on communication breakdown. They also suggest that a prime goal for reform ought to be to demystify the legal process for the debtor and to provide a method for debtors with legitimate debts to enter into a realistic repayment scheme.

2. The "Shock" Treatment

Garnishment does come as a "shock" or as a "cold bath". The theory of wage garnishment - to shock a debtor - into settlement not only seems a somewhat uncivilised method of recovering debts but has unfortunate consequences for the debtor. He is firstly in no position to effectively negotiate a settlement with the creditor. If a debt is legitimate, the debtor will still be in an unequal bargaining position. His only bargaining weapon is to skip or leave his job which is hardly likely to benefit him in the long run. The shock effect may also probably cause him to default on his other obligations. It is possible that garnishment is as likely to alienate a debtor as to cause him to come to a settlement. The social consequences of this "shock" treatment seem a high price to pay and they challenge us to find a simpler more humane way to collect legitimate debts.

3. Exemptions

The debtors interviews confirm what we already guessed. The present level of exemption in the Rules of Court are inadequate for the majority of debtors to live "a modest but dignified existence". (Australian Law Reform Commission: Report No. 6, Insolvency and Regular Payment of Debts.)

TOWARDS A TYPOLOGY OF THE GARNISHEED DEBTOR

We discussed in the introduction to the report the importance of particular typifications of debtors in formulating policy in this area. We summarised the major typifications as unfortunate, inadequate, feckless, spendaholic and professional.

In drawing up the following typology I have benefitted greatly from a paper by M. Adler and E. Wozniak of the Department of Social Administration at the University of Edinburgh. They argued that "the majority of debtors have simply been unfortunate, perhaps because their circumstances have changed in some way, but that they want to repay their debts and will repay them if suitable terms can be agreed". They argue that many of the present problems are caused because a debtor fails to repay because the creditor's terms are unrealistic or unacceptable. They compare this typology with that of the "inadequate" debtor and the "amoral" calculator, arguing that these represent small minorities of debtors against whom enforcement action is taken.

Our analysis and observation of debtors suggest the following typifications:

1. The chronically unfortunate repeat player.
2. The unfortunate one shot player.
3. The "amoral" defaulter.
4. The one shot "unjustified" debtor.

The first category consisted of approximately 12.5%, the second approximately 55%, the third approximately 10% and the fourth approximately 22.5%.

1. The Chronically Unfortunate Repeat Player

Debts for this group are part of wider problems which they face in coping with life. They may be related to personal problems in the life of the debtor, for example, a single parent, and often are associated with the following characteristics:

a. lower than average income,
b. occupations with no upward mobility which may be unstable,

c. usually at least two dependants,
d. a low level of education,
e. no significant assets,
f. no home ownership.

They are not necessarily younger debtors, suggesting that their problems are not a direct consequence of that period of their life which involved heavy credit use.

This group has difficulty in living from month to month and any expenses that are unexpected will put a wrench into their finances. They are not in a position to save money and credit will be more expensive for them. They do not have sufficient money to obtain the basic package of consumer goods deemed desirable by the majority of Canadians.

There is little opportunity for self indulgence, since any major purchase such as a car on credit will put a severe strain on the family budget. If this group gets into difficulties with credit, they are unlikely to effectively negotiate or communicate with their creditors. Indeed, after their first encounters with creditors they may adopt a fatalistic attitude knowing that they are powerless really to do anything about it. This fatalism was illustrated by the actions of one debtor who expected that his creditors would seize his car and therefore took the license plates off the car and left the car for them to seize.

Some of this group may be shunted off the stage into bankruptcy, but others will continue working and being garnisheed. None of this group were on welfare. They all wanted to continue working notwithstanding that a large chunk of pay was being garnisheed. Garnishment may not therefore be, as it has been suggested, an inducement to go on welfare, but it may be an inducement to move to another job.

Garnishment for this group is the cruellest cut of all since it will inevitably leave them with insufficient income to live on or pay rent, often forcing them to move to another house or apartment. Surprisingly, they may be able to get further credit to pay off their debt but this will be a temporary expedient and the pack of cards that is their debts will often collapse at this point.

It is submitted that the debt problems of this group cannot be regarded in isolation, as the problems of a small minority of "inadequate" individuals. Nor is it simply a matter of inadequate income. Their debt problems are related to structural problems such as poor housing, poor education, high costs of credit, and the creation of a norm of consumption for the mainstream of society which is always beyond their reach.

It is difficult to suggest simple solutions for the problems of this group. To ask them to "adapt" and budget their income to their circumstances is an inadequate response. Indeed for this group a number of studies have suggested that indebtedness may be a reasonable and normal response to their situation. (Katona:)(Andreason: 1975)

I fear indeed that we may have interviewed the most stable segment of this population who were able to obtain credit. We can only speculate what conditions are like for those who are permanently unemployed or on welfare and who may not even be able to obtain credit from a high risk legitimate credit source such as a finance company.

2. <u>The Unfortunate One Shot Player</u>

This group forms the majority of debtors. Their debt problems are usually due to change of circumstances since the time they incurred the debt, causing loss of income. The characteristics of this group are average to lower than average income which may be unstable. They are generally blue collar workers who usually don't own a home and have lower education and lack of future potential for upward mobility. They are

usually willing to repay the debt but may not have been able to meet the creditor's terms. There were a significant number of communication breakdowns during the collection process with this group. For example, a number had attempted to make arrangements with creditors but the creditors had refused or the debtor had been unable to keep to the repayment scheme.

There also appeared to be a general lack of knowledge of what was occurring to them during the collection process and what could happen to them when legal action was taken.

Garnishment will also have a powerful effect on the income of this group. There is always the possibility that certain members of this group may become repeat players or slip into Category 1. For most of these debtors, however, their debt problems are not necessarily a recurring phenomenon, especially for the younger "first time" debtor.

The problem with the existing debt collection system is that it may be providing inadequate opportunity for these debtors to make a realistic effort to extricate themselves from the problem.

3. The "Amoral" Defaulter

The characteristics of this relatively small group of debtors are generally higher than average income in an unstable employment, often as a salesman.

The unstable nature of their remuneration may cause them to get caught with insufficient money to pay their bills. Lack of planning for income tax seems to be a significant cause of problems.

This group does not usually suffer from the consequences of garnishment. They are able to negotiate with the creditors and if negotiation fails are able to avoid having their wages garnisheed. They have more knowledge than the other groups of actions that may be taken against a debtor and they often have access to lawyers who they may use to negotiate on their behalf.

The description "amoral" defaulter does not mean that these debtors intentionally overextend themselves with no intention of repaying the debt. Rather, the debtor, who is often having problems because of unfortunate changes in circumstance, is not interested in repaying on the creditor's terms. He is willing to repay on his own terms and will not be cajoled by the creditor or his lawyer, nor does he feel a great stigma attached to non-payment. The threats therefore that a creditor can make against this group are limited. The debtors are often self-employed and their managers are generally sympathetic to their position and are unsympathetic to lawyers and creditors. These debtors are unlikely therefore to suffer job loss as a result of garnishment.

4. The One Shot "Unjustified" Debtor

This category began to develop in my mind when I realized that a significant number of debtors felt that there was no justification for them being garnisheed. This category includes not only cases where a debtor had purchased unsatisfactory goods or services but also cases where a spouse is sued for a former spouse's debt of five years ago of which the spouse had no knowledge.

They also include cases which illustrate the difficulties in bureaucratic collection. Thus one debtor made an arrangement with a creditor and sent three post dated cheques. The collection branch of the creditor was not aware that the cheques had arrived at another office. They therefore garnisheed the wages of the debtor. In another case a debtor had cancelled the policy of insurance but was still pressed for payment and eventually paid after being pressured by a collection agency. A common characteristic of these cases is the dubious validity of the debts and the possible defences that a debtor would have against his creditor. The structure of the collection process as we have noted often forecloses any opportunity for raising such defences.

Conclusions

We are convinced that any reform of creditors' remedies as used against consumers must take account of these typologies. We advert to them further therefore in the Chapter, Proposals for Reform.

CREDITORS' INTERVIEWS

We categorized from the Court file survey types of creditors using the garnishee process. The following categories were used: banks, finance companies, credit unions, department stores, oil companies, retailers of goods and services, individuals, utilities, professional services, and property and real estate agencies. We interviewed 33 creditors and the following table shows the distribution of the creditor sample.

Creditor Sample Table

Banks and Bank Credit Cards	7
Finance Companies	5
Department Stores	5
Retailers of Goods and Services	7
Oil Companies	1
Individuals	3
Property Rental	2
Credit Unions	2
Utilities	1
Total	33

The sample was therefore a comprehensive sample of major creditors, that is banks, finance companies, department stores, and retailers of goods and services. Included in the category of retailers of goods and services were a number of small firms since it it argued that wage garnishment is an important remedy for such individuals. One category which was not represented was professional services. It should be remembered that the overwhelming majority of these cases involved lawyers.

I. Introduction: Creditors and the Formal Legal Process

We have already noted that the formal legal process collects a very small percentage of delinquent accounts

and that over 95% of debts are collected through the informal collection process. It would be naive however to assume that the formal legal process and legal remedies are therefore of little importance to creditors. The purpose of this section is to sketch the relationship between the formal and informal collection process.

We have noted that creditors view the legal process and the enforcement of judgments as being both costly and cumbersome. Legal action represents a step in the collection process where bureaucratic rationality may diminish or indeed disappear. I use the term bureaucracy in the Weberian sense of "calculability". "For modern bureaucracy, the element of calculability of its rules has really been of decisive significance. The nature of modern civilization, especially its technical-economic substructure, requires this calculability of consequences." (M. Weber, on Law in Economy and Society, M. Rheinstein (ed.) p. 350) and "The more bureaucracy depersonalizes itself i.e. the more completely it succeeds in achieving that condition which is acclaimed as its peculiar virtue viz., ... the exclusion of ... every purely personal, especially irrational and incalculable, feeling from the execution of official tasks." (ibid. p. 351).

The particular dangers for a creditor in taking formal legal action are: (1) the cost and (2) the loss of control over the collection process and a possible incalculability of consequences. For example, the personality and disposition of the judge may influence the outcome of the case. Thus in those isolated cases where a consumer does defend an action against a bureaucratic creditor the judge may be sympathetic to "the little guy". Similarly, a creditor must rely on a third party, the sheriff, to seize assets or enforce his judgments. Our interviews confirm Rock's thesis that "creditors feel that their power and enforcement generally have been weakened as soon as legal action is taken".

A basic problem for a creditor is therefore the fact, already noted, that the theory of the legal process is one of an adversary confrontation within the confines of due process. It is not organized around ideas of bureaucratic rationality and therefore the two processes are antithetic to one another.

Creditors have, however, primarily adjusted to the vagaries of the legal process by not using it. They also exploit its symbolic effect. In addition, they have sought out methods which reduce cost and permit the legal process to be administered in a bureaucratically rational manner.

It should not be thought that the presence or absence of bureaucratic rationality in the legal process is the only factor determining whether or not legal action will be taken. Creditors are concerned with preserving customers' good will and their public image would suffer if they were known to sue immediately an account was delinquent. However, bureaucractic rationality is an important factor and is central to the understanding of the possibilities of reform.

A striking example of the search by creditors for low cost bureaucratic collection procedures is provided by these data in file survey No. 2 which indicate that repeat player creditors may now have discovered the cheapness of the Small Claims Court. Thus, these creditors now have an ability to send an employee to court to process a large number of claims at a heavily subsidized rate. Twenty or thirty claims can be processed in one day. The creditors' employees are also able to build up relationships with court staff who help them to subsequently fill out garnishee summons forms.*

* These observations are based on personal discussions by the present writer with court staff.

Most creditors stated that they would try to avoid legal action unless the amount was over $1,000 which is the limit of the jurisdiction of the Small Claims Court. The decision to hand over an account to a lawyer would seem to be an important step in collection. It generally requires authorization from a regional manager and there will be an analysis at that time of the debtor's application for credit in order to determine the income, assets and possible recovery against the debtor.

However, creditors might still sue for smaller amounts although they would not use a lawyer. Thus we have noted that creditors are able to reduce the cost of legal action by using the small claims procedure. There is also the use of collection agencies for smaller amounts. It would appear from the interviews that retail creditors use collection agencies more than any other creditor group. Indeed, it appears that finance companies do not use collection agencies at all. Thus, most retailers and department stores will assign their smaller accounts to collection agencies and only use a lawyer for amounts over a certain figure (usually $1,000) or on a "selective" basis for example if a debtor has significant assets. The advantages of using collection agencies are of course that the creditor obtains the specialized expertise of the collection agency and need pay nothing to the collection agency unless the latter collects the debt. By hiring a collection agency the creditor also externalizes the cost of ill will on the part of the debtor.

In addition, turning an account over to a collection agency is a more bureaucratically routine step than a decision to take legal action. However, it is important to note that the collection agency to whom the account is turned over may itself take legal action against the debtor at a later date. They will sue in the name of the creditor. Thus, many of the retail credit and other claims in our file survey may be cases where collection agents have taken legal action. The

importance of this is that a significant number of these retail credit claims are for small amounts. It is a plausible hypothesis that suing for such small amounts is only profitable either through the use of collection agencies on a volume basis or through the bureaucratic collection procedure of the Small Claims Court. We noted in another section the difficulties in communication between a creditor and debtor as the collection process proceeded and the special difficulties where a debt is turned over to a collection agency.

Another method of reducing the cost of collection is to use legal firms who specialize in bulk collection work. Thus, there are a relatively small number of legal firms in Edmonton who might be said to have organized collection into a bureaucratically rational procedure. There will be a collection department sometimes supervised by a para-legal employee who is responsible to a partner in the firm who in time will have little to do with the day-to-day work of collection. These firms will have continuing relationships with the larger repeat player creditors with whom they deal.

There is thus a pressure at all stages in the collection process to routinise and reduce the cost of collection.

I have discussed so far in this section methods by which the legal process is adapted to the collection process of repeat player creditors. This instrumental use of the law must be contrasted however with the important symbolic function which the formal legal process plays for the informal collection process.

There seems to be a symbolic aspect to certain enforcement action by creditors. For example, a number of creditors indicated that they would take legal action against a debtor almost as a punitive gesture. Thus, where a debtor showed no intention

of paying or where the debtor was "not at all cooperative" or where he had signed an N.S.F. cheque, the creditor might take legal action irrespective of the amount owed. This punitive aspect served in the creditor's view as a method of establishing his credibility in collection. It seems to represent the symbolic deterrence of legal action and underlies the fear held by creditors that if these individuals were not sued then "there would be a grapevine effect and it would get around that the creditor could be taken for a ride".

