



CPP & OAS BENEFITS EXEMPT FROM GARNISHMENT

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The *Canada Pension Plan Act* and the *Old Age Security Act* both contain a provision that a benefit "shall not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, attach, anticipate or give as security a benefit is void".

For a long time, there was no reported court decision which discussed the extent of protection provided to pensioners by these provisions.

Consider the example of a pensioner who is sued and has a judgement issued against him or her for money owing. If the person who won the court case tries to garnishee the senior's CPP or OAS benefits by serving a Notice of Garnishment on the appropriate government department, the government department will take the position that they do not have to pay any money because the pension benefits are exempt from garnishment.

However, what happens if the CPP or OAS benefits are automatically deposited into the senior's bank account, and the bank is then served with a Notice of Garnishment?

ACE acted for a senior in just such a case called *Metropolitan Toronto (Municipality) v. O'Brien*, 1995 CanLII 7053 (ON S.C.). In this case, the Municipality of Metropolitan Toronto obtained a judgement against the senior for money owing. The Municipality then served a Notice of Garnishment on the senior's bank.

The evidence was that the only money which went into this bank account was the senior's OAS, CPP and GIS benefits, which were electronically deposited into the bank account automatically.

The Municipality argued that once the pension money was paid into the bank account, the exemption was lost and the account could be garnisheed for money owing.

Mr. Justice O'Brien rejected this argument. He found that the funds paid into the account did not lose their protection from garnishment simply because of the modern convenience of electronic deposits.

This case is an important one. It establishes the principal that, even if a senior gets into financial difficulty and has a judgement against him or her, at least they will be able to rely on continuing to receive their CPP, OAS and GIS benefits so that they have some money to live on.