

Report on the Uniform Civil Enforcement of Money Judgments Act

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- (a) promote the clarification and simplification of the law and its adaptation to modern social needs,
- (b) promote improvement of the administration of justice and respect for the rule of law, and
- (c) promote and carry out scholarly legal research.

The Institute is the effective successor to the Law Reform Commission of British Columbia, which ceased operations in 1997.

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INTRODUCTORY NOTE

The British Columbia Law Institute has the honour to present:

Report on the Uniform Civil Enforcement of Money Judgments Act

An effective system of enforcing money judgments is one of the cornerstones of the legal system. In British Columbia, the civil enforcement system has been largely ignored by legislators. As a result, it is archaic, fragmentary, and inefficient. Fundamental reform is needed if the system is to achieve its goals.

This Report presents a specific proposal for fundamental reform of the civil enforcement system. The *Uniform Civil Enforcement of Money Judgments Act* is a model statute prepared by the Uniform Law Conference of Canada. The proposals embodied in the Uniform Act will realign British Columbia's civil enforcement system on a foundation that is coherent, streamlined, and unified. This Report also makes recommendations on the effective implementation of the Uniform Act in British Columbia.

Ann McLean
Chair,
British Columbia Law Institute

March 2005

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I. INTRODUCTION

The law of civil enforcement governs the legal procedures that a person who has obtained a judgment for the payment of money may use to enforce payment of that judgment. The pronouncement of a money judgment rarely results in its immediate payment; instead, the judgment creditor usually must take steps to compel the judgment debtor to pay. These steps, as the Ontario Law Reform Commission has observed, can be as time-consuming, elaborate, and expensive as the steps required to establish liability:¹

Generally speaking, successful litigants perceive the final money judgment of the court as the termination of their often long, arduous and expensive legal travails. Unfortunately, however, in many instances it takes only a short period of time for them to become totally disabused of this notion. Rather than marking the successful completion of their efforts to gain monetary relief, the judgment often represents only the beginning of a more difficult and frustrating experience—enforcing the judgment to obtain payment.

Eliminating this frustration is one of the imperatives of civil enforcement law.² A legal system that provided rights without the means to enforce those rights effectively would be one that is badly flawed. As the Alberta Law Reform Institute has pointed out, “[a] just and efficient process of debt enforcement is fundamental to society.”³

A just and efficient civil enforcement system is one that advances three policy goals. The first goal, which has already been touched upon, is that just debts must be paid.⁴ To this goal of providing legal tools for judgment creditors to overcome the obstinacy of judgment debtors,⁵ two more goals may be added. The law must also provide a level of protection for judgment debtors and their dependents. This policy goal, like the first, commands broad agreement. The third goal is much more controversial. Nevertheless, the consensus in Canada is that the civil enforcement system ought to provide for an orderly

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1. *Report on the Enforcement of Judgment Debts and Related Matters (Part 1)* (Toronto: The Commission, 1982) at 1. In many cases, it should be noted, liability is established by way of a default judgment, and the difficulties involved in civil enforcement greatly exceed those involved in establishing liability.
 2. The importance of this point is underscored by the label often applied to this area of the law—creditors’ remedies. That term has been avoided in this Report, because it implies that civil enforcement is only concerned with the interests of judgment creditors.
 3. *Report on Enforcement of Money Judgments* (ALRI Rep. No. 61), vol. 1 (Edmonton: The Institute, 1991) at 3.
 4. This Report will not concern itself with questions of liability, or the “justice” of a debt. For the purposes of this Report, a debt that has been reduced to a judgment is, by definition, a just debt.
 5. In many cases refusal to pay a judgment is a direct result of inability to pay. This problem can be of the utmost practical importance for participants in the civil enforcement system. Conceptually, however, inability to pay lies on the other side of the divide separating civil enforcement issues from bankruptcy and insolvency issues. This Report will not address questions that are more properly addressed within the law of bankruptcy and insolvency.
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distribution of the judgment debtor's estate by requiring judgment creditors to share the proceeds of enforcement.⁶

It is the position of this Report that the law of civil enforcement in British Columbia, as it now stands, fails to advance these three policy goals to the extent needed to provide a just and efficient civil enforcement system. Fundamental reform is necessary. This Report will examine a specific proposal for fundamental statutory reform: a model act recently endorsed by the Uniform Law Conference of Canada called the *Uniform Civil Enforcement of Money Judgments Act*.⁷

II. THE STRUCTURE OF THIS REPORT

This Report embraces both discussion of broad policy issues and presentation of the minute details of the law.

The five appendices are oriented toward detail. Appendix A, which makes up by far the largest portion of this Report, contains the text of the Uniform Act, along with the commentary provided by the Uniform Law Conference of Canada. Integrated into this appendix is the British Columbia Law Institute's review of the Uniform Act, which focusses on issues to be addressed in implementing the Uniform Act into British Columbia law. In reviewing the Uniform Act, we provide both suggested revisions to and deletions from the statutory text and brief commentary on issues raised by specific provisions of the Uniform Act.

Appendix B examines how the implementation of the Uniform Act will affect British Columbia's major civil enforcement statutes, the *Court Order Enforcement Act*⁸ and the *Creditor Assistance Act*.⁹ In order to round out this treatment of the statutory substantive law of civil enforcement in British Columbia, it also addresses a few selected provisions

6. See Charles R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2d ed. (Toronto: Carswell, 1995) at 1-3 for the identification of these three policy goals and further discussion of them.

7. See online: Uniform Law Conference of Canada <http://www.ulcc.ca/en/poam2/CLS2004_UCEMJA_En.pdf> [the Uniform Act]. See also Appendix A, below, at 25ff. The version of the Uniform Act that appears in Appendix A is the version that was presented at the 2004 annual meeting of the Uniform Law Conference of Canada, augmented by amendments made in September 2004 in response to specific issues raised at the annual meeting. Official adoption of the Uniform Act as a uniform statute will be granted upon approval of a French translation. As of the date of this Report, the French translation is still under consideration. Any changes to the Uniform Act that may result from this process, though, will be minor and not substantive. Further information on the status of the Uniform Act may be found in the proceedings of 2004 annual meeting of the Uniform Law Conference of Canada, in particular the Civil Section Minutes and the Commercial Law Documents. See online: Uniform Law Conference of Canada <<http://www.ulcc.ca/en/poam2/>>.

8. R.S.B.C. 1996, c. 78.

9. R.S.B.C. 1996, c. 83.

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that have been located in the *Law and Equity Act*.¹⁰ Appendix B sets out tables of concordance, showing (in broad terms) where the provisions of the *Court Order Enforcement Act*, the *Creditor Assistance Act*, and the *Law and Equity Act* are dealt with in the Uniform Act. Appendix B also tabulates the British Columbia Law Institute's recommendations for the disposition of each provision of the *Court Order Enforcement Act* and the *Creditor Assistance Act*, and the relevant provisions of the *Law and Equity Act*.

Appendices C, D, and E address transitional issues. Appendix C illustrates how enforcement proceedings will be affected by the coming into force of legislation implementing the Uniform Act through a series of descriptive transitional scenarios. Appendix D lists consequential amendments to other British Columbia legislation. Appendix E deals with special implementation issues that arise for local governments and drainage and diking districts.

The body of this Report (apart from the appendices) provides a broad overview of the Uniform Act. It focusses on describing the origins of the Uniform Act in law reform projects in other provinces and in the work of the Uniform Law Conference of Canada and the major policy themes and provisions of the Uniform Act. It also explains the British Columbia Law Institute's focus on implementation issues. But, in order to demonstrate why reform of the law is necessary, it begins by reviewing the history and operation of British Columbia's current civil enforcement system and the major arguments in favour of reform.

III. SUMMARY OF THE CURRENT LAW

A. Introduction

The law of civil enforcement has been described as “. . . a mixture of common law and equitable doctrine, modified by a mass of English and Canadian legislation contained in statutes and in rules of court. . . . [T]he present law in any Canadian jurisdiction cannot be understood without a firm grasp of its basis in legal history.”¹¹ Legal history also sheds light on the reform proposals embodied in the Uniform Act. The Uniform Act is itself the result of an evolutionary process that goes back almost 200 years.¹²

10. R.S.B.C. 1996, c. 253.

11. Dunlop, *supra* note 6 at 2.

12. The summary that follows can only scratch the surface of the history and operation of the current law of civil enforcement. For a more detailed treatment of these topics *see* Dunlop, *ibid.* at 69–110; Lyman R. Robinson, *British Columbia Debtor–Creditor Law and Precedents* (Toronto: Carswell, 2003 [looseleaf]). In addition to these textbooks, the following publications of the British Columbia Law Reform Commission are helpful sources of information on the history and operation of the current law: *Report on Attachment of Debts Act* (LRC 39) (Vancouver: The Commission, 1978); *Report on Execution Against Land* (LRC 40) (Vancouver: The Commission, 1978); *Report on Creditors' Relief Legislation: A New Approach* (LRC 42) (Vancouver: The Commission, 1979); Gordon N. Turriff & Elizabeth Edinger, *The Office of the Sheriff: A Study Paper Prepared for the Law Reform Commis-*

The current law of civil enforcement in British Columbia has its roots in English, American, and Canadian sources. English legislation and case law have been the most important of these sources.

B. English Influences

At the beginning of the nineteenth century, under English law, a judgment creditor could pursue one of two general types of remedies. The judgment creditor could seek to have the judgment debtor imprisoned until the judgment was satisfied, or the judgment creditor could seek to have the judgment satisfied out of the judgment debtor's assets. There were a number of procedures available to pursue the judgment debtor's assets. The two most important were the writ of *fiery facias* (which is the forerunner of the current writ of execution) and the writ of *elegit*.¹³

The building blocks of the common law system of civil enforcement were the writ and the sheriff. A writ is "[a] court's written order, in the name of a state or other competent legal authority, commanding the addressee to do or refrain from doing some specified act."¹⁴ The sheriff is an officer of the court, who, among other duties, is responsible for carrying out execution proceedings.¹⁵ The writ of *fiery facias* ". . . commands the sheriff to cause to be made (*fiery facias*) out of the . . . chattels of a judgment debtor an amount sufficient to pay the judgment creditor with costs."¹⁶ This command was carried out by seizing items of the judgment debtor's tangible personal property and selling them. The procedure under the writ of *elegit* was as follows:¹⁷

. . . the sheriff first seized the chattels of the debtor and, after their appraisal, delivered enough of the chattels to the creditor to satisfy the debt. If the debt still remained unsatisfied, the sheriff then installed the creditor in possession of one-half of the land until its income produced the requisite satisfaction.

sion of British Columbia (Vancouver: The Commission, 1983); *Report on Execution Against Securities* (LRC 116) (Vancouver: The Commission, 1991).

13. *Court Order Enforcement Act*, *supra* note 8, section 80 provides that a writ of *elegit* must not be issued in British Columbia.
 14. *Black's Law Dictionary*, 8th ed., s.v. "writ."
 15. *See The Office of the Sheriff*, *supra* note 12 at 4–9; 132–134.
 16. Gerard V. La Forest, "Some Aspects of the Writ of Fieri Facias" (1959) 12 U.N.B.L.J. 39 at 39 [footnote omitted]. The excised part of this passage referred to satisfying a judgment out of the lands of a judgment debtor. At common law, the writ of *fiery facias* could not be used to execute against land. By the time of this article, though, New Brunswick had modified the scope of the writ by legislation. The writ of execution (British Columbia's statutory successor to the writ of *fiery facias*) has been similarly expanded in scope by legislation, but it has never been expanded to reach land.
 17. Dunlop, *supra* note 6 at 84.
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These tools were largely adequate to the tasks required of them until the beginning of the nineteenth century. At that time, the beginning of the industrial revolution in England, the kinds of assets and the composition of wealth began to change. The old remedies were no longer up to the job of playing an effective role in civil enforcement. As noted, the writ of *elegit* only allowed the judgment creditor to seize half of the rents and profits of the land. The land itself could not be seized and sold. This rule reflected the feudal notion that land is more than an asset—it is a relationship between a feudal overlord and underlings, which should not be tampered with lightly. The writ of *fiery facias* was similarly limited. It could only be used to reach legal interests in property. Equitable interests were beyond its grasp. Further, it could not be used to seize any interest in intangible property—even money was beyond its reach.

This situation became more and more intolerable. A measure of creditors' frustrations can be found in the increasing popularity of imprisonment of debtors through the eighteenth and early nineteenth centuries. Imprisonment appears to have developed into an important remedy in response to the limitations of the remedies available against a judgment debtor's assets. Imprisonment could compel a judgment debtor to sell assets that could not be reached by the writ of *fiery facias* or the writ of *elegit*.

A major reform of civil enforcement law in England occurred with the enactment of the *Judgments Act, 1838*.¹⁸ This legislation sharply restricted the availability of imprisonment as a tool for civil enforcement. The legislation also expanded both the scope of the existing remedies against a judgment debtor's assets and introduced new remedies to reach those assets that could not be reached under the common law.

The *Judgments Act, 1838* extended the writ of *fiery facias* to a variety of intangible assets that have a documentary aspect—such as money, cheques, and other commercial paper. This reform did not involve a fundamental change to the nature of the writ. The procedure for employing the writ also remained the same.

Where the *Judgments Act, 1838* did break new ground was in the creation of the charging order. This new remedy was available against land¹⁹ and against company shares²⁰ and government securities.²¹ To appreciate the contrast between the charging order and the

18. (U.K.), 1 & 2 Vict., c. 110. Some important amendments to the *Judgments Act, 1838* are found in the *Judgments Act, 1840*, (U.K.), 3 & 4 Vict., c. 82.

19. *Judgments Act, 1838, ibid.*, section 13. Unlike proceedings under the writ of *elegit* at common law, which limited the judgment creditor to realizing upon half the rents and profits arising from the land, this section allowed the judgment creditor ultimately to sell the charged land itself to satisfy the judgment.

20. *Judgments Act, 1838, ibid.*, section 12.

21. *Judgments Act, 1838, ibid.*, section 14.

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writs of *fieri facias* and *elegit*, one need only look at the procedure to be followed for obtaining a charging order against company shares or government securities:²²

. . . an initial application [is] made without notice to the judgment debtor, for an order restraining the registration of a transfer of the shares or other securities and directing the judgment debtor and directing the judgment debtor to show cause why a final charging order should not be made. If the judgment debtor does not convince the court that a charging order should not be made, the order is made absolute, charging the property with payment of the judgment. If the judgment remains unsatisfied after six months, the judgment creditor can bring an action for sale of the property charged.

This notion of charging the judgment debtor's property with the payment of a hitherto unsecured judgment debt is the seed of an idea that comes into full flower in the Uniform Act—the idea of assimilating civil enforcement remedies to the secured transaction system.

Even with the enactment of the *Judgments Act, 1838* one important type of asset remained outside the reach of civil enforcement. This asset was the pure intangible—the debt. It was dealt with in the *Common Law Procedure Act, 1854*,²³ which expanded the remedy of attachment to allow ordinary judgment creditors to garnishee debts owing to a judgment debtor.²⁴

The final part of the nineteenth-century English civil enforcement system was equitable execution. The Court of Chancery developed a number of remedies both to enforce its own decrees (when those decrees required the payment of money) and to assist judgment creditors who had failed, due to the limitations of the common law remedies, to obtain satisfaction of their judgments. The two most important remedies were equitable receiverships²⁵ and the equitable charging order.²⁶

This basic set of creditors' remedies from English law was imported into British Columbia law beginning in the late nineteenth century. Along with a few refinements developed in the early twentieth century, these remedies form the largest part of what is now the *Court Order Enforcement Act*. The provisions of the *Judgments Act, 1838* extending the scope of the writ of *fieri facias* to money, cheques, and other commercial paper appear

22. *Report on Execution Against Securities*, *supra* note 12 at 20–21 [footnotes omitted].

23. (U.K.), 17 & 18 Vict., c. 125.

24. Attachment of debts was available from the late fifteenth century on a very limited scale through the remedy of foreign attachment in the Mayor's Court of the city of London. See *Report on Attachment of Debts Act*, *supra* note 12 at 11–12.

25. See Dunlop, *supra* note 6 at 93 (“where the appointment of a receiver is an exercise of equitable execution, the receiver will be empowered to sell the personalty and to distribute the proceeds and rents and profits of real estate to the judgment creditors” [footnote omitted]).

26. The equitable charging order was used to reach funds held in court.

virtually unchanged in section 58 of the *Court Order Enforcement Act*. The *Court Order Enforcement Act* also includes a further extension of the scope of the writ to reach shares.²⁷ The provisions dealing with attachment of debts from the *Common Law Procedure Act, 1854* have been carried forward as Part 1 of the *Court Order Enforcement Act*, with one significant change. The *Court Order Enforcement Act* permits garnishment before judgment, in certain cases. The charging order is still the core concept for execution against land; sections 88 to 112 of the *Court Order Enforcement Act* graft it onto British Columbia's land title system. Charging orders against company shares and government securities under the *Judgments Act, 1838* are still available.²⁸ Receiverships and equitable charging orders—though rarely used—may still be granted by the courts.²⁹

C. American Influences

In addition to the influence of English law, American influences can be seen in British Columbia civil enforcement law. The main debt British Columbia owes to American law is a more fully developed concept of exemptions from exigibility than is present in English law.³⁰

Exemptions first appeared in British Columbia law in a series of statutes called the *Homestead Act*.³¹ This legislation reflected a policy of encouraging settlement in wilderness areas by giving settlers a greater degree of protection from creditors than was thought necessary in non-frontier areas. As settlement of the province matured, the policy underlying exemptions became less important. Until a few years ago, British Columbia law provided only for a very low global pecuniary exemption.³² In one of the rare examples

27. *Court Order Enforcement Act*, *supra* note 8, sections 64–68.

28. *Court Order Enforcement Act*, *ibid.*, section 69 preserves this remedy.

29. See Elizabeth R. Edinger, “The Appointment of Equitable Receivers: Application of Rules or Exercise of Pure Discretion?” (1988) 67 Can. Bar Rev. 306; John M. Moshonas & Susan A. Griffin, “Equitable Charging Orders in British Columbia” (1986) 1 N.C.D. Rev. 11.

30. The common law was very harsh. See *Hardistey v. Barney*, (1689) 1 Comb. 356 at 356, 90 E.R. 525 (K.B.), Holt C.J. (“upon a fieri facias the sheriff may take any thing but wearing clothes; nay, if the party hath two gowns, he may take one of them”).

31. *Homestead Act, 1866*, (V.I.), 30 Vict. no., 6 (creating exemption for registered homesteads in colony of Vancouver Island up to a value of \$2500 and for personal property up to a value of \$150); *Homestead Ordinance, 1867*, S.B.C. 1867, c. 77 (repealing *Homestead Act, 1866* and giving effect to the exemptions throughout British Columbia); *Homestead Amendment Act, 1873*, S.B.C. 1873, c. 38 (increasing exemption for personal property to a value of \$500); *Homestead Act, C.S.B.C. 1888*, c. 57 (deleting references to bankruptcy and insolvency in previous legislation); *Homestead Act Amendment Act, 1893*, S.B.C. 1893, c. 16 (limiting exemption for personal property to property that is not seized in satisfaction of a debt contracted for the purpose of acquiring the property); *Homestead Act Amendment Act, 1896*, S.B.C. 1896, c. 23 (limiting exemption by excluding stock in trade of a business).

32. The exemptions were for personal property, up to a value of \$2000, and for land that had been registered as a homestead, up to a value of \$2500.

of modernization of the *Court Order Enforcement Act*, this approach was amended recently to provide for categories of exempt items of property.³³

American influences are also seen in the development of garnishment before judgment. This procedure does not exist in English law. In the nineteenth century, garnishment before judgment began to appear in several American states. Although British Columbia, like all Canadian provinces, was heavily influenced by the English model of garnishment, it did adapt this American notion into its civil enforcement system.³⁴

D. Canadian Influences

In addition to English and American influences, there is one distinctly Canadian contribution to the law of civil enforcement. This contribution is the idea that judgment creditors should share the proceeds of execution. In other countries, such sharing only occurs when a debtor is petitioned into bankruptcy. From 1880 to 1920, however, Canada had no bankruptcy law. Bankruptcy is a federal matter, but in the absence of federal action, the provinces began to mandate sharing among judgment creditors. In British Columbia, the *Creditor Assistance Act*³⁵ carries forward this policy.

Some commentators have argued that legislation like the *Creditor Assistance Act* has not been needed since 1920, the year that the federal government reentered the field of bankruptcy legislation. These arguments have not carried the day, as the sharing principle has become firmly established in Canadian civil enforcement law.

The *Creditor Assistance Act* does not represent a complete embodiment of the sharing principle. It only requires judgment creditors who “levy execution” to share the proceeds of that execution “rateably.”³⁶ Some creditors’ remedies, notably garnishment, are not considered to be “levying execution” and therefore are not subject to the sharing principle. The *Creditor Assistance Act* also permits creditors who have not reduced their debts to a judgment to share in the proceeds, if they have obtained a certificate.³⁷

E. Summary

This is British Columbia’s civil enforcement system as it exists today. It maintains the nineteenth-century approach of having a series of largely independent and self-contained

33. See *Court Order Enforcement Act*, *supra* note 8, section 71, as am. by *Miscellaneous Statutes Amendment Act*, 1997, S.B.C. 1997, c. 27, sections 1–10.

34. See Dunlop, *supra* note 6 at 104–109.

35. *Supra* note 9.

36. *Creditor Assistance Act*, *ibid.*, section 1 defines “rateably” as meaning “in proportion to the amount of a person’s executions or certificates.”

37. *Creditor Assistance Act*, *ibid.*, sections 6–11.

procedures for reaching specific kinds of assets: the writ of *fiери facias* (now called the writ of execution) for the seizure and sale of tangible personal property, money, and commercial paper; garnishment (both pre- and postjudgment) of debts; a registration system for proceeding against land; the *Judgments Act, 1838* charging order as an alternative remedy for company shares and government securities; equitable receiverships; and equitable charging orders for funds in court. These remedies are subject both to the exemptions in the *Court Order Enforcement Act* and to their inherent limitations (which are spelled out in the jurisprudence). Finally, the *Creditor Assistance Act* applies a policy of sharing to the exercise of certain remedies, while others operate according to the common law principle of first in time, first in right.

IV. THE CASE FOR REFORM

The current composition and organization of British Columbia's civil enforcement system generate the leading arguments in favour of reform. The system is fragmentary, uncoordinated, and out of date. Prof. Dunlop, a leading academic in the field, argues that:³⁸

... it is undeniable that the present system of creditors' remedies law in Canada is in urgent need of reform. In most provinces, the law governing debtor-creditor relations is a patchwork of English and Canadian legislation and judge-made rules which do not fit together into a comprehensible or workable pattern. Much of the law is out of date, particularly when viewed against the backdrop of the economic and social changes which have occurred in recent years. The creditors' remedies system is thus perceived as operating unsatisfactorily by both creditors and debtors, one result being that creditors will do everything possible to collect their debts without resort to law. The system of judicial creditors' remedies often fails to accomplish much more than to create hardship for low-income debtors without doing much to satisfy the claims of their creditors.

One way to illustrate how fragmentary and archaic civil enforcement in British Columbia can be is to look at the treatment of a specific asset.

Company shares are an increasingly important means of holding wealth. An efficient civil enforcement system needs effective and modern procedures to make wealth that is concentrated in shares available to satisfy a judgment. The *Court Order Enforcement Act* recognizes this point, and expressly makes shares liable to seizure and sale.³⁹ Unfortunately, the procedure it prescribes for the seizure and sale of shares relies on concepts concerning the legal nature of shares that have been out of date for 80 years.⁴⁰ The method of seizure—which requires service of a notice on the company that issued the share—is completely out of touch with modern practices of holding and transferring shares, which, for publicly-traded companies, depend almost entirely on securities intermediaries, operating between the company and the shareholder. The result of this old-

38. *Supra* note 6 at 9.