This symbolic function of law is represented also in the idea held by a number of creditors and many commentators on garnishment that the power of garnishment lies in its threat rather than its actual use. The sentiment was expressed by creditors that if debtors did not have at least a vague sense that there was "a price to pay", then there would be a large rise in bad debts. It is difficult to empirically trace this connection and there is little in sociological literature concerning the extent to which "a vague sense of threat keeps everyone reasonably reliable". (Macaulay: 1977). "My own guess is that, in the main, writers, both legal and other, tend to over-estimate heavily the effect of law...but that on the other hand any layman who ever gets to considering the effects of law in his own case is likely then to let the idea of it influence him far more than it really is worth". (Llewellyn: 1931).

The legal process and the legal rules are also of symbolic value to the creditors because they reinforce certain public values about debt and debt collection. Sociological literature suggests that there may be a tendency in the public to equate what is the law with what is right and good and it is therefore of importance to creditors that the legal process unambiguously upholds doctrines such as pacta sunt servanda. The threat of legal process against a debtor represents therefore a threat

which states that the debtor has challenged an important public value. Although creditors may be enforcing their values, the values are represented as having the impersonality of legal rules and procedures and as representing important public values. (rectification)

Having sketched these important general considerations we turn now to a specific analysis of the steps in the collection process leading up to garnishment.

II. The Collection Process Prior to Legal Action

A decision to initiate legal action will be taken after the failure of the informal process to collect. Puckett in his study provides a useful outline at pp. 178 - 184 of the collection process prior to legal action and garnishment. The pace of the collection process and the timing of different actions by creditors depends on the type of creditor and the debtor. Most large retail creditors stated that they would not contemplate legal action or collection action until an account was at least 90 days overdue. The billing procedure up to that point would be a series of computer statements. Finance companies however established personal contact by telephone almost immediately after a debtor was overdue, and would continue telephoning the debtor regularly until the debt was paid. Certain banks which appeared to be extremely aggressive in the consumer loan field also contacted the debtor almost immediately (10 days) after default but most banks did not move as fast as finance companies, nor did they appear to be as well organised in their collection effort.

The collection effort may also be speeded up by certain circumstances of the debtor. Thus, if the debtor defaults at the beginning of a loan and is a new customer or if he does not pay a credit card shortly after he has obtained it then the

collection process may be speeded up. Similarly, if a person is a marginal risk or has a poor payment record then these factors will sometimes speed up the collection process. In these circumstances the creditor may attempt to establish immediate personal (telephone) contact with the debtor, especially if the balance outstanding is high.

The collection process is characterised by both a series of escalating threats and an appeal to the debtor to respect certain public values. A creditor before instituting legal action will normally warn a debtor of the possible adverse consequences flowing from this action. We were interested in obtaining creditors' views on the use and effectiveness of the threat of legal action and garnishment.

1. Creditors Use and Perception of the Effectiveness of the Threat of Legal Action and Wage Garnishment

It is argued by many commentators that the effectiveness of remedies such as wage garnishment lie in their threatened rather than actual use.

We asked creditors how effective they thought the threat of legal action or garnishment was. All creditors, with one exception, admitted to threatening both legal action and garnishment. Only one creditor stated: "We never make threats."

Approximately half of creditors who were able to reply stated that both the threat of legal action and the threat of wage garnishment were effective methods of recovering a debt. A number of these stressed the psychological effect of the threat and the fact that individuals might not want to have their employers involved.

About 15% of creditors stated that the threat of wage garnishment was not at all effective. One bank official stated that one was "down to a hard core at this point and it doesn't worry them," and "it doesn't seem to scare anybody off his boots anymore, people who are familiar with it can take steps to avoid it - debtors have become very knowledgeable." Another said that "actually doing it is more effective than the threat."

A significant minority (approximately 15%) noted that the threat of legal action or garnishment was only effective if the creditor carried through with the threat. They thus stressed the importance of maintaining credibility in their bargaining. It was interesting to note that they were almost all finance companies who made this point.

Those creditors who stated that the threat of legal action was effective also stressed the symbolic importance of sending letters with a lawyer's letterhead or a statement of claim.

2. Factors Involved in a Decision to Take Legal Action

Creditors indicated that two factors are of central importance to a decision to take legal action against a debtor: cost and the attitude and circumstances of the debtor. Accounts under a certain figure($500 or $1,000) would be sent to a collection agent rather than to a lawyer. Of course, the collection agent might subsequently sue in the name of the creditor.

Most creditors stated that the attitude of the debtor was an important factor in a decision to turn an account over to a collection agency or a lawyer. Thus one creditor stated that we would "move only when the debtor has the income and ability to pay" and another stated that "legal action is only considered if the customer is unwilling to cooperate in any way." Perhaps

more important than attitude was, for the large bureaucratic creditor, the attachable assets and income of the debtor. It is at this point that the creditor will turn to the debtor's application form, bringing it up to date and setting it in the context of the collection effort up to this point. He will then be is a position to make a cost benefit analysis of the chances of recovery. All major creditors are aware of the costs and inefficiency of legal services and the legal process and a decision to hand over an account directly to a lawyer is sufficiently important that authorisation by a regional manager is normally required for legal action.

The decision to turn over an account to a collection agency (for those creditors who use collection agencies) is a much simpler bureaucratic step. In addition, since it does not appear to be as serious a step as legal action, the person making the decision will not feel the same assumption of responsibility as one would for taking legal action.

Collection agencies would also be used if no contact had been made with a debtor during collection. A number of creditors stated that they would not take legal action unless they had made some contact. If they had made no contact it would be unlikely that lawyers would be able to do better than collection agents who would be more experienced at establishing contact with a debtor or skip tracing.

We did not find, as Puckett did, that creditors abandoned claims for small amounts, for example, under $100. Rather they turned them over to collection agents. One retailer stated that "if an account is under $100 then we would turn it over to a collection agency."

Another alternative to using lawyers is for the creditors to go themselves to the Small Claims Court. This provides a

cheap bureaucratic method of collection. This seemed to be becoming a practice among a number of bureaucratic creditors, as indicated by File Survey #2.

The fact that many creditors stated that "the attitude of the debtor" was important might imply that there was an element of "punishment" or "spite" in legal action being taken. One employee of a finance company stated that "if they've no intention to pay I would rather see them on welfare." A smaller retail creditor stated that they would take legal action almost immediately where they were given an N.S.F. cheque. It is not clear to what extent this "spite" is built into the bureaucratic nature of collection, indicating that creditors will sue on principle to establish credibility and bargaining power, and show to other debtors that there's "a price to pay" if they are delinquent debtors. The purpose may be "pour encourager les autres."

Such a perspective is based on the symbolic function of law as deterrent, but it is difficult to reconcile with the bureaucratic rationality of collection.

A further issue, which we take up in a later part of the study is how creditors define a debtor as being "unwilling to cooperate" and to what extent this typification is used to organise the reality of debt collection, to portray it to the outside world, and to legitimate legal action.

III. Creditors' Use and Perception of the Effectiveness of Legal Remedies

We asked creditors to indicate which remedies they used most often, which was most effective, and which was most essential to their collection activity.

(1) Seizure of personal property

It is clear that for all creditors, seizure of the personal property of the debtor under a writ of execution is rarely resorted to. This finding adds to these data in the file survey which indicated that seizure of personal property was extremely rare in those cases where a debtor's wages were being garnisheed. The creditors' interviews confirm therefore that a seizure of personal property is a remedy rarely used by creditors either on its own or in conjunction with other remedies.

The reasons for this are not hard to find. Firstly, it is a costly process which is unlikely to realise sufficient funds to liquidate the debt. It is also a draconian measure because the use value to the debtor of the property will be far greater than its exchange value. It might also mar the image of the creditor if it was widely known that it seized individuals' personal property. A number of creditors mentioned all these factors when they discussed the effectiveness of this remedy.

Repossession of a purchase money security under a chattel mortgage or conditional sale, as distinct from a general seizure of personal goods under a writ of execution, appears to be of significance to banks and credit unions. Thus one credit union official stated that repossession of a vehicle was used in 7 out of 10 cases, garnishment in 1 out of 10. We noted in the file survey that in 11% of the cases sampled there was a possible repossession under either a chattel mortgage or conditional sale. It should also be noted that this would not include "voluntary" repossessions by agreement between the creditor and the debtor. Repossession seemed to be of less significance for finance companies and of no significance for retailers or utilities.

(2) Bank account garnishment

Although creditors discounted the importance of bank account garnishment, the file study indicates that it was used in a significant number of cases. This suggests that the creditors in the interviews were running together their thoughts about use and effectiveness.

(3) Wage garnishment

Retail creditors and finance companies used wage garnishment most often, thought it to be most effective, and most essential to their collection activity. Retailers appeared most pleased with the use of garnishment and certainly the majority regarded it as essential. One retailer stated: "Garnishment is essential for small amounts of $300 to $500." Utilities and oil companies also used wage garnishment more than any other remedy, and regarded it as being both most effective and most essential to their collection activity. It has already been suggested in our file survey analysis that the importance of wage garnishment to these creditors may lie in the lack of alternative remedies. (Jacob, 1967) Finance companies are generally dealing with higher risk debtors who may have little security. In addition, unlike banks, finance companies do not have control over the debtors bank account or bank credit cards. A number of finance company employees who were interviewed were envious of this power of the banks. Taking security may not be practicable for retail creditors or department stores. The same is true of gas credit and utilities. These data confirm Jacob's study, illustrating the fact that garnishment is most favoured by those who are either suing for smaller amounts where security may be inappropriate and those suing where security is impracticable because of the debtor's circumstances. The majority of banks and credit unions, although using wage garnishment, rated repossession of security as a more effective and most essential remedy.

A primary purpose of wage garnishment is, of course, to force the debtor to make a settlement. One creditor stated that "it hurts to see that amount come off his pay cheque." Creditors and lawyers repeatedly stated this to be a primary purpose of wage garnishment. In addition, it was argued that garnishment would force the passive debtor to communicate with the creditor, and garnishment therefore functioned "as a device to restore communication." We noted also in the section on wage garnishment and the employment relationship, how an employer may put pressure on a debtor to settle a debt and that most creditors were aware of this. In addition, wage garnishment probably does come as somewhat of a surprise to many debtors and this adds to its impact. Garnishment does not involve any of the possible adverse publicity which is involved in a public seizure of goods.

The cumulative evidence from the court files and employers' interviews indicate therefore that wage garnishment is a powerful lever which may, however, only be used once or twice. Any further use may lead to the debtor losing his job or being transformed into a bitter debtor who will avoid all attempts by the creditor to recover the debt. (Secondary deviancy.) It must therefore be argued that wage garnishment as presently used by creditors is not intended to be a method for making an orderly repayment of debt over a period of time. We advert to this use of the remedy in our proposals for reform.

Although a primary purpose may be to shock a debtor into settlement, it is also used by certain creditors, in particular finance companies, as a method of re-establishing "control" over a debtor. They dislike the loss of control and incalculability of legal action, and garnishment provided a method for re-establishing control. (See also the section on the finance company and its debtors.) Retailers are less interested in this aspect of garnishment, turning over many

accounts to collection agents and not expecting to do business again with the customer who has legal action taken against him.

(4) Writ against real property

A relatively large proportion of banks mentioned the writ against a debtor's real estate as constituting the most essential remedy. This was also mentioned by certain retailers as being effective and by a significant minority of retailers as being the most essential remedy. There was some mention of this remedy in all categories of repeat player creditors.

The cost effectiveness of the writ against real property resides in the fact that if a debtor wishes to sell his real property he will in practice have to get the writ removed from his title. J. M. Côté in the Alberta Bar Admission materials on creditors' rights notes the importances of keeping one's writs up to date and states: "a good many solicitors fail to do so, which is foolish, for a writ against an individual usually bears fruit eventually, especially in the Land Titles Office" (Volume V., Creditors' Rights, p. 37).

Our interviews with lawyers also suggested the effectiveness of the writ against real property when it could be used. Not all lawyers were agreed as to how effective it was but only one lawyer stated that it was not at all effective. A representative comment was that "when we are able to use it it is most effective."

An actual seizure and sale of real property is an extremely cumbersome and protracted process. The efficacy of this remedy lies in its long term effectiveness and its power as a lever. This provides therefore an example of the operation of the

unofficial collection system, where the remedy may be used to coerce a debtor into settlement of the debt. It will represent a powerful threat if the debtor is unaware of the difficulties in seizure. 74% of debtors whom we interviewed did not know that they were entitled to retain property exempt from seizure. The "amoral" defaulter will on the other hand know that the threat is an empty one. It should also be remembered that 66% of garnisheed debtors whom we interviewed did not own their own home.

It is important to remember that "effective remedy" is a relative term and must be set in the context of the general view of repeat player creditors that any legal process is costly and cumbersome. The following comments are representative of this view:

"There is so much time involved in garnisheeing that it's a costly business - there are so many ways the customer can slow down the process" and "wage garnishment is most cost effective, but still we often lose" and "none of the remedies are cost effective."

Summary

1. Finance companies, retail creditors, utilities and oil companies use wage garnishment more than other repeat player creditors, regarding it as being essential to their collection activity.

2. A significantly large number of repeat player creditors stressed the long term effectiveness of the writ against real property in recovering a debt.

3. Wage garnishment is for most repeat player creditors an important lever for coercing a debtor into making an immediate settlement. It is not used primarily to make an orderly payment of the debt over time.

4. Creditors' remedies and wage garnishment, in particular, are used by finance companies to re-establish control over a debtor.

5. A seizure of personal property under a writ of execution is extremely rare.

6. Repossession of a major asset, for example, a car or truck, is a remedy which is used most by banks and credit unions. Seizure would be in pursuance of a chattel mortgage or conditional sale.

As a footnote, it might be added that creditors view the use of the legal process as bureaucratic enforcement. They do not expect a debtor to defend an action for debt collection. They view their use of the formal legal process as part of collection rather than the law. This perspective is well illustrated by the comments of one creditor who stated:

> "The collection agency will sue on our behalf. We rarely use lawyers - they are used where there is some dispute - where there is a legal problem, not a collection problem."

Indeed, one lawyer stated that if a debtor defended an action, then the creditor might well drop the suit.

IV. Views of Creditors on the Effect of Changes in Creditors' Remedies

We were interested in finding out creditors' views on the effect of the abolition of wage garnishment on their credit granting and collection practices.

