

NS Maintenance Enforcement Program Garnishment involving an Estate or a Beneficiary Information Sheet

A Notice of Garnishment issued under the *Maintenance Enforcement Act (MEA)* and its *Regulations* may apply to either an estate or a beneficiary of the estate.

[1] If the Payor is the deceased person, the MEP claim affects the estate and the Notice of Claim procedures available in sections 48 to 52 of the *Regulations* made under the *Probate Act* may be used.

[2] If the Payor is a beneficiary of an estate, the Notice of Claim procedure outlined above **does not apply** to the MEP Garnishment. The following information and procedural options are available to the Personal Representative for consideration:

[A] Authority

The Probate Court has no authority or role in determining how a MEP Garnishment is to be addressed.

Upon the Grant being issued, the Personal Representative (PR) of an estate is the only one with authority to decide how to proceed in relation to the MEP Garnishment.

The PR's duties to comply with the laws in Nova Scotia extend beyond the *Probate Act* and its *Regulations* to include the *MEA* and its *Regulations*, and the *Trustees Act*.

[B] Process

The steps taken in proceeding through the Probate Court are affected by a MEP Garnishment both in the reporting requirements of the PR to the Probate Court and the timelines involved. The *MEA* and its *Regulations* provide procedural options for the PR to consider in deciding how to proceed.

The following provides information available in the *Probate Act* and its *Regulations*, the *MEA* and its *Regulations*, and the *Trustees Act* and incorporates the related procedural steps:

1. The PR is the one to decide how to proceed in relation to the MEP Garnishment because:
 - a. this garnishment issue falls outside of the jurisdiction and authority of the Probate Court, and
 - b. the PR's decision regarding the MEP Garnishment is subject to the *MEA* whether or not the estate matter proceeds any further in Probate Court.
2. The estate matter is placed "on hold" until the Probate Court is notified by the PR of how they have chosen to address the MEP Garnishment.
 - a. The PR has sole control over the choices for responding to the MEP Garnishment and, accordingly, also controls the timing of the estate matter moving forward.
 - b. The PR must advise the Registrar of the PR's decision in relation to the MEP Garnishment to proceed.

3. There are at least **three** procedural options available to the PR:

[a] **Application:** The PR may decide to make an application to the Supreme Court (Family Division) under section 24 of the MEA for determination on whether or not the role of the PR is an “income source” as defined in the maintenance enforcement legislation and therefor the PR must comply with the MEP Garnishment.

[b] **Compliance:** If the PR determines that the PR Role with the estate falls within the definition of “trust” under the Trustee Act (s. 2) and as such, also determines that the PR Role constitutes an “income source” under the MEA (s. 2) and its Regulations (s. 2), the PR may decide to comply with the MEP Garnishment process without making an application to the Family Division for a determination on the point.

The beneficiary/payor has 2 main options in response to the PR's choice to comply with the MEP Garnishment:

1. apply to the Supreme Court (Family Division) under section 24 of the MEA for a determination, or
2. file an application in the Probate Court to challenge this decision of the PR to comply with the garnishment.

Whether or not an application (or possibly a notice of objection) is filed, the PR is accountable in Probate Court for the decision to comply with the MEP Garnishment and, at the time of the passing of accounts (if this application is made), is to provide the Probate Court with:

- the particulars of how the PR distributed the beneficiary's share, and
- the reasons relied upon to establish why this decision to comply was done in accordance with the laws of Nova Scotia.

[c] **Non-compliance:** If the PR determines that the PR role does not fall within the definition of “trustee” under the *Trustee Act*, or does not constitute an “income source” under the *MEA*, or both, the PR may decide to carry out the terms of the will in distributing the beneficiary's share directly to the beneficiary, which does not comply with the MEP Garnishment Order.

In doing so, the Director of Maintenance Enforcement may make application under section 24 of the *MEA* to the Supreme Court (Family Division).

Section 24 of the *MEA* references the types of orders that can be sought, and the list includes an order for contempt.