39. *Supra* note 8, section 64.

40. *Ibid.*, section 65.

fashioned legal structure is that shares in publicly-traded companies are, in practice, extremely difficult to seize under a writ of execution.

Execution against shares issued by private companies presents a different set of problems. In most cases, these shares are subject to transfer restrictions. For a long time, following the decision in *Phillips v. La Paloma Sweets Ltd.*,⁴¹ courts and creditors in British Columbia believed that the shares that are subject to transfer restrictions were not exigible. In the early 1970s, however, *Associates Finance Co. Ltd. v. Webber*⁴² made it clear that this conclusion was not the law in British Columbia. Unfortunately, the case was not able to provide much guidance on how to overcome the practical difficulties of balancing the interests of judgment creditors, other shareholders, and the incoming purchaser. This is understandable, as it is difficult for the courts to carry all the burdens associated with law reform. But the result is that shares in privately-held companies are rarely seized and sold to satisfy judgment debts.

The fragmentary nature of the current law of civil enforcement is brought home by the fact that judgment creditors have an alternative remedy for company shares: the *Judgments Act, 1838* charging order.⁴³ The same type of asset, therefore, can be reached by two very different procedures.⁴⁴ This bifurcation has a harmful effect on other areas of the system, such as the sharing principle, which require coordination to operate efficiently.

The long silence of the legislature has left the courts as the sole actor in reform of the civil enforcement system. The courts have been able to modernize some aspects of the system, but they cannot be expected to resolve all the difficulties that have built up. In particular, the courts cannot ensure that the civil enforcement system keeps pace with the changing nature of holding wealth in society. This task must be handled by the legislature. The treatment of shares in the current system shows what happens when the legislature is absent from the field: doubts are cast on the exigibility of an asset or on the procedure to follow to execute against an asset. This problem exists not only for company

41. (1921) 66 D.L.R. 577, 51 O.L.R. 125 (Div. Ct.).

42. (1972) 28 D.L.R. (3d) 673 at 686, [1972] 4 W.W.R. 131 (B.C.S.C.), Anderson J. (“[the sheriff’s] duty is to seize and sell, in accordance with the articles of association (save those articles which absolutely prohibit transfers at the discretion of the directors) by which he is not bound”).

43. See *Consumer Imagenet Inc. v. Infinetron International, Inc.*, (2001) 89 B.C.L.R. (3d) 93, 2001 BCSC 372, for an example of the continuing use of this remedy.

44. See also *Vancouver A & W Drive-Ins Ltd. v. United Food Services Ltd.*, (1981) 38 B.C.L.R. 30, 13 B.L.R. 89 (S.C.), which suggests that judgment creditors may have a third remedy against company shares: the appointment of an equitable receiver. This case has been criticized; it likely cannot be seen as laying down a general principle that a judgment creditor is entitled to the appointment of a receiver to reach company shares. But this remedy may be available in situations that closely resemble the facts of this case, which involved shares held in a registered retirement savings plan.

shares: other financial instruments and all forms of intellectual property exist in a similar grey area.⁴⁵ The situation resembles, in many respects, the situation that confronted the English reformers at the beginning of the nineteenth century.

Nineteenth-century English reforms addressed the pressing concerns of that day largely by expanding the system inherited from the common law. Following this strategy would not effectively solve today's problems. The long neglect of civil enforcement law has resulted in many of its core concepts becoming encrusted with technicalities and uncertainties.

An example of the uncertainties and deficiencies of the current system can be seen in the concept of "binding." The precise legal nature of binding has proved difficult, if not impossible, to isolate.⁴⁶ The courts have foundered on the question of what, if any, rights binding confers on a judgment creditor. The best that can be said is that, once property is bound by a writ of *fieri facias*, the sheriff has a right to seize it. This right becomes complicated when third-party interests in the property enter the picture. The pattern of piecemeal modification by statute of a common law rule that time has made unworkable is present in the development of the concept of the binding effect of the writ of *fieri facias*.⁴⁷

At common law, the writ had effect from its teste. As soon as it was issued it bound the goods of the execution debtor into whosoever hands they came. So that if an execution debtor sold his goods after the issue of the writ, the execution creditor had a right to seize them even against a *bona-fide* purchaser for value without notice. The English Statute of Frauds made an important alteration to this law. It provided, in effect, that the writ should not bind the goods of an execution debtor until it was delivered to the sheriff to be executed. . . .

It should be observed that the provision in the Statute of Frauds merely postpones the time when the writ binds the goods of the execution debtor; it does not otherwise alter the law. So that if a judgment debtor sells goods to an innocent purchaser after the writ has been placed in the hands of the sheriff for execution, the sheriff may seize the goods in the hands of the innocent purchaser.

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45. Some provinces make certain forms of intellectual property exigible: *see e.g. Executions Act*, R.S.O. 1990, c. E.24, section 17 (authorizing sheriff to seize rights under a patent of invention). In British Columbia, the *Court Order Enforcement Act* is silent on the issue of exigibility of intellectual property rights. In effect, this silence has left the issue to the courts to resolve case by case: *see Mortil v. International Phasor Telecom Ltd.*, (1988) 23 B.C.L.R. (2d) 354, 20 C.P.R. (3d) 277 (Co. Ct.).
46. *See Dunlop, supra* note 6 at 511 (citing cases that describe binding as variously creating a charge, a lien, or a security interest in the judgment debtor's personal property and criticizing the inability "to discover the true nature of the execution creditor's rights").
47. La Forest, *supra* note 16 at 40 [footnotes omitted]. In British Columbia, the development described in the passage culminated in the enactment of section 35 of the *Law and Equity Act*, *supra* note 10, which adopts the rule in the *Mercantile Law Amendment Act, 1856* for the writ of execution. The concept of binding operates for other enforcement remedies, as well. Different rules apply in each case: *see e.g. Court Order Enforcement Act, supra* note 8, section 9 (garnishment).
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This blemish on the law was removed in England by section 1 of the Mercantile Law Amendment Act, 1856, which provided that no writ of *fiery facias* should prejudice the right of any person to goods acquired from an execution debtor in good faith, for valuable consideration and without notice.

As this passage explains, the statutory reforms of the concept of binding have been directed to protecting the interests of *bona fide* purchasers for value without notice. But these interests are not the only third-party interests that may conflict with the concept of binding. Judgment debtors may have granted security interests in their personal property; government and preferred creditors may be part of the competition for the judgment debtor's assets. Government, preferred, and secured creditors all benefit from acting within a modern and certain legal regime. The provisions of the *Personal Property Security Act*,⁴⁸ in particular, show how out of date the concept of binding is. In 1959, Prof. La Forest (later La Forest J.) pronounced the binding effect of the writ to be "a matter that is in crying need of reform";⁴⁹ given the progress since that time in other areas of the law, this judgment is all the more apt today.

Conceptual uncertainties in civil enforcement remedies are not the only problems for the system. Its ordinary operation is excessively cumbersome. In addition to having to carry the burden of reform of the law, the courts are also involved inordinately in the day-to-day administration of the civil enforcement system. Garnishment illustrates this point. The remedy has adopted a civil litigation model for its procedure. It requires a formal order of the court, based on affidavit evidence. The court registry must record each application in a debt attachment book.⁵⁰ Garnished funds are paid into court. A further application is required to have them paid out. If the debt is one that is periodically recurring, then the process must be repeated, with exquisite timing, each time the debt comes due.⁵¹ Other remedies also require excessive judicial oversight. Proceedings against land involve multiple applications to court, in a procedure that resembles foreclosure.⁵² Even the seizure of personal property requires the issuance of a writ from the court registry.

One rationale for this level of court oversight would be protection for vulnerable debtors. But it is not at all clear whether this system is in fact providing adequate protection for anyone. It is clear, however, that the time and resources the courts must devote to routine administrative oversight impairs their efficiency in dealing with actual disputes.

48. R.S.B.C. 1996, c. 359.

49. La Forest, *supra* note 16 at 39.

50. *Court Order Enforcement Act*, *supra* note 8, section 22.

51. Continuing garnishing orders are only available to those preferred creditors who come within the scope of the family maintenance enforcement program: see *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127, sections 15 (5); 18 (3).

52. *Court Order Enforcement Act*, *supra* note 8, sections 92–106.

These aspects of civil enforcement begin to explain why one commentator has described the system, from the creditor's point of view, as being "a lengthy marathon to compensation."⁵³ But a fragmented and archaic system can harm debtors as well. A good illustration of this point is found in prejudgment remedies. The major statutory remedy in this area is prejudgment garnishment.⁵⁴ A creditor is entitled to this remedy if its claim can be framed as one sounding in debt. In other words, technical considerations prevail over the major substantive issue—the possibility that a creditor's judgment will ultimately not be satisfied due to the debtor's actions. Prejudgment garnishment, which almost always has serious consequences for a debtor, provides some creditors with unjustified leverage while leaving others, who may be substantively more deserving, without a remedy.

As in other areas, the courts have stepped in to fill some of the gaps in the statutory prejudgment remedies. This task was done by the creation of the *Mareva* injunction, which has the effect of freezing a debtor's assets, prior to judgment, where there is a real risk that a creditor's claim will be practically defeated. Conceptually, the *Mareva* injunction is a considerable advance on prejudgment garnishment. But the system still lacks unity and coordination, because court orders have to be individually crafted in each case. Since *Mareva* injunctions are issued after an *ex parte* hearing, the level of protection for debtors can occasionally be insufficient.⁵⁵

The Uniform Act is designed to address these problems of fragmentation, inefficiency, and irrelevancy, as a discussion of its origins will show.

V. THE DEVELOPMENT OF THE UNIFORM ACT

A. The Uniform Law Conference of Canada

The Uniform Law Conference of Canada (the "ULCC") is a law reform body that has been in existence since 1918. The ULCC comprises a Criminal Section and a Civil Section. The Civil Section brings together government lawyers, representatives of provincial law reform bodies, law professors, and lawyers in private practice to consider areas of the civil law that could benefit from harmonization and modernization. The goal of its work is the creation of uniform statutes in the areas of the law chosen for study. The ULCC considers completed uniform statutes at its annual meeting, and those endorsed by its

53. The Continuing Legal Education Society of British Columbia, *British Columbia Creditors' Remedies: An Annotated Guide* (Vancouver: The Continuing Legal Education Society of British Columbia) at § 14.01.

54. *Court Order Enforcement Act*, *supra* note 8, section 3 (2)–(3).

55. See Royal J. Morton, "The *Mareva* Injunction: Prejudgment Security Gone Too Far?" (2003) 61 Advocate 543 (reviewing a number of cases in which orders were issued without sufficient protection for the debtor's interests, including one which failed to exempt ordinary household expenditures from its scope).

members are recommended for enactment by all the relevant levels of government in Canada.

In recent years, the focus of the Civil Section has been on the commercial law of Canada. It adopted an overarching project called the Commercial Law Strategy in 1998. In 2000, a project dealing with the reform of civil enforcement of money judgments was added to the Commercial Law Strategy.

B. The Working Group

A national working group was created in 2001 to carry out the development of a uniform statute. The British Columbia Law Institute, with funding from the Ministry of Attorney General, took the leading role in fostering the working group and providing it with administrative support. The project leader was Prof. Lyman R. Robinson, Q.C., author of a major textbook on British Columbia civil enforcement law.⁵⁶ The members of the working group were drawn from the ranks of lawyers active in academia, government, law reform bodies, and private practice. The legal academics who participated in the project were: Prof. Ronald C.C. Cuming, Q.C. (who was instrumental in the development and implementation of the *Personal Property Security Acts* of British Columbia, Alberta, and Saskatchewan), Prof. Tamara Buckwold, and Prof. John Williamson. From government came Christopher Curran, Darcy McGovern, Marie José Longtin, and Geoff Ho, Q.C. (prior to his appointment to the Provincial Court of Alberta). Mr. Curran was formerly High Sheriff for the province of Newfoundland and Labrador. The Working Group also benefitted from the contribution of Joan Collins, a sheriff from New Brunswick. The federal government was represented by Mounia Allouch, Manon Dostie, Keith Pritchard, and Mireille Blanchard. Two members of the working group were also involved in provincial law reform bodies: Arthur Close, Q.C. (executive director of the British Columbia Law Institute) and Tim Rattenbury (Ministry of the Attorney General, New Brunswick). Finally, for a brief time, Sandy Robinson, an experienced civil litigator in Ontario, was a member of the working group.

Prof. Cuming, Prof. Buckwold, Prof. Williamson, Judge Ho, and Mr. Curran were all active in projects to reform the law of civil enforcement in Saskatchewan, Alberta, and Newfoundland and Labrador.

C. Sources

Although the implementation of the Uniform Act would represent a fundamental change in British Columbia civil enforcement law, it would not be a radical break with the law in other provinces. The ideas embodied by the Uniform Act are not untested. These ideas have been a part of law reform projects that stretch back 15 years, and they have formed the basis of legislation in force in other Canadian jurisdictions.

56. *Supra* note 12.

A significant law reform development was the publication of the Alberta Law Reform Institute's *Report on Enforcement of Money Judgments*.⁵⁷ This Report proposed, for the first time, a unified and coordinated system of civil enforcement. Its recommendations are the basis of legislation in Alberta⁵⁸ and Newfoundland and Labrador.⁵⁹

The Alberta and Newfoundland legislation formed one pillar supporting the Uniform Act. Another pillar was a law reform project that examined civil enforcement in Saskatchewan.⁶⁰ More than the Alberta and Newfoundland and Labrador statutes, the Saskatchewan Interim Report provided the conceptual underpinnings of the Uniform Act.

Finally, a third pillar for the Uniform Act was the *Personal Property Security Act*, versions of which are in force in most Canadian provinces, including British Columbia.⁶¹ The *Personal Property Security Act* did for the law of secured transactions what the Uniform Act does for the law of civil enforcement: it reformed a fragmentary and antiquated system, replacing it with a conceptually coherent and unified one. Its development made possible the reforms to civil enforcement first proposed by the Alberta Law Reform Institute.

VI. SUMMARY OF THE UNIFORM ACT

A. Major Themes

Prof. Robinson has described the goals of the Uniform Act as being “to modernize and make uniform the law governing the enforcement of money judgments.”⁶² In addition to modernization and harmonization, consolidation of the law of civil enforcement can also be considered to be a goal of the Uniform Act.

57. *Supra* note 3.

58. *Civil Enforcement Act*, R.S.A. 2000, c. C-15.

59. *Judgment Enforcement Act*, S.N.L. 1996, c. J-1.1.

60. Tamara M. Buckwold & Ronald C.C. Cuming, *Interim Report on Modernization of Saskatchewan Money Judgment Enforcement Law* (November 2001), online: Saskatchewan Queen's Printer <www.qp.gov.sk.ca/orphan/reporta.pdf> [Saskatchewan Interim Report]. The final report for this project was released after the completion of the Uniform Act: see Tamara M. Buckwold & Ronald C.C. Cuming, *Final Report on Modernization of Saskatchewan Money Judgment Enforcement Law* (January 2005) [Saskatchewan Final Report].

61. *Supra* note 48.

62. *Proceedings of the Eighty-Sixth Annual Meeting—Report of the Civil Enforcement Working Group*, online: Uniform Law Conference of Canada <http://www.ulcc.ca/en/poam2/CLS2004_Civil_Enforcement_Working_Group_Rep_En.pdf> at para. 1.

1. MODERNIZATION

Modernization of the law of civil enforcement involves removing impediments to the system reaching its overall goals. These goals are compelling the payment of just debts, providing an adequate level of protection for debtors and their dependents, and ensuring the orderly distribution of the debtor's estate by sharing the proceeds of enforcement among judgment creditors.

One of the major limitations of the current system is that certain types of property and interests in property are not available for the satisfaction of judgments. The Uniform Act overcomes this limitation by articulating a policy of universal exigibility. Under this policy, all of a judgment debtor's property and interests in property are subject to enforcement proceedings, except for those items of property that are expressly exempted in the statute.⁶³

The Uniform Act does away with the current system of matching discrete enforcement tools with discrete items of property. In its place, the Uniform Act relies on a unified and streamlined method of enforcement. In effect, the Uniform Act replaces the plethora of current remedies with a single remedy—seizure of assets.⁶⁴

The remedy is invoked by the giving of enforcement instructions from the judgment creditor to the enforcement officer. These instructions may be very detailed, or they may be general. Giving them does not require that the judgment creditor apply to court for an order or obtain a writ from the court registry. The Uniform Act thus removes the need for court oversight of the general administration of the civil enforcement system. Judicial oversight is instead concentrated on resolving substantive legal disputes. On this point, the Uniform Act allows for liberal access to the courts.⁶⁵

A judgment creditor is allowed to give enforcement instructions upon registration of a notice of judgment. The Uniform Act does away with the concept of binding. In its place, registration of a notice of judgment in the Personal Property Registry will create an enforcement charge over the judgment debtor's present and after-acquired personal prop-

63. See also *Civil Enforcement Act*, *supra* note 58, section 2 (b); *Judgment Enforcement Act*, *supra* note 59, section 3 (5) (b); Saskatchewan Interim Report, *supra* note 60, section 22; Saskatchewan Final Report, *supra* note 60, section 25.

64. See also Saskatchewan Interim Report, *ibid.* at xii; Saskatchewan Final Report, *ibid.* at 8. The *Civil Enforcement Act*, *ibid.* and the *Judgment Enforcement Act*, *ibid.* also make great strides in this direction. Both statutes, though, preserve garnishment as a distinct remedy, operating alongside seizure of assets.

65. See also *Civil Enforcement Act*, *ibid.*, section 5; *Judgment Enforcement Act*, *ibid.*, section 11; Saskatchewan Interim Report, *ibid.* at xi–xii. Unlike the Uniform Act, both the *Civil Enforcement Act* and the *Judgment Enforcement Act* retain the writ of enforcement.

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erty.⁶⁶ In effect, a judgment creditor who registers a notice of judgment becomes a secured creditor. Priority disputes are resolved in a scheme that closely resembles that of the *Personal Property Security Act*. For jurisdictions that adhere to a land title system, an enforcement charge on the judgment debtor's land is created upon registration of the notice of judgment against a particular title to land in the land title office.⁶⁷

The Uniform Act provides for a liberal set of exemptions from enforcement proceedings.⁶⁸ The Uniform Act's approach to exemptions does not involve recreating the law from the ground up.⁶⁹ Rather, the Uniform Act stays within the existing framework in Canadian law. Where there was broad agreement, the working group promoted exemptions that are in keeping with recent societal developments.

The Uniform Act embodies the sharing principle. The proceeds of all enforcement proceedings are subject to rateable sharing among judgment creditors.⁷⁰ The Uniform Act also introduces an innovation into the principle. In recognition of the work done by the judgment creditor who takes the lead in locating assets to be seized, the Uniform Act provides for a preferential payment to that judgment creditor.⁷¹

2. HARMONIZATION

The Uniform Act promotes harmonization in three ways. First, it provides a statute for enactment in all of the provinces or territories.⁷² Second, as noted above, the Uniform

66. See also Saskatchewan Interim Report, *ibid.* at x–xi; sections 9–14; Saskatchewan Final Report, *ibid.* at 8; sections 10–15. The *Civil Enforcement Act*, *ibid.* and the *Judgment Enforcement Act*, *ibid.* retain the word binding, but flesh out the concept by heavy reliance on personal property security ideas.

67. See also *Civil Enforcement Act*, *ibid.*, section 33 (2) (b).

68. See also *Civil Enforcement Act*, *ibid.*, section 88; *Judgment Enforcement Act*, *supra* note 59, section 131; section 139; Saskatchewan Interim Report, *supra* note 60, section 62; section 65; Saskatchewan Final Report, *supra* note 60, section 73; sections 75–76.

69. There exists such wide variation among the provinces on certain aspects of exemptions that a fundamental redesign of the system may be impossible. Compare *e.g.* the value of the exemption for land in Saskatchewan's *Exemptions Act*, R.S.S. 1978, c. E-14, section 2 (1) 10 (exempts from execution "the homestead, provided it is not more than one hundred and sixty acres") with the lack of any exemption for land in the Maritime provinces: see *Memorials and Executions Act*, R.S.N.B. 1973, c. M-9; *Judicature Act*, R.S.N.S. 1989, c. 240; *Judgment and Execution Act*, R.S.P.E.I. 1988, c. J-3.

70. See also *Civil Enforcement Act*, *supra* note 58, section 97; section 99 (3) (g); *Judgment Enforcement Act*, *supra* note 59, section 151; section 154 (1) (i); Saskatchewan Interim Report, *supra* note 60 at xix–xx; section 74; section 76 (1) (i); Saskatchewan Final Report, *supra* note 60, section 86; section 89 (2) (i).

71. See also *Civil Enforcement Act*, *ibid.*, section 99 (3) (f); *Judgment Enforcement Act*, *ibid.*, section 154 (1) (h); Saskatchewan Interim Report, *ibid.*, section 76 (1) (d); Saskatchewan Final Report, *ibid.*, section 89 (2) (d).

72. Uniformity, however, does not require each province or territory to enact a statute with identical pro-

Act draws on a number of ideas that are contained in law reform reports and in statutes already in force in Canada. Implementation of the Uniform Act in British Columbia will bring the civil enforcement system into line with the system that exists in Alberta and Newfoundland and Labrador. Third, the Uniform Act draws on other uniform statutes. In particular, the Uniform Act embraces concepts from the *Uniform Enforcement of Canadian Judgments and Decrees Act*,⁷³ the *Uniform Registered Plan (Retirement Income) Exemption Act*,⁷⁴ and the *Uniform Securities Transfer Act*.⁷⁵ None of these uniform statutes is currently in force in British Columbia.⁷⁶ Although implementation of each uniform statute would be preferable, implementation of the Uniform Act will provide some of the benefits of harmonization in these areas of the law.

3. CONSOLIDATION

The law of creditors' remedies in British Columbia is currently found in a variety of sources, including provincial statutes (*Court Order Enforcement Act*,⁷⁷ *Creditor Assistance Act*,⁷⁸ *Law and Equity Act*⁷⁹), English statutes (*Judgments Act, 1838*⁸⁰), and cases (which set out important common law and equitable principles). The Uniform Act consolidates this law in a single statute. In addition, by virtue of its requirement of registering notices of judgment in the Personal Property Registry, the Uniform Act achieves a measure of integration of the unsecured and secured creditors' remedies systems.

B. Major Provisions

The Uniform Act contains sixteen Parts. In some cases, a Part contains Divisions. The summary that follows touches on one or two highlights from each Part or Division.⁸¹

visions. The Uniform Act has flexibility built into it at several key points. For example, the Uniform Act contains two options for the enforcement of judgments against land.

73. Online: Uniform Law Conference of Canada <<http://www.ulcc.ca/en/us/index.cfm?sec=1&sub=1e4>>.
 74. Online: Uniform Law Conference of Canada <<http://www.ulcc.ca/en/poam2/index.cfm?sec=1999&sub=1999ha>>.
 75. Online: Uniform Law Conference of Canada <http://www.ulcc.ca/en/us/Uniform_Securities_Transfer_Act_En.pdf>
 76. Legislation implementing the *Uniform Enforcement of Canadian Judgments and Decrees Act* has been passed, but the statute has not yet been brought into force. See *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29.
 77. *Supra* note 8.
 78. *Supra* note 9.
 79. *Supra* note 10.
 80. *Supra* note 18 (in force by virtue of section 2 of the *Law and Equity Act*, *ibid.*).
 81. See Appendix A, below, at 25ff for the text of the Uniform Act, with detailed commentary provided by the ULCC.
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Part 1 sets out the definitions that are applicable to the whole of the Uniform Act. One definition in this group is particularly of note. The very broad definition of “property” expands the common law notion of property to embrace equitable and other interests that, under the current law, are not available for the satisfaction of judgment debts. This definition helps to implement the concept of universal exigibility.