1. Effect of abolition of wage garnishment on cost and availability of credit

Of the 29 creditors who responded to this question, almost 70% stated that the abolition of wage garnishment would have no effect on the cost or availability of credit. The following tables indicate the response to this question broken down by creditor type.

Effect of Abolition of Wage Garnishment on Granting and Availability of Credit

	Finance Companies	Dept. Stores	Retailers of Goods & Services
Would affect granting and availability of credit	2		2
Would not affect	3	5	3
	5	5	5

	Banks and Bank Credit Cards	Credit Unions
Would affect	-	-
Would not affect	7	2
	7	2

	Utilities	Oil Companies	Property Rental
Would affect	1	1	2
Would not affect	-	-	1
	1	1	3

In addition, 2 small retailers of goods and services who rarely resorted to the courts stated simply that they "wouldn't favour" abolition of wage garnishment.

These data indicate that the creditors who would be most affected in the granting and availability of credit are utilities, oil companies and property rentals. In addition, a significant minority of finance companies and retailers of goods and services stated that the abolition of wage garnishment would affect the granting and availability of credit to marginal applicants.

There was a certain concern expressed by a minority of creditors about the loss of the symbolic threat - that there was "a price to pay if the debtor defaulted." As one creditor stated: "People have the psychological belief that there's a price to pay". What would happen if it was not there?

There was also a certain contradiction shown by a minority of creditors who insisted that garnishment was of no importance to them in a decision to grant credit, e.g. "If I think I'm going to have to sue someone on a loan then I won't grant it." Yet they thought abolition of garnishment would restrict the availability of credit.

It may be of incidental but important interest that most loan institutions do not put up interest rates for marginal risks, that for most consumer loans the interest rate is standard.

2. Effect of abolition of wage garnishment on collection practices

It is difficult to draw any clear conclusions from creditors' answers to this question.

Approximately 11 (33%) thought that the unavailability of wage garnishment would make collection more costly and cumbersome or that they would suffer greater bad debt losses.

The general impression obtained was that most creditors were not very certain about the effects on collection as evidenced by comments in the last section concerning the loss of the threat of wage garnishment.

An additional source of data concerning creditors' perceptions of these issues can be found in data collected by Professor C.R.B. Dunlop of the Faculty of Law, University of Alberta. He wrote in 1976 to 10 major retail and loan creditors (many of whom were also interviewed in our study) eliciting, among other things, their views on the effect of abolition of wage garnishment on their business in the Province of New Brunswick. Most creditors stated that as a matter of general policy the right to garnish was not considered in assessing credit applications and that the abolition of wage garnishment had had little effect on collections in New Brunswick. One department store and a finance company did however suggest that their bad debts had gone up significantly with the abolition of wage garnishment. The department store commented that although there was no great revisions as far as granting credit to marginal clients, the lack of wage garnishment had had a devastating effect on uncollectible (sic) recoveries, and that more expensive remedies were being used. The finance company commented:

> "Our people are well aware that we have no recourse whatsoever against the unsecured recalcitrant debtor."

The Department of Justice in New Brunswick stated that abolition of wage garnishment had had little effect on the granting of credit or the debt collection process. This latter data was confirmed by the Chief Sheriff for the Province of New Brunswick.

These comments must be understood in the context of the fact that wage garnishment may not have been a very important remedy in New Brunswick.

A number of these creditors also commented on the effect of the inability to garnish wages on credit granting to Federal Civil Service employees. All creditors responding (5) stated that the lack of garnishment had no effect on the granting of credit to Civil Service employees and that the lack of garnishment had not materially increased their bad debt experience with this group of debtors. One creditor (department store) did however state that this occurred because of "the general stability, security and excellent wages enjoyed by civil servants", and another (bank), noted that "were we to take more rigid stand (sic) concerning applications (for credit) from these people, we believe their requirements would then be financed by the _____, a major competitor of ours."

V. Profile of Marginal Credit Risk

We asked creditors if they could draw for us a profile of a marginal credit risk. A number of factors were common to the majority of responses. These factors were:

(a) limited job stability or transient occupations;
(b) skilled and unskilled tradesmen;
(c) age (younger individuals under 30);
(d) marital instability;
(e) a lack of assets.

It is interesting to note that the only creditor who mentioned individuals on welfare and unemployed persons as marginal risks was a utility which presumably has less choice over its customers than retail merchants or loan institutions. This might suggest that these groups are at present excluded from the credit market.

It should be noted that these factors mentioned by creditors are similar to a number of the characteristics of the debtors whom we interviewed. The factors reinforce the fact that many marginal individuals are much more prone to suffer debt problems because of a change of circumstance in their life subsequent to obtaining the credit. Indeed, one creditor stated:

> "People become marginal because of change of circumstances."

In addition, creditors perceive the young, perhaps first time credit user, as a possible marginal risk, because he or she may not be used to budgeting or handling credit.

Do any of these factors fit the profile of the "professional" debtor? It is interesting to note that a number of creditors mentioned the self employed debtor businessman as a possible marginal risk. This might cover both skilled and unskilled tradesmen and small businessmen, for example, salesmen. In addition, a number of lawyers whom we interviewed suggested a profile of the professional debtor to be that of a person who is a self employed businessman who has his assets in someone else's name. They argued that the creditor's remedies were of little use against this particular group.

VI. Creditors' Perceptions of Reasons for Default

This question was based on questions used by the National Commission on Consumer Finance and Puckett's study. We asked creditors to rank in order their perceptions of the reasons for a debtor defaulting. The following tables indicate the results for creditors as a whole and broken down by creditor type.

CREDITORS - PERCEPTION OF REASONS FOR DEBTOR DEFAULTING

	Reason Number			
	1	2	3	4
oss of income	11	9	5	1
oluntary overextension	16	7	3	2
arital instability	2	8	8	3
ack of intention to repay	1		1	8
	30	24	17	14

CREDITORS - PERCEPTION OF REASONS WHY DEBTORS FAIL TO PAY BY CREDITOR TYPE

1 Reason for Default	Banks	Credit Union	Retail Credit	Finance Companies	Other
oss of income	5		4	3	1
oluntary overextension	1	2	5	1	4
arital instability				1	
ack of intention to repay				1	
ther					1

The majority of creditors viewed voluntary overextension followed by loss of income as the primary reasons for default. Marital instability although not ranked highly as a primary reason appears to be a significant secondary factor in the creditor's perception of reasons for defaulting. Lack of intention to repay is of minimal importance.

When broken down by creditor type the data show that the majority of loan institutions viewed loss of income as the primary reason for a debtor defaulting whereas a slight majority of retail creditors viewed voluntary overextension as the primary reason. The other category of creditors was, apart from utilities, mainly comprised of small organizations, rental companies, and

individuals. Given the limited use of the courts by many of these individuals, their perceptions of reasons for default may be less reliable than larger institutions. Thus, if we look at the largest group of consumer credit holders in Alberta the majority view loss of income as being the single most important reason for default.

It is instructive to compare these data with those from the National Commission on Consumer Finance and Puckett's Ontario data.

National Commission on Consumer Finance

REASON	BANKS	FINANCE COMPANIES	RETAIL TRADE
Unemployment	1	1	1
Overextension	2	2	3
Illness of Debtor	3	3	2
Separation	4	4	4
Illness of Family Member of Debtor	5	6	6
Divorce	6	5	5
Lack of Intention to Repay Just Debts—"Deadbeat"	7	8	7
Family Relocation	8	7	8

Puckett

TABLE 62

Ranking of reason why debtors fail to pay by creditor type

	creditor type			
reason	loan creditors	retail creditors	medical creditors	others
unemployment	1	1	2	1
illness	3	3	3	4
overextension	2	2	1	2
family problems	4	4	4	3
no intention to pay	5	5	5	5
fraud by creditor	6	6	6	6

Both these studies used differing sampling techniques and interview techniques. However, they both produced similar data suggesting that unemployment was the single most important reason for default.

Our findings differ since we noted that voluntary overextension was perceived to be the most important reason. In addition, a significant number of creditors cited marital instability as a reason and it would appear that this factor ranks more highly than in the other studies. One creditor stated bluntly that "a broken home is a broken loan." It is interesting to note also that when we talked to lawyers the vast majority of them viewed the reason for the debtor defaulting as being primarily caused by voluntary overextension and secondly marital instability. One must wonder how lawyers who rarely meet a debtor would be able to form such a clear impression of the reasons for default. Only one lawyer candidly stated he had no idea why debtors defaulted.

It may be that it is a popular public perception that voluntary overextension is a primary reason for default and that that could account for why the lawyers were so clear on this issues, as were the small retailers and individuals who had limited knowledge of either collection or the court system. Rock in his study encountered a similar phenomenon when he interviewed members of the public concerning their perceptions of debtors. Although most individuals knew little about debts or debt collection all were willing to characterise the actors involved in the enforcement process.

Voluntary overextension does not, of course, mean willful default. It seems to imply bad financial planning a certain imprudence, and perhaps some innocent miscalculation.

Looking at all these data sources we can see that a central factor in reasons for default is a change of circumstances in the life of the debtor since the granting of the credit.

Summary

1. These data suggest that the wilful defaulter or debtor who has no intention to repay a debt is more myth than reality. The "dishonest" debtor (See: Crowther Report on Consumer Credit) does not appear to be of significance to creditors.

2. There are in the creditor's perception a small proportion of professional debtors but they are not to be equated with "dead beats" and rather seem to fit the typology of the "amoral" defaulter whom we sketched at the end of the debtor interviews. They also seem to form a small proportion of debtors in default.

3. The vast majority of debtors appear to be in a problem either because of unfortunate change of circumstance or because of a certain imprudence or perhaps because of a combination of both. The danger in the present system is the manner in which it can turn these individuals into recalcitrant debtors. (Secondary deviancy)

VI: Problems in the collection process

Introduction

Communication Breakdown in the Collection Process

Data from the debtors interviews suggested that change of circumstances, usually loss of income, caused a debtor to default and a significant number defaulted because of payment misunderstandings. The overwhelming majority of debtors who felt that they had contracted legitimate debts were willing to repay the debt.

Almost all major creditors who we interviewed said that one major purpose of the self-help collection process before legal action was to restore communication between themselves and the debtor and to find out the reason for the delinquency. Indeed one creditor stated that they would not sue if they had failed to establish contact. The collection process in the view of the majority of creditors was designed to distinguish those debtors unable to pay and those debtors unwilling to pay. Many creditors said that most legal enforcement was directed against the latter group and a number of creditors stressed the attitude of the debtor as constituting an important factor in a decision to take legal action. Thus one creditor stated that legal action "is only considered if the customer is unwilling to cooperate in any way". Legal action was regarded as a last, almost desperate step in collection, signifying a loss of control. It may also be remembered that creditors viewed voluntary overextension and loss of income as the two most important reasons for a debtor defaulting.

These two accounts raise a number of questions about the sampled debtors. Why were they garnisheed if the majority were unable not unwilling to pay? Were the debtors "unwilling to cooperate"?

These questions and the apparent contradictions between the perceptions of those involved (creditors, debtors) suggested that we examine more closely the structure of the debt collection process, the nature of communications between debtor and creditor and the attitude of creditor and debtor during this process. Perhaps this could provide a clue to explain these contradictions.

This section is not intended to be a comprehensive explanation. Rather it is a sketch based on this writer's observations and analysis of data on the process of debt collection. Its theme is an expression of Puckett's comment that "the structure of debt collection militates against creditor-debtor communication".

1. Bureaucractic collection

Most major creditors operate a collection process which reflects certain of the characteristics of bureaucratic organisations - a system of rules, impersonality, a hierarchy of authority and specialisation. Many have manuals for collection.

The bureaucratic nature of much collection work means that debtors will be "typified" as the collection procedure progresses through the debtor's career of, for example, from being a 30 day delinquent to becoming a sixty day delinquent and finally a 90 day delinquent. Each step in the timetable requires a different approach and attitude on the part of the creditor. Although the collectors wish to deal individually with each debtor, to do so fully would take time and be costly. The limited amount of information and time that a collector will have for any particular debtor will only permit him to fit the debtor into the three or four "categories" of debtors which he uses to organise the mass of material which he faces daily. Any action by the debtor will be interpreted in the light of

these categories. Thus, for example, a debtor who promises to repay a certain amount of the debt and then fails to, will be swept along the career path into the "feckless" or "unwilling to cooperate" categories. Similarly, a debtor who is silent for 120 days will be automatically treated as one "unwilling to cooperate".

In addition a basic problem is the nature of communication during the collection process which is partly a result of the bureaucratisation of collection, and partly the attitude of creditor and debtor. Thus, one debtor complained that he kept on receiving telephone calls from differing employees of the creditor.

Leff admirably summarises the problem:

> "...insofar as there is "communication" in merchant-consumer coercive collection, it resembles two chutes separated in space and time. A message triggers a reply. A reply, or a failure to reply, triggers another message, or another more coercive move. It is a game, and that's the trouble, <u>for it is not a conversation or a deal</u>. The institutional arrangements...are such that assertion, denial, threat and counterpart are fostered, but conversation and negotiation, both of which demand continuous interaction, are not. This is exacerbated when one of the parties is bureaucractised, with fine differentiation of function within the bureaucracy."

Communication during the collection process could not therefore be described as a conversation. The collector assumes after all that the debtor has contracted a legitimate debt which he ought to pay. The paramount goal of collection is - to collect - and that places severe contraints on any "bargaining" taking place for example one creditor suggested that a debtor ought to take out a loan to pay off the debt. Thus Puckett noted the following comment "We're not a charity but a business.

Our relationship is one of commerce and we have to be careful. Some of the stories you hear just can't be believed". Implicit in this comment is the further point that neither party has a good reason to trust the other.* Thus many creditors and collectors have the lurking fear that if they are in any way soft or understanding to the debtor they will either be "burned" by what turns out to be a professional debtor or deadbeat or they will never get paid. Any "move" will be interpreted in the light of the categories mentioned above. Thus a debtor who promises to repay a certain amount of the debt and then fails to, will become a case for more severe treatment, notwithstanding that he may have made the promise simply to get the creditor off his back or without thinking about his other debts. The comments of one debtor are illustrative. She had significant problems because she was a single parent. The collection agency was however unsympathetic and "ignorant" on the phone implying that she was giving a "sob story". However when she went to the collection agency in person (with a cheque) the "people were really nice".

Creditors must, of course, be concerned up to a certain point in collection with the value of a customer's business, and their public image. They also seem seized of the fear that if they are not firm then it will "get around" that they can be taken for a ride. This "firmness" may well antagonise a debtor.

