



WHEN CAN OAS & CPP BENEFITS BE SUBJECT TO SEIZURE?

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The *Old Age Security Act* and the *Canada Pension Plan Act* provide that Old Age Security (OAS) and Canada Pension Plan (CPP) benefits shall not be assigned, charged, attached, anticipated or given as security, and any transaction claiming to do so is void. In practical terms, this means that if you are successfully sued, OAS or CPP benefits cannot be taken from you to pay the court order.

The 1995 case of *Metropolitan Toronto (Municipality) v. O'Brien*¹ established that even if pensions are deposited into a bank account, third party creditors cannot garnishee the pension amounts in order to pay an outstanding judgment.²

However, in the following situations, your pension funds are not protected and can be seized.

1. Pension funds are deposited into an account with a financial institution to whom you owe money

If you are behind in payments owing to your bank, it can seize any funds that you deposit into that bank, including pension funds. Most standard banking agreements contain provisions allowing the bank to “set off” any money that they receive from you against the money you owe to the bank. If you are behind in payments owing to a bank by way of a credit card, mortgage or line of credit, you should be aware that the bank can seize any pension funds or other funds that you deposit into your bank account.

2. Support or maintenance arrears for children and/or spouses

If you are behind in your support or maintenance payments, 50% of your pension income can be seized to pay these arrears. In Ontario, this is often done through the Family Responsibility Office. To stop this seizure of funds,

¹ (1995) 23 O.R. (3rd) 543. A copy of the case can be found at <http://www.canlii.org/en/on/onsc/doc/1995/1995canlii7053/1995canlii7053.pdf>.

² For more information about the *O'Brien* case and garnishment, please refer to ACE's article entitled *CPP & OAS Benefits Exempt from Garnishment*.

you have to apply to court and explain why the court should make a new order reducing or eliminating the outstanding arrears.

3. Canada Revenue Agency

The Canada Revenue Agency (CRA) has very broad powers to seize any of your tax return or pension money in order to collect outstanding tax arrears. The CRA will simply send a letter to your bank or to the Income Security Programs (the office responsible for OAS and CPP benefits) to advise them how much of your pension or other money must be sent to the CRA for tax arrears. In practice, there is sometimes room for negotiating the amount that will be seized by the CRA.

4. Income Security Programs overpayments

If Income Security Programs determines that they have paid you too much, even it is their mistake, they can deduct money from your pension payments. In practice, the amount deducted from each pension cheque can be quite modest. It is possible to negotiate the amount that will be deducted by contacting the Income Security Programs.

5. Social assistance repayments

If you are eligible to receive OAS benefits, you will not normally be eligible to receive social assistance benefits from Ontario Works or the Ontario Disability Support Program. However, if you are not yet receiving pension benefits because your pension application has not been completed or your eligibility has not been determined, you may apply for and receive social assistance. Keep in mind that you may also be required to reimburse the money you receive from social assistance once you start receiving your pension benefits. The social assistance money is automatically deducted from any retroactive pension benefits paid to you. This prevents the double payment of both pension and social assistance benefits.

If you have any questions about deductions that have been made from your pension benefits, you should contact the Income Security Programs office at 1-800-277-9914. You should have your social insurance number and other identifying information ready when making inquiries.