General provisions applicable to the whole of the Uniform Act appear in Part 2. Section 10 adopts the standard of good faith and commercial reasonableness from the *Personal Property Security Act*⁸² into the civil enforcement system. Section 7 authorizes the court to make a wide range of orders in fulfilling its oversight function. This provision is intended to underscore that the role of the courts in civil enforcement is concerned with resolving disputes, rather than with routine administration.

Part 3 describes the powers of the enforcement officer. The words “enforcement officer” are meant as a generic term to embrace the systems already in place in the provinces and territories, whether they rely on a High Sheriff, sheriffs, or court bailiffs. The Uniform Act does not establish a uniform structure for regulating enforcement officers. Instead, it leaves regulation to the existing structures in place in the enacting provinces.

Part 4 creates the preservation order, a new statutory prejudgment remedy that is intended to replace *Mareva* injunctions, prejudgment garnishment, and whatever other prejudgment remedies are in existence in an enacting province or territory. Part 4 contains a unified basis for entitlement to the order, and gives the courts a high degree of flexibility in tailoring the order to meet specific circumstances.

Parts 5–7 contain the machinery for the administrative operation of the civil enforcement system under the Uniform Act.

Part 5 sets out the mechanics for registration of a notice of judgment in the Personal Property Registry. Registration results in the creation of an enforcement charge over the judgment debtor’s existing and after-acquired personal property. The enforcement charge replaces the old concept of binding. Registration is also a prerequisite to initiating enforcement proceedings under the Uniform Act.

Part 6 contains the rules for determining priority between an enforcement charge and other interests in the judgment debtor’s property. These rules are, in large part, modelled on the provisions in the *Personal Property Security Act*.⁸³

Part 7 sets out the rules for enforcement instructions. Unlike the current system, which requires matching discrete enforcement procedures to certain types of property, the Uni-

82. *Supra* note 48, section 68 (2)–(3).

83. *Ibid.*, sections 28–37.

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form Act establishes enforcement instructions as an all-purpose passport to enforcement of a judgment against a judgment debtor's property. A judgment creditor will be entitled to issue enforcement instructions after registration of a notice of judgment in the Personal Property Registry. It will not be necessary to apply to court for an order or for the registry to issue a writ.

Part 8 establishes a system for examining a judgment debtor to obtain information about the existence, location, and description of the judgment debtor's property. In part, this system duplicates the existing examination in aid of execution procedure contained in Rule 42A. Part 8, however, also contains a number of provisions that are geared to eliciting information that will assist the judgment creditor in registering a notice of judgment in the Personal Property Registry.

The rules governing enforcement proceedings against personal property appear in Part 9. In many respects, these provisions are the heart of the Uniform Act. Part 9 is divided into six Divisions. Division 1 sets out the general rules for enforcement proceedings against personal property. Divisions 2–6 set out special rules that apply to types of property that have caused difficulties for the civil enforcement system in the past.

Division 1 provides the default rules for enforcement officers in seizing and selling personal property. These rules are intended to modernize and rationalize the common law rules that have built up over time to govern the current law in this area.

Division 2 deals with fixtures and crops. Fixtures and crops are types of property that have hybrid or shifting natures. Depending on surrounding circumstances, they may be classed as either personal property or real property. The dedicated rules in Division 2 are meant to accommodate the special nature of these types of property.

Division 3 contains rules that apply to the seizure and sale of a judgment debtor's interest under lease, contract of sale, or security agreement. Division 3 covers both situations where the judgment debtor is the lessor, seller, or secured party and where the judgment debtor is the lessee, buyer, or debtor.

Division 4 replaces the remedy of garnishment with a procedure that allows an enforcement officer to seize an account owing to a judgment debtor. The change to this important remedy involves more than renaming the procedure. Under the Uniform Act, an account is charged with an enforcement charge upon registration of a notice of judgment. The process of seizing an account begins when a creditor gives an enforcement instruction to the enforcement officer. The enforcement officer seizes the account by giving a notice of seizure to the account debtor, and "as soon as practicable thereafter" to the judgment debtor. (Section 14 allows the enforcement officer to delegate the task of delivering these notices to the judgment creditor or its agent—such as a law firm. Relying on section 14, judgment creditors and their law firms may preserve a semblance of estab-

lished practices in employing the new remedy.) If there is no dispute, the funds are paid to the enforcement officer. These funds constitute a distributable fund, which, ultimately, is shared rateably among all judgment creditors. A notice of seizure applies to future accounts owing from the account debtor to the judgment debtor at any time within 12 months after the date on which the notice of seizure is given to the account debtor.

Division 5 creates a modern framework for seizing and selling securities and security entitlements. This framework is based on another statute prepared by the ULCC and endorsed at its most recent annual meeting, the *Uniform Securities Transfer Act*.⁸⁴ This uniform statute is intended to provide Canada with a modern statute that reflects current practice in the transfer of securities.⁸⁵ The *Uniform Securities Transfer Act* is based on the current revision of Article 8 of the American Uniform Commercial Code.⁸⁶ In addition to providing a modern framework for seizing publicly-traded securities, Division 5 also provides a code for seizing and selling securities in privately-held companies that are subject to transfer restrictions.⁸⁷

Part 10 deals with the enforcement of judgments against land. The Uniform Act contains two options for proceeding against a judgment debtor's land. The two options are meant to reflect the two major policy positions that prevail in the provinces and territories. Under the first option, registration of a notice of judgment in the Personal Property Registry creates an enforcement charge over all of the judgment debtor's present and after-acquired personal property *and* land.⁸⁸ Under the second option, registration of a notice of judgment in the Personal Property Registry does not create an enforcement charge over the judgment debtor's land. Instead, the judgment creditor must take the further step of registering the enforcement charge against a specific title to land in the land title office. Enforcement of the registered enforcement charge is, in effect, a streamlined version of the current system in British Columbia.

84. *Supra* note 75. The *Uniform Securities Transfer Act* has also been endorsed by the Canadian Securities Administrators. For further information on the *Uniform Securities Transfer Act* see Eric T. Spink & Maxime A. Paré, "The *Uniform Securities Transfer Act*: Globalized Commercial Law for Canada" (2004) 19 B.F.L.R. 321.

85. Canadian laws governing the transfer of securities tend to exist in business corporations statutes. These laws are invariably based on an older model of the transfer of securities. See e.g. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, Part VII, which was inspired by the 1977 revision of Article 8 of the Uniform Commercial Code.

86. U.C.C. rev. art. 8 (1994).

87. See Uniform Act, *supra* note 7, section 125.

88. Registration of the enforcement charge in the province's land registry system is necessary under this option only to protect the judgment creditor's priority position vis-à-vis third-party interests in the land.

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Part 11 sets out the rules for enforcing judgments against co-owned and partnership property. These rules apply both to personal property and to land. Under the current law, if a judgment debtor owns an interest in property, and a third party is also a joint owner or a co-owner of the property, then the sheriff cannot seize the judgment debtor's interest. The Uniform Act reverses this rule. Part 11 sets out the rules that an enforcement officer must follow in these cases. These rules balance the rights of third parties with the interests of judgment creditors in realizing upon their judgments.

The Uniform Act's exemption provisions are in Part 12. Part 12 is divided into three divisions, which deal with the process of claiming an exemption and determining its validity, exempt property, and exempt income. Part 12 contains some notable innovations in the law of exemptions. It extends exemptions to corporations that are effectively incorporated proprietorships. The exemption for income recognizes that, for many people, income is earned outside an employment relationship. Part 12 gives effect to the *Uniform Registered Plan (Retirement Income) Exemption Act*,⁸⁹ rendering registered retirement savings plans, deferred profit sharing plans, and registered retirement income funds exempt from enforcement proceedings.

Part 13 deals with applications for the appointment of a receiver. It also lists the powers of receivers and describes supervision by the court. Part 13 is a useful supplement to an area of the law that is currently underdeveloped in British Columbia.

Part 14 contains the rules governing the distribution of proceeds from enforcement proceedings to judgment creditors. The key terms in Part 14 are "distributable fund" and "eligible claim." A distributable fund is constituted when the enforcement officer realizes proceeds from an enforcement proceeding. A judgment creditor has an eligible claim if he or she has delivered an enforcement instruction to the enforcement officer, or if he or she delivers an enforcement instruction within the period designated, after receiving notice of the constitution of a distributable fund. After the payment of specified claims that are given priority to the proceeds,⁹⁰ eligible claimants share the remainder on a *pro rata* basis.

Parts 15 and 16 deal primarily with administrative matters: third person claims and transition, regulations, forms, and fees.

VII. THE BRITISH COLUMBIA LAW INSTITUTE'S ROLE

In addition to taking the lead role in supporting the development of a working group to produce the Uniform Act, the British Columbia Law Institute (the "BCLI") also set itself

89. *Supra* note 74.

90. These claims include a premium for a judgment creditor whose instructions led to the contribution of funds to the distributable fund.

the task of developing a reformed civil enforcement statute for British Columbia. The two projects are integrated to a large degree, as the Uniform Act provides the model for law reform for British Columbia, without the need of developing an independent statute.

It must be stressed, however, that the Uniform Act presents a *model* for law reform. It does not resolve all the issues that enacting provinces will face in bringing legislation into force. Each province will have a unique set of implementation issues. In reviewing and commenting on the Uniform Act, the BCLI focussed on a number of pressing implementation issues for British Columbia.

There is a range of subjects that can be addressed under the heading of implementation issues. The range runs from the level of small details up to broad policy issues.

In some cases the Uniform Act itself pushes an implementation issue to the surface. For example, the Uniform Act contains a number of blank spaces. These spaces are meant to accommodate references to the relevant provincial law. Beyond the level of detail, the Uniform Act also presents some choices in policy. Part 10, which contains two options for enforcing judgments against land, is an example of this type of implementation issue.

Other implementation issues are subtler. A number of them arise from differences in the existing civil enforcement systems of the provinces. Provisions that appear in the *Court Order Enforcement Act* do not appear in the leading civil enforcement statute in each province. For example, outside British Columbia, the preference for three months' wages⁹¹ tends to appear in employment standards legislation. The Uniform Act follows the consensus position of the provinces. Where this solution would result in the loss of an important provision from the *Court Order Enforcement Act*, the BCLI has recommended reenacting the provision as part of the Uniform Act. Differences among the approaches to personal property security also raise implementation issues for the Uniform Act. Where the Uniform Act strays from the approach taken in British Columbia's *Personal Property Security Act*, the BCLI has recommended changes to ensure harmony on this point. These changes do not depart significantly from the spirit of the Uniform Act, which promotes harmony between the civil enforcement and personal property security systems. Finally, some aspects of British Columbia civil procedure and practice before the courts have prompted changes to some provisions of the Uniform Act.

A number of topics that could be considered implementation issues have not been addressed in our review of the Uniform Act. As the Uniform Act is the product of a national working group, it could not be expected to conform to any one province's drafting conventions. Before it is enacted in British Columbia, legislative counsel's office will have to revise it, to ensure harmony with British Columbia's drafting conventions. We have not undertaken this task. The implementation of the Uniform Act will have pro-

91. See *Court Order Enforcement Act*, *supra* note 8, section 52.

found consequences for the family maintenance enforcement system. These consequences deserve study in their own right; they cannot simply be grafted onto a study of the Uniform Act.

Finally, the implementation of the Uniform Act will fundamentally change the tasks of the people who carry out the enforcement of judgments—the enforcement officers. Under the current system, the role once occupied by the sheriff is now occupied by private court bailiffs. The implementation of the Uniform Act need not alter that structure. The administration of this structure may remain largely a matter of agreement between the provincial government and the court bailiff firms. The BCLI has not attempted to sketch out a statutory structure to govern this relationship. We have made some suggestions for updating the contractual relations that are currently in place, however.⁹²

VIII. CONCLUSION

British Columbia's civil enforcement system is in need of fundamental reform. The Uniform Act provides a good model for the reform that is needed. The BCLI recommends that the provincial government enact legislation implementing the Uniform Act.

92. See the BCLI introductory comment to Part 3 of the Uniform Act in Appendix A, below, at 56–57.

APPENDIX A

Uniform Civil Enforcement of Money Judgments Act

Note

This Appendix contains the statutory provisions of the *Uniform Civil Enforcement of Money Judgments Act* (the “Uniform Act”), including provisions that the British Columbia Law Institute (the “BCLI”) is recommending not to be enacted in British Columbia, provisions that the BCLI is recommending adding to the British Columbia legislation implementing the Uniform Act, references to the sources for those statutory provisions, commentary by the Uniform Law Conference of Canada (the “ULCC”) on the statutory provisions, and commentary by the BCLI on the statutory provisions and deletions and additions to it. In order to allow readers to determine quickly the category that the text they are reading falls into, the following formatting cues have been used:

- aaaa: plain text = the statutory provisions of the Uniform Act
- aaaa: shaded text = provisions of the Uniform Act that the BCLI is recommending not to be implemented in British Columbia
- aaaa: boxed text = provisions that the BCLI is recommending to be added to the legislation implementing the Uniform Act in British Columbia
- aaaa: bold text = sources of the statutory provisions of the Uniform Act. The major sources are identified as follows: AB = *Civil Enforcement Act*, R.S.A. 2000, c. C-15; NL = *Judgment Enforcement Act*, S.N.L. 1996, c. J-1.1; PPSA = *Personal Property Security Act*, R.S.B.C. 1996, c. 359; SK = Ronald C.C. Cuming & Tamara Buckwold, *Interim Report on Modernization of Saskatchewan Money Judgment Law*. Other sources are identified by the title of the enactment and its chapter number. The notation “*cf.*” is used to draw attention to a provision that expresses a similar idea in a different manner. Where there is no source for a provision, it is labelled “original.”
- aaaa: italicized text = commentary by the ULCC on the Uniform Act
- aaaa: Arial text = commentary by the BCLI on the Uniform Act, and on additions to and deletions from it

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Short Title

This Act may be cited as the *Uniform Civil Enforcement of Money Judgments Act*.

BCLI Comment: British Columbia legislation does not employ separate long and short titles, so this express reference to a short title is unnecessary.

PART 1—INTERPRETATION

Definitions

1 (1) In this Act:

“**account**” means a monetary obligation, however created, other than an obligation evidenced by a negotiable instrument or security,

- (a) owing by a person to a judgment debtor,
- (b) whether or not payable, and
- (c) whether or not specific as to amount,

and includes an obligation under a term deposit contract, an insurance contract, a letter of credit, a guarantee agreement or an indemnity agreement to make payment to the judgment debtor in discharge of any liability of the insurer, issuer, guarantor or indemnitor to the judgment debtor;

Sources: SK, section 1; cf. PPSA, section 1

ULCC Comment: Section 1 (2) of this Act incorporates the Personal Property Security Act definition of the term “security.”

“**account debtor**” means a person

- (a) who is obligated to a judgment debtor under an account, an intangible or chattel paper, or

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- (b) who will become so obligated under a future account, and, where the context permits, includes an insurer, issuer, guarantor or indemnitor who is obligated to make a payment to the judgment debtor;

Source: SK, section 1

ULCC Comment: The term “future account” is defined later in this section. The inclusion of an insurer within the meaning of an account debtor does not affect exemptions from seizure or attachment contained in the Insurance Act of a province/territory that are applicable to specified life insurance policies or proceeds of specified life insurance policies. Section 1 (2) of this Act incorporates the Personal Property Security Act definition of the term “intangible.”

“amount recoverable” means, in relation to a judgment being enforced, the total of:

- (a) the unsatisfied amount of the judgment,
- (b) any costs that the judgment creditor is entitled to recover,
- (c) any unpaid interest on the judgment referred to in paragraph (a) or the costs referred to in paragraph (b),
- (d) any fees, taxable court costs and expenses paid or payable in respect of an enforcement officer’s services in relation to the judgment, and
- (e) any other amounts that are prescribed or that may be ordered by the court;

Source: SK, section 1

“co-owned property” means property that a judgment debtor owns with one or more persons as a joint tenant or tenant in common;

Source: original

“co-owner” means a person who owns co-owned property with a judgment debtor;

Source: original

“court” means the [insert the name of superior court of the enacting province/territory] Supreme Court unless the context otherwise provides;

Sources: AB, section 1 (1) (j); NL, section 2 (1) (h); SK, section 1

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“dispose” means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things;

Source: *Interpretation Act*, R.S.B.C. 1996, c. 238, section 29

BCLI Comment: This definition of “dispose” already appears in the *Interpretation Act*, so it is not necessary to include it in the Uniform Act.

“distributable fund” means a fund described in section 180;

Source: original

“DPSP” means a deferred profit sharing plan as defined in section 147 of the *Income Tax Act* (Canada);

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

BCLI Comment: DPSP is defined and used in two places in the Uniform Act: Part 9 Division 4 (seizure of accounts) and Part 12 Division 3 (income exemption). In each case, the definition is the same; it appears twice to accommodate two aspects of the *Uniform Registered Plan (Retirement Income) Exemption Act*. To avoid repetition, the definition may be relocated to section 1.

“employment remuneration” means amounts payable to a judgment debtor pursuant to a contract of employment in relation to a periodic payment and includes the market value of all goods and services that the judgment debtor has received or is entitled to receive in relation to that pay period in lieu of money;

Source: *Uniform Civil Enforcement of Money Judgments Act*, section 101 (1)

BCLI Comment: Employment remuneration appears in two places in the Uniform Act: Part 9 Division 4 (seizure of accounts) and Part 12 Division 3 (income exemption). The phrase is currently defined in section 101 (1). When it appears later in the Uniform Act, there is a cross-reference to section 101 (1). The definition may be moved to section 1, which will avoid the need for repeated cross-references.

“enforcement charge” means a charge on property of a judgment debtor created by the registration of a notice of judgment;

Source: original

“enforcement instruction” means written instructions delivered by a judgment creditor to an enforcement officer under Part 7;

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Source: original

“enforcement officer” means a person appointed under [insert the name of the provincial/territorial enactment under which a person or a private civil enforcement agency is appointed or authorized to carry out enforcement proceedings] *Sheriff Act* and includes [insert the appropriate titles such as “deputy sheriff,” “bailiff,” “court bailiff” etc.] a court bailiff who are *is* authorized under the laws of the province to carry out the functions and duties of an enforcement officer under this Act;

Source: original

ULCC Comment: In most provinces/territories, the functions of an enforcement officer will be carried out by deputy sheriffs under the supervision of the Sheriff or, in the case of Newfoundland and Labrador, the High Sheriff, who is appointed under the Sheriffs Act or Court Officials Act. In some provinces, such as Alberta and British Columbia, functions related to the enforcement of civil judgments, which were traditionally carried out by a sheriff, have been privatized and these functions are performed by private agencies operating under a contract with the government. This definition permits each province/territory to adopt the organizational and administrative structures that are appropriate for the province/territory.

“enforcement proceeding” means any action, step or measure authorized by this Act to be taken for the purpose of enforcing a judgment but does not include the registration of a notice of judgment under Part 5 or Part 10;

Source: *cf.* AB, section 1 (1) (uu)

“exempt income” means that portion of a judgment debtor’s income that is not subject to an enforcement proceeding as provided by Part 12 of this Act;

Source: original

“exempt property” means property of a judgment debtor that is not subject to an enforcement proceeding as provided by Part 12 of this Act;

Source: original

“exemption” means an entitlement of a judgment debtor to claim property of a judgment debtor as exempt property and income of a judgment debtor as exempt income;

Source: original

“exigible property”, except as otherwise provided in this Act, means real and personal property of the judgment debtor that is subject to an enforcement

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charge including property held in joint tenancy whether or not the property is in the possession of the judgment debtor;

Source: original

“future account” means an account that becomes due and payable at any time after seizure of the account by an enforcement officer under Part 9 Division 4 or after a demand for payment by a receiver if a legal relationship exists between the account debtor and the judgment debtor at the time an account debtor receives a notice of seizure or a demand for payment, as the case may be;

Source: *cf.* SK, section 1

“income” means property in the form of money or other form of personal property that a judgment debtor has received or has the right to receive as payment

- (a) of employment remuneration,
- (b) under a contract for personal services providing for a series of periodic payments,
- (c) under a retirement pension to the extent that it is not exempt from seizure or attachment under the laws of Canada or British Columbia,
- (d) under an annuity,
- (e) from a registered plan,
- (f) from the investment of that portion of money received by the judgment debtor pursuant to a legal entitlement for compensation for a personal physical injury that is attributable to loss of future income, and
- (g) from a source prescribed by regulation;

Source: *Uniform Civil Enforcement of Money Judgments Act*, section 164

BCLI Comment: The definition of “income” only applies to Part 12 Division 3 (income exemption). The same issues that arise in a seizure of employment remuneration, however, arise when accounts from the other sources included in the definition of “income” are seized. Section 101, which sets out rules governing the timing of when a seizure of employment remuneration is effective, should be amended to include the broader definition of “income” used in connection with the income exemption. Since the colloquial meaning of “income” is not used in the Uniform Act, this specific definition of “income” may be located in section 1.

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“**instructing judgment creditor**” means a judgment creditor who has delivered a subsisting enforcement instruction to an enforcement officer;

Source: *cf.* SK, section 1

“**judgment**” means any judgment, order or decree of a court that requires the payment of money and includes

- (a) a judgment of [insert name of the superior court of the enacting province/territory] [the Supreme Court of British Columbia], the Court of Appeal of [insert name of the enacting province/territory] [for British Columbia], the [insert the name of the small claims court of the enacting province/territory] [Small Claims Division of the Provincial Court], the Supreme Court of Canada and a judgment issued under the *Federal Courts Act* (Canada), and
- (b) a certificate, duty or right that requires the payment of money and that may be enforced as or in the same manner as a judgment of the court, and
- (c) a monetary order made under section 725 of the *Criminal Code* (Canada)

BCLI Comment: Section 741 of the *Criminal Code* authorizes the filing of a restitution order made under what is now sections 738 and 739 of the *Criminal Code* “in any civil court in Canada that has jurisdiction to enter a judgment” in the amount of the restitution order. Upon filing, the restitution order is enforceable “as if it were a judgment rendered against the offender in that court in civil proceedings.” Since the *Criminal Code* already contains an adequate mechanism for bringing restitution orders within the provincial civil enforcement structure, there is no need to incorporate these orders within the meaning of “judgment.”

but does not include

- (d) an order for contempt requiring the payment of money, and
- (e) an order for maintenance or support;

Source: *cf.* NL, section 2 (1) (bb)

ULCC Comment: With regard to paragraph (e), each province/territory should decide whether orders for the payment of maintenance and support should be included within the definition of “judgment” for the purposes of this Act.

BCLI Comment: Here and in section 4 (3), the Uniform Act touches on the enforcement of orders for maintenance and support. The Uniform Act does not attempt to integrate these types of orders. The ULCC does recommend that enacting provinces and territories review their family maintenance support system and decide whether orders for maintenance for support should, in the end, be included within the scope of the Uniform Act. This point must be emphasized. British

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Columbia's *Family Maintenance Enforcement Act* relies, at several points, on the existing civil enforcement structure established by the *Court Order Enforcement Act*. At a minimum, it will have to be carefully reviewed in order to harmonize its enforcement mechanisms with those of the Uniform Act. In addition, given the enhanced enforcement mechanisms that appear later in the Uniform Act, there may be a case for the full integration of orders for maintenance and support within the Uniform Act system.