For example, a debtor who starts out willing to repay may become alienated by the collection process and simply refuse to cooperate. Thus one debtor stated:

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* This is especially true, the farther the collection process goes. Thus a lawyer's manual in Alberta on debt collection states: "talk is cheap and debtors are an inexhaustible source of excuses and promises, 97% of which are never fulfilled." Law Society of Alberta, Bar Admission Course, Creditors' rights (J.E. Cote 1971).

> "They phoned me several times a week - hassling me by phone. I got fed up and refused to communicate - I guess it's my nature that if someone gets pushy - I'll resist - I got tired of the phone calls."

In addition, a debtor who attempts to communicate with a creditor about a payment misunderstanding or a problem that he is having may not feel that he has been given sufficient time or understanding by the employee whom he initially contacted. The possible impersonality of the contact may leave the debtor dissatisfied. If the debtor subsequently receives a computer printout demanding payment or further collection calls then his dissatisfaction may turn to disgruntlement which may manifest itself in non-payment of the debt.

2. The debtor's attitude and knowledge

We have already noted some of the effects which collection has on a debtor. A debtor who is having debt problems may be embarrassed or afraid to discuss them, especially with his creditors. The majority of debtors are unlikely to be skilled negotiators and their problems are confounded if they have a number of debts. Most creditors are aware of the fact that debtors may be unwilling to communicate. One creditor stated: "there usually is some problem that they won't tell us about and we have to work to find out the reason for the delinquency." Unfortunately the previous section suggests that "working to find out the reason for the delinquency" may make a debtor even less cooperative and reduce the chances of recovering the debt through the process of self help.

A debtor may for a number of reasons decide to remain silent during collection. This may be because of fatalism, the conviction that there is nothing one can do about the problem and therefore one might as well take the consequences. The debtor may simply be afraid. One creditor interviewed by Rock in his study summarised this problem.

"My assumption is that the majority of those [passed on to debt collectors] don't start out with the intention of defrauding. They have fallen on to bad times and they haven't been sufficiently well educated to discuss it to bridge the gap. It's resulted in them going in so deep, and these tougher and tougher letters coming in, they feel they can't face the collection."

In some cases, debtors who have experienced the process before or know from acquaintances about it may remain silent because they may reason that their experience with "negotiation" in the past suggests that it is unlikely to yield any benefit.

All these actions by the debtor will result in his being labelled "unwilling to cooperate" and justify the "cold shower" of garnishment.

The majority of debtors do not know what can and cannot happen to them and this does not therefore put them in a good negotiating position. Although 75.9% of debtors knew that a creditor could not seize all of their wages packet, only 26.7% of debtors knew that certain of their property was exempt from seizure.

Did you know that you are entitled to retain a certain portion of your wages exempt from garnishment?

		Percentage
Yes	22	75.9
No	7	24.1

Did you know that you are entitled to retain certain property exempt from seizures?

		Percentage
No	21	72.4
Yes	8	27.6

It is not in the creditor's interest to fully educate the debtor of the specific consequences of non-payment because of the important psychological effect of setting out vague undesirable consequences (e.g. if this debt is not paid, collection action (and presumably all that that entails) will be taken against you) which will hopefully maintain a state of "controlled anxiety" in the debtor inducing him to pay. What the creditor must fear, as we noted earlier, is the professional debtor who does know the rules and can foil any attempt by the creditor to use his sanctions. There were a minority of debtors in the sample, who, although not professional, knew how to negotiate and avoid many of the problems of debt collection. These were individuals in the upper income, self-employed salesman category. I would hesitate to call them professional debtors but they were probably the only individuals in our sample who had some success in negotiating with their creditors.

Conclusions

The debt collection process may be creating "deviants" or "recalcitrant" debtors. This was also the conclusion of Rock:

> "The autonomy of the collection system leads to the production of deviants despite a paucity of information about debtors, their motives and their situations. Someone who is illiterate, perplexed or absent will be automatically treated as if he were a recalcitrant or elusive professional debtor."

The conclusion which follows from this is that those debtors who are garnisheed may not fit the perceptions of creditors who assume that only "recalcitrant" debtors have strong action taken against them. However such a belief on the part of the creditor has an important legitimating function. It is to this topic which I now turn.

3. The legitimation of garnishment

A belief in the efficacy of the collection process in sifting out recalcitrant and professional debtors justifies the escalating threats as the process moves towards legal action. Each step in the collection process therefore assumes the "validity" of previous steps and thus the collector on the later step feels justified in taking strong measures.

The belief that one is dealing at this stage with a "special" category of individuals adds a moral justification to collection and insinuates that many of those who are collected against are "ineligible for membership of the normal moral community". cf. The symbolic universe of traditional India assigned a status to outcastes that was closer to that of the animals. It also justifies suing to maintain credibility, to prove to this group that this particular creditor cannot be duped. Thus one creditor stated:

"We will spend $99.00 to collect $100. - we want them to know that they can't get away with this at X."

This phenomenon was also documented in interviews with lawyers. A recurring comment was that one ought not to feel too much sympathy for debtors against whom legal action was taken. Legal action was, in their opinion, only taken after a long process of collection, during which creditors were usually willing to make a settlement or take smaller payments especially if the debtor's problems arose from some unfortunate change of circumstances.

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* [To this creditor "they" were a quasi criminal group who did not deserve any rights. As an example he was outraged that creditors were not allowed to make long distance collect calls to debtors and that the government was interfering with business in preventing it from harassing debtors.]

Thus one lawyer stated:

> "I think a lot of debtors are attempting to evade debts - because - after all creditors have already tried to make arrangements so we only come in at the end of a long process - although creditors are sometimes vindictive, they are generally understanding."

The assumption of creditors and lawyers was therefore that one is left with a "hard core"* of debtors at the end of the collection process, against whom tough measures must be taken. It is interesting to note that the lawyer who made the above remarks also stated that he had "no idea" why debtors defaulted on their debts.

Before concluding I should like to outline two cases studies which illustrate particular deficiencies in the collection process.

4. The case of the dissatisfied debtor

The problems of communication and negotiation between creditor and debtor are illustrated most forcefully by the case of the dissatisfied consumer. I shall briefly recount the case history of one of the debtors interviewed.

When the debtor was dissatisfied with the goods purchased he contacted the retailer to say that the goods were unsatisfactory (the drawers didn't fit and the legs broke) and that he would not pay any more until they gave other merchandise or

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* This expression was used by a significant number of creditors. Thus when discussing the effectiveness of threats of wage garnishment, many creditors stated that it was no longer effective against the "hard core" of debtors against whom such actions would be taken.

settled about the payments. The company could not replace the merchandise, however, and continued to bill the debtor every month. Every time the debtor received a bill he would phone to explain. However, the retail company simply pressed for the remaining payments and threatened to turn the debtor over to a collection agency. They carried out this threat and the debtor was subsequently garnisheed. After being garnisheed the debtor paid the remaining balance, but only because he wanted to maintain his credit rating. The total amount owing was approximately $380.

The debtor wanted to go to court because he thought he had a defence but did not know that he was being sued and did not remember receiving a summons. He was quite willing to pay the store if they would replace the goods with satisfactory ones.

This case illustrates the "staccato" nature of communication during the collection process and the difficulty facing a debtor who wants to "negotiate". A consumer debtor has little power in his armory to force a creditor into a settlement. Refusing to pay, as this case illustrates, is ineffective as a negotiating tool. A consumer is not in a position to threaten the creditor with the "cold bath" of garnishment, if he is not cooperative. He will already be in a disadvantageous position before he begins to negotiate because he will be dealing with a contract which has been drawn up by the creditor. (This debtor commented that they "shouldn't have the fine print in contracts". They "should lay their cards on the table").

Even if a consumer was willing to take legal action and obtained judgment the effect on the creditor would be minimal. The consumer must spend far more economically and psychologically than the professional creditor if he wants to take action.

There is no method for the consumer, unlike the business creditor, to externalise his costs. As Arthur Leff states, there is no "consumer in due course" doctrine. Leff concludes in relation to the consumer creditors that:

> "Our hypothetical businessman can allow the consumer to pursue his legal remedies with relative impunity, for none of the consumer's options can force a risk of much more than the $50 claim. That is not much satisfaction for the consumer to buy - merely preventing a windfall. It ordinarily demands "superspite", that is, infliction by the consumer of greater harm on himself than he can inflict on his enemy. It may still be done; the history of law is filled with cranks who spend large and unrecoverable sums to assuage feelings of outrage, moral or economic. But it is not bloody likely."

Similar considerations led Ison to recommend abolition of debt claims arising out of retail transactions.

"If it is too difficult or too expensive to develop a system that would give full effect to buyers' rights, we ought not to be enforcing sellers' claims regardless of their merits. In other words, if we are unwilling or unable to develop a proper system of adjudication for consumer cases we ought not to be giving judgment at all.*

The second case study is that of finance companies and their client debtors. Three factors are important here: the organisation of the companies; their attitude towards lending and their perception of their debtors.

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* Of course, it may be argued that studies show that many retailers give a consumer more than his legal rights by taking back goods or giving refunds irrespective of whether they are in fact unsatisfactory goods. It is also true that for a number of reasons this rule may not benefit those in the lower income groups who are the majority of individuals garnisheed.

5. The finance company and their debtors

Firstly, finance companies are organised in such a way that each individual manager is under great pressure to maximise lending and minimise defaults. There is very tight top to bottom control of delinquency ratios, and profit maximisation is the key.

The attitude of finance companies appears to be one of control. They want to control the surplus resources of their debtors and this perception colours their attitude towards communication with the debtor. The debtor is not someone to be negotiated on an equal footing - he/she is someone to be controlled. That does not mean being nasty but it does make it difficult to negotiate. The debtor is a person who is "told" what to do. If he does not do it then the collection process will become more insistent. It was with this group of creditors that debtors reported most harassment. This may be partly a function of the creditors's perception of their debtors.

A reader might interject at this stage - why do they take this attitude - won't it alienate a customer? The simple answer is no, and this for a number of reasons. First, the majority of finance company customers are poor risks and they do not have much choice in borrowing. They therefore are in a weak bargaining position. The finance company knows that they may well come back even if they default on this loan. There may be, however, competition between finance companies.

Second, a finance company debtor is usually in a less knowledgeable position and may well be used to being a taker of orders rather than a giver of orders, and is probably less articulate than a borrower from a bank. These factors make "negotiation" one sided.

A useful example was provided during an interview with a finance company. A customer had come in to find out the principal balance on his loan. The employee of the finance company did not know and told the customer in a perfunctory manner that he couldn't tell him how much he owed. The customer simply left the office.

The approach towards negotiation with a debtor is provided by the following comment by a finance company employee about debtors.

> "Sometimes we'll call him in - if we get calls from other creditors."

and

> "we don't use collection agencies - we don't want anyone else harassing our customers."

Conclusion

I have tried to illustrate certain of the deficiencies in the collection process preceding garnishment. There is the bureaucratic nature of collection* whose goal is maximum returns and which sustains itself by symbolic universe of debtor "types" which may not correspond with reality. There is also the important factor well summarised in following quotation:

> "The more a creditor deals with the system's everyday annoyances and frustrations, the more likely it is that he will lose sight of the distinction between debtors who are unable to pay, or who have legitimate grievances, and debtors who will not pay."*

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* R.R. Anderson, Coercive collection and exempt property in Texas: A debtor's paradise or a living hell? (1975) 13 Houston L. Rev. 84 at p. 103-104.

Homer Kripke, Professor of Law at New York University School of Law spent 20 years practising for or on behalf of consumer finance companies. It is interesting therefore to note his comments on bureaucratic collection:

> "Even in reputable financing, once the credit is extended and a default occurs, an irresistable dynamic takes hold, the result of the profit mainspring of the private sector of the economy, and more particularly of the bloodlessness of the "Organization Man" and the impersonality of the public company. Men who are compassionate in personal affairs feel that they cannot be compassionate in their business affairs with other people's money, "I can't do it, because we're a public company." Here more than in the idea of "overreaching creditors"[13] at the time of credit extension lies "the immorality of large organizations: which Moynihan, following Niebuhr, finds to be "the central danger of the age".[14]
>
> Kripke, Consumer Credit Regulation: A Credit-oriented viewpoint 1968 68 Cal. L. Rev. 445 at 450.

The basic point therefore is that collection is probably less than efficient in distinguishing those "unwilling to pay" from those "unable to pay".

In addition it is difficult for debtors with legitimate grievances to effectively negotiate with a creditor. Collection, even at the self-help stage is essentially coercive.

I do not deny that there are professional debtors and recalcitrant debtors. However, the present system appears capable of creating them out of bemused debtors who are willing to pay. The consequent problems which they suffer are a matter for concern. These considerations suggest two challenges for reform.

1. The facilitation of more effective two way communication between debtor and creditor so that the coercive side of debt colelction may be reduced.

2. The provision of effective channels of recourse for those consumers with legitimate grievances, whose complaints cannot be solved by 1.

DEBT COLLECTION AND THE ISSUE OF HARASSMENT

Our study suggests a high incidence of debtor harassment. Six out of 30 debtors reported some form of objectionable collection practice.

Their complaints fell into a number of categories.

(1) Telephone calls

The most common complaint concerned repeated phone calls to the debtor, sometimes late at night. Thus one debtor stated that he was phoned 30 times a day. Another complained that the creditors phoned at 9:00 p.m. on Sunday night, and a third stated that the creditor had called three or four times an hour.

(2) Abusive and threatening language

Another source of complaint concerned threats and the use of abusive language. Two debtors were threatened with jail, one was assailed by racist comments and the threat that he would be "taught a lesson", and a number of debtors were threatened with seizure of all their property.

(3) Communication with the debtor's employer

Finally, one debtor was upset because the creditor had persistently phoned her at work. If another employee answered the phone while the debtor was not there, the creditor would "tell the whole story". The creditor would "tell all to whoever answered the phone". This both embarassed and humiliated the debtor.

In addition, debtors complained about the lack of coordination within collection agencies. Sometimes they would be phoned by one employee, sometimes by another.

It may be argued that what constitutes "harassment" is a subjective judgment. In order to avoid bias we have restricted our examples of harassment to cases clearly recognized as "harassment" by previous public reports and writings.*

Incidence of Harassment

The 1978 Report of the Supervisor of Consumer Credit in Alberta states that "the major (consumer) complaint area is still collection practices." The following table indicates the incidence of complaints concerning collection practices.

