

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**Alonzo Robin Smith**

**Applicant**

**and**

**Karthi Thevendranathan  
Donna Panuccio  
Canadian Forces Pension Services (CFPS)**

**Respondents**

**MOTION RECORD**

17 February 2015

Alonzo Smith  
202 Moore Ave  
Kitchener, ON  
N2H 3S9  
Tel: 519-404-9267

TO: Karthi Thevendranathan  
Donna Panuccio  
Canadian Forces Pension Service  
National Defence Headquarters  
Ottawa, Ontario K1A 0K2  
Tel: 1-800-267-0325  
Fax: (613) 971-6491

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**NOTICE OF MOTION**

APPLICATION UNDER: R.R.O. 1990, Reg. 194, r. 37.17

The applicant will make a motion to the court on Wednesday 4, March, at 10 a.m., or soon after that time as the motion can be heard, at 85 Fredrick Street, Kitchener, Ontario N2H 0A7.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

in writing under subrule 37.12.1 (1) because it is (*insert one of* on consent, unopposed *or* made without notice);

in writing as an opposed motion under subrule 37.12.1 (4);

orally.

**THE MOTION IS FOR:**

1. **AN ORDER** that the respondents cease and desist their “statutory set-off deductions” against the applicant without an order from a court of competent jurisdiction.
2. **AN ORDER** that any funds diverted under the “statutory set-off” be reimbursed to the applicant with interest.
3. **AN ORDER** for costs of this motion.
4. Such further and other relief as the honourable court may permit and deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Jurisdiction to hear the motion**

5. The court has jurisdiction to hear the matter pursuant to the rules as the applicant brings this motion as an urgent case under undue hardship before the commencement of proceedings pursuant to r. 37.17 of the Rules.

**MOTION BEFORE COMMENCEMENT OF PROCEEDING**

**37.17** In an urgent case, a motion may be made before the commencement of a proceeding on the moving party’s undertaking to commence the proceeding forthwith.

R.R.O. 1990, Reg. 194, r. 37.17.

6. The moving party undertakes to commence the proceeding forthwith as required by the rule.
7. This is not a tax matter and is not about the validity or quantity of an assessment.
8. This matter does not challenge the exclusive jurisdiction of the tax court.
9. Granting the relief sought is not prejudicial to the respondents.

**Facts of loss of property**

10. Applicant received notice on 12 February 2015 from the respondents that they intend to “set-off” (unauthorized seizure) my military pension.
11. The start date is to be March 2015.

12. The completion date is to be April 2017.

13. The seizure is to be \$1133.43 per month with a final amount of 1136.03.

14. The pension balance I will receive is to be approximately \$25 per month.

**Absence of fundamental justice and due process**

15. the Canadian Forces Superannuation Act in force at the time of my pension account being converted to pay out states:

Benefits not assignable, etc.

**14.** Subject to Part II of the *Garnishment, Attachment and Pension Diversion Act* and to the *Pension Benefits Division Act*,

(a) a benefit under this Part, Part I.1 or Part III is not capable of being assigned, charged, anticipated or given as security and any transaction that purports to assign, charge, anticipate or give as security any such benefit is null and void;

(b) a benefit to which a contributor, survivor or child is entitled under this Part, Part I.1 or Part III is not capable of being surrendered or commuted during the lifetime of that person except under section 24.1 or subsection 29(3) or under regulations made under section 59.1, and any other transaction that purports to so surrender or commute any such benefit is null and void; and

(c) a benefit under this Part, Part I.1 or Part III is exempt from attachment, seizure and execution, either at law or in equity.

R.S., 1985, c. C-17, s. 14;

1992, c. 46, s. 39;

16. At law this seizure has the effect of being a violation of the applicants human rights and fundamental freedoms as stated in the Canadian Bill of Rights S.C. 1960, c. 44 s. 1 (a).

17. At law no person has the authority to seize property without consent or court order.

18. CFPS has not received my consent for their action.

19. CFPS has no court order to obey the “requirements” made by CRA.

20. The applicant has been afforded no opportunity before a court of competent jurisdiction to give full answer and defence; in violation of the *audi alteram partem* rule.

21. CFPS is in violation of the trust between the applicant and themselves by granting CRAs request.
22. CFPS has been notified by the applicant to cease and desist with their actions.
23. CFPS refusal to comply with the governing laws, statutes and ordinances demonstrates they are operating in “bad faith” due to their intentional refusal to perform their duty.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

24. NOTICE TO COMMENCE/CEASE STATUTORY SET-OFF DEDUCTIONS dated 5 February 2015.
25. E-mail response to respondents regarding the Notice of statutory set-off.
26. Affidavit of Alonzo Smith (applicant).
27. Canadian Forces Superannuation Act R.S., 1985, c. C-17, s. 14.
28. Canadian Bill of Rights S.C. 1960, c. 44
29. Such further and other documents that the court may permit.

17 February 2015

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Court file no: \_\_\_\_\_

*ONTARIO*

**SUPERIOR COURT OF JUSTICE**

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The Honourable Justice : \_\_\_\_\_ Wednesday March 4th 2015

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**B E T W E E N:**

**Alonzo Robin Smith**

**Applicant**

**and**

**Karthi Thevendranathan  
Donna Panuccio  
Canadian Forces Pension Services (CFPS)**

**Respondents**

**ORDER**

On motion made by the applicant before the commencement of proceedings pursuant to rule 37.17 and on his undertaking to commence the proceeding for an order to enjoin the respondents from proceeding with a Statutory Set-off Deductions brought on notice to the respondents and **UPON HEARING** the submissions of the applicant and counsel for the crown respondents:

1. **THIS COURT ORDERS** that the respondents are enjoined not to garnish the pension funds of the applicant.
2. **THIS COURT ORDERS** the respondents are to reimburse any revenues converted under “statutory set-off” to the date of receiving this order with interest as laid out by the Bank of Canada.
3. **THIS COURT ORDERS** this cease and desist order to be effective immediately as of this date and to remain in force until amended by further orders of a court of competent jurisdiction.
4. **THIS COURT ORDERS** that the applicant is awarded the costs of this motion in the amount of \_\_\_\_\_.

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