“judgment creditor” means a person in whose favour a judgment has been granted and, when used in relation to a notice of judgment, means the person who is shown as the judgment creditor in the registration of the notice of judgment;

Source: original

“judgment debtor” means a person against whom a judgment has been granted and, when used in relation to a notice of judgment, means the person who is shown as the judgment debtor in the registration of the notice of judgment;

Source: original

ULCC Comment: Section 9 provides that this Act binds the Crown in exercising any rights or remedies as a creditor in enforcement proceedings; however, this Act does not apply to the Crown when a judgment orders the payment of money by the Crown.

“land” includes an interest in land, including any right, title or estate in it of any tenure, with all buildings and houses, unless there are words to exclude buildings and houses, or to restrict the meaning, but does not include growing crops;

Sources: *Interpretation Act*, R.S.B.C. 1996, c. 238, section 29; cf. AB, section 1 (1) (bb); NL, section 2 (1) (cc)

ULCC Comment: If the Interpretation Act of an enacting province/territory contains a definition of “land” that is as broad as this definition, it may not be necessary to include a definition of “land” in this Act. This definition of land is taken from the British Columbia Interpretation Act.

BCLI Comment: The proposed addition to this section is meant to settle any uncertainty over the status of growing crops, which the courts have characterized as land in certain circumstances and as personal property in other circumstances.

“notice of judgment” means a notice of judgment registered under Part 5 or Part 10 and includes an amendment of a notice of judgment;

Source: original

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“person” includes an individual, sole proprietorship, corporation, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, business trust, party, government or agent of a government, and the personal or other legal representatives of a person to whom the context can apply according to law;

Source: original

ULCC Comment: If the Interpretation Act of an enacting province/territory contains a definition of “person” that is as broad as this definition, it may not be necessary to include a definition of “person” in this Act. In most provinces/territories, the term “corporation” is defined as including a society incorporated under the Society Act of the province/territory. If this is not the case, the definition of “person” should be modified to include a society incorporated under the legislation of the province/territory. This definition includes “government or agent of a government” to make it clear that whenever this Act refers to a “person”, a government or an agent of government is entitled to take whatever action that a person could take.

“personal property” means property other than land and includes an interest in personal property;

Sources: cf. AB, section 1 (1) (jj); NL, section 2 (1) (oo)

ULCC Comment: The purpose of this definition is to bring within the definition of “personal property” all kinds of property that are described in the definition of “property” except land.

“planholder” means:

- (a) with respect to a DPSP, a beneficiary within the meaning of section 147 of the *Income Tax Act* (Canada);
- (b) with respect to an RRIF, an annuitant as defined in section 146.3 of the *Income Tax Act* (Canada); and
- (c) with respect to an RRSP, an annuitant as defined in section 146 of the *Income Tax Act* (Canada);

Source: *Uniform Registered Plan (Retirement Income) Act*, section 2

BCLI Comment: “Planholder” is a key term for the *Uniform Registered Plan (Retirement Income) Exemption Act*. If that uniform statute is not independently enacted and brought into force in British Columbia, then its provisions may be adopted in the Uniform Act. The exemption for planholders under the Uniform Act appears in section 159.

“property” includes

- (a) things, as well as rights or interests in things,

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- (b) a thing regarded in law or equity as property, or as an interest in property,
- (c) a right or interest that can be transferred for value from one person to another,
- (d) a right, including a contingent or future right, to be paid money or receive another kind of property,
- (e) a chose in action, and
- (f) a cause of action;

Sources: AB, section 1 (1) (ll); NL, section 2 (1) (rr)

ULCC Comment: This definition of “property” expands the common law definition of property to include valuable rights such as licenses that are transferable.

“receiver” means a receiver appointed under Part 13;

Source: original

“record” means any book, document, notice, map, drawing, photograph, letter, voucher, paper and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

Source: *cf. Interpretation Act, R.S.B.C. 1996, c. 238, section 29*

“registered plan” means a DPSP, an RRIF or an RRSP;

Source: *Uniform Registered Plan (Retirement Income) Act, section 2*

BCLI Comment: “Registered Plan” is defined and used in two places in the Uniform Act: Part 9 Division 4 (seizure of accounts) and Part 12 Division 3 (income exemption). In each case, the definition is the same; it appears twice to accommodate two aspects of the *Uniform Registered Plan (Retirement Income) Exemption Act*. To avoid repetition, the definition may be relocated to section 1.

“registrar” means the registrar of the registry or other person who has the responsibility for administering the registry;

Source: original

“registry” means the registry referred to in Part 5 that is prescribed by regulation;

Source: NL, section 2 (1) (tt)

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“**RRIF**” means a registered retirement income fund as defined in section 146.3 of the *Income Tax Act* (Canada);

Source: *Uniform Registered Plan (Retirement Income) Act*, section 2

BCLI Comment: RRIF is defined and used in two places in the Uniform Act: Part 9 Division 4 (seizure of accounts) and Part 12 Division 3 (income exemption). In each case, the definition is the same; it appears twice to accommodate two aspects of the *Uniform Registered Plan (Retirement Income) Exemption Act*. To avoid repetition, the definition may be relocated to section 1.

“**RRSP**” means a registered retirement savings plan as defined in section 146 of the *Income Tax Act* (Canada);

Source: *Uniform Registered Plan (Retirement Income) Act*, section 2

BCLI Comment: RRSP is defined and used in two places in the Uniform Act: Part 9 Division 4 (seizure of accounts) and Part 12 Division 3 (income exemption). In each case, the definition is the same; it appears twice to accommodate two aspects of the *Uniform Registered Plan (Retirement Income) Exemption Act*. To avoid repetition, the definition may be relocated to section 1.

“**subsisting enforcement instruction**” means an enforcement instruction, delivered by an instructing judgment creditor to an enforcement officer under Part 7 that remains in effect in accordance with Part 7.

Source: SK, section 1

(2) The following terms have the meanings given to them in the [insert the name of the *Personal Property Security Act* of the enacting province/territory or the Regulations made under that Act] *Personal Property Security Act*:

(a) accessions;

BCLI Comment: This word does not appear in the Uniform Act (except for this section), so it is not necessary to incorporate it as a defined term.

(b) building;

BCLI Comment: This word only appears in one other place in the Uniform Act, as part of the definition of “land.” Since the definition of “land” merely restates the definition in the *Interpretation Act* (which uses the word building in its colloquial sense), there is no need to incorporate this specialized definition of building.

(c) building materials;

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BCLI Comment: This phrase does not appear in the Uniform Act (except for this section), so it is not necessary to incorporate it as a defined term.

- (d) chattel paper;
- (e) crops;
- (f) fixture;
- (g) goods;
- (h) instrument;
- (i) intangible;
- (j) money;
- (k) new value;

BCLI Comment: This phrase does not appear in the Uniform Act (except for this section), so it is not necessary to incorporate it as a defined term.

- (l) purchase;
- (m) purchase money security interest;
- (n) secured party;
- (o) security;
- (p) security interest;
- (q) serial numbered goods;

BCLI Comment: This phrase only appears in Part 6 and section 40. Section 34 contains a definition of “serial numbered goods” that applies to Part 6 and section 40. There is no need to include “serial numbered goods” in this list, which is applicable to the entire Uniform Act.

- (r) value.

Source: original

- (3) A reference in this Act to “this Act” or “this enactment” includes a reference to the regulations made under this Act.

Sources: AB, section 1 (3); NL, section 2 (3)

PART 2—GENERAL

ULCC Introductory Comment: This Part contains general provisions that apply to the whole Act.

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General

- 2 (1) Except as otherwise provided by any other enactment, a person wishing to enforce a judgment must do so in accordance with this Act.

Sources: *cf.* AB, section 2 (a); NL, section 3 (1)

- (2) A notice of seizure must be in the prescribed form.

Source: SK, section 23 (4)

- (3) Nothing in this Act authorizes the arrest or imprisonment of a person for default in payment of a judgment.

Sources: *cf.* AB, section 2 (e); NL, section 3 (5) (d)

- (4) Subject to this Act, anything done by an enforcement officer with the written consent of all interested persons, including a judgment debtor whose rights may be affected, is deemed to have been done in accordance with this Act.

Sources: AB, section 2 (f); NL, section 3 (5) (e)

- (5) The waiver by a judgment debtor of any right or duty under this Act whether contained in a contract or otherwise is void if given before a dispute arises between the judgment debtor and the judgment creditor.

Sources: AB, section 2 (h); NL, section 3 (5) (g)

ULCC Comment: The term “judgment” is defined in section 1 and is limited to a judgment, order, decree, or certificate that requires the payment of money.

Under subsection (2), different forms of a notice of seizure may be prescribed for seizing different types of personal property.

Under subsection (5), the point in time where there is a dispute between a judgment debtor and a judgment creditor is a question of fact in each case. The existence of a dispute will usually precede the initiation of litigation. A person who is seeking the loan or credit may be persuaded to waive an entitlement to claim property as exempt from seizure if there is a default in repayment. In these circumstances, the waiver is given prior to any dispute arising between the parties and waiver is void.

Judgments of the Federal Court of Canada

- 3 (1) A notice of judgment may be registered under Part 5 of this Act with regard to a judgment issued by the Federal Court of Canada under the *Federal Courts Act* (Canada).

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- (2) If a notice of judgment is registered under Part 5 of this Act with regard to a judgment referred to in subsection (1), enforcement proceedings may be taken under this Act with regard to the judgment.
- (3) This section does not apply to a judgment issued by the Federal Court of Canada under the *Federal Courts Act* (Canada) against the Crown in the Right of Canada as a judgment debtor.

Source: original

ULCC Comment: *Section 56 (3) of the Federal Courts Act (Canada) provides:*

- (3) *All writs of execution or other process against property, whether prescribed by the Rules or authorized by subsection (1), shall*
 - (a) *unless otherwise provided by the Rules, be executed, with respect to the property liable to execution and the mode of seizure and sale, as nearly as possible in the same manner as similar writs or process that are issued out of the superior courts of the province in which the property to be seized is situated are, by the law of that province, required to be executed; and*
 - (b) *bind property in the same manner as similar writs or process issued by the provincial superior courts, and the rights of purchasers under the writs or process are the same as those of purchasers under those similar writs or process.*

Section 56 (3) of the Federal Courts Act does not accurately describe the process for enforcing judgments under the Uniform Act. Under the Uniform Act, writs of execution are no longer used. The process for enforcing a judgment is to register a notice of judgment in the prescribed registry in accordance with Part 5 of this Act. After registration, a judgment creditor is entitled to issue enforcement instructions to an enforcement officer who is thereby authorized to take enforcement proceedings. The registration of a notice of judgment creates an enforcement charge against property of a judgment debtor. Seizure of property under a writ of execution is no longer a prerequisite to property being charged or bound. The effect of section 3 of this Act is to expressly provide that a judgment of the Federal Court may be registered under this Act. Section 3 does not require that a judgment of the Federal Court be registered under this Act. The judgment creditor may choose to rely on the processes of execution found in the Federal Courts Act and the Federal Court Rules. A judgment creditor may find that there are several advantages to registering a Federal Court judgment under this Act. First, upon registration of a notice of judgment in the prescribed registry under Part 5 of this Act, an enforcement charge is created that charges the judgment debtor's personal property described in the notice of judgment. Second, the judgment creditor may instruct an enforcement officer to use any of the enforcement proceedings under this Act. Third, if the judgment creditor gives an enforcement instruction to an enforcement officer, the judgment creditor will be entitled to share in the distribution of proceeds of enforcement proceedings taken by other judgment creditors of the same judgment debtor.

Ideally, the Parliament of Canada will amend section 56 of the Federal Courts Act and make judgments of the Federal Court enforceable in a province/territory where property is situated in the same manner as a judgment of the superior court of the province/territory.

References in other enactments to enforcement proceedings

- 4
- (1) A reference in any other enactment to an enforcement proceeding with regard to a judgment that is enforceable under this Act is deemed to be a reference to an enforcement proceeding under this Act.
 - (2) A reference in any other enactment to [insert names of statutes in the enacting province/territory such as *Attachment of Debts Act*, *Absconding Debtors Act*, *Creditors' Relief Act*, *Executions Act* or *Exemptions Act* that are repealed upon this Act coming into force] [the *Court Order Enforcement Act* or the *Creditor Assistance Act*] is deemed to be a reference to this Act.
 - (3) Nothing in this Act affects [insert the name of statutes in the enacting province or territory related to family support such as *Maintenance Orders Enforcement Act* and the *Reciprocal Enforcement of Maintenance Orders Act*] [the *Family Maintenance Enforcement Act* or the *Interjurisdictional Support Orders Act*].

Source: cf. AB, section 108

ULCC Comment: Each province/territory is expected to review its legislation and make various consequential amendments. It will be necessary to substitute the name of this Act in place of the name of enactments that will be repealed when this Act comes into force. All provincial/territorial enactments should be reviewed for references to various types of enforcement proceedings that will no longer be used after this Act comes into force. Such references should be replaced with a reference to an enforcement proceeding under this Act. Terms that will need to be replaced include:

- 1 writ of fieri facias,
- 2 writ of seizure and sale,
- 3 writ of execution,
- 4 warrant of execution,
- 5 garnishment of a debt,
- 6 attachment of a debt, and
- 7 equitable execution.

Subsections (1) and (2) are default provisions that will apply if consequential amendments miss a reference to an Act that is repealed or an enforcement proceeding that will no longer be used after this Act comes into force.

This Act assumes that enforcement proceedings with regard to the enforcement of family maintenance and support orders will remain under another enactment that is specifically designed for that purpose. Nevertheless, each province/territory should review its family maintenance enforcement legislation and its relationship to this Act.

BCLI Comment: As was noted in the BCLI comment to the definition of “judgment” in section 1 (1), the Uniform Act touches on the enforcement of orders for maintenance and support, and decides to leave those types of orders outside its scope. The ULCC does recommend that enacting provinces and territories review their family maintenance support system and decide whether orders for maintenance for support should, in the end, be included within the scope of the Uniform Act. This point must be emphasized. British Columbia’s *Family Maintenance Enforcement Act* relies, at several points, on the existing civil enforcement structure established by the *Court Order Enforcement Act*. At a minimum, it will have to be carefully reviewed in order to harmonize its enforcement mechanisms with those of the Uniform Act. In addition, given the enhanced enforcement mechanisms that appear later in the Uniform Act, there may be a case for the full integration of orders for maintenance and support within the Uniform Act system.

Delivery of notices, demands and documents

- 5 (1) Unless otherwise provided in this Act, giving a notice or demand, or delivering a document or record by any of the following manners satisfies a requirement in this Act:

- (a) to an individual,
 - (i) by leaving a copy
 - (A) with the individual,
 - (B) with the individual’s agent,
 - (C) at the individual’s residence with an adult who apparently resides with the individual,

BCLI Comment: Merely leaving a copy of a notice, demand, or document at an individual’s residence sets the bar too low. It runs the risk of an individual being prejudiced in an enforcement proceeding.

- (D) if the individual is the sole proprietor of a business and the matter to which the notice, demand, document or record refers relates to the business, at the address of the business, or
 - (E) in the manner prescribed by the regulations, or
 - (ii) by ordinary mail addressed to the individual at the address of the individual;
 - (b) to a partnership,
 - (i) by leaving a copy
 - (A) with one or more of the partners who is not a limited partner,

- (B) with a person who, at the time the notice or demand is given, or the document or record is delivered, has control or management of the partnership business,
 - (C) at the partnership's office during hours when it is open to the public, or
 - (D) in the manner prescribed by the regulations, or
- (ii) by ordinary mail addressed to
 - (A) the partnership,
 - (B) any one or more of the partners who is not a limited partner, or
 - (C) any person who, at the time the notice or demand is given, or the document or record is delivered, has control or management of the partnership business, at the address of the partnership business;
- (c) to a corporation,
 - (i) by leaving a copy
 - (A) with an officer or director of the corporation or a person in charge of any office or place of business of the corporation,
 - (B) at the registered or head office of the corporation during hours when it is open to the public,
 - (C) if the corporation has its registered or head office outside [insert name of enacting province/territory] [British Columbia], with the attorney for service for the corporation in [insert name of enacting province/territory] [British Columbia], or
 - (D) in the manner prescribed by the regulations, or
 - (ii) by ordinary mail addressed to the corporation at the registered or head office of the corporation;
- (d) to a local government,
 - (i) by leaving a copy
 - (A) with the mayor or chief administrative officer of the local government,
 - (B) at the local government's principal office during hours when it is open to the public, or

- (C) in the manner prescribed by the regulations, or
- (ii) by ordinary mail addressed to the local government at its the principal address;
- (e) to the government,
 - (i) by leaving a copy
 - (A) at the office of the deputy minister of a government ministry or to the head office of a government agency,
 - (B) with a lawyer on the staff of the [Attorney General] at [the seat of government of the enacting province/territory] [Victoria, during office hours], or
 - (C) in the manner prescribed by the regulations, or
 - (ii) by ordinary mail addressed to the [Deputy Attorney General] at [the seat of government of the enacting province/territory] [Victoria]; or
- (f) to an enforcement officer,
 - (i) by leaving a copy
 - (A) with the enforcement officer,
 - (B) with the enforcement officer's agent,
 - (C) at the enforcement officer's office during hours when it is open to the public, or
 - (D) in the manner prescribed by the regulations, or
 - (ii) by ordinary mail addressed to the enforcement officer at the address of the enforcement officer.

Source: *cf.* PPSA, section 72

- (2) A notice, demand or record or document delivered by mail is deemed, in the absence of evidence to the contrary, to be received on the earlier of
 - (a) the date the addressee actually receives the notice; and
 - (b) the expiry of 10 days after the date of mailing.

Source: original

ULCC Comment: The objective of subsection (1) is to provide a comprehensive description of the means by which notices and demands may be given, or documents and records may be delivered to various types of legal entities. To the extent that a province/territory already has comprehensive rules with regard to such matters, this section may incorporate those rules by reference. Provinces/territories that have enacted elec-

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tronic commerce legislation should consider whether they wish to make such legislation applicable to this section.

In subsection (1) (d), a local government entity includes a municipality, township, county, regional district, and a school board. Each enacting province/territory may choose the term or terms that are appropriate for the province/territory. With regard to clause (e), a province/territory may choose to enact or incorporate an existing provision in another enactment that deals with service of notice to the government. If an enactment repealed by this Act, which related to garnishment of employment remuneration of civil servants provided for service on garnishing orders on the government by service on the Deputy Minister of Finance or similar official in the Ministry of Finance or similar ministry, a province/territory may wish to consider including a provision in Part 9 Division 4 that continues this practice despite the general rule found in clause (e). With regard to clause (f), administrative arrangements with regard to enforcement officers may vary widely among the provinces and territories, particularly if enforcement is through a system of private bailiffs. Each province/territory should review the means by which notices and demands may be given, or documents and records may be delivered to an enforcement officer.

Under subsection (2), if a person disputes that he or she received a notice, demand, document, or record, the person may apply to the court under section 7 for an order extending the time for doing an act or other appropriate order. On such an application, the court may consider evidence with regard to the mailing of the notice, demand, document, or record and evidence with regard to whether or not there was any confirmation of delivery by Canada Post. After taking into account any rights that have accrued prior to the making of the application and any prejudice that may be caused to innocent third parties by making the order requested by the applicant, the court may make whatever order is appropriate in the circumstances.

Knowledge

6 For the purposes of this Act:

- (a) an individual knows or has knowledge of information when the information is acquired by the individual under circumstances in which a reasonable person would take cognizance of it;
- (b) a partnership knows or has knowledge of information when the information has come to the attention of one of the general partners or a person having control or management of the partnership business under circumstances in which a reasonable person would take cognizance of it;
- (c) a corporation knows or has knowledge of information when the information:
 - (i) comes to the attention of a managing director or officer of the corporation, or
 - (ii) comes to the attention of a senior employee of the corporation with responsibility for matters to which the information relates, under circumstances in which a reasonable person would take cognizance of it, or

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- (ii) comes to the attention of a senior employee of the corporation with responsibility for matters to which the information relates,
under circumstances in which a reasonable person would take cognizance of it, or

BCLI Comment: The reasonableness requirement should apply to both senior employees and managing directors or officers.

- (iii) is given or delivered in writing to the corporation's registered office or attorney for service;
- (d) a local government entity knows or has knowledge of information when information has come to the attention of:
 - (i) the mayor or chief administrative officer of the local government entity, or

- (ii) a senior employee of the local government entity with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it; and

- (ii) a senior employee of the local government entity with responsibility for matters to which the information relates,
under circumstances in which a reasonable person would take cognizance of it; and

BCLI Comment: The reasonableness requirement should apply to both senior employees and mayors or chief administrative officers.

- (e) a government knows or has knowledge of information when information has come to the attention of a senior employee of the government with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

Sources: AB, section 1 (2); NL, section 2 (2); PPSA, section 1 (2)

ULCC Comment: The term “know” or “knowledge” is used in numerous sections in the Act. Each province/territory should make this section conform to the comparable section of its Personal Property Security Act. This section has been adapted from the section 1 (2) of the British Columbia Personal Property Security Act.

Applications to court

- 7 (1) On application, the court may give directions in respect of, determine any matter or issue that arises out of, and make any order that it considers appropriate in respect of, enforcement proceedings under this Act.
- (2) On an application under this section or another section of this Act, the court may, without limitation, make one or more of the following orders:
- (a) a declaration of a right or injunctive relief, that is necessary to ensure compliance with this Act or to ensure the protection of the interests of any person in property that is subject to enforcement proceedings;
 - (b) giving directions to any person regarding the exercise of that person's rights or performance of that person's functions or duties under this Act;
 - (c) ordering a judgment debtor or any person in possession or control of property of the judgment debtor to deliver up the property to an enforcement officer or to another person named in the order;
 - (d) enjoining a judgment debtor or any other person from disposing of or otherwise dealing with property of a judgment debtor;
 - (e) giving directions respecting the carrying out of enforcement proceedings including without limitation, the method and terms of sale or disposition of property of a judgment debtor;
 - (f) staying an enforcement proceeding with respect to all or any portion of a judgment debtor's property on any terms and conditions that the court considers appropriate, if the court considers that it would be just and equitable to do so;
 - (g) ordering a judgment debtor or other person to execute an assignment, transfer, document or record that is required to complete the sale or disposition of property by an enforcement officer or a receiver;
 - (h) extending or abridging any period of time provided for under this Act;
 - (i) enjoining any person from interfering with an enforcement officer while the enforcement officer is carrying out an enforcement proceeding or otherwise taking measures to enforce a judgment under this Act;
 - (j) directing a police authority with authority or responsibility for public safety in the locality where an enforcement proceeding will be carried out, including without limitation, a peace officer as defined in the *Criminal Code*, to prevent a breach of the peace and provide protection to an enforcement officer while an enforcement officer is car-

rying out a seizure of property or otherwise taking enforcement proceedings;

- (k) providing for giving of a notice or demand, or delivery of a document or record by another method in substitution for the method provided by this Act;
 - (l) ordering that the registration of a notice of judgment in the registry be discharged;
 - (m) awarding costs in connection with an application to court made under this Act.
- (3) On application, the court may rescind or vary an order staying an enforcement proceeding if the application is based on new information or a change in circumstances.