SUMMARY OF CREDIT COMPLAINTS RECEIVED BY CONSUMER RELATIONS DIVISION IN 1978 ACCORDING TO REASONS FOR COMPLAINTS

eason for Complaint	Telephone	% of Telephone Complaints	Written	% of Written Complaints
a) Cost of Credit	42 (120)	5 (13)	4 (16)	2 (6)
b) Payout Calculations	60 (104)	7 (12)	19 (15)	8 (6)
c) Balance Owing	139 (127)	15 (14)	47 (62)	20 (24)
d) Credit Contract, Liability	150 (212)	16 (24)	24 (19)	10 (7)
e) Disclosure of Credit Terms	29 (10)	3 (1)	8 (5)	3 (2)
f) Collection Practices	162 (166)	19 (18)	25 (30)	11 (11)
g) Credit Reporting	44 (48)	5 (5)	4 (7)	2 (2)
h) Legal Action	40 (12)	5 (1)	7 (1)	3 (1)
i) Credit Advertising	7 (24)	1 (3)	83 (104)	35 (39)
j) Credit Card Solicitation	4 (10)	.5 (1)	0 (2)	0 (1)
k) Information Request	179 (52)	21.5 (6)	8 (0)	3 (0)
l) Other	16 (15)	2 (2)	9 (1)	3 (1)
Total	872 (900)	100%	238 (262)	100%

nount Recovered $10,666 ($13,604.47)
verage Recovery Per File $44.81 ($52.00)

ote: The numbers in brackets indicate 1977 figures.

* See: B.C. Law Reform Commission, Report on Debtor-Creditor, Relationships Part I, pp. 8-9; Payne Committee on the Enforcement of Judgment Debts, pp. 320-321.

Our study suggests that these statistics on collection practices are the tip of an iceberg. Our figure of 6 out of 30 is fairly conservative since those include only what we considered unambiguous cases of harassment. Even assuming that our figure is an overestimate and that only 4 out of 30 or 12% of cases involve harassment then that is extremely disquieting.

If there are approximately 5,000 consumer garnishees per annum in Edmonton, then 12% of 5,000 is 600. That is only debtors who have been garnisheed. Our "tip of the iceberg" hypothesis is also supported by a number of studies on consumer complaints which not only suggest the unrepresentativeness of consumer complaint statistics but also indicate that such statistics are especially misleading in registering the dissatisfaction of those of lower socio-economic status. (Best and Andreasen, Consumer Response to unsatisfactory purchases: A survey of perceiving defects, voicing complaints, and obtaining redress. 11 Law and Society Rev. 701 (1977). Ison, Credit Marketing and Consumer Protection Ch. 16 esp. pp. 136-145. Warland, Herman and Willetts (Dissatisfied Consumers: who gets upset and who takes action, (1975) J. of Cons. Affairs, 9: 149).

Debtor harassment is not therefore an isolated phenomenon. Nor is it restricted to collection agents. The majority of cases we investigated involved creditors, almost exclusively finance companies, collecting debts on their own behalf. Once again we find evidence supporting the arguments in our section on communication breakdown. Thus a number of debtors who complained about harassment, also complained that there appeared to be a lack of coordination among employees of the collector. Debtors were phoned by different employees, who did not know what the other had said to the debtor.

We are concerned by the level of debtor harassment, and think that it requires immediate attention.

Policy issues in the regulation of collection

We recognize that a creditor has a legitimate interest in recovering a just debt as swiftly and cheaply as possible, avoiding the cost and delay of litigation. We also recognize that a creditor may have to be firm in his collection attempts and that as the Payne committee in the United Kingdom stated "the relationship of creditor and debtor often engenders antagonism."

However, "the right to pursue a debtor is not a license to outrage the debtor," Norris v. Maskin Stores Inc. 132 So. 2d. 321 (Ala. 1961) and the debtor also has certain interests that ought to be protected.

In a useful article, Greenfield (1972) Wash. U.L.Qu. 1 states the following interests of the debtor:

(1) the integrity of his body;
(2) the integrity of his personality.

The first category would include protection from direct physical harm. The second, Greenfield argues includes:

(a) an interest in keeping private facts out of the public light;
(b) an interest in being left alone, in "shutting out the outside world when he so desires";
(c) an interest in maintaining his dignity and self respect.

The debtor also has an interest in continuing in his employment and seeing that "the employment relationship not be disrupted by factors that are not relevant to that relationship." (Greenfield op. cit. supra. p. 10.) The debtor also has an interest in payment of the debts so that he will be able to continue to obtain credit in the future.

Greenfield also suggests a number of societal interests independent of the parties involved.

These are:

(1) Society has no interest in punishing indebtedness, since the economy is based largely on the extension of credit and debt collection is a matter of civil not criminal justice.

(2) Society has an interest in the payment of debts.

(3) Society has an interest in reducing the congestion of the nation's courts. Permitting extrajudicial collection methods that result in payment or compromise of claims tends to reduce the congestion that would exist if all claims were litigated.

On the other hand, "if an alleged debt does not actually exist, society has an interest in not permitting the alleged creditor to coerce payment of the alleged debt by placing the alleged debtor in fear of losing his job or by harassing him until he pays merely to put an end to the harassment."

A policy objective which attempted to fairly balance these interests must recognize that there are important justifications in permitting a creditor to use reasonable methods of self-help collection.

The purpose of legislation must be to set out recurring situations which, in the light of these interests, are regarded as unreasonable. It should also set out a general standard of reasonableness which can take account of novel cases of unreasonable collection tactic.

"If reasonable methods of collecting debts fail the proper course for creditors is to invoke the machinery of the courts." Payne Committee Para 1235.

Existing law

Both the criminal law and the law of torts provide some limited possibilities for controlling unreasonable debt collection practices. The reader is referred to more detailed texts for information on these possibilities.*

The major regulation of collection practices is through provincial Collection Practices Acts. The present statute in Alberta is The Collection Practices Act, S.A. 1978 c. 47. These statutes differ both in their approach and the extent of their regulation of collection. A comparative analysis of these statutes suggests a number of issues which ought to be dealt with in any reform of the present Alberta provisions.

Issues for reform of collection practices legislation

1. Scope of legislation

An important issue is whether legislation should be restricted to those who collect debts on behalf of others or ought to extend to all creditors including those collecting their own debts.

The purpose of regulation is to prohibit objectionable collection practice, irrespective of the author of the practice. Our data suggest that objectionable collection practices are not limited to collection agents. We therefore agree with the British Columbia Law Reform Commission who stated that "the debt collection process should be subject to the same legal restraints, whether carried on by principals or agents." (B.C. Law Reform Commission, report on debtor-creditor relationships Part 1 Debt Collection and Collection Agents. p. 17 (1971). See also S.B.C. c. 26, s. 14(1) (1973). Manitoba Consumer Protection Act, S.M. 1970 c. 63, s. 100.) The present Alberta

* See: B.C. Law Reform Commission, Debtor-Creditor Relationships Part 1 1971. Debt Collection and Collection Agents.

legislation limits its regulation of collection practices to collection agents. (The Collection Practices Act, 1978 c. 47 s. 13(1).) It is possible that s. 2(d) of the Unfair Trade Practices Act would be applicable but it would not give a consumer an individual right of action. (See S.A. 1975, c. 33, s. 11(1)(a).)

Manitoba and British Columbia are the only provinces which regulate the collection practices of creditors collecting on their own behalf. (See also report of the National Commission on Consumer Finance p. 41.)

Most provincial legislation exempts certain categories of persons from the scope of the legislation. Thus the Alberta Act does not apply to barristers and solicitors and insurers, and trustees under the Bankruptcy Act are not required to be licensed. (s. 3(1), (2) & (3).) Since the purpose of the licensing requirement is similar to the "trust fund" concept, it is rational to exempt categories or persons already subject to trust fund obligations. This rationale would not extend to exempting such persons from those sections dealing with objectionable collection practices. It may, however, be argued that certain of these persons, for example barristers and solicitors, ought to be regulated by their own professional societies.

2. The "house agency" issue

A related issue is the situation where creditors collecting their own accounts assume the name of a fictitious collection agency in the hope of pressuring the debtor to settle. They are known as "house agents".

The misleading appearance conveyed by this practice caused the British Columbia Law Reform Commission to recommend that creditors should have the option of collecting in their own name, collecting through an exempted person such as a solicitor or collecting through an independent licensed agency. They

further recommended that the Inspector of Collection Agents be empowered to refuse a licence to any person where, in his opinion, that person proposes to carry on business in a form that is likely to convey a misleading appearance that debts are being collected on behalf of others.

This would have effectively prohibited the practice.

Provincial legislation has adopted two approaches here:

(1) A number of jurisdictions (Alberta, Manitoba, Saskatchewan, Newfoundland) define collection agent to include the house agency. They are therefore accepted as legitimate and are required to be licensed.

(2) Both British Columbia and Ontario prohibit a creditor from attempting to collect payment from a debtor other than in their own name or through a licensed collection agent. (S.B.C. c. 26, s. 14(1)(h).)

If the purpose of legislation is to prevent misleading practices by the creditor then there seems a strong argument for the prohibition of "house agencies". Creditors would still be able to maintain collection departments or to use independent licensed agencies or a solicitor.

3. Objectionable collection practices

The purpose of this section is to outline those practices which are objectionable in themselves and to suggest practices which may become objectionable because of the manner in which they are exercised.

(1) The following practices are recognized as objectionable in themselves:

> (a) threats of violence, express or implied to the debtor or his family. S.B.C. s. 14(1).

(b) threatening to do what one has no right to do, for example putting a debtor in jail, or what one has no intention of doing, for example, seizing property. S.M. 1970 c. 63 s. 100(d).

(c) use of obscene, profane language.

(d) collecting money that exceeds the amount owing. Collection Agencies Act. R.S.O. 1970 s. 31(a).

(e) making collect telephone calls to debtors, his family or anyone, in order to demand payment. Collection Agencies Act R.S.O. 1970 (as amended) s. 31(b). S.N.S. 1975, c. 7, s. 20(1)(d).

(f) using forms or documents which resemble official court documents. S.M. 1970 c. 63 s. 100(e). Court Forms Act R.S.A. 1970, c. 72.

(g) making telephone calls or sending telegrams or other communication or making personal calls between 10 p.m. and 8 a.m.

(h) threatening to bring about the loss of the debtor's employment.

(i) giving any publicity to a claim otherwise than by reporting it to a credit reporting service.

*

These practices are objectionable because they go beyond any legitimate interest the creditor has in recovering the debt, and one may only presume that in many cases the purpose is often "to instill fear and panic in the debtor" or to give them a "nasty surprise" by the use of "cunning devices" so that the debtors will be pressured into making payment. (note comments of National Commission on Consumer Finance).

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* 273 S.W. 2d. 64 (1954) (list of collection practices.)

There are a number of other situations which may not be objectionable per se but which if exercised unreasonably or with the sole purpose of inflicting harm on the debtor become objectionable. These are: 1) telephone contact with the debtor; and 2) communication with the debtor's employer.

1) Telephone contact with the debtor

Telephone contact is regarded by the majority of creditors as the most effective method of communicating with a debtor. Indeed finance companies appear to use little else.

We do not think that it would serve the interests of debtor or creditor to prohibit telephone collections. However, we submit that, in addition to prohibiting creditors from telephoning between 10 p.m. and 8 a.m., and on a Sunday or a holiday there should be a provision which prohibits making telephone calls which either because of their nature or frequency are an unreasonable invasion of the debtor's privacy and/or are likely to result in alarm and distress to the debtor. S.B.C. c. 26, s. 14(1)(c); S.M. 1970 c. 63, s. 100(c); S.N.S. 1975 c. 7, s. j.

2) Communication with the debtor's employer

We note in the section on wage garnishment and employment both the high incidence of creditors who would contact employers and the problems created for debtors by this contact.

A number of policies might be suggested for this area.

1. Prohibit a creditor communicating with the debtor's employer except to verify employment or unless the creditor has obtained the written consent of the debtor.

2. Prohibit all communications between a creditor and the employer of a debtor.

The argument in favour of a blanket prohibition is summarised in the following extract from the B.C. Law Reform Commission report:

> The vital thing is not what the collection agency communicates to the employer, but what the collection agency can induce the employee to think it has communicated to the employer. What they can induce the employee to think is the measure of the coercion that they have applied. [T]he only way [to prevent coercion via the employer] is to proscribe any communication at all with the employer, or to the employee via the employer, or to the employee at his place of work, or to the employee via any employee or agent of the same employer.

The arguments against such a blanket prohibition are:

1. It would permit skip debtors to avoid detection if the creditor was refused the right of finding his whereabouts through his employer.

2. It would accelerate the use of drastic remedies.

Sanctions

It is clear that collection practices legislation will only be effective if there are effective sanctions and it is effectively policed. Most provinces include criminal and administrative sanctions and a number expressly provide for a civil action by the debtor for damages or a fixed amount.

One of the purposes of the legislation must be to make those collecting debts aware of the statutory standards. Greater attempts should, therefore, be made to circulate to debt collectors a listing

of objectionable practices with an explanation of why such practices are proscribed. Such action could have an important educating and preventive influence.

WAGE GARNISHMENT AND EMPLOYMENT

Introduction

A central issue in the study was the effect of a wage garnishment order on a debtor's employment. Existing studies suggested a number of issues. Firstly, it was argued that employers resented the inconvenience and cost of administering a garnishment order, calculating the exemption and paying money into court. In addition, most employers, having images of themselves as creditors rather than debtors, and doubting the reliability of a garnisheed employee might discharge an employee. This was thought to be particularly true in smaller concerns which might find the administration of a garnishment order time consuming and costly.

Second, although a debtor might not be discharged, the garnishment might affect promotion possibilities or his status at work.

Third, depriving the debtor of a portion of his wages might induce him to leave his employment.

Fourth, the psychological effect of the garnishment might affect the debtor's work causing problems which might lead to his subsequent dismissal or firing.

Finally, the knowledge of the garnishment order by his employer and co-workers might lead to embarrassment and humiliation for the debtors, affecting his work performance, and possibly giving cause to his employer to dismiss him.

We wanted to analyze these issues in our study. We also wanted to gather information on the cost of the process to the employer and the difficulties faced by him in following the existing garnishment procedure. Our sources for this aspect of

the study were the debtors' interviews, employers' interviews and, to a lesser degree, creditors' interviews. For the employers' interviews, we took a random sample from the court files over a period of three months, of employers who had had garnishee orders against them. We conducted telephone interviews with a total of 44 employers out of 75 sampled. The nature of the sample shown by size and type of firm is illustrated by Tables 1 and 2.

TABLE I

NATURE OF EMPLOYER

Category Label	Frequency	Percentage
Construction	8	18.2
Transport	6	13.6
Services	5	11.4
Food	5	11.4
Manufacturing	4	9.1
Retail	4	9.1
Other	4	9.1
Provincial Public Service	2	4.5
Utilities	2	4.5
Real Estate	2	4.5
Real Estate	2	4.5
Municipal Public Service	1	2.3
Department Store	1	2.3

TABLE 2

NUMBER OF EMPLOYEES

Category Label	Frequency	Percentage
0 - 24	6	13.6
25 - 49	3	6.8
50 - 99	4	9.1
100 - 249	5	11.4
250 - 499	4	9.1
500 - 999	7	15.9
1,000 - 2,499	4	9.1
2,500 - 4,999	5	11.4
5,000 - 9,999	1	2.3
over 10,000	4	9.1

The sample shows that there is a high representation of construction and transport (courier, trucking) firms in our sample. The absence of finance industries is worth mentioning.

The statistics on size of firm show that 22.7% of the firms interviewed had less than 50 employees and 43% had less than 500 employees. We were particularly interested in finding out the impact of garnishment on employees in small firms. Our sample therefore differs from Puckett's which was drawn from an address register of employees with 50 or more employees.

We crosstabulated the size and type of firm. This indicated that 50%(2) of the manufacturing industries had under 100 employees, and 50%(2) 250-499 employees; the municipal public service, over 10,000, the two provincial public services 1,000 - 2,499 and over 10,000 respectively; utilities 50%(1) 1,000 - 2,499, 50%(1) over 10,000; department store 1,000 - 2,499; retailers 25%(1) 0 - 24, 75%(2) 100 - 249; transport 16.7%(1) 0 - 24, and 16.7%(1) over 10,000, 33.3%(2) 25 - 49, 16.7%(1) 50 - 99, and 16.7%(1) 500 - 999 and 16.7% (1) over 10,000; construction 25%(2) 0 - 24, 12.5%(1) 50 - 99, 12.5% (1) 100 - 124, 12.5%(1) 500 - 999 and 12.%(1) 1,000 - 2,499, 25%(2) 2,500 -

4,999; services 20%(1) 0 - 24, 20%(1) 50 - 99, 20%(1) 100 - 249, 20%(1) 500 - 999, 20%(1) 2,500 - 4,999; food 20%(1) 250 - 499, 60%(3) 500 - 999, 20%(1) 2,500 - 4,999; real estate 50%(1) 0 - 24 and 50%(1) 25-49; other 33.3%(1) 500 - 999, 33.3%(1) 1,000 - 2,699 and 33.3%(1) 5,000 - 9,999. Construction and transport accounted for 50%(5) out of the 10 firms with under 50 employees. The total number of garnishee orders received during 1978 was and total number of employees garnisheed were for the 44 employers, 1443.

I. Employers

1. Employers' Procedures on Receiving an Initial Wage Garnishment Summons

We asked employers what their policy was in relation to an employee on receipt of an initial garnishment order. 70% of employers stated that they would contact the employee personally, 27.3% stated that they would formally contact the employee, and 2.3% stated that there would be no contact. The majority of those who would formally contact or not contact the employee at all were large, bureaucratized employers organized to impersonally process large numbers of garnishment orders.

This initial personal contact by a large majority of employers does carry, I think, the implication of a mild form of pressure on the debtor. What it means is that the debtor is now faced with the complication of a third party who knows about and may discuss with him his debt problem. There is, in addition, the potential embarrassment of other individuals at work being aware of his problem. It is in this sense that the simple fact of personal contact by the employer may pressure the debtor to do something about the debt.

When we analyzed the nature of the contact, we found that 89.7% of these employers put pressure on the debtor to settle the debt before the employer was required to process the garnishment. This is illustrated by Table 3.

TABLE 3

NATURE OF CONTACT ON INITIAL GARNISHMENT
WHERE EMPLOYERS TAKE ACTIVE ROLE

Category Label	Frequency	Percentage
Pressure to Settle	26	89.7
Explain to Employee	3	10.3

In addition, 10.3% would explain the garnishment order to the employee and give him an opportunity to take action before the employer was required to process the garnishee. We encountered only one employer who would help the debtor to defeat the garnishee. This information is corroborated by the debtors' interviews which showed that in a significant number of cases the employer was helpful and understanding, but in only one case did the employer help the debtor to defeat the garnishee.

There is thus this initial period not recognized by the official rules of court, between the receipt of a garnishee summons by the employee and the time when he must make a return to the Clerk of the Court. During this period, the debtor is under pressure to settle the debt.

The predominant reason given by an employer for pressuring a debtor to settle is so that he does not have to get involved in the administrative inconvenience of processing the order. Thus one employer stated that we "tell them to try and settle because it causes additional bookkeeping" and another stated "we tell them not to involve the company". Most employers believe that they are acting in the best interests of the employee by pressuring him to settle before the garnishee is processed.

These data are confirmed by our debtors' interviews where over 75% of debtors discussed the garnishment with their employer, and, in addition, 75% first learned of the wage garnishment from the employer. The danger, of course, in pressure being put upon a debtor to settle is that he may be induced into some unwise or precipitate action such as leaving his employment or going into further debt. The impression at this initial stage is that an employer will be satisfied if the debtor can solve the problem for himself and cause no further difficulties either for himself or for the company.

2. Employers' Procedures on Receiving Two or more Garnishees on an Employee's Wages

Our next question was: "What is your policy in relation to an employee who receives two or more garnishments?" The results are shown in Table 4.

TABLE 4

WHAT HAPPENS WHERE TWO OR MORE GARNISHEES

Category Label	Frequency	Percentage
Contemplate Dismissal	14	37.8
Pressure to Settle	9	24.3
Offer Debt Counselling	7	18.9
Would Dismiss if Could	4	10.8
Dismiss	3	8.1

8.1% of the employers replying stated that they would dismiss an employee on receiving two or more garnishees on the employee, 37.8% indicated that they would contemplate dismissal, 24.3% would continue the pressure on the debtor to settle, approximately 18.9% would counsel the debtor and 10.8% would fire the debtor if it were not prohibited by S.40 of the Alberta Labour Act. This last category is interesting because it does suggest that the Alberta Labour Act has had some effect. It should be noted that all

these employers were large, bureaucratised employers.

An employee who is garnisheed two or more times is therefore much more prone to lose his job or have other disciplinary action taken against him than if he only has one order against him.

We classified employers' responses to two or more garnishments into compassion, acquiescence and disfavour (Table 5).

TABLE 5

ATTITUDE TOWARD EMPLOYEE'S SITUATION WHERE TWO OR MORE GARNISHMENTS

Category Label	Frequency	Percentage
Disfavour	29	70.7
Compassion	6	14.6
Acquiescence	6	14.6

70.7% of employers viewed with disfavour an employee who had two or more garnishments; 14.6% viewed an employee with compassion and 14.6% acquiesced. As one bluntly stated: "We don't like it and would not look favourably on it" and "we would tell them to clean it up". Although this disfavour would not necessarily be translated into dismissal, it would continue the pressure on the employee, making worse the consequences mentioned in relation to the initial garnishment.

These initial findings suggest the hypothesis that wage garnishment may be of short term benefit to a creditor. An employer would initially put pressure on the debtor to pay the debt. However, unless the employer is a large, bureaucratised organisation, then there is a significant chance that the employee may simply leave his employment or be fired if there are further garnishment orders.

This hypothesis may also be supported by our File Survey which indicated that in 82% of cases no more than two wage garnishments were issued for a debt.

3. Size of Firm and Unionisation Related to Employment Problems Caused by Wage Garnishment

It is argued that wage garnishment may have the greatest effect on an employee in a small concern which may not be unionised and where an employer could not afford either the time or the cost to administer the garnishee order.

Our data appear to confirm these hypotheses. Of those firms who would dismiss an employee on two or more garnishments, all had less than 250 employees and 66.6% (2 out of 3) had less than 50 employees. In addition, of the 14 employers who would contemplate dismissal on two or more garnishments, 65% had less than 250 employees and 42.8% had less than 100 employees. 75% of employers who would dismiss the employee, if it were not contrary to s.40 of the Alberta Labour Act had more than 2,500 employees and 50% had more than 10,000 employees.

We also crosstabulated the size of firm with knowledge of s.40 of the Alberta Labour Act which prohibits dismissal of an employee where the sole reason is that garnishment proceedings are being or may be taken against him. 69.8% of employers knew of the provisions of this Act. 30.2% did not.

38.5% of those who did not know that dismissal of an employee on these grounds was prohibited, were firms with less than 25 employees, 15.4% had 25 - 49 employers and 7.7% had 50 - 99. Thus over 60% of those who did not know of the Alberta Labour Act provisions had less than 100 employees.

Of firms with over 1,000 employees, only 2 (14%) out of 11 did not know of the provisions of the Act.

Even more interesting were the results we obtained when we crosstabulated the size of the firm with union membership and their policy in relation to an employee who received two or more garnishments. 100% of the firms who would dismiss an employee were not unionised; 87.1% of firms who would continue to pressure to settle were unionised; 71.4% of those who would offer debt counselling were not unionised; and 100% of firms who would dismiss an employee if it were not against s.40 of the Alberta Labour Act were unionised. Two thirds of this last group had over 2,500 employees.

These data, therefore, represent a strong argument that size of firm, unionisation and knowledge of the Alberta Labour Act are important contributing factors in whether an employee is discharged on account of wage garnishment. It should also be noted that the majority of small firms (under 100) were in the construction and transport sectors, where there is often highly unstable employment patterns.

4. Employer Attitudes Towards the Wage Garnishment Process

Thirty-six of the 44 employers openly stated a dislike at being involved in the process of wage garnishment. Sometimes, no reason was given, sometimes a number of reasons were given. Twenty-four cited administrative inconvenience. This included cases where wage garnishment involved the manual processing of a cheque which was normally processed by computer, where it "causes additional bookkeeping" and where it was time consuming for clerks because of more paper work. Employers' annoyance with the process was summarised in the repeated use of phrases such as inconvenience, nuisance, irritation and "hassle." (Jablonski: The following comments are typical:

> "From the company's side we just don't want to get involved -- it's a hassle"

and

> "I don't see why the employer has to be involved".

Seven employers indicated that they saw no reason why employers should be involved in a debtors' personal problems. Three of these seven gave embarrassment to the employee as a reason. Six stated that they saw no reason why an employer should be used by a creditor as a collection agent and four felt that the creditor was partly to blame for the problem.

Only large employers with presumably bureaucratised payroll systems which could easily handle garnishees and those firms which had had very little experience with garnishment seemed to acquiesce in the process.

5. Cost of the Garnishment Process to Employers

Twenty-one out of 44 employers gave us a dollar estimate of the cost of a single garnishee. This was in response to the question: "Considering all the costs required to process garnishments, do you have any estimate of the cost of processing a single garnishment order?" The average cost was $40. Of the remainder replying to this question, eight stated the cost of a garnishment to be "negligible" and three stated that it was time consuming and expensive although they could not provide an exact figure. Rule 477 of the Alberta Rules of Court allows a garnishee to deduct five dollars for compensation. This would appear to be quite inadequate to cover the expenses of the majority of employers. This cost is therefore a large subsidy to the creditor's collection costs.

6. Image as Creditors?

One might assume that if garnishments were so inconvenient and irritating to the majority of employers, then they would be in favour of abolition of the remedy. However, over 80% of the creditors were against abolition. 60% of employers in Puckett's study favoured abolition. A significant number did say that as employers they favoured abolition but that as creditors they would not since there ought to be some manner in which debtors are required to repay their debts. None said that "as debtors we would like to see it abolished". It may be imprecise to state unequivocally that employers had an image of themselves as

creditors. Rather they reflected the popular public attitude that views credit and debt entanglement as possibly reflecting a moral weakness or inadequacy on the part of the debtor, something vaguely undesirable.

The great majority of those workers who are garnisheed are manual workers, many of them unskilled. Employers may or may not disapprove of the actions of the debtor but they are unlikely to identify themselves and their values with the problems of the debtor. Some employers were paternalistic towards their employees, others frustrated at being unable to understand the motivations of an employee who is garnisheed, for example, stating that "Don't they know their integrity is at stake". Sometimes there was the perception that these individuals are inadequate, sometimes that garnishment is simply part of the lifestyle of the lower income manual unskilled worker.

7. Employers' Understanding of Exemptions and Wage Garnishment Procedure

We asked employers the following questions concerning the procedure of wage garnishment:

> Are there any ways in which you think the procedure of wage garnishment can be improved?

and

> Do you think the procedure for assessing the amount to be paid into court and the appropriate exemptions are easy to follow?

A significant number replied that there should be advance notice that wage garnishment was going to occur since it usually came as a complete surprise to the employer. There was also a number of suggestions that there should be a continuing garnishment order. Certain other points were mentioned by individual employers. These were that the garnishee instructions were unclear concerning commissio salesmen and that it is difficult to fit weekly payees into the

rules. Two employers raised the issue that under Rule 475(2) a garnishee summons only attaches those wages accruing due on the day the garnishee summons is served.

The fact that 28 employers seemed to have no problem with administering the summons is not particularly reassuring. Thirty did not have a solicitor or legal department check the validity of the order and it is the writer's impression that very few employers are aware of the significance of Rule 475(2) which requires an employer to pay into court only that portion of the wages which had accrued due up to the time of the service of the garnishee summons. The impression received was that most employers simply assumed that if a summons is received on the twentieth of the month and an employee is paid monthly, then the summons will catch that whole month's salary. In addition, it may be surmised that many employers are unaware of the fact that if a debtor is employed during only part of a month, he is entitled to the full exemption for the month. (See Rule 483(3)). This hypothesis is substantiated by the experience of one of our debtors. These mistakes by the employer do not benefit the debtor.

(i) Employers and Exemptions

One significant piece of information which we obtained was that 25% of employers in their answer to the question "Do you think that the procedures for assessing the amount to be paid into court and the appropriate exemptions are easy to follow?", volunteered the reply that the exemptions were outdated since they left the debtor insufficient to live on, especially if he had a family. Since employers see the exact amount left to the debtor this observation is of importance.

II. Debtors' Experiences of Employment Difficulties Caused by Wage Garnishment

Introduction

It is a reasonable hypothesis that our sample of debtors represented a more stable segment of an unstable population.

Thus 43.3% had not changed jobs over the last five years, and 36.7% had changed jobs once or twice in the last five years. Fifty-three percent had moved residence no more than twice in the past five years and 71% had been in the same employment for over two years previous to the garnishment.

These factors must be taken into account in reviewing our data. The data may underestimate problems related to wage garnishment at the workplace.