Sources: NL, section 11; SK, section 83; cf. AB, section 5

ULCC Comment: This Act cannot anticipate every issue that may arise in relation to the enforcement of judgments. Therefore, it is desirable to provide a broad power to make an application to the court for an order that will deal with questions that may arise under the Act. “Court” is defined in section 1 as meaning the superior court of the province/territory. This section describes some of the circumstances when an application may be made to the court and the types of orders that a court may make. Subsection (2) is not an exhaustive list of orders that a court may make under this section.

If provision is made elsewhere in this Act for an application to court, sections 7 and 8 apply to such an application.

Appeal from an order of the court

- 8
- (1) An appeal lies to the Court of Appeal from an order of the court made under this Act.
 - (2) An appeal under subsection (1) from an order of the court must not be brought more than 30 days after the date of the order.
 - (3) An order under appeal remains in force pending the determination of the appeal, unless otherwise ordered by the court that made the order under appeal.

Source: original

ULCC Comment: A province/territory may wish to rely on the ordinary rules that govern appeals; however, specification of the specific number of days within which an appeal must be brought may overcome any argument that might otherwise arise in some provinces and territories with regard to the different appeal periods that apply to interlocutory and final orders.

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Crown is bound by this Act as a judgment creditor

- 9** This Act binds the Crown in exercising any rights or remedies as a judgment creditor in enforcement proceedings.

Sources: AB, section 3; NL, section 4; SK, section 79

Government is not bound by this Act as a judgment debtor

- 9** This Act does not bind the government in exercising any rights or remedies as a judgment debtor in enforcement proceedings.

Source: *cf. Uniform Civil Enforcement of Money Judgments Act, section 9*

***ULCC Comment:** This section is not required if an enacting provinces/territories already has legislation that provides that an enactment is binding on the Crown unless otherwise specifically provided. If an enacting province/territory does not have such legislation, the purpose of this section is to eliminate special priorities that the Crown, in the right of the province/territory, may have as a judgment creditor when enforcing a judgment under this Act. This section does not affect rights of the Crown under enactments that create a deemed trust or deemed security interest in favour of the Crown in relation to specified forms of property. This Act does not apply to the Crown when a judgment is rendered against the Crown. If a judgment for the payment of money is rendered against the Crown, in the right of the province/territory, it will be necessary to refer to enactments dealing with proceedings against the Crown.*

BCLI Comment: By virtue of section 14 (1) of the *Interpretation Act*, an enactment is binding on the British Columbia government unless it specifically provides otherwise. In most other Canadian provinces, the rule is precisely the opposite. Therefore, in order to bring into effect the policy stated in the ULCC Comment, it is necessary that this section contain an express exemption for the government when it is a judgment debtor and it is not necessary that this section contain express language binding the government as a judgment creditor. This would leave enforcement of judgments against the provincial government to the procedure established in section 13 of the *Crown Proceeding Act*.

The Uniform Act does not address the position of municipalities as debtors. Currently, section 293 of the *Local Government Act* provides that “a writ of execution against a municipality must not be issued without leave of the Supreme Court.” The statute also provides that “a writ of execution against a municipality may be endorsed with a direction to the sheriff to levy its amount by rate. . . .” In order to maintain these procedures, the *Local Government Act* will have to be amended to replace the references to a writ of execution with references that are consistent with the terms used in Uniform Act. Although there is no exact equivalent to the writ of execution in the Uniform Act, the intent of the *Local Government Act* may be preserved by requiring a creditor of a municipality to obtain the leave of the Supreme Court before registering a notice of judgment. See Appendix E, below, for our proposed legislative amendments.

Standard of conduct

- 10** (1) Any person, including a judgment creditor, an enforcement officer and a receiver, who is authorized by this Act to perform a function or duty or exercise a right or power must, in performing that function or duty or in exer-

cising that right or power, do so in good faith and in a commercially reasonable manner.

- (2) A person does not act in bad faith merely because the person acts with knowledge of the interest of some other person.

Sources: AB, section 2 (g); NL, section 3 (5) (f); PPSA, section 68 (2)–(3); SK, section 82

ULCC Comment: The standard of commercial reasonableness is the same standard that applies to the performance of functions and duties and the exercise of rights under Personal Property Security Act legislation.

Failure to comply with this Act

- 11** A person who suffers loss or damage as a result of another person's failure, without lawful justification or excuse, to comply with this Act has a cause of action against that other person with respect to that failure, and is entitled to a judgment for:
- (a) damages in an amount equal to the loss or damage suffered, or \$200 or such other amount as may be specified by regulation, whichever is greater; and
 - (b) costs of the proceedings under this section.

Source: NL, section 16

ULCC Comment: It may be difficult to prove that a failure to comply with this Act was the proximate cause any loss or damage. Therefore, as an alternative, a court may award \$200 or such other sum as may be specified by regulation, without proof of actual loss or damage.

Interference with an enforcement proceeding

- 12** (1) On application by an enforcement officer or an instructing judgment creditor, the court may order that any person who, without lawful justification or excuse, interfered with or delayed the performance of any duty or function by an enforcement officer or a receiver that relates to an enforcement proceeding, pay to the enforcement officer an amount not exceeding the total of the following:
- (a) any additional costs incurred by the judgment creditor, the enforcement officer or the receiver as a result of the interference or delay;
 - (b) the value of exigible property that could have been seized, and sold or otherwise disposed of, if the interference or delay had not occurred and that as a result of the interference or delay is no longer available for seizure and sale or disposition;

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- (c) the amount by which exigible property has diminished in value as a result of the interference or delay;
- (d) costs of the application.

Source: SK, section 84 (1)

- (2) Under subsection (1), a person against whom a claim is made has a defence to the claim if he or she establishes that, at the time of the interference, he or she believed on reasonable grounds that he or she had a lawful justification or excuse for his or her action.

Source: original

- (3) Any money received by a judgment creditor or an enforcement officer under subsection (1) constitutes a distributable fund.

ULCC Comment: Any money received by a judgment creditor or an enforcement officer under subsection (1) constitutes a distributable fund under Part 14 of this Act.

BCLI Comment: The addition of subsection (3) is recommended out of an excess of caution. Section 180 (2) (b) incorporates “money otherwise identified in this Act” into a distributable fund. Subsection (3) expressly declares that money received as a result of a court order in response to interference with an enforcement proceeding must be included in a distributable fund.

When judgment is payable

- 12.1** (1) If a judgment has been obtained for a sum of money, the sum is payable immediately unless the court orders otherwise.
- (2) The court may provide that a judgment is payable by installments or may suspend enforcement proceedings for the time it considers proper.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 48

Court may order preference claim to extent of 3 months' wages

- 12.2** (1) In the case of an enforcement of a judgment, or in the case of a sale of personal property or land by a receiver under an order or decree of court or otherwise, a clerk, servant, labourer or worker, to whom the judgment debtor or person against whom the enforcement procedure is directed is indebted for employment remuneration, may apply, or any 2 or more may join in applying, by summons in chambers, to the court for an order under subsection (2).
- (2) On an application under subsection (1), the court may order that there be retained by the enforcement officer out of the proceeds, if any, of the enforcement proceedings, or sale, or by the receiver, in preference to the re-

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mainder of the claim of the judgment creditor, as much as is due or accruing due at the time of the seizure to the clerk, servant, labourer or worker, from the execution debtor for employment remuneration, not exceeding 3 months' arrears, and taxed costs of and incidental to the application, after paying the instructing judgment creditor his or her costs of obtaining judgment and enforcement, or of the order for sale of land.

- (3) The enforcement officer, or the receiver, must obey an order under subsection (2) on pain of attachment.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 52

BCLI Comment: These proposed sections carry forward provisions from the *Court Order Enforcement Act*. Other provinces have located similar provisions in their equivalents to the *Supreme Court Act* and *Employment Standards Act*.

PART 3—ENFORCEMENT OFFICERS

BCLI Introductory Comment: Court bailiffs appointed under section 3 of the *Sheriff Act* will, in all likelihood, fill the role of enforcement officer in British Columbia. The Uniform Act does not contain extensive regulatory provisions applying to enforcement officers. It is recommended that the provincial government review its existing regulatory structure—particularly its contracts with court bailiff firms—and ensure that it is in accordance with the enhanced rights and powers granted to and duties and obligations imposed upon enforcement officers by the Uniform Act. Given the changes to civil enforcement brought about by the implementation of the Uniform Act, this review will have to be broad in scope. A number of issues may be briefly identified at this stage:

- (1) Training. Currently, court bailiffs' primary function in the civil enforcement system is the seizure of tangible personal property. This will change under the Uniform Act, because the Uniform Act gives enforcement officers expanded powers, duties, and obligations. These duties range from seizure of accounts (the Uniform Act equivalent to garnishment) to sales of interests in jointly-held property to front-line determination of issues related to exemptions. Adequate training of enforcement officers will be necessary to ensure a smooth implementation of the Uniform Act.
- (2) Complaint resolution. The expanded role of enforcement officers could give rise to complaints that require settlement under an administrative system, rather than in the criminal or civil courts.
- (3) Territoriality. Contracts currently limit court bailiffs to acting within defined regions in British Columbia. There may be a need to revisit this system, particularly in light of the fact that the Uniform Act authorizes seizures of accounts and other forms of intangible property that do not exist in any physical space. Notice, also, that section 41 (2) provides that an enforcement proceeding taken by an enforcement officer is not invalid merely because it was carried out at a place outside the enforcement officer's contractually-assigned territory.
- (4) Competing seizures. In those areas of British Columbia where more than one court bailiff firm operate, the potential for competing seizures arises. This could

create problems—at a minimum it will create duplication of enforcement proceedings. The problem may be overcome, to a certain extent, by information sharing, and perhaps by requiring registration of enforcement instructions in the Personal Property Registry.

- (5) Expert advice. Enforcement officers may be faced with very complex seizures and sales under the Uniform Act. It would be desirable for them to have ready access to legal advice. Retaining a law firm for this purpose could be required under the terms of their contract.
- (6) Trustees in bankruptcy. Trustees in bankruptcy have some experience in realizing upon intangible interests in property. It may be necessary to draw on that expertise by allowing trustees in bankruptcy to be licensed as enforcement officers.

Enforcement officer's powers to deal with property

- 13** (1) Subject to complying with the requirements of Parts 9 and 11 with regard to personal property and Parts 10 and 11 with regard to land, an enforcement officer who seizes a judgment debtor's personal property or gives a notice of intention to sell a judgment debtor's land may, during the continuance of the enforcement proceeding, do any act or thing with respect to that property that could have been or may be done by the judgment debtor and may exercise any power or right insofar as it is necessarily incidental to the enforcement proceeding with respect to that property or its disposition that the judgment debtor had at the time of seizure of personal property or the giving of a notice of intention to sell land or that the judgment debtor acquires after that time, including, without limitation, the power to do one or more of the following:
- (a) sell, dispose or otherwise realize on the value of the property;
 - (b) execute or endorse any document that could have been or may be executed or endorsed by the judgment debtor;
 - (c) make an election;
 - (d) exercise a right as a beneficiary under a trust;
 - (e) give a release or discharge;
 - (f) collect an account;
 - (g) endorse a security;
 - (h) present an instrument for payment and receive payment;
 - (i) sue or take any action in the name of the judgment debtor to enforce payment of an obligation evidenced by an instrument;
 - (j) negotiate an instrument or security without recourse.

Sources: SK, section 22 (2); *cf.* AB, section 8; NL, section 8

- (2) An enforcement officer may use assistance and advice, including the paid assistance and advice of agents, brokers or advisors, to carry out the duties and functions of an enforcement officer under this Act.

Source: NL, section 6

- (3) When an enforcement officer seizes personal property under this Act, the judgment debtor loses all rights and powers to deal with the seized property for the duration of the period that the seizure is effective.

Source: original

ULCC Comment: Part 9 contains specific requirements that must be followed by an enforcement officer with regard to the seizure and sale of personal property. Part 10 contains specific requirements that must be followed by an enforcement officer with regard to an enforcement proceeding against land. If property is co-owned by a judgment debtor and another person, Part 11 contains specific requirements that must be followed by an enforcement officer.

With regard to subsection (1) (j), an enforcement officer needs the statutory power to negotiate an instrument without recourse otherwise the enforcement officer could become liable on the instrument as an endorser.

Delegation of delivery functions to a judgment creditor

- 14** (1) An enforcement officer may delegate to a judgment creditor or an agent of the judgment creditor
- (a) the giving of any notice or demand that the enforcement officer may give under this Act; and
 - (b) the delivery of any document or record that the enforcement officer may deliver under this Act.
- (2) A judgment creditor may decline to accept a delegation referred to in subsection (1).
- (3) If a judgment creditor accepts a delegation under this section and gives the notice or demand, or delivers the document or record as required by this Act, the judgment creditor is entitled to recover from the judgment debtor an amount that is equal to the fees and costs that the enforcement officer would have been entitled to receive if the enforcement officer had given the notice or demand, or delivered the document or record.
- (4) If an enforcement officer receives a written declaration from the judgment creditor that the judgment creditor has given the notice or demand, or delivered the document or record in accordance with a delegation under subsection (1), and the enforcement officer takes or omits to take any action that the enforcement officer would be entitled to take or omit to take under

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this Act in reliance on that written declaration, the enforcement officer faces no liability for so acting.

- (5) A person who makes a written declaration referred to in subsection (4) that is false commits an offence.

Source: SK, section 81

ULCC Comment: *To reduce the burden on enforcement officers, an enforcement officer is authorized to delegate these responsibilities to a judgment creditor or an agent of the judgment creditor. An agent of the judgment creditor will normally be either a law firm retained by the judgment creditor or a private bailiff or process server retained by the judgment creditor or the judgment creditor's law firm.*

If an enforcement officer makes a delegation under subsection (1), with respect to the giving of a notice or demand, the notice or demand must be prepared by and issued over the name of the enforcement officer.

If a judgment creditor declines to accept a delegation by the enforcement officer, the responsibility of giving the notice or demand remains with the enforcement officer.

The fees, taxable costs, and expenses that an enforcement officer is entitled to receive for giving a notice or demand or delivering a document or record are prescribed by regulation under Part 16.

Some provinces and territories have legislation providing that a person, who is not authorized to serve a notice or demand, holds himself or herself out as an enforcement officer or carries out any function of an enforcement officer, commits an offence. This type of provision is not included in this Act. If a province or territory wishes to include all of the statutory authority for the appointment of sheriffs or the authorization of private enforcement agencies in this Act, it may be necessary to include an offence section in this Act.

BCLI Comment: An additional reason for the enactment of this section is that it provides for some consistency of practice, particularly in connection with seizures of accounts. A seizure of an account under the Uniform Act broadly corresponds to the current enforcement measure of attachment of debts. Currently, in British Columbia, court bailiffs have no involvement in the process of attaching a debt. This will change when the Uniform Act comes into force, but some semblance of the old system may be preserved if the enforcement officer delegates the delivery of notices necessary to seize an account to a judgment creditor or a judgment creditor's lawyer.

PART 4—PRESERVATION ORDERS

ULCC Introductory Comment: *If a plaintiff is concerned that enforcement of a judgment, which may ultimately be rendered against the defendant in a proceeding, will be seriously hindered as a consequence of future dealings with the property of the defendant, the plaintiff may apply to the court for one or more orders described in section 17 that have the effect of “preserving” some or all of the defendant's assets for subsequent enforcement proceedings.*

Under this Act, the process of prejudgment garnishment is no longer available and is replaced by the opportunity of applying for a preservation order. Prejudgment garnishment is being replaced for several reasons. The primary weakness of the current prejudgment garnishing order process is that the order is normally made on an ex parte application and there is no effective judicial determination of whether or not the circumstances warrant the use of a prejudgment preservation measure. Consequently, such proceedings

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may be used by a plaintiff to gain a tactical advantage over a defendant by depriving the defendant of funds that the defendant may need to support his or her dependents, to operate her or his business or to defend against the plaintiff's claim. From the plaintiff's perspective, prejudgment garnishment is limited to actions where the plaintiff's claim is for debt or a liquidated sum and the process has become encrusted with many technical requirements that may cause an order to subsequently be set aside.

This Part also seeks to make the law and procedure uniform with regard to injunctions in the nature of a Mareva injunction.

In order to minimize the use of preservation orders as a tactical strategy to place pressure on a defendant to settle a dubious claim, the plaintiff will normally be required to post security before the preservation order becomes effective. If the plaintiff's action is dismissed or discontinued in the circumstances described in section 22 (3), the security posted by the plaintiff will be available to compensate the defendant, or other affected person, who suffers pecuniary loss or damage as a consequence of the preservation order.

BCLI Introductory Comment: As the ULCC comment points out, Part 4 has two goals. First, it aims to place all forms of prejudgment relief on a consistent footing. Second, it attempts “to make the law and procedure uniform with regard to injunctions in the nature of a *Mareva* injunction.”

In order to achieve the first goal, Part 4 draws on the law that has developed in connection with the granting of *Mareva* injunctions. From this body of law, it articulates a unifying principle that bases prejudgment relief on the real possibility that enforcement of a future money judgment will be seriously hindered by depletion of the defendant's property. This unifying principle does away with the statutory basis for prejudgment garnishment, which requires a claim for a recovery of a debt or a liquidated demand. (A preservation order may, however, operate like prejudgment garnishment, in that it could result in the seizure of an account). The new statutory remedy also contains protections for those subject to preservation orders, such as mandatory exemptions for a defendant's reasonable living or business expenses and posting of security.

In order to achieve the second goal, Part 4 sets out a compromise of the practices and procedures used in the provinces and territories for the granting of *Mareva* injunctions. As a result, some of the flexibility that British Columbia litigants and courts had under *Mareva* injunction practice is lost. It would be desirable to preserve this flexibility, even if it comes at the expense of uniformity. The amended provisions are modelled on Alberta's *Civil Enforcement Act*, which sets out a flexible framework for granting preservation orders that is more in tune with current British Columbia practice.

Definitions

15 In this Part:

“**defendant**” means the defendant, respondent or other person opposing a proceeding;

“**plaintiff**” means a plaintiff in a proceeding, a petitioner or other person asserting a claim for the payment of money, and includes a plaintiff by way of counterclaim;

“**preservation order**” means an order, made under section 17, to preserve or protect some or all of the property of a defendant;

“**proceeding**” means

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- (a) an action, suit, cause, matter, appeal or application which includes a claim for the payment of money; or
- (b) a proceeding in another province or territory of Canada regardless of how it is commenced that includes a claim for the payment of money.

Sources: *cf.* AB, section 16; NL, section 25

Definitions

15 In this Part,

“**claim**” means a claim that may result in a judgment being granted if the claim is established;

“**dealing**”, in reference to property, includes transferring, mortgaging, charging, using, disposing of, creating an interest in or doing anything to the property;

“**defendant**” means a person against whom a claim is asserted;

“**exigible property**” means property that would be exigible if the defendant were a judgment debtor;

“**plaintiff**” means a person asserting a claim;

“**third person**” means a person other than a defendant or a plaintiff.

Sources: *cf.* AB, section 16; NL, section 25

BCLI Comment: These definitions are taken from the Alberta *Civil Enforcement Act*. They usefully contain a more expansive concept of “dealing” and a cautious definition of “exigible property,” which underscores that the defendant is, strictly speaking, not a debtor at the time the preservation order comes into existence and operates.

Application for preservation order

16 (1) On application by a plaintiff made with or without notice, a court may make a preservation order

(a) in a proceeding commenced in a court in the [province/territory] if a judgment that may be obtained by the plaintiff in the proceeding could be enforced under this Act; or

[(b) with regard to a proceeding commenced in a court in another province or territory of Canada, if:

(i) a judgment obtained by the plaintiff in the proceeding may be enforced in the province/territory under this Act;

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(ii) the court in which proceeding was commenced made an order that is similar to a preservation order that may be made under this Part; and
(iii) it is alleged under oath that the defendant owns property in the province/territory.]
(2) On an application made under subsection (1), the court must consider any relevant fact or matter including but not limited to whether:
(a) the facts alleged in support of the plaintiff's claim, if proven at trial, are sufficient to establish the plaintiff's claim for the payment of money;
(b) if a preservation order is not granted, the enforcement of a judgment that may ultimately be rendered against the defendant in favour of the plaintiff is likely to be significantly impaired as a result of any future disposition, dissipation, destruction, concealment or other dealing with the property of the defendant other than as may be permitted by an order made under this Part; and
(c) the plaintiff or the defendant would suffer the greater harm from the granting or refusal of a preservation order.

Sources: *cf.* AB, section 17 (1); NL, section 27 (1); SK, section 2 (1)

ULCC Comment: Subsection (1) (b) should be enacted only by those provinces and territories that have not enacted the Uniform Enforcement of Canadian Judgments and Decrees Act. If a province or territory has enacted the Uniform Enforcement of Canadian Judgments and Decrees Act and a preservation order is made in a proceeding in another province or territory, the preservation order qualifies as judgment that may be registered and enforced in the province as if it were an order of the registering court.

If a province or territory has not enacted the Uniform Enforcement of Canadian Judgments and Decrees Act, subsection (1) (b) permits an application for a preservation order to be made in the circumstances described in clause (b).

If a default judgment has been entered against a defendant and an application is made to set aside the default judgment, a term or condition of an order setting aside the default judgment may be that the defendant consent to a preservation order. For example, if funds have already been realized by way of enforcement proceedings on the default judgment, a preservation order may be made that applies to all or part of the funds.

Subsection (2) describes the factors that a court must consider before deciding whether or not to make a preservation order. The consideration of these factors is somewhat similar to the process laid down by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (A.G.)*, [1994] 1 S.C.R. 311 with regard to applications for injunctive relief. In that case, Justices Sopinka and Cory, writing the judgment of the Court, described that process in the following manner:

First, a preliminary assessment must be made of the merits of the case to ensure that there is a serious question to be tried. Secondly, it must be determined whether the applicant would

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suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

An application for a preservation order may often be made, in the first instance, without notice and before a statement of defence has been filed by the defendant. The factual basis of the application will normally be supplied by affidavit evidence. Under subsection (2) (a), the primary function of the court is to determine whether the facts alleged by the plaintiff, if proven at trial, are sufficient to establish the plaintiff's claim. If a defence is filed, the court must also consider the defence and any evidence tendered in support of the defence before deciding whether or not to make a preservation order. Under subsection (2) (b), the court must examine the effect on the plaintiff's likely ability to enforce of any judgment that may ultimately be rendered against the defendant in relation to possible future actions by the defendant in relation to her or his property. Under subsection (2) (c), the court must balance the potential harm to the plaintiff of not making a preservation order against the potential harm to the defendant if a preservation order is made.

Application for a preservation order

- 16** (1) A plaintiff may apply to the court for a preservation order where
- (a) the plaintiff has commenced or is about to commence proceedings in British Columbia to establish the plaintiff's claim, or
 - (b) the plaintiff has commenced proceedings before a foreign tribunal to establish a claim if
 - (i) a judgment of the foreign tribunal could be enforced in British Columbia by action or by proceedings under an enactment dealing with the reciprocal enforcement of judgments, and
 - (ii) the defendant appears to have exigible property in British Columbia.
- (2) Subject to section 22, on hearing an application for a preservation order, the court may grant the order if the court is satisfied that
- (a) there is a reasonable likelihood that the plaintiff's claim against the defendant will be established,
 - (b) there are reasonable grounds for believing that the defendant is dealing with the defendant's exigible property, or is likely to deal with that property,
 - (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and
 - (ii) in a manner that would be likely to seriously hinder the plaintiff in the enforcement of a judgment against the defendant, and
 - (c) it would be just and equitable, taking into account the interests of the plaintiff, the defendant and any affected third person to grant the order.

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- (3) An application for a preservation order may be made without notice to any person.