1. Job Dismissal

Two debtors (8%) interviewed were laid off because of garnishment. Both were unionized and one knew of the provisions of the Alberta Labour Act. Neither bore any grudge against their employer. They were indeed understanding about his position: "It was a small business and ... he ... didn't want to be involved". ... "After all, garnishment probably means that a person has problems and he brings them to work and so is a bad employee".

This "acceptance" of dismissal will be commented on in a later section.

Six (20%) debtors stated that although they were not dismissed on account of garnishment, it was common knowledge that a lot of firms would fire people because of garnishment. One debtor also claimed that she knew of a retail firm where they would ask an employee to resign if their wages were garnisheed.

Fourteen (48%) stated that their employer was helpful and understanding. Of these cases, in three the employer had stated that he could have fired the employee but decided to be helpful. Thus although an employer could be helpful and understanding, he might still put pressure on the debtor to settle the debt.

2. Other Effects of Wage Garnishment on Employment

Thirty percent of the debtors were extremely embarrassed by the fact that their employer, and, in a number of cases, their fellow workers, knew about the garnishment. This occurred even where the employer was helpful and understanding. One debtor stated:

> "The supervisor and personnel manager know personal things that they otherwise would not know and that I'd prefer they did not know."

This embarrassment and invasion of privacy at the workplace is an important issue and we will return to it later.

3. Union Involvement and Dismissal

We were interested in establishing the effect and role of unions in relationto wage garnishment. We have already noted the statistical relationship in our employers interviews between union involvement, knowledge of the Alberta Labour Act and dismissal. Of the 24 debtors for whom union membership was possible, 12 were unionized and 12 were not. Seven of the 12 contacted the union and two stated that the union was helpful, in one case providing a lawyer. Two stated that the union had said that there was nothing they could do. Of the five who did not contact the union, the majority appeared to think that the union would not be able to help. One commented that "unions are good for holidays and pay only" and another "what's the union going to do?".

These findings suggest that unions are perceived by only a minority of debtors as relevant to solving debt problems and could therefore be a useful source of help and advice for them in solving their short term debt problems. There is a need, however, for unions to communicate to individuals their usefulness in this area and to develop the perception in their members that they can be a source of aid.

Unions may not, however, be capable of dealing with long term debt problems of members and it should be mentioned that the two individuals in our sample who were laid off on account of garnishment were both union members.

4. S.40 of The Alberta Labour Act and Wage Garnishment

Section 2 of Part I indicated the connection between lack of knowledge by an employer of S.40 of The Alberta Labour Act and job dismissal.

Our data suggest that S.40 may have had an educational and deterrent effect on certain larger employers, who are unionised.

There are, however, two fundamental reasons which affect the general effectiveness of S.40 of The Alberta Labour Act.

Firstly, it is a reactive statute. It requires an employee to bring a private complaint. An employee who is garnisheed is often reconciled to highly unstable employment and being laid off on account of garnishment may well be regarded as "just one of those things". He is unlikely to take private action against his employer for redress. Existing data on consumer perception of and complaints concerning defects in products support the conclusion that the type of person who is garnisheed is least able or willing to initiate a private complaint (Best & Andreason: 1978).

In addition, to the extent that an employee does not perceive himself as a victim when he is laid off then he will not think of taking action. This perception may be helped by the employer who will often portray himself as a victim when he contacts the debtor. If you add to these factors the stigma attached to being garnisheed evidenced by the embarrassment and humiliation of a significant number of our debtors, then an employee is unlikely to be willing to take any action.

III. Role of Creditors in Relation to Employment and Wage Garnishment

If creditors know about the facts that we have mentioned in Parts I and II, then they will be able to make the workplace

an important part of the collection process. Our creditor and employer interviews suggest that creditors are aware of the pressure that may be exerted at the workplace during the collection process.

Firstly, creditors may contact an employer before garnishment to help them locate debtors and pressure the debtor into settlement (See Table 6). We asked employers if they received such calls and what their response was to them.

TABLE 6

ACTION TAKEN BY EMPLOYER ON RECEIVING TELEPHONE CALL FROM CREDITOR

Category Label	Percentage
More information than employment status	39.4
Simple information	27.3
With I.D. more information	21.2
No information	12.1

81% of employers replying indicated that they got calls of this nature from creditors every month and 90% of creditors interviewed indicated that they would phone the debtor at work which in most cases involves phoning the debtor's supervisor or employer. The knowledge that employers would cooperate in putting pressure on the debtor permits a creditor to use a third party to pressure a debtor into settlement. Telephoning an individual's employer at work also has the psychological effect of invading the privacy of the workplace and letting the employee debtor know that there is no sanctuary from the creditor.

The possible dangers in this are illustrated by the experience of one debtor who was particularly upset by the creditor phoning her at work. If another employee answered the phone while the debtor was not there, then the creditor would "tell the employee the whole story." This both embarrassed and humiliated the debtor.

Only 12.1% of our employers stated that they would not be at all cooperative with a creditor. 89.3% of employers would contact the employee about the debt and give information concerning the employee's location to the creditor.

TABLE 7

THOSE EMPLOYERS WHO WOULD CONTACT EMPLOYEE AFTER RECEIVING CALL FROM CREDITOR

Category Label	Frequency	Percentage
Yes	25	89.3
No	3	10.7

It should be noted that until December 31, 1978, when the Collection Practices Act (S.A. 1978, c.47) repealed the Collection Agencies Act (S.A. 1965, c.13), a collection agent could not enquiries at the place of employment of the debtor, except with the approval of the debtor, or for the purpose of verifying employment. (Alta. regs. 567/65 as amended by Alta. regs. 589/65, 16(d)(ii). This legislation does not extend to individuals or firms collecting debts on their own behalf.

At a later stage in the collection process our data on the employer's pressure on the debtor confirmed the well known assumption that creditors use garnishments not simply as a direct instrument of recovery but in order to pressure a debtor into making contact or make some arrangement to settle the debt. Thus one creditor stated that garnishment would "stir up the employer and get him to pressure the debtor" and one lawyer interviewed stated that "wage garnishment stirs up employers and the employee to make some arrangement".

An extreme example of the dangers to the employee in this is provided by the case of Sawatsky v. Credit Bureau of Edmonton Ltd. (Unreported, File No. 62766, 19th May 1970, Supreme Court of Alberta). In this case, the defendant sent a letter to the employer suggesting that the employer pressure the debtor to settle the debt. However, it was a case of mistaken identity and the plaintiff was not the debtor referred to in the letter. The defendant sent it in spite of the debtor's denial of the debt. The plaintiff sued for defamation and was awarded $1,000 in damages, including exemplary damages.

The workplace thus becomes coopted into a number of stages in the collection process. The legitimacy of this is raised in a later section.

IV. General Impressions

A large majority of debtors were blue collar workers in positions that did not carry any security. A small percentage were commission salesmen or self employed. The following general impressions relate to the first group.

Wage garnishment, it is often argued, hinders promotion possibilities, gives employers negative attitudes and may even lead to an employee being fired. These ideas were reflected in our questionnaire. We asked questions such as "Would garnishment affect promotion possibilities?" and we assumed that employers might develop a negative attitude towards a previously reliable hard working, upwardly mobile employee. However, these questions soon began to seem irrelevant. The overwhelming majority of employees who are garnisheed do not have promotion possibilities. They are not "upwardly mobile". Garnishment is simply something which is part of an environment where jobs are relatively unstable. Being laid off on account of garnishment simply adds that extra iota of instability. Thus Leff:

> "Garnishment would not ordinarily render a secure job untenable, but merely intensify existing insecurity. It would function most frequently as a stomp on the fingers of a cliff hanger."

Legislation preventing firing on account of garnishment may lessen the insecurity since it will attempt to prevent "the stomp on the fingers". However, giving security to an employee who is having his wages garnisheed may be little consolation. He does not wish security but rather his paycheck. Therefore, irrespective of the legislation, debtors may be under a strong inducement to move on to another job.

These speculations are to a certain extent confirmed by statistics on the enforcement of maintenance orders referred to by the Payne Committee in the United Kingdom on the Enforcement of Judgment Debts. Yet it should not be suggested that debtors are footloose and moving from job to job. A majority of debtors interviewed had continued working notwithstanding the

garnishment. They did not wish to go on welfare, notwithstanding that that would be the most "rational" economic solution (Trebilcock: 1975). The work ethic seemed just as strong in our group as it allegedly is in middle income groups. Wage garnishment is dangerous because it erodes that desire to work. The only solution for this group may therefore be to abolish wage garnishment.

The employers' interviews confirm these impressions of the debtors. Although employers may have images of themselves as creditors rather than debtors and although they don't like the process and appear to "disapprove" of the debtor, in many cases they view garnishment as simply part of the lifestyle of the manual worker. It's something that they have to tolerate and accept though not necessarily understand. Yet the reaction of many employees to wage garnishment may be quite rational given their situation. It may be well to remember the following quotation: "When there is a discrepancy between middle class and working class attitudes and behaviours, there is always the possibility that the latter's adaptation will be defined as inadequate" (Rock, p. 279).

V. Conclusions

1. Wage garnishment does lead to a significant number of employees being fired, notwithstanding s.40 of The Alberta Labour Act. If a debtor does not have a job, even for a short period of time, he will have even more difficulty in repaying his debt and the garnishment will have a "ripple" effect on his other debts.

2. Wage garnishment has the greatest impact on employees of smaller firms where an employer may not have knowledge of s.40 of The Alberta Labour Act and where the workforce may not be unionised.

3. It leads to significant embarrassment and humiliation for an employee in relation to his employer and fellow workers. Wage garnishment and the collection process preceeding it may lead to an invasion of the debtors' privacy at work.

4. The costs to the employer of administering wage garnishments are not adequately recompensed by the present Rules of Court.

5. Wage garnishment may induce a number of employees to leave work, rather than have this large slice of pay deducted.

6. It contributes to the continuing instability of employment of many of those individuals who are garnisheed and therfore has a significant effect on the right to work, particularly affecting that segment of the population who rely exclusively on wages.

7. The use of wage garnishment once is an effective collection tool for a creditor in forcing a debtor into a settlement. An employer will put pressure on an employee to settle, and the debtor will have the spectre of a large slice of his wage being carried off. There will be embarrassment at work, the danger of further garnishees and the folklore and fact that people get fired because of garnishees lurking in the background. All of these factors are a powerful pressure on the debtor to settle before the first garnishee goes through.

If a creditor uses garnishment more than once then there may be reduction in the benefit to either party. A debtor will have already lost one paycheck and the employer will be looking on the employee with increasing disfavour. The pack of cards which are the debtor's debts may be collapsing and he may have contracted further problems in attempting to hurriedly pay off this initial debt. He may therefore leave work or be laid off and certainly may not be willing to negotiate with the creditor.

In addition, garnishments may not come alone. Two or more may arrive at the same time. Garnisheeing once for each individual creditor may mean a pile of garnishees for the individual debtor and all the problems which occur with multiple garnishees.

8. Employers' interviews confirm the fact that the exemptions from wage garnishment are inadequate for a debtor to survive on.

9. S.40 of The Alberta Labour Act is deficient in giving protection to a significant number of garnisheed employees.

10. Employers, in many cases, do not follow the Rules of Court on garnishment, in particular Rules 475(2) and 478. This is not intentional neglect. They are, however, unaware in many cases of the complexities of correctly processing a garnishment order. These mistakes in the vast majority of cases benefit the creditor, not the debtor. The debtor is highly unlikely to bring an action under Rule 481 to dispute a mistake made by an employer.

RECOMMENDATIONS

1. The only certain method of protecting a garnisheed employee is to abolish wage garnishment as presently constituted.

2. If wage garnishment is to be maintained, a number of reforms would appear to be desirable.

Firstly, a number of changes ought to be made to s.40 of The Alberta Labour Act. This issue was discussed in our Working Paper on Exemptions from Execution and Wage Garnishment. The following measures were suggested in that paper.

(i) Employees are presently protected only if the sole reason for dismissal is that garnishment proceedings have been taken against him. This should be replaced by the words "principal cause" or "substantial" cause.

(ii) The Board of Industrial Relations ought to be empowered to reinstate an employee who is dismissed or demoted because of wage garnishment.

(iii) The burden of proof that s.40 has not been contravened ought to be on the employer once a prosecution has been brought under that section.

(iv) An employee should have a specific right to obtain damages suffered as a consequence of the dismissal similar to art.650 of the Quebec Code of Civil Procedure.

In addition, greatest effort must be made to make employers, particularly small concerns, aware of S.40. More knowledge of the Act

may have some effect on an employer's decision whether to fire an employee. This is discussed in (4) below.

3. Rule 477 concerning payment of compensation to the garnishee is inadequate. It ought to be revised.

4. The procedure for processing wage garnishments ought to be much simpler for an employer. It is not surprising that employers do not correctly carry out the garnishment procedure. Most garnishee summons forms are arcane and ineffably obscure to anyone who is not a lawyer, and outdated garnishee summonses appear to be in regular use.

There ought to be a simple typed form with instructions to the employer to fill in the blanks where appropriate. Employers ought to be provided with a manual for calculating exemptions, similar to those used for income taxation. A similar simplification of procedure was recommended by the California Law Revision Commission in their report on wage garnishment.

There should also be a notice in bold type on each garnishee summons that it is prohibited to dismiss an employee where the principal cause for firing is because his wages have been garnisheed.

5. Some form of continuing order should be provided. Data show that if an employer only received one wage garnishment order, then he is much less liable to take disciplinary action against an employee, and the administrative inconvenience and costs of the employer would be greatly reduced.

6. Legislation should regulate or prohibit communication between a creditor and the debtor's employer to protect the debtor's privacy prevent embarrassment and humiliation and protect his job. We make a number of recommendations concerning this issue in the section on Debt Collection and Harassment.

7. A number of the provisions of the Alberta Rules of Court dealing with wage garnishment are based on the theory that wages are simply a particular type of debt and that therefore similar rules ought to apply. Rule 475(1)(2) is an example. If the wage packet is to be attacked then the specific functional issues related to wages ought to be considered rather than analysing them as simply a form of debt.

Conclusions

The following is a summary of the general conclusions of the study.

I. The Social Reality of Debt Collection and Garnishment

Our study suggests that the majority of debtors are neither deadbeats, nor professional, nor inadequate. Debtors are not a special category of individuals. The majority of debtors have suffered an unfortunate change of circumstance since incurring the debt and have been unable to effectively solve their problems.

Although a small minority of debtors may be typified as amoral defaulters they are not deadbeats. In addition there are a small group of debtors for whom debt is part of larger structural problems. (See: Towards a Typology of the Garnisheed Debtor). This latter group's debt problems are related to structural problems such as poor housing, poor education, high cost of credit, and unstable income patterns.

One of our most significant conclusions concerns the extent to which the self-help process of collection preceding legal action may be creating recalcitrant debtors and foreclosing the opportunity for debtors to effectively communicate either their problems or grievances. Thus many debtors are willing to repay the debt but cannot meet the creditor's repayment scheme or are too optimistic as to the amount that they will be able to repay. A major challenge for reform is therefore the facilitation of more effective two-way communication between a debtor and creditor before legal action is taken so that those with legitimate debts may make a realistic repayment of all their debts.

The "autonomous dynamic" of the debt collection process creates the danger of compounding the debtor's problems, since

being sued on one debt will often lead to default on other debts. A significant number of debtors think that they have some form of legal or moral defence to the action but are unable to effectively assert it. The structure of debt collection contributes to difficulties for the minority of dissatisfied consumers to effectively register their complaints. These problems are exacerbated as the collection process becomes more insistent or collection agencies are involved. We do not imply that creditors are unsympathetic but rather that these problems result from the bureaucratic dynamism of a process which is geared to maximize profit.

II. The Effectiveness of the Legal Process and Wage Garnishment

We consider under this heading the following arguments concerning wage garnishment:

1. Garnishment is the only practical means of executing on a judgment where there is a small loan or debt.

2. Garnishment is a cheap, effective remedy.

3. Garnishment is used by higher risk creditors who count on using their remedies.

4. Garnishment is the only effective remedy in a society where future income rather than assets is used for security for a loan.

5. The individual aggressive creditor uses the remedy at the expense of other creditors causing the debtor to collapse on his obligations and

6. Garnishment prevents an orderly payment of debts to all creditors by favoring the creditor who is first with his garnishment order.

We have come to the following conclusions on these issues. (See File Survey : Creditors' survey, pp.).

1. Any conclusions on the effectiveness of garnishment must be set in the context of the fact that for all creditors the legal process is regarded as costly and cumbersome. Creditors

are continually searching for cheap remedies or ways in which they can convert the legal process into a bureaucratic process (See Creditors, pp.).

2. Over 95% of debts are collected through the informal process of debt collection. The formal legal process represents only a small aspect of collection. (See below No. 5).

3. Garnishment is used more heavily by either higher risk creditors and/or those who lack alternative remedies against their debtors. Thus it is regarded as most essential to the collection activities of finance companies, retail creditors, utilities, and oil companies.

These creditors have the ability to structure the transaction in advance so that they will have the information necessary to effectively carry out garnishment, should that need arise. It would perhaps be an exaggeration to say that they "count on" their remedies; rather they plan for the contingency of default by the debtor.

These creditors, given the relatively higher risk debtors with whom they deal, must look primarily to the income of their debtor or his/her co-signor in the event of default, rather than to any personal property of the debtor.

Seizure of personal property is for all creditors primarily restricted to seizure of large individual items, for example, cars or trucks.

4. The majority of all creditors who use garnishment are "repeat players" that is "units which have had and anticipate repeated litigation, which have low stakes in the outcome of any one case, and which have the resources to pursue their long run interests.

A primary purpose of garnishment for these creditors is to coerce the debtor into a settlement and to reassert control over the debtor. Another important purpose is to discipline the debtors concerned and establish the creditor's credibility as a collector, and as a bargaining agent.

The costs for garnishment debt claims under $1000 are significantly less both in absolute terms and as a percentage of

the amount claimed than those over $1000. It is therefore possible to keep costs low until garnishment. If the first or second garnishment forces a settlement then the cost will be relatively low, through the subsidisation of garnishment by the employer of the debtor. It is therefore a relatively cheap remedy for small claims.

5. For repeat player creditors garnishment is an integral part of a bureaucratic process of self-help collection. It is important to understand this fact because the legal process and garnishment are adapted as far as possible by those creditors to a bureaucratic model.

Wherever possible, creditors will attempt to change the due process and adjudication model of legal process into a bureaucratic role. There is a tension therefore caused by a conflict between the theory of a legal action and the underlying theory of bureaucratic collection. The creditor's interest in reform is to speed up and make the process more efficient so that the whole process approximates bureaucratic rationality. Is this in the public interest?

6. Interviews with debtors indicated that garnishment did cause significant numbers of debtors either to default on other obligations, for example, a house rental payment, or to further overextend themselves. Creditors' interviews and the file survey indicate that a primary purpose of garnishment is to obtain a settlement and that it as a powerful lever on the debtor. The creditor or his lawyer is, quite naturally, concerned with getting the best settlement of his particular debt. As one lawyer stated "I would attempt to make the best settlement for my client." Such a settlement would not have to take account of exemptions in the Rules of Court. The majority of debtors have more than one debt and are not in a good position to negotiate a realistic settlement under threat of another garnishment.

These factors suggest that, while it is emotive to talk about "aggressive" creditors, the existing system of debt collection does not secure an orderly payment of debts to all creditors of a debtor, and has significant potential for confounding the debtor's problems.

7. Those creditors who have occasional resort to the courts, for example, individuals, are most liable to be disappointed by the costliness and cumbersome nature of garnishment and the legal process.

To the extent that they have neither a well organised collection system or are unable to effectively turn themselves into repeat players, for example, by the use of collection agents, the individual creditor will find the process extremely ineffective, especially against an unwilling debtor.

III. The Impact of Garnishment on the Debtor

1. The Consequences of Garnishment for the Debtor's Employment

(1) Wage garnishment does lead to a significant number of employees being fired, notwithstanding s.40 of The Alberta Labour Act. If a debtor does not have a job, even for a short period of time, he will have even more difficulty in repaying his debt and the garnishment will have a "ripple" effect on his other debts.

(2) Wage garnishment has the greatest impact on employees of smaller firms where an employer may not have knowledge of s.40 of The Alberta Labour Act and where the workforce may not be unionised.

(3) It leads to significant embarrassment and humiliation for an employee in relation to his employer and fellow workers. Wage garnishment and collection process preceding it may lead to an invasion of the debtor's privacy at work.

(4) Wage garnishment may induce a number of employees to leave work, rather than have this large slice of pay deducted.

(5) It contributes to the continuing instability of employment of many of those individuals who are garnisheed and therefore has a significant effect on the right to work, particularly affecting that segment of the population who rely exclusively on wages.

(6) The use of wage garnishment once is an effective collection tool for a creditor in forcing a debtor into a settlement. An employer will put pressure on an employee to settle, and the debtor will have the spectre of a large slice of his wage being carried off. There will be embarrassment at work, the danger of further garnishees and the folklore and fact that people get fired because of garnishees lurking in the background. All of these factors are a powerful pressure on the debtor to settle before the first garnishee goes through.

If a creditor uses garnishment more than once then there may be reduction in the benefit to either party. A debtor will have already lost one paycheck and the employer will be looking on the employee with increasing disfavour. The pack of cards which are the debtor's debts may be collapsing and he may have contracted further problems in attempting to hurriedly pay off this initial debt. He may therefore leave work or be laid off and certainly may not be willing to negotiate with the creditor.

(7) The workplace has become co-opted into a number of stages of the creditor's collection process in the period leading up to garnishment.

2. Wage Garnishment and Bankruptcy

There is no evidence of a significant relationship between garnishment and bankruptcy. This confirms data from previous studies (Caplovitz: p. 275, 1973; Jacob, pp. 1967; Puckett, 1978, p.).

3. Marital Discord and Wage Garnishment

There are two relationships.

(1) Marital Discord as a Factor Leading to Wage Garnishment

If spouses have separated then there may be questions as to who is liable for which debts. One spouse may not feel morally responsible for the other ex-spouse's debts especially if goods were purchased against his/her wishes. This may lead to initial resistance to payment or payment misunderstandings which subsequently lead to the debtor failing to make payment.

This is thus an example of one social problem providing the context for the creation of another social problem.

(2) The Impact of Garnishment on Marital Stability

It is difficult to draw any clear conclusions on this issue. Certainly if there is a relationship it is probably between cumulative debt problems and marital instability. From our limited observations we are confident in stating that cumulative debt problems may certainly lead to a strain on a marriage.

It may be hypothesized that this will become even more significant, the more that marriage is viewed as an economic partnership.

(See: Caplovitz: p. 284)

4. Deterioration in Health Related to Wage Garnishment

Our interviews with debtors suggest that in a number of cases there was a clear relationship between debt problems, the legal process and deterioration in mental and physical health.

5. Wage Earners Require 85% to 90% of Their Income Simply to Meet Current Expenditures

The problem with wage garnishment is that by the time it is used against a debtor, he will already in many cases be in financial difficulties.

Our information from debtors and employers indicates the inadequate level of the present exemptions from wage garnishment in the Rules of Court. The interviews with debtors also suggested that exemptions ought to be formulated in the light of all the needs and circumstances of a debtor. The creditor's interviews by implication suggest that the exemptions are inadequate because creditor's repeatedly stated that the importance of wage garnishment was that it hurt the debtor, and thereby forced him into a settlement.

6. Wage Garnishment is More Damaging Against the Poorer Debtor

A number of comments are appropriate here. Firstly, the debtor's interviews suggest that the secondary consequences of debt default were greater for those with lower than average income with unstable blue collar occupations and lower than average educational levels. Many of these chronically unfortunate repeat players (see: typology of the garnisheed debtor) are unable or unlikely to negotiate effectively with a creditor and were more likely to take a fatalistic attitude towards their debt problems.

Secondary consequences that might occur to this group would include default on rent and other obligations and loss of job.

They were also the most likely group to be harassed by their creditors. This group has no assets or accumulated wealth to tide over any unfortunate change in circumstances. It is not an exaggeration to say that debt for this group simply compounds the despair of living at the lower unstable end of society. These individuals may not be poor as defined by income levels, but they are poor in respect of opportunities, services and ability to change the unstable patterns of their lives.

III. Garnishment and Credit Granting

1. Businessmen Extend Credit in Reliance on the Legal System Permitting the Enforcement of Money Judgments

This statement as initially formulated certainly appears to us to be too wide. We are not convinced that the vast majority of credit trading depends on legal remedies or even the threat of legal remedies. The overwhelming majority of creditors, for example, claimed that wage garnishment and other creditor remedies are not of importance in a decision to grant credit. We are also convinced that the vast majority of individuals pay debts for many social reasons unrelated to issues of legal enforceability and those who do not pay do so mainly because of an unfortunate change of circumstances.

It must also be remembered that credit grantors know that an efficient exploitation of the credit market must lead to some bad debt and that as one creditor stated: "2% are going to crack anyway."

It does not appear that legal enforceability is the only factor in begetting bad risks and this therefore throws doubt on Llewellyn's comment that: "Remove the legal sanction and men will

give credit with more care." Other factors such as competitive and organizational pressures appear to play a role.

It must also be remembered that creditors have nonlegal remedies, for example, blacklisting and the denial of credit in addition to legal enforceability. The creditors' interviews suggested that legal enforceability was important primarily to the granting of credit by high risk creditors, for example, finance companies and also to retail creditors who lack alternative remedies. In the light of these general comments we offer our conclusions on more specific issues relating to credit granting and restrictions on creditors' remedies.

1. Will Abolition of Wage Garnishment Increase Debtor Default?

Our interviews with debtors suggested that the majority of debtors suffered a change of circumstances and were willing to repay their debts and that the legal remedies were of little use against either them or the "amoral defaulters."

Creditors did not view the legal remedies as a deterrent although they were concerned as to what would happen if it "got around" that there was "no price to pay" for debt default. However, we are not at all convinced, as we have noted above, that the vast majority of people pay debts because of the fear that there is a price to pay and that those who do get into difficulties do so because of, in general, circumstances outside their control. For those individuals who are "amoral" defaulters or have no intention to repay their debts, the present legal remedies are, in any event, ineffective and abolition of garnishment would have no effect on them anyway.

2. Would Abolition of Wage Garnishment Increase Uncollectable Defaulted Debts?

Our impression of the collection process preceding garnishment is that although it is bureaucratic, it is less than efficient in

distinguishing those unwilling from those unable to pay.

We have argued earlier that as the process of debt collection becomes more insistent it may be creating recalcitrant debtors out of those willing to repay their debts. Certainly, if the majority of debtors are in problems because of a change of circumstances, then a coercive system of debt collection may not be efficient and may indeed simply alienate a significant number of debtors. Leff graphically states the problem: "Even letting a turnip know that a pot of boiling water is inexorably in its future will not get any blood out of it, and actually boiling it will merely turn a viable plant into a short and mean meal."

3. Will Abolition of Wage Garnishment Mean More Costly Collection Procedures?

This argument is difficult to answer conclusively because of a number of factors. Firstly, the answer depends on what, if any, remedy would be substituted for wage garnishment. Assuming that there was no substitution then it is not clear from the creditors' interviews what the impact would be. Much would depend on the extent to which creditors are presently operating efficient collection procedures and the level of competition in the particular credit market.

4. Would Abolition of Wage Garnishment Force Marginal Credit Risks Out of the Market?

This is an important issue because it focuses on those individuals whom we think might be affected by an abolition of creditors' remedies. Creditors' interviews suggest that this argument assumes importance for a minority of finance companies and retailers. Thus when we say that abolition of creditors' remedies would have an effect on credit granting it ought to be made clear that we are talking about a small group of

credit granters and a small group of debtors.

Once again our impression was that there is no necessary connection between abolition of wage garnishment and a reduction in service to marginal risks. This is because:

1. Finance companies appear to act under conditions of imperfect competition. For example, interest rates do not appear to depend on the individual consumer risk. Abolition might simply require them to be more efficient in their collection procedures. Efficient collection procedures are not necessarily harsher.

2. There are important organizational pressures in finance companies to continue to grant credit to existing marginal risks.

3. For retailers, the sales and collection departments may be quite distinct. It is dubious whether an effect on one would necessarily affect the other. Sales persons are also under organizational pressure to maximize sales and are unlikely to be held responsible for bad debts.

4. Although creditors know what the characteristics of marginal risks are, they are usually unable to predict with any great accuracy whether a particular individual will or will not default. Although there is not perfect competition the pressures of competition may lead to credit grantors reducing the amount of creditor granted.

Of course, we do not know how these creditors would definitely react but certainly we don't think that there is a clear argument for making the statement that there is any necessary connection between abolition of wage garnishment, for example, and a reduction in service to marginal risks. Wage garnishment is after all not used to recover the debt but rather

to force the debtor into a settlement. An important issue, therefore, is whether creditors might simply use some other type of threat to force debtors into settlement. Yet we note that there is already a significant level of harassment of debtors.