Sources: AB, section 17 (1)–(2); *cf.* NL, section 27 (1)–(2)

BCLI Comment: Section 16 allows a plaintiff to apply, with or without notice to the defendant or a third person, to the Supreme Court for a preservation order. The plaintiff may bring this application if the defendant is subject to the jurisdiction of the Supreme Court of British Columbia or if the defendant is subject to the jurisdiction of a foreign tribunal and has exigible property in British Columbia. A “foreign tribunal” would include the courts of the other provinces and territories of Canada as well as tribunals of foreign countries, if the judgment of such a court or tribunal could be enforced in British Columbia at common law or under existing legislation for the reciprocal enforcement of judgments. Section 16 (2) sets out the test for a court on an application for a preservation order.

Registration of preservation order granted in another province or territory

16.1 (1) In this section,

“**Canadian preservation order**” means an order made in a civil proceeding by a court of a province or territory other than British Columbia that has the effect of preserving a defendant’s exigible property;

“**registered Canadian preservation order**” means a Canadian preservation order that is registered under this Act.

Source: *cf. Uniform Enforcement of Canadian Judgments and Decrees Act, section 1*

- (2) A Canadian preservation order may be registered under this Act by paying the fee prescribed by regulation and by filing in the registry of the court
- (a) a copy of the preservation order, certified as true by a judge, registrar, clerk or other proper officer of the court that made the preservation order, and
 - (b) any additional information or material required by regulation.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act, section 3 (1)*

- (3) Subject to subsection (4), a registered Canadian preservation order may be enforced in British Columbia as if it were a preservation order made by the court.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act, section 4*

- (4) A party to the proceeding in which a registered Canadian preservation order was made, or an interested third person, may apply to the court for directions respecting its enforcement.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act*, section 6 (1)

- (5) On an application under subsection (4), the court may
- (a) make an order that the preservation order be modified as may be required to make it enforceable in conformity with local practice,
 - (b) make an order stipulating the procedure to be used in enforcing the preservation order,
 - (c) make an order staying or limiting the enforcement of the preservation order, subject to any terms and for any period the court considers appropriate in the circumstances, if
 - (i) such an order could be made in respect of a preservation order made by the court under this Act,
 - (ii) the party against whom enforcement is sought has brought, or intends to bring, in the province or territory where the Canadian preservation order was made, a proceeding to set aside, vary or obtain other relief in respect of the preservation order,
 - (iii) an order staying or limiting enforcement is in effect in the province or territory where the Canadian preservation order was made, or
 - (iv) it is contrary to public policy in British Columbia.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act*, section 6 (2)

- (6) Despite subsection (5), the court must not make an order staying or limiting the enforcement of a registered Canadian preservation order solely on the grounds that
- (a) the judge, court or tribunal that made the preservation order lacked jurisdiction over the subject matter of the proceeding that led to the preservation order, or over the party against whom enforcement is sought, under
 - (i) principles of private international law, or
 - (ii) the domestic law of the province or territory where the preservation order was made,
 - (b) the court would have come to a different decision on a finding of fact or law or on an exercise of discretion from the decision of the judge or court that made the preservation order, or

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- (c) a defect existed in the process or proceeding leading to the preservation order.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act*, section 6 (3)

- (7) An application for directions must be made under subsection (4) before any measures are taken to enforce a registered preservation order where
 - (a) the enforceability of the preservation order is, by its terms, subject to the satisfaction of a condition, or
 - (b) the preservation order was obtained without notice to the persons bound by it.

Source: *Uniform Enforcement of Canadian Judgments and Decrees Act*, section 6 (4)

BCLI Comment: This section adopts the operative provisions of the *Uniform Enforcement of Canadian Judgments and Decrees Act* for the registration and enforcement in British Columbia of preservation orders made by courts in other provinces or territories of Canada. Under the *Uniform Enforcement of Canadian Judgments and Decrees Act* a judgment or decree (such as a preservation order) of a court of another Canadian province or territory may be registered and enforced as a judgment of a court of an enacting province. Adopting this system for preservation orders will render such orders more effective in practice. If British Columbia brings the *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29 into force before the Uniform Act is enacted, then section 16.1 may be struck out. If the *Enforcement of Canadian Judgments and Decrees Act* is brought into force subsequent to the enactment of the Uniform Act, then section 16.1 may be repealed.

Preservation orders

- 17** (1) Subject to subsections (2) and (3), on an application made under section 16, the court may make a preservation order it considers necessary with regard to the exigible property of a defendant existing at the time of the making of the preservation order or acquired during the currency of the order including, without limitation, an order:
- (a) requiring the payment into court of an account that is due or may become due to the defendant;

- (a.1) directing that the order applies to
 - (i) all or specific exigible property of the defendant, or
 - (ii) any exigible property to be subsequently identified in writing by an enforcement officer;

Sources: AB, section 17 (3) (a); NL, section 28 (1) (a)

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- (b) prohibiting the disposition, dissipation, destruction or concealment of, or any other dealing with, the property to which the preservation order applies;

- (b) prohibiting any dealing with exigible property of the defendant;
- (b.1) imposing conditions or restrictions on any dealings with exigible property of the defendant;

Sources: AB, section 17 (3) (b)–(c); NL, section 28 (1) (b)–(c)

- (c) appointing a receiver, with or without security, in which case Part 13 applies;
- (d) requiring the defendant or a person who has possession or control of exigible property of the defendant to deliver the property to a person identified in the order;
- (e) authorizing an enforcement officer instructed by the plaintiff or a receiver appointed under clause (c) to take special conservatory measures or to sell or otherwise dispose of property if:
 - (i) the property is perishable, or
 - (ii) the property may decline substantially in value if it is not disposed of immediately;
- (f) permitting the defendant to retain and use property affected by an order subject to the restrictions or conditions the court considers appropriate;
- (g) if the court has reasonable grounds to conclude that the defendant is concealing property located in the [province/territory] [British Columbia], requiring the defendant to disclose, under oath, the existence and location of the property.;

Sources: *cf.* AB, section 17 (3); NL, section 28 (1); SK, section 2 (4)

- (h) including any other term, condition or ancillary provision that the court considers necessary or desirable.

Sources: AB, section 17 (3) (g); NL, section 28 (1) (g)

BCLI Comment: The added subsections are intended to give the court more range and flexibility in crafting preservation orders.

- (2) The court must not make an order that prevents a defendant or other persons from disposing of or otherwise dealing with the property of the defendant for the purposes of meeting:
- (a) reasonable living expenses of the defendant and the dependents of the defendant;
 - (b) ordinary business expenses of the defendant; or
 - (c) the expenses of defending the proceeding.

Source: original

- (3) The court must not make an order that:
- (a) affects income that the defendant or a dependent of the defendant would be entitled to claim as exempt under Part 12 if the defendant were a judgment debtor; or
 - (b) interferes with the rights of the defendant or a third person other than the defendant to an extent greater than is necessary to preserve sufficient exigible property of the defendant to satisfy a judgment that may ultimately be rendered against the defendant in favour of the plaintiff.

Source: SK, section 2 (5)

- (4) If a sale or disposition of property is conducted under subsection (1) (e), the enforcement officer must pay the proceeds of the sale or disposition of the property, after deducting the fees and expenses of the enforcement officer, into court.

Source: original

- (5) If funds are paid into court under subsections (1) (a) or (4), the court may order payment out of court:
- (a) to the enforcement officer, if the plaintiff obtains judgment in the proceeding against the defendant, of an amount not exceeding the amount of the judgment against the defendant;
 - (b) to the defendant, if the proceeding commenced by the plaintiff is discontinued or dismissed; or
 - (c) to the defendant, if the plaintiff obtains judgment in the proceeding against the defendant, with respect to any amount paid into court that is not required to satisfy the judgment in favour of the plaintiff.

Source: original

ULCC Comment: *Preservation orders that a court may make under subsection (1) do not give the plaintiff a property interest in the property that is the subject of the order. The order restrains the defendant and others named in the order from dealing with the property in a manner that is inconsistent with the preservation order. The order may restrain persons named in the order from dealing with property of the defendant notwithstanding that the property is located outside the jurisdiction of the court.*

A preservation order made under subsection (1) (a), replaces prejudgment garnishment. A preservation order made under subsection (1) (b) is in the nature of a Mareva injunction. If a receiver is appointed under subsection (1) (c), the receiver would normally be expected to preserve the property; however, if the property is perishable or likely to depreciate quickly, an application may be made for order under clause (e). Subsection (1) (d) permits the court to order a third party, who is a bailee in possession of property of the defendant, to deliver up the property. Clause (d) does not permit the court to order a third party, who has a right or interest that entitles the third party to maintain possession against the defendant, to deliver up possession. A defendant may be permitted to remain in possession of tangible property that is subject to a preservation order. Therefore, the need to provide a broad power to take conservatory measures referred to in subsection (1) (e), which may be necessary when a secured party takes possession of collateral under a security agreement, will not usually arise in the context of a preservation order. For example, if the property is a hazard to health, it remains a matter for the defendant and perhaps the relevant government regulatory agency. Subsection (1) (g) reflects a type of order that has been made in applications for Mareva injunctions.

With regard to any application made to the court, the court has power under section 7 (2) (m), to make an order with regard to costs. Normally, a third party should be compensated for her or his costs incurred in relation to an application for a preservation order unless the third person has participated in a scheme with the defendant with the objective of rendering the defendant judgment proof.

The purpose of subsection (2) is to prevent preservation orders being used improperly as a tactic to bring pressure to bear on a defendant to agree to an unjustifiable settlement.

Continuation and termination of preservation order

18 Subject to section 19, a preservation order made under section 17 or extended or modified by an order made under section 23 is effective until the earlier of the following:

- (a) the date provided in the order made under either section 17 or section 23, whichever is the later;
- (b) the date that the proceeding in which the preservation order was made, is discontinued, dismissed or otherwise terminated;
- (c) the date that is 21 days after the entry in the records of the court that granted the judgment in favour of the plaintiff in the proceeding in which the preservation order was granted or any longer period that the court may order;
- (d) the date on which the defendant or other person provides security in a form and in an amount considered sufficient by the court; or

- (e) the date on which a judgment obtained by the plaintiff in the proceeding is satisfied.

Sources: *cf.* AB, section 19; NL, section 30; SK, section 3 (2)

ULCC Comment: *With regard to clause (c), a plaintiff who obtains a judgment against a defendant in the proceeding needs a reasonable period after judgment is pronounced to register a notice of judgment in the registry under Part 5 of this Act.*

Preservation order made without notice

- 19**
- (1) If a preservation order is granted on an application made without notice, the order must specify a date, not more than 21 days after the day that the order is granted, on which the order expires.
 - (2) A preservation order under subsection (1) obtained in an application without notice is not effective against:
 - (a) a defendant until the earlier of:
 - (i) the time when a copy of the order is delivered to the defendant, and
 - (ii) the time when the defendant has knowledge of the order; and
 - (b) any other person named in the order until the earlier of:
 - (i) the time when a copy of the order is delivered to such person, and
 - (ii) the time when the defendant or person named in the order has knowledge of the order.
 - (3) If an application under section 23 is made without notice to extend a preservation order made without notice, an order extending the preservation order must specify a date, not more than 21 days after the day that the order is granted, on which the order expires.
 - (4) If an application under section 23 is made on notice to extend a preservation order made without notice:
 - (a) the onus is on the plaintiff to establish that the preservation order should be continued; and
 - (b) the court may terminate the preservation order if the court is satisfied that the plaintiff failed to make full and frank disclosure of the material information that existed at the time the plaintiff made the application for the preservation order without notice.

Sources: *cf.* AB, section 18; NL, section 29

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ULCC Comment: If a province/territory has a general rule that ex parte orders and injunctions automatically expire after a period that is shorter than 21 days, unless the order is extended on notice to the defendant, a province/territory may wish to make the general rule apply to applications for ex parte preservation orders rather than the 21 day rule in subsection (1).

An example of when an application for a preservation order may be made without notice is when the plaintiff is seeking a preservation order under section 17 (1) (a) requiring a bank or financial institution to pay into court those funds held to the defendant's credit in an account maintained by the bank or financial institution. Such an application may be made without notice to either the defendant or the bank because if notice is given, the defendant may withdraw the funds prior to the delivery of the preservation order. If the application is made without notice, and the preservation order is physically given to the bank prior to the expiration of the order, the order is effective from the time of the physical delivery of the preservation order to the bank.

If an application is made on notice to extend a preservation order that was previously made without notice, the plaintiff must make his or her case for a preservation order in the same manner as if the application was initially made on notice. If the court extends the preservation order after hearing the application on notice, the preservation order continues in effect until one of the events described in section 18 occurs.

If a preservation order is made, without notice, seizing an account owing to the defendant, and the preservation order is given to the account debtor before an application is made, with notice, it will be necessary for the plaintiff to make an application with notice to the defendant and the account debtor, to confirm and extend the preservation order. This is different than the process of garnishment before judgment.

Effect of preservation order

- 20** Subject to section 21 (2), a preservation order applies to the defendant and the other persons named in the order, but gives no property interest to the plaintiff.

Source: cf. SK, section 3 (1)

ULCC Comment: A preservation order does not give the plaintiff any property interest in the property that is subject to the order. Nevertheless, under section 21, a notice of preservation order may be registered in the land title office or land registry office against land of the defendant.

Registration of notice preservation order against land

- 21** (1) A notice of a preservation order in the prescribed form may be registered against the land of the defendant in the [insert the name of the land title or land registry offices in the enacting province/territory] [land title office] in the same manner that a notice of judgment may be registered in accordance with Part 10 and the regulations.
- (2) If a preservation order is no longer effective under section 18, Part 10 applies with regard to the discharge of the registration of a notice of preservation order against land in the same manner as if it were a notice of judgment.

Sources: cf. AB, section 22; NL, section 33

ULCC Comment: Despite that section 20 provides that a preservation order does not give any property interest, a notice of preservation order may be registered against all or some of the defendant's land. The effect of registering a notice of preservation order is dealt with in Part 10 (section 130 (2) of Option #1 and section 128 (2) of Option #2). The registration of a notice of preservation order is somewhat analogous to registering a claim of lien under builders lien or mechanic's lien legislation or the registration of a caveat. In such cases, if the plaintiff's claim is proven at trial, the claim has priority over interests that are registered after the registration of the caveat or claim of lien. If the plaintiff's claim is not proven at trial, the registration of the caveat or claim of lien must be removed and it has no effect on the priorities of interests registered after the caveat or claim of lien.

Under subsection (2), if a preservation order is no longer effective because it has expired or for some other reason, the defendant or another person can deliver a demand under Part 10 requiring the plaintiff or judgment creditor, as the case may be, to discharge the notice of preservation order. If the plaintiff/judgment creditor does not obtain a court order providing for the continuation of the registration of the notice of preservation order, the person who made the demand may submit a discharge of the notice of preservation order for registration.

Security required from plaintiff

- 22** (1) Unless a court otherwise orders, a preservation order and any order modifying or extending a preservation order under section 23 must include an order requiring the plaintiff to provide security in an amount and form that is sufficient to compensate the defendant or another person named in the order for loss or damage that may be caused by the preservation order in the circumstances specified in subsection (3).
- (2) If the defendant or any other person suffers loss or damage as a consequence of the preservation order in any of the circumstances described in subsection (3), the court may order that there be paid, out of the security referred to in subsection (1), if any, to the defendant or other person named in the order referred to subsection (1), an amount to compensate for a pecuniary loss or damage suffered by the applicant as a result of the preservation order that was foreseeable at the time when the preservation order was made.
- (3) The court may only make an order under subsection (2) if:
- (a) the court in which the plaintiff's proceeding was commenced dismissed the proceeding because of a failure on the part of the plaintiff to pursue the claim;
 - (b) the plaintiff discontinued the proceeding after an application was made by the defendant for an order dismissing the plaintiff's claim because of a failure on the part of the plaintiff to pursue the claim;
 - (c) the court concludes that:
 - (i) in the proceeding, the plaintiff presented evidence that was false or misleading,

- (ii) on the application for a preservation order, the plaintiff did not make full and frank disclosure of relevant facts to the court, or
- (iii) there was other misconduct by the plaintiff in the proceeding or on the application for the preservation order; or
- (d) at the date the proceeding was commenced, the plaintiff had no reasonable expectation of obtaining judgment.

Sources: *cf.* AB, section 17 (4); NL, section 28 (2); SK, section 5

ULCC Comment: *Unless the court otherwise orders, the court must order the plaintiff to post security as a condition of being granted a preservation order. The requirement that security will normally be posted is intended to guard against preservation orders being used as a tactical manoeuvre by a plaintiff to bring pressure on a defendant to settle a dubious claim. The amount and form of the security are left for the discretion of the court. If a plaintiff is able to demonstrate that her or his financial circumstances are such that he or she is unable to post security or security is not required in the circumstances, the court may in its discretion waive the requirement for security. Nevertheless, the presumption is that security must be ordered. The amount of the security will depend on the court's assessment of the loss or damage that it is reasonably foreseeable the defendant may suffer as a consequence of making a preservation order.*

If a defendant or other person suffers loss as a consequence of a preservation order in any of the circumstances described in subsection (3), the court may make an order for the payment of compensation out of the security provided by the plaintiff. The loss or damage that may be paid out of the security is limited to loss or damage that was foreseeable at the time that the preservation order was made.

Modification or extension of preservation order

- 23** (1) The plaintiff on whose application a preservation order is made, a defendant, or a person affected by a preservation order may apply to the court that made the preservation order to have the order extended, modified or terminated, including the addition, modification or termination of provision for security under section 22.
- (2) If a preservation order is modified or terminated under subsection (1) with regard to land of the defendant, the plaintiff must register an amendment notice with regard to a notice of preservation order that is registered against the land.

Source: *cf.* SK, section 4

ULCC Comment: *Self-explanatory.*

Enforcement proceedings against property subject to preservation order

- 24** (1) Despite the making of a preservation order or the registration of a notice of a preservation order against the land of the defendant, and subject to subsection (3), enforcement proceedings may be commenced or continued in

another proceeding against property that is subject to a preservation order, and

- (a) money realized through those enforcement proceedings may be distributed under Part 14 without regard to the claim of the plaintiff who obtained the preservation order if that plaintiff does not have an eligible claim within the meaning of Part 14 at the time the distributable fund is created under Part 14; and
 - (b) the purchaser of land in those enforcement proceedings takes the land free of any enforcement charge that may be created by the registration of a notice of judgment in the proceeding in which the preservation order was made.
- (2) On application, the court may make one or more of the following orders:
- (a) an enforcement proceeding not be commenced or continued against property that is subject to a preservation order, without the leave of the court, until the preservation order terminates;
 - (b) a distributable fund constituted under Part 14 in another enforcement proceeding against land that is the subject to a preservation order not be distributed without leave of the court.

Sources: AB, section 24; NL, section 35

ULCC Comment: Self-explanatory.

Compensation if dealings with property are inconsistent with preservation order

- 25** (1) If a third person other than the defendant knowingly assists or participates in the disposal, dissipation, concealment, destruction or other dealing with property that is the subject of a preservation order in a manner that is inconsistent with the terms of the preservation order, the court may order that person to compensate a plaintiff who:
- (a) obtained judgment against the defendant;
 - (b) is unable to satisfy the judgment from the assets of the defendant; and
 - (c) suffers actual loss as a result of that dealing.
- (2) The amount of compensation that a person may be ordered to pay under subsection (1) must not exceed the fair market value of property that was dealt with by that person.
- (3) The court must not make an order under subsection (1) against a person other than the defendant if the person's dealing that caused the loss was necessary to meet a legal duty of the person that:

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- (a) arose before the person acquired knowledge of the preservation order; and
- (b) was owed to a person other than the defendant.

Sources: AB, section 25; NL, section 36

***ULCC Comment:** Compensation payable under this section is limited to actual loss. Before judgment, a plaintiff has not suffered in any actual loss by reason of an unauthorized dealing. Therefore, this remedy is limited to a claim by a judgment creditor who has obtained judgment.*

Subsection (3) applies if, for example, a lawyer holds funds of a client subject to an undertaking given to a third party before acquiring knowledge of the preservation order. The undertaking may have been given to another lawyer, who is acting for a vendor in a real estate transaction. The undertaking may require the payment out of the funds upon the registration of a conveyance. If a copy of the preservation order is given to the lawyer after the undertaking was made but before the funds are paid out, the lawyer is under a legal duty to pay out the funds in accordance with the undertaking. This subsection will exempt the lawyer from liability in any claim for compensation by the plaintiff who obtained the preservation order.

PART 5—REGISTRATION OF NOTICE OF JUDGMENT AND CREATION OF AN ENFORCEMENT CHARGE

***ULCC Introductory Comment:** Under this Part, registration of a notice of judgment in the prescribed registry creates an “enforcement charge” on the personal property of the judgment debtor that is analogous to a perfected non-purchase-money security interest under Personal Property Security Acts. In most provinces/territories, the Personal Property Registry established under the Personal Property Security Act will likely be the prescribed registry. Subject to the specific priority rules in Part 6, the Personal Property Security Act rules govern the priority of an enforcement charge in relation to other interests in the property. Subject to certain preferences with regard to the distribution of proceeds of an enforcement proceeding under Part 14, there is no priority among enforcement charges.*

When an enforcement charge is created, the personal property of the judgment debtor is immediately charged with the satisfaction of the judgment to which the notice of judgment relates. It will no longer be necessary for an enforcement officer to make a seizure of property before the property is charged by or subject to an enforcement charge. With regard to land, whether registration of a notice of judgment under this Part will create a charge on a judgment debtor’s land depends on whether a province/territory chooses to enact Option #1 or Option #2 under Part 10 (Land).

Under this Act, registration of a notice of judgment under this Part is a prerequisite to initiating enforcement proceedings and being eligible to participate in the distribution of proceeds of an enforcement proceeding taken by another judgment creditor with regard to the same judgment debtor.

Definition

- 26** In this Part, “**exigible property of the judgment debtor**” means exigible property of the judgment debtor that is personal property.

Source: original

Registration of notice of judgment

- 27** (1) A judgment creditor may register a judgment in the registry by registering a notice of judgment in the prescribed form and in accordance with this Part and the regulations.

Sources: NL, section 38 (1); SK, section 9 (1)

- (2) A notice of judgment may be registered under subsection (1) whether or not the time for filing an appeal has expired or an appeal has been filed.

Source: original

- (3) Whether or not an enforcement instruction has been delivered to an enforcement officer under Part 7 of this Act, upon the written request of a judgment creditor, an enforcement officer must deliver a demand to a judgment debtor requiring the judgment debtor to deliver to the enforcement officer or a person designated by the enforcement officer documentary evidence of the judgment debtor's full legal name.

Sources: original; *cf.* SK, section 15

- (4) If a judgment debtor is a natural person, the documentary evidence required for the purposes of subsection (3) is determined by the following rules:
- (a) if the judgment debtor was born in Canada and the judgment debtor's birth is registered in Canada with a government agency responsible for the registration of births, the judgment debtor's birth certificate or equivalent document issued by the government agency;
 - (b) if the judgment debtor was born in Canada but the judgment debtor's birth is not registered in Canada with a government agency responsible for the registration of births,
 - (i) a current passport issued to the judgment debtor by the Government of Canada,
 - (ii) if the judgment debtor does not have a current passport, a current social insurance card issued to the judgment debtor by the Government of Canada,
 - (iii) if the judgment debtor does not have a current passport or social insurance card, a current passport issued to the judgment debtor by the government of a jurisdiction other than Canada where the judgment debtor habitually resides;

- (c) if the judgment debtor was not born in Canada but is a Canadian citizen, the judgment debtor's certificate of Canadian citizenship;
- (d) if the judgment debtor was not born in Canada and is not a Canadian citizen,
 - (i) a current visa issued to the judgment debtor by the Government of Canada,
 - (ii) if the judgment debtor does not have a current Canadian visa, a current passport issued to the judgment debtor by the government of the jurisdiction where the judgment debtor habitually resides, or
 - (iii) if the judgment debtor does not have a current Canadian visa or a current passport, the birth certificate or equivalent document issued to the judgment debtor by the government agency responsible for the registration of births at the place where the judgment debtor was born;
- (e) notwithstanding clauses (a) to (d), if the judgment debtor has changed or changes his or her name in accordance with change of name legislation, the judgment debtor's change of name certificate or equivalent document, and if a judgment debtor who changes his or her name after marriage habitually resides in a jurisdiction in which the name adopted is recognized by law without the issuance of a change of name certificate or equivalent document and no such document has been issued, the judgment debtor's written declaration of the name or names used by the judgment debtor after marriage accompanied by the certificate of marriage or equivalent document,
- (f) if the law of the jurisdiction where the judgment debtor habitually resides recognizes both the name that a person had before marriage and the name adopted after marriage without the issuance of a change of name certificate or equivalent document and the judgment debtor uses both names, the documentary evidence required in accordance with clauses (a) to (d) with regard to the former name and documentary evidence referred to in clause (e) with regard to the latter name, and
- (g) in a case not falling within clauses (a) to (f), any two of the following documents issued to the judgment debtor by the Government of Canada or a province or territory of Canada:
 - (i) a current motor vehicle operator's license,
 - (ii) a current motor vehicle registration,
 - (iii) a current medical insurance card.

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Source: original

- (5) Delivery to the enforcement officer who made the demand referred to in subsection (3) of a notarized notarially-certified copy of the documentary evidence referred to in subsection (4) constitutes compliance with the demand.

Source: original

- (5.1) The judgment debtor may sever any personal information other than his or her name from the notarially-certified copy of the documentary evidence delivered to the enforcement officer.

Source: original

BCLI Comment: Subsection (5.1) is intended to strike a balance between the judgment debtor's privacy rights and the judgment creditor's need to obtain the judgment debtor's correct legal name for the purposes of registering a notice of judgment in the Personal Property Registry. The documents listed in subsection (4) contain much more information than is needed to determine the judgment debtor's name. Some of this information will be simply irrelevant to the purpose of the subsection, such as the person's height, age, and weight. In other cases, the judgment debtor may have a legitimate reluctance to releasing the information to the judgment creditor. Social insurance numbers, which can often be the key to a person's credit history, fall into this category. A judgment creditor should not be allowed to acquire this information as a part of any disclosure of the judgment debtor's legal name. Subsection (5.1) would permit the judgment debtor to remove or obscure this personal information from the copy of the identifying document provided to the enforcement officer. This should not frustrate the underlying purpose of subsection (4), as the judgment creditor will still receive information about the judgment debtor's name and, due to the requirement of obtaining a notarially-certified copy, an assurance of the authenticity of the source of that information.

- (6) A judgment debtor must provide the documentary evidence demanded by an enforcement officer under subsection (3) within 10 days of receipt of the demand or such further time as the enforcement officer may stipulate or the court may order on an application by the judgment debtor.

Source: original

- (7) On application, the court may order the judgment debtor to comply with a demand made by an enforcement officer under this section.

Source: original

ULCC Comment: The terms "judgment" and "notice of judgment" are defined in section 1. In most provinces/territories, the Personal Property Registry established under the Personal Property Security Act will be the prescribed registry. The registration of a notice of judgment under subsection (1) is modeled on the

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registration of a financing statement under Personal Property Security Acts. The cost associated with the registrations and the maintenance of the registry will be recovered from the registration fees. With regard to the amendment or renewal of a registered notice of judgment, section 33 incorporates, with the necessary modifications, those provisions of the Personal Property Security Act that apply to a financing change statement.

Under section 28, registration of a notice of judgment creates an enforcement charge on the property of the judgment debtor as provided in that section. A judgment creditor must register a notice of a judgment before giving an enforcement instruction to an enforcement officer under Part 7. Consequently, the registry will serve as a single searchable registry within a province or territory where all judgments capable of immediate enforcement against a judgment debtor will be registered.

The form of a notice of judgment will be prescribed by regulation under Part 16 to be an electronic form capable of registration by means of an online registration process. The prescribed form will contain specified information fields that must be completed before a notice of judgment will be accepted for registration. Additional fields may be either alternative or optional fields. Examples of the information fields that will be included in the prescribed form include:

- (a) name of the judgment creditor;
- (b) name and additional identifying characteristics of the judgment debtor;
- (c) an exclusionary field to be used to exclude persons with names that may be similar to the judgment debtor;
- (d) particulars of the judgment including:
 - (i) the court from which the judgment was issued;
 - (ii) the number assigned to the court file or judgment;
 - (iii) the date of the pronouncement of the judgment;
- (e) particulars with regard to the judgment debtor's property including:
 - (i) the serial numbers of any serial numbered equipment if they are known to the judgment creditor; and
 - (ii) the location of property;
- (f) the length of the registration period for the notice of judgment chosen by the judgment creditor.

A judgment creditor must register a notice of a judgment before giving an enforcement instruction to an enforcement officer under Part 7. However, a registration of a notice of judgment is invalid if there is a seriously misleading defect or error in the name of the judgment debtor. Such invalidity arises as a consequence of the incorporation, by section 33 (1) (e) of this Act, of section 43 (7) of the Personal Property Security Act (British Columbia). A plaintiff may commence an action against a defendant using the name by which a defendant is commonly known or the name that a defendant used in his or her dealings with the plaintiff. This name may not be the defendant's legal name. Therefore, it is necessary to include a method by which a judgment creditor can compel the judgment debtor to provide documentary evidence in respect of his or her legal name and thereby enable the judgment creditor to register a valid notice of judgment. Subsections (3) to (7) will enable a judgment creditor to obtain evidence with regard to the judgment debtor's legal name. If a judgment debtor fails to comply with a court order under subsection (7), contempt of court proceedings may be brought in relation to the judgment debtor. Each province/territory should review its Evidence Act, and perhaps its Rules of Court, for the purpose of considering amendments that will permit questions to be directed to a defendant or other witnesses during a trial or proceeding that are in-

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tended to elicit information with regard to the legal name of the defendant and any other name or names under which a defendant holds property.

Creation of enforcement charge

28 Registration of a notice of judgment under section 27 creates an enforcement charge securing the amount recoverable on:

- (a) all exigible property of the judgment debtor and all fixtures and crops existing at the time of registration and acquired by the judgment debtor after the registration of the enforcement charge and prior to its discharge; or
- (b) such items or kinds of exigible property of the judgment debtor, including a fixture or crops, that are described in the prescribed manner in the notice of judgment.

Source: SK, section 9 (2)

***ULCC Comment:** Registration of a notice of judgment in the registry automatically creates an enforcement charge that charges all of the judgment debtor's present and after-acquired personal property unless the registration of the notice of judgment lists only specific items of the judgment debtor's property that will be subject to the enforcement charge. The term "enforcement charge" is used to distinguish this type of charge from consensual security interests or other charges that may encumber a judgment debtor's property. Notwithstanding that an enforcement charge charges a judgment debtor's property specified in the notice of judgment, if an enforcement proceeding is commenced with respect to specific property by way of seizure or otherwise, a judgment debtor is entitled to claim property described in Part 12 as property that is exempt from enforcement proceedings.*

BCLI Comment: The references to fixtures and crops are unnecessary. In section 1 (2), the Uniform Act incorporates by reference the definition of "goods" found in the *Personal Property Security Act*. This definition has the effect of including fixtures and crops within the category of personal property for the purposes of the Uniform Act. Any conflicts created by this position and the traditional legal rules governing fixtures and crops will be resolved in accordance with the special priority rules set out in section 36.1.

Effective period of enforcement charge

29 (1) An enforcement charge is effective from the time of the registration until the earliest of:

- (a) the expiration of the registration period stated in the notice of judgment and any renewal notice by which registration is effected; or
- (b) the discharge of the notice of judgment.

Source: SK, section 9 (3)

- (2) An enforcement charge remains in effect even though an appeal is taken against the judgment.

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Source: original

- (3) An enforcement charge relating to a judgment that is reversed on appeal is deemed never to have existed.

Source: original

- (4) Unless the court otherwise orders, an order staying enforcement proceedings with respect to a judgment or a payment order that prohibits enforcement of the judgment does not affect an enforcement charge or the registration of a notice of judgment.

Source: original

ULCC Comment: The judgment creditor is permitted to choose the length of the registration. This adopts the approach of Personal Property Security legislation with regard to the registration of a financing statement in relation to a consensual security interest. The registration fee will increase with the length of the registration period chosen by the judgment creditor. The judgment creditor may choose registration for an infinite period; however, the fee payable for choosing this option may discourage most judgment creditors from selecting this option.

If a judgment is satisfied or the judgment is no longer in force because the judgment is extinguished under the law of the province/territory due to the expiry of the limitation period for enforcing the underlying judgment, the judgment creditor is obliged under section 31 to register a discharge. If the judgment creditor fails to register a discharge, the judgment debtor may proceed under section 31 to register a discharge.

Some provinces/territories have Rules of Court or other enactments that provide that the filing of an appeal against a monetary judgment operates as an automatic stay of execution. Such provisions will continue to be effective as a stay of enforcement proceedings with respect to the judgment; however, such provisions will not prevent the creation or continuance of an enforcement charge by the registration of a notice of judgment. However, the court could, upon granting a judgment, or at any time before the registration of a notice of judgment, order that a notice of judgment with respect to the judgment not be registered until further order of the court.

Giving notice of a registration, amendment or renewal of notice of judgment

- 30** (1) Within [30] 20 days after the registration of a notice of judgment or an amendment/renewal notice, the judgment creditor must give to each person named as a judgment debtor in the notice of judgment a copy of the verification statement issued by the registry that relates to the registration of the notice of judgment, amendment notice or renewal notice.
- (2) For the purposes of subsection (1), “**verification statement**” has the meaning prescribed by regulation.

Sources: PPSA, section 43 (14)–(15); cf. NL, section 42 (1.1)

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ULCC Comment: The number of days specified in this section should be consistent with number of days provided in the comparable provision of the Personal Property Security Act of the province/territory. In some provinces such as British Columbia, the statement must be sent within 20 days. This section is based on a similar provision in Personal Property Security Act legislation (section 43 (14) and (15) of the BC PPSA).

Discharge or amendment of notice of judgment

- 31** (1) A judgment creditor who has registered a notice of judgment must:
- (a) register a discharge of the notice of judgment if:
 - (i) the judgment to which the enforcement charge relates is satisfied, withdrawn or otherwise becomes unenforceable, or
 - (ii) a court has ordered that the notice of judgment be discharged;
 - (b) register an amendment notice that amends the notice of judgment in accordance with the demand given by the judgment debtor under subsection (2), including without limitation, to release property that:
 - (i) the judgment creditor has agreed to release from the enforcement charge, or
 - (ii) is not property of the judgment debtor; or
 - (c) register a discharge or an amendment of the notice of judgment as may be appropriate if a person who is not the judgment debtor of the judgment creditor:
 - (i) has a name that corresponds to the name used in a notice of judgment to describe the judgment debtor, and
 - (ii) has property that is mistakenly charged by the enforcement charge created by the registration of that notice of judgment.
- (2) If a judgment debtor, a person referred to in subsection (1) (c) or a person with an interest in property charged by an enforcement charge considers that subsection (1) applies in respect of that notice of judgment, that person may give a written demand to the judgment creditor requiring the judgment creditor to discharge or amend the notice of judgment.
- (3) A judgment creditor who receives a demand under subsection (2) must, within [insert the number of days in the comparable section of the PPSA of the enacting jurisdiction] 15 days after receipt of the demand:
- (a) discharge the notice of judgment;
 - (b) register an amendment notice to amend the notice of judgment in accordance with subsection (1) (b) or (c); or

- (c) obtain and submit to the registrar for filing a copy of an entered court order, made under subsection (4), that the notice of judgment need not be discharged or amended.
- (4) On application by a judgment creditor who has registered a notice of judgment, by the judgment debtor named in that registration or by any other person with an interest in property charged by the enforcement charge created by that registration, the court may order that:
 - (a) the registration of the notice of judgment be maintained generally, or for any period and on any terms and conditions the court may consider appropriate; or
 - (b) the notice of judgment be amended or discharged on any terms and conditions the court considers appropriate.
- (5) If an order made under subsection (4) affects the registration of a notice of judgment, the registrar must amend or discharge the registration accordingly after a copy of that entered order is filed with the registrar.
- (6) If a judgment creditor referred to in subsection (3) does not comply with that subsection within the time required, the person who provided the demand may register in the registry a discharge of the notice of judgment or an amendment notice.
- (7) The registrar must register a discharge of notice of judgment, or an amendment notice, submitted by a person under subsection (6) if:
 - (a) the discharge of notice of judgment or the amendment notice is satisfactory to the registrar; and
 - (b) the person submits to the registrar proof satisfactory to the registrar that subsections (1) and (6) apply to the notice of judgment.
- (8) No fee or expense shall be charged, and no amount of money shall be accepted by a judgment creditor for compliance with a demand made pursuant to subsection (2).

Sources: PPSA, section 50; cf. NL, section 45

ULCC Comment: This section adopts an approach that is similar to the compulsory discharge or amendment of registration provisions found in Personal Property Security Act legislation (see section 50 of the BC PPSA); however, there are differences between the two Acts. The purpose of this section is to provide a relatively expeditious process by which a judgment debtor or other person can compel the registration of a discharge or an amendment of a notice of judgment in the circumstances described in subsection (1). If clause (c) of subsection (1) is applicable, an amendment notice may be required to exclude from the operation of the enforcement charge property of a person who is not a judgment debtor of the judgment creditor.

If a judgment debtor or other person makes frivolous or vexatious demands requiring the registration of a discharge or an amendment notice and the judgment creditor is required to make needless applications to

the court under subsection (3), the person making the frivolous and vexatious demands can be penalized by an award of costs. Frivolous or vexatious demands do not appear to have been a problem under comparable PPSA legislation. However, if an award of costs against the judgment debtor or other person is not an effective deterrent to frivolous or vexatious demands, a judgment creditor may apply for an order under either subsection (3) that the registration is effective until a further order by the court regardless of any further demands by the judgment debtor or other person. Alternatively, the judgment creditor could apply for an order under section 7 in the nature of an injunction prohibiting the judgment debtor or other person from making further demands without permission of the court.

In subsection (5), each enacting province/territory must insert the number of days within which the judgment creditor, after receiving a demand, must either register a discharge or an amendment notice or obtain an order of the court that the registration need not be discharged or amended. This section is based on a comparable section in PPSA legislation. There is a significant variation in the number of days specified in PPSA legislation of the provinces and territories. Rather than attempting to seek uniformity among the provinces and territories with regard to the number of days, the number of days should be consistent with the number of days specified in the comparable provision of the PPSA of the enacting province or territory.

Registration does not constitute notice or knowledge of notice of judgment

- 32** Registration of a notice of judgment in the registry does not constitute notice to or knowledge by any person of the existence of the notice of judgment.

Source: NL, section 43

ULCC Comment: The purpose of this section is to preclude the development of any concept of constructive notice with regard to a notice of judgment based merely upon the registration of a notice of judgment combined with the ability of a person to obtain knowledge of a notice of judgment by searching the registry.

Application of registration provisions of the *Personal Property Security Act*

- 33** (1) Except as otherwise specifically provided in this Act, the following sections of the *Personal Property Security Act* [The section number references in this section refer to the British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of its *Personal Property Security Act*.] apply to matters arising under this Act:
- (a) section 42 [*establishment of registry, seal, registrar, services provided*];
 - (b) section 43 (2) [*effective date and time of registration*];
 - (c) section 43 (3) [*no registration until fees paid*];
 - (d) section 43 (6) [*validity of registration not affected by defect, irregularity, etc. in notice of judgment*];
 - (e) section 43 (7) [*circumstances where defects in name of debtor or serial number of collateral that are seriously misleading may render registration invalid*];

- (f) section 43 (8) *[if defect is seriously misleading, not necessary to prove anyone actually misled by it];*
 - (g) section 43 (9) *[failure to provide description of in relation to one item of property does not affect validity of registration with respect to other property];*
 - (h) section 43 (12) *[registrar may reject a notice of judgment if it does not comply with Act or regulations];*
 - (i) section 43 (13) *[registrar shall give reasons for rejecting registration];*
 - (j) section 44 (2) *[renewal of a registration];*
 - (k) section 44 (3) *[amendment of a registration];*
 - (l) section 44 (4) *[amendment of registration not otherwise provided];*
 - (m) section 45 *[registrations of transfers];*
 - (n) section 46 (2) *[removal of records from registry where registration no longer effective or notice of judgment discharged];*
 - (o) section 48 *[registry searches];*
 - (p) section 51 *[transfer of debtor's interest in property or change of judgment debtors];* and
 - (q) section 52 *[actions against the Crown for loss suffered by reliance on a printed search result, failure to register a printed notice of judgment, etc.].*
- (2) When applying the sections referred to in subsection (1), a reference to:
- (a) “collateral” is read as a reference to “property subject to an enforcement charge”;
 - (b) “debtor” is read as a reference to a “judgment debtor”;
 - (c) “financing statement” is read as “notice of judgment”;
 - (d) “financing change statement” is read as “amendment/renewal notice”;
 - (e) “secured party” is read as a reference to a “judgment creditor”; and
 - (f) “security interest” is read as a reference to an “enforcement charge.”

Source: SK, section 14

ULCC Comment: Self-explanatory.

PART 6—PRIORITY OF AN ENFORCEMENT CHARGE

Definitions

34 In this Part:

“**buyer of goods**” has the meaning given to buyer of goods in section 30 (1) of the *Personal Property Security Act*; [The section number reference in this definition refers to the British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of its *Personal Property Security Act*.]

“**consumer goods**” has the meaning given to consumer goods in section 1 (1) of the *Personal Property Security Act*;

Sources: AB, section 31 (b) (ii); cf. NL, section 37 (c)

BCLI Comment: The concept of “consumer goods” is used in the version of section 36 that the BCLI recommends adopting. If this version of section 36 is not adopted, then the definition of “consumer goods” need not be incorporated by reference.

“**new value**” has the meaning given to new value in section 1 (1) of the *Personal Property Security Act*;

Sources: AB, section 31 (b) (vi); cf. NL, section 37 (i)

BCLI Comment: The concept of “new value” is used in the version of section 37 (5) that the BCLI recommends adopting. If this version of section 37 (5) is not adopted, then the definition of “new value” need not be incorporated by reference.

“**ordinary course of business of the seller**” has the meaning given to it in section 30 (1) of the *Personal Property Security Act*; [The section number reference in this definition refers to the British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of its *Personal Property Security Act*.]

“**seller**” has the meaning given to seller in section 30 (1) of the *Personal Property Security Act*; and [The section number reference in this definition refers to the British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of its *Personal Property Security Act*.]

“**serial numbered goods**” has the meaning given to serial numbered goods in section 1 (1) of the regulations made under the *Personal Property Security Act*; other than one or more of the following:

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(a) goods held by the judgment debtor for sale or lease, or that have been leased by the judgment debtor as lessor;

(b) goods furnished or to be furnished under a contract of service;

(c) raw materials or work in progress; and

(d) materials used or consumed in a business.

[The section number reference in this definition refers to the regulations made under British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of the regulations made under its *Personal Property Security Act* or the Act itself if the definition is included in the Act.]

Sources: *cf.* AB, section 31; NL, section 37

ULCC Comment: Under section 1 (2) (g) of this Act, the term “goods” has the meaning given to it in the *Personal Property Security Act*.

BCLI Comment: The lettered paragraphs have the effect of carving “inventory” (as that term is defined in the *Personal Property Security Act*) out of the definition of “serial numbered goods.” The main reason for doing this is to avoid the need for description of inventory by serial number in the registration of a notice of judgment. In British Columbia, this point is addressed by section 9 (2) (c) of the *Personal Property Regulation*. The technical requirements for registration of a notice of judgment are better suited to articulation in a regulation, rather than in a statutory definition section.

Priority of enforcement charge

35 (1) Except as otherwise provided in this Act, an enforcement charge has the same priority in relation to both prior and subsequent interests in personal property charged by it as a perfected non-purchase-money security interest in that property would have under the *Personal Property Security Act*.

Source: SK, section 10 (1)

(2) Even though property charged by an enforcement charge would be inventory or proceeds of inventory under the *Personal Property Security Act*, as those terms are defined in the *Personal Property Security Act*, the property is deemed not to be inventory or proceeds of inventory, as the case may be, for the purposes of this Act.

Source: original

(3) Subject to subsection (5), priority between a perfected security interest in serial numbered goods and an enforcement charge on the same goods is determined on the basis of the earlier of the following:

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- (a) the perfection of the security interest; and
- (b) the registration of the notice of judgment creating the enforcement charge that is registered in the manner prescribed by regulations made under the *Personal Property Security Act* for security interests in serial numbered goods.

Sources: original; cf. SK, section 11 (4)

- (4) A security interest referred to in subsection (3) is perfected by registration if it is registered in the manner prescribed by the regulations made under the *Personal Property Security Act* for security interests in serial numbered goods.

Sources: original; cf. SK, section 11 (4) (b)

- (5) A security interest has priority over an enforcement charge with respect to advances secured by the security interest and made after the enforcement charge comes into existence only if:
 - (a) a registration relating to the security interest was effected before the enforcement charge was created; and
 - (b) the advances were made without knowledge by the secured party of the enforcement charge.

Sources: SK, section 10 (2); cf. AB, section 35 (1)–(2); NL, section 50 (1)–(2)

- (6) Despite that the secured party has knowledge of the enforcement charge, the security interest referred to in subsection (5) has priority with respect to:
 - (a) advances made under a legally binding obligation owed to a person other than the judgment debtor incurred by the secured party before acquiring knowledge of the enforcement charge; and
 - (b) reasonable costs incurred and expenditures made by the secured party for protection, preservation or repair of the property charged by the enforcement charge.

Sources: SK, section 10 (2); cf. AB, section 35 (1)–(2); NL, section 50 (1)–(2)

- (7) Priority between an enforcement charge and a security interest in respect of a fixture or crops is determined without regard to the fact that the fixture or crops are attached to land.

Source: original

(8) Subject to subsection (9), an enforcement charge charging a fixture or crops has priority over:
(a) an interest in the land on which the fixture is located or crops are growing that, at the date the enforcement charge is created, could have been registered but was not registered as provided by [insert the title of the <i>Land Titles Act</i> or similar Act under which interests in land are registered]; and
(b) a registered or unregistered interest in the land on which the fixture is located or the crops are growing acquired from the judgment debtor after the charge was created;
but, does not have priority over an interest in the land acquired by a transferee unless:
(c) a search of the registry using the name of the transferor as recorded in the records of the land titles office discloses the enforcement charge; or
(d) the enforcement charge is registered as provided in [insert the section number and title of the <i>Land Titles Act</i> or similar Act under which interests in land are registered in the province/territory];

Sources: SK, section 10 (3); *cf.* AB, section 37; NL, section 53

ULCC Comment: *If a province/territory selects Option #2 in Part 10 (Land), clause (c) should be deleted.*

(9) An enforcement charge charging a fixture or crops does not have priority over a mortgage on the land, registered prior to the creation of the enforcement charge if the mortgage specifically charges the fixture or crops, securing a specific principal sum or a revolving line of credit up to a specified principal sum, even though:
(a) advances are made under the mortgage after the enforcement charge was created; or
(b) when the enforcement charge was created, there are no outstanding advances secured by the mortgage.

Sources: SK, section 10 (4); *cf.* AB, section 37; NL, section 53

ULCC Comment: *Except as otherwise provided in this Act, the effect of subsection (1) is to make the priority rules of the Personal Property Security Act, which are applicable in determining the priority of a perfected non-purchase money security interest, applicable to determining the priority of an enforcement charge created under this Act in relation to other security interests. It does not determine priorities among enforcement charges.*

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The effect of subsections (3) and (4) is that an enforcement charge that charges serial numbered goods will only take priority over a security interest that is perfected by serial number registration or perfected by possession if there is a registration with respect to the charge that includes the serial number.

BCLI Comment: This section sets out several important priority rules. Under the current law, a writ of execution binds the goods of a judgment debtor upon its delivery to the sheriff for execution. Section 35 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 provides relief from the binding effect of the writ for innocent purchasers: the writ does not prejudice the title to goods of the judgment debtor that have been acquired by any person in good faith and for valuable consideration before actual seizure of the goods under the writ, so long as the person acquiring the goods had no notice of the delivery of the writ (or any other writ of execution) to the sheriff for execution. In contrast, the registration of a notice of judgment in the personal property registry will create an enforcement charge over all of the present and after-acquired exigible personal property of the judgment debtor. This shift represents both a major theoretical change in the law and a change that has the potential to cause prejudice to innocent third parties who deal with the judgment debtor. In many respects, the issues here are similar to the ones created by the coming into force of the *Personal Property Security Act*. It is desirable, therefore, to have a set of priority rules in the Uniform Act that correspond as closely as possible with the rules already existing in the *Personal Property Security Act*. Many of the current provisions of the Uniform Act, however, depart in subtle ways from the priority rules contained in Part 3 of the British Columbia *Personal Property Security Act*. The proposed changes to the Uniform Act are meant to make this Part correspond more closely to the *Personal Property Security Act*, and thereby ease the implementation of the Uniform Act.

Priority between enforcement charges and security interests

- 35** (1) Except as otherwise provided in this Part, a security interest in personal property is subordinate to an enforcement charge regardless of whether the security interest attached before or after the personal property became subject to the enforcement charge.
- (2) Subject to section 35 (5) and (6) of the *Personal Property Security Act*, a security interest in personal property has priority over an enforcement charge if at the time that the notice of judgment creating the enforcement charge was registered in the registry
- (a) the security interest is perfected or registered in the registry, or
 - (b) the secured party or person acting on behalf of the secured party has possession of the personal property under section 24 of the *Personal Property Security Act*.
- (3) A purchase money security interest in personal property has priority over an enforcement charge that charged the personal property before the purchase money security interest was registered or perfected if the security interest was registered or perfected not later than 15 days from the day that
- (a) the judgment debtor, or another person at the request of the judgment debtor, obtained possession of the collateral, or

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- (b) the security interest attached, in the case of personal property other than goods, chattel paper, a security certificate, a document of title, an instrument or money.
 - (4) Where
 - (a) an enforcement charge
 - (i) lapses as a result of a failure to renew the registration of a notice of judgment, or
 - (ii) has been discharged in error or without authorization,
 - and
 - (b) the notice of judgment is re-registered not later than 30 days after the lapse or discharge,
- the lapse or discharge of the notice of judgment does not affect the priority status of the enforcement charge created thereby in relation to a competing perfected security interest that immediately prior to the lapse or discharge of the notice of judgment had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and prior to the re-registration of the notice of judgment.

Sources: AB, section 35; NL, sections 50–51; cf. PPSA, section 35 (7)

BCLI Comment: This section governs priorities between enforcement charges and security interests. The section makes the time of registration (or perfection by possession, in the case of some security interests) the relevant time for determining priority. The references to the *Personal Property Security Act* in subsection (2) deal with priority for future advances. (Notice that these *Personal Property Act* provisions will require amendment to bring them into accord with the Uniform Act.) Subsection (3) accommodates the concept of “super-priority” of purchase money security interests. Subsection (4) reproduces a slip rule found in the *Personal Property Security Act*.

Protection of buyers and lessees of goods

- 36** (1) A buyer or lessee of goods sold or leased in the ordinary course of business of a seller or lessor who is a judgment debtor takes free of an enforcement charge charging the goods, whether or not the buyer or lessee knows of the charge, unless the buyer or lessee knows that the goods bought or leased have been seized under this Act.

Sources: PPSA, section 30 (2); SK, section 11 (2); cf. AB, section 36 (1); NL, section 52 (1)

- (2) A buyer or lessee of goods takes free from an enforcement charge charging goods if the buyer or lessee:

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- (a) bought or leased the goods without knowledge of the enforcement charge or knowledge that the goods have been seized or are subject to other enforcement proceedings under this Act; and
- (b) if the goods were serial numbered goods and, at the time of the purchase or lease, the goods were not described in the registration of the notice of judgment creating the enforcement charge in the manner prescribed by the regulations made under the *Personal Property Security Act* for security interests in serial numbered goods.

Sources: SK, section 11 (4); cf. AB, section 36 (3); NL, section 52 (3)

- (2) A buyer or lessee of goods, other than fixtures, that are acquired as consumer goods takes free from an enforcement charge charging the goods if
 - (a) the buyer or lessee gave value for the interest acquired,
 - (b) the buyer or lessee bought or leased the goods without knowledge that the goods are subject to an enforcement charge, and
 - (c) the purchase price of the goods does not exceed \$1 000 or, in the case of a lease, the market value of which does not exceed \$1 000.

Sources: AB, section 36 (2); NL, section 52 (2); cf. PPSA, section 30 (3)–(4)

- (3) Where serial numbered goods that are subject to an enforcement charge are not described by serial number in the notice of judgment that created that enforcement charge,
 - (a) in the case of consumer goods, a buyer, lessee or secured party who gives value for an interest in the goods acquires the interest free of the enforcement charge, and
 - (b) in the case of equipment, a buyer, lessee or secured party who gives value for an interest in the goods without knowledge of enforcement charge acquires the interest free of the enforcement charge.

Sources: AB, section 36 (3); NL, section 52 (3); cf. PPSA, section 30 (6) and (7).

- (4) A sale or lease under this section may be for cash, by exchange for other property or on credit, and includes delivering goods or a document of title to goods under a pre-existing contract for sale, but does not include a transfer as security for, or in total or partial satisfaction of, a money debt or past liability.

Sources: AB, section 36 (4); NL, section 52 (4); PPSA, section 30 (8)

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ULCC Comment: Subsection (1) closely parallels Personal Property Security Act legislation (section 30 (2) in Saskatchewan and B.C.) by addressing the priority of buyers or lessees of goods that are sold or leased in the ordinary course of a judgment debtor's business. This section differs from its PPSA counterpart only with regard to its definition of the knowledge that will preclude operation of the section in favour of the buyer or lessee. Under PPSA section 30 (2), an ordinary course buyer or lessee of goods that are subject to a security interest takes free of the security interest unless he or she knows that the sale or lease constitutes a breach of the security agreement that gives rise to the security interest. Under this Act, an ordinary course buyer or lessee of goods that are subject to an enforcement charge takes free of the enforcement charge unless he or she knows that the goods have been seized in an enforcement proceeding under this Act. Section 6 of this Act contains a definition of what constitutes "knowledge."

In subsection (2), the words "or knowledge that the goods have been seized or are subject to any other enforcement measure" have been included to ensure that a person who knows that goods have been seized cannot make the argument that he or she did not know that they were subject to a charge.

BCLI Comment: Subsection (2) is added to provide additional protection for purchasers of low value consumer goods. Subsection (3) is intended to bring the Uniform Act's rules respecting serial numbered goods into conformity with British Columbia's *Personal Property Security Act*. Subsection (4) is added to remove all doubt over what constitutes a sale or lease for the purposes of this section.

Fixtures and growing crops

- 36.1** (1) Where goods are subject to an enforcement charge and while being subject to the enforcement charge the goods become a fixture, those goods continue to be subject to that enforcement charge.
- (2) Where
- (a) goods that are subject to an enforcement charge become a fixture, or
 - (b) growing crops are subject to an enforcement charge
- a notice of that fact may be registered under the *Land Title Act* against the certificate of title for the land.
- (3) Any question of priorities between an enforcement charge and a security interest in a fixture or a growing crop must be determined in accordance with section 36 (6) or 37 (5) of the *Personal Property Security Act*.
- (4) Where a person acquires an interest in a fixture or a growing crop that is subject to an enforcement charge by acquiring an interest in the land on which the fixture or crop is located, that person's interest is not subordinate to the enforcement charge unless the notice referred to in subsection (2) was registered against the certificate of title before the person acquired the interest.
- (5) Subsections (2), (3) and (4) apply only to land for which a certificate of title has been issued under the *Land Title Act*.

Sources: AB, section 37; NL, section 53; PPSA, sections 36–37

BCLI Comment: Goods that become fixtures are held, under the traditional rules of property law, to have changed their character from personal property to real property. Subsection (1) confirms that an enforcement charge that charges such goods will not be affected by this transformation. Subsections (2) and (3) establish a method for determining priority to fixtures and growing crops that turns on registration of a notice against title to the land containing the fixtures or growing crops. Subsection (4) provides protection for purchasers of land containing fixtures or growing crops. These provisions essentially rely on the structure for priorities created by sections 36 and 37 of the *Personal Property Security Act*. For rules governing the seizure of fixtures and growing crops, see Part 9 Division 2.

Purchasers of chattel paper

- 37** (1) The interest of a purchaser of chattel paper has the same priority in relation to an enforcement charge that it has in relation to another security interest in the chattel paper perfected by registration as provided in the *Personal Property Security Act*.
- (2) A purchaser of chattel paper who takes possession of the chattel paper pursuant to a disposition by an enforcement officer or receiver has priority over a security interest in the chattel paper that was perfected by registration pursuant to section 25 of the *Personal Property Security Act*. [The section number reference in this section refers to the British Columbia Act. Each enacting jurisdiction must substitute the corresponding section number of its *Personal Property Security Act*.]

Sources: cf. AB, section 38 (5); NL, section 54 (6)

ULCC Comment: Under subsection (1), if an enforcement officer seizes chattel paper but does not take physical possession of chattel paper and the judgment debtor subsequently sells the chattel paper to a purchaser, the purchaser has the same priority in relation to the enforcement charge that the purchaser would have in relation to a security interest perfected by registration as provided in the PPSA. Section 31 (6) of the BC PPSA provides that a purchaser of chattel paper who takes possession of the chattel paper in the ordinary course of business and for new value has priority over any security interest in it that was perfected by registration under section 25 of the PPSA if the purchaser does not know at the time of taking possession that the chattel paper is subject to a security interest.

The purpose of subsection (2) is to put the purchaser from an enforcement officer in the same priority position in relation to a prior registered interest in the chattel paper as the purchaser would be if the purchaser had taken possession of the chattel paper in a purchase from the judgment debtor.

Negotiable instruments

- 37** (1) A holder of money has priority over an enforcement charge charging the money if that holder
- (a) acquired the money without knowledge of the enforcement charge,
- or

- (b) is a holder for value, whether or not the holder has knowledge of the enforcement charge.
- (2) A purchaser of an instrument or security certificate has priority over an enforcement charge charging the instrument or security certificate if that purchaser
 - (a) gave value,
 - (b) acquired it without knowledge of the enforcement charge, and
 - (c) took possession of it.
- (3) A clearing agency that takes possession of a security certificate without knowledge of an enforcement charge charging the security certificate has priority over the enforcement charge.
- (4) A holder of a negotiable document of title has priority over an enforcement charge charging the document of title if that holder
 - (a) gave value, and
 - (b) acquired the document of title without knowledge of the enforcement charge.
- (5) A purchaser of chattel paper has priority over an enforcement charge charging the chattel paper if that purchaser
 - (a) gave new value,
 - (b) took possession of the chattel paper in the ordinary course of the purchaser's business, and
 - (c) at the time of taking possession did not have knowledge of the enforcement charge.

Sources: AB, section 38; NL, section 54; cf. PPSA, section 31

BCLI Comment: This section and section 37.1 replace the current section 37 and expand its scope beyond chattel paper to cover all sorts of negotiable and quasi-negotiable instruments. It is impractical to expect those who deal with or hold money, instruments, securities, or documents of title to search the personal property registry before coming into possession of these types of property. Subsection (5) essentially repeats the general *Personal Property Security Act* rule for purchasers of chattel paper.

Instruments and securities

- 37.1** A purchaser of an instrument or a security has priority over an enforcement charge charging the instrument or security if
- (a) the purchaser gave value for the instrument or security,

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- (b) the purchaser acquired the instrument or security without knowledge that it was charged by an enforcement charge,
- (c) in the case of an instrument or a security that
 - (i) is not a security with a clearing agency, the purchaser took possession of the instrument or security, or
 - (ii) is a security with a clearing agency, an entry has been made in the records of the appropriate clearing agency indicating that the security has been transferred to the purchaser.

Sources: PPSA, section 31 (3); *cf.* AB, section 39; NL, section 55

BCLI Comment: Section 37.1 follows the language currently used in the *Personal Property Security Act*. In Part 9 Division 5 of the Uniform Act, the seizure of securities is treated using the language and concepts of the *Uniform Securities Transfer Act*, which is currently not in force. A consequential amendment to section 31 (3) of the *Personal Property Security Act* has been proposed to bring it into conformity with the *Uniform Securities Transfer Act*. When the *Uniform Securities Transfer Act* is enacted, a similar amendment should also be made to this provision of the Uniform Act.

Priority of liens

- 37.2** When a person in the ordinary course of business furnishes materials or services with respect to goods that are subject to an enforcement charge, any lien that the person has with respect to the materials or services has priority over the enforcement charge unless the lien is given under an enactment that provides that the lien does not have that priority.

Sources: AB, section 40; NL, section 57; PPSA, section 32

BCLI Comment: This section adopts a rule giving priority to certain types of liens from the *Personal Property Security Act*.

Relationships among interests in seized property

- 38**
- (1) An interest in property is not subordinate to an enforcement charge by reason only of the fact that the interest is subordinate to another enforcement charge.
 - (2) If an interest in property is subordinate to an enforcement charge a person who acquires the property as a result of enforcement proceedings acquires the property free of the subordinate interest.
 - (3) An interest in property that is subordinate to an enforcement charge is subordinate to the extent of the amount recoverable under the judgment to which the enforcement charge relates at the time the enforcement proceedings are taken against the property.

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- (4) Nothing in this Part is to be construed so that it creates a priority among enforcement charges.
- (5) A trustee in bankruptcy of a judgment debtor succeeds to the interest of a judgment creditor under an enforcement charge created before the date of the bankruptcy.
- (6) Subsection (5) does not give the trustee priority over a security interest in serial numbered goods perfected by registration of a financing statement that does not include the serial number of the goods if the security interest would otherwise be effective against the trustee pursuant to the *Personal Property Security Act*.

Sources: cf. AB, section 42; NL, sections 48 (2), 61; SK, section 12

ULCC Comment: Under subsection (1), if a security interest in property is registered after the creation of an enforcement charge and a subsequent enforcement charge is created after the registration of the security interest, the security interest is not subordinate to the second enforcement charge merely because it is subordinate to the first enforcement charge.

The purpose of subsection (4) is to ensure that nothing in Part 6 is interpreted as creating a priority among enforcement charges based on the time when enforcement charges are created. Subject to the certain preferences in the distribution of a distributable fund under Part 14, the balance of a distributable fund is distributed among all eligible claims on a pro rata basis.

The purpose of subsection (5) is to prevent “priority flips” that may otherwise occur upon bankruptcy or insolvency when an enforcement charge is registered in the registry prior to a security interest. Without this subsection, upon the bankruptcy of the judgment debtor, a subsequently perfected security interest would have priority over the enforcement charge. This subsection gives the trustee in bankruptcy the power to enforce the priority of an enforcement charge created under this Act over subordinate interests of secured creditors. The constitutionality of this approach in judgment enforcement legislation has yet to be tested in the courts; however, a similar section has existed in the Newfoundland and Labrador Judgment Enforcement Act as section 48 (2) since 1997. Furthermore, in *Re Giffen*, [1998] 1 S.C.R. 91, the Supreme Court of Canada considered the relationship between section 20 (b) (i) of the Personal Property Security Act (British Columbia) and priorities established by the Bankruptcy and Insolvency Act. At 119, Iacobucci J., writing the judgment of the Supreme Court of Canada, held that section 20 (b) (i) did not have the effect of reordering the priorities established by section 136 of the Bankruptcy and Insolvency Act. The Court held that section 12 (2) of the Personal Property Security Act provides a lessee with a proprietary interest in goods that vests in the trustee upon a bankruptcy of the lessee. The trustee, as a representative of the unsecured creditors is entitled to assert this proprietary interest. Similarly, section 38 (5) provides that the trustee succeeds to the interest of the judgment creditor under an enforcement charge and the trustee is entitled to assert this charge, on behalf of all unsecured creditors, against a subordinate security interest. Any proceeds that are realized by the trustee as a consequence of realizing upon the enforcement charge will be distributed by the trustee among all creditors in accordance with the distribution scheme of the Bankruptcy and Insolvency Act. This section does not give the holder of an enforcement charge any priority over unsecured creditors in a distribution under the Bankruptcy and Insolvency Act. Another benefit of this subsection is that it removes the inducement that a subordinate secured creditor would otherwise have to petition a judgment debtor into bankruptcy merely for the purpose of advancing its priority status in relation to enforcement charges created under this Act.

Under subsection (6), an enforcement charge affecting non-inventory serial numbered goods created by a registration that includes the serial number of the goods will have priority over a security interest perfected by registration of a financing statement that does not include the serial number. If a trustee in bankruptcy of a judgment debtor “succeeds to the interest” of the judgment creditor holding that charge, one could conclude that the trustee thereby takes priority over the security interest. However, that result would reverse the priority rule specified by the PPSA in a case involving a competition between a trustee and the holder of a security interest in serial number goods held by the debtor as equipment. In those circumstances, the PPSA provides that a security interest perfected by registration of a financing statement that does not include the serial number of the goods prevails against the trustee. Accordingly, subsection (6) is designed to ensure that the PPSA rule governs.

Circumstances when a person is deemed to have knowledge of enforcement charge

- 39** For the purposes of this Part, a person, including a buyer or lessee of goods, is deemed to have knowledge of an enforcement charge if that person has knowledge that:
- (a) a notice of judgment is registered against the owner of the property including the seller or lessor of goods; or
 - (b) the property, which is charged by an enforcement charge, is the subject of enforcement proceedings or has been seized.

Sources: *cf.* AB, section 32; NL, section 47

ULCC Comment: *Under section 32, registration of a notice of judgment does not constitute and form of constructive notice of the notice of judgment. Knowledge is an element in some of the priority rules that pertain to enforcement charges such as the rules found in sections 35 (5) and (6) and 36.*

PART 7—ENFORCEMENT INSTRUCTIONS

ULCC Introductory Comment: *An enforcement proceeding may not be commenced until an enforcement instruction is delivered to an enforcement officer by a judgment creditor who has registered a notice of judgment under Part 5. This Part contains the rules with regard giving an enforcement instruction or a supplemental enforcement instruction, and the withdrawal or termination of an enforcement instruction.*

Delivery of enforcement instruction to enforcement officer

- 40** (1) A judgment creditor who wishes to initiate an enforcement proceeding must deliver an enforcement instruction to an enforcement officer.

Sources: *cf.* NL, section 72; SK, section 17 (1)

- (2) An enforcement instruction must
 - (a) be in the prescribed form; and

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- (b) identify the enforcement proceedings that the enforcement officer is requested to undertake.

Sources: *cf.* NL, section 72; SK, section 17 (1)

- (3) An enforcement instruction must be accompanied by the following:

- (a) a statement in the prescribed form, signed by either the judgment creditor giving the enforcement instruction or the lawyer acting on behalf of that judgment creditor, that there is no court order, and no action taken under or in accordance with any statute or regulation, known to the person signing the statement that would impede or preclude enforcement of the judgment;
- (b) a search result issued by the registry indicating that
 - (i) a notice of judgment has been registered in the registry with regard to the judgment to be enforced, and
 - (ii) the registration of that notice of judgment remains in effect;
- (c) if an enforcement officer is instructed to seize specified serial numbered goods, a search result issued by the registry and dated not more than 5 days before the date on which the enforcement instruction is delivered to the enforcement officer, indicating that the notice of judgment registered by the judgment creditor identified the serial number of the goods;

BCLI Comment: It will always be advantageous for a judgment creditor to describe a judgment debtor's serial numbered goods (as that term is defined in the *Personal Property Security Regulation*) by serial number, but it will not always be practical to expect judgment creditors to be able to obtain the necessary serial numbers. Section 36 provides protection for third parties who are affected by a failure to describe serial numbered goods by serial number in a notice of judgment. Section 40 (3) (c) indirectly extends that protection to judgment debtors by requiring judgment creditors to describe serial numbered goods by serial number in order validly to instruct an enforcement officer to carry out a seizure of the judgment debtor's personal property. There is no compelling reason to extend such protection to judgment debtors, though. If there are no competing interests involved, a judgment creditor should be able to seize a judgment debtor's serial numbered goods, even if that judgment creditor has failed to describe those goods by their serial numbers.

- (d) a copy of the judgment to be enforced;
- (e) if an enforcement proceeding that an enforcement officer is instructed to take is the subject of a direction by the court, a copy of the entered court order as certified by the court;
- (f) payment of the fee prescribed for the delivery of an enforcement instruction to an enforcement officer or, if agreed to by the enforce-

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ment officer, provision of an undertaking, in a form satisfactory to the enforcement officer, for the payment of the enforcement officer's fees;

(g) any other prescribed records.

Sources: *cf.* NL, section 72; SK, section 17 (1)

- (4) Unless the court otherwise orders, an enforcement officer may refrain from taking an enforcement proceeding until the enforcement officer receives:
- (a) an undertaking, satisfactory to the enforcement officer, for the payment of the enforcement officer's fees and estimated expenses relating to the enforcement proceeding; and
 - (b) if required by the enforcement officer, security, satisfactory to the enforcement officer, to secure that payment of the enforcement officer's fees and estimated expenses.

Source: SK, section 20 (2)

- (5) Unless the court orders otherwise, an enforcement officer may, in addition to or instead of realizing on any security provided under subsection (4) (b), enforce an undertaking referred to in subsection (4) (a) for payment of the enforcement officer's fees and expenses to the extent those fees and expenses were incurred in relation to the enforcement instruction with respect to which the undertaking was provided, in the same manner as if the undertaking were an enforceable contract between the enforcement officer and the person who provided the undertaking.

Source: SK, section 20 (3)

- (6) Subject to subsection (4), an enforcement officer to whom an enforcement instruction is delivered must, promptly after receipt of the instruction and documents and records referred to in subsection (3), undertake the enforcement proceeding contained in the enforcement instruction if, in the opinion of the enforcement officer, the enforcement proceeding is
- (a) in accordance with this Act; and
 - (b) in accordance with any court order made in relation to it.

Source: SK, section 20 (1)

- (7) In this section, “**serial numbered goods**” has the same meaning as in section 34.

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Source: original

ULCC Comment: *The prescribed form of enforcement instruction referred to in subsection (2) should contain information fields that will call upon the judgment creditor to provide the following types of information to the extent that they are known to the judgment creditor:*

- (a) *The name and address of the judgment creditor;*
- (b) *The name and address of the law firm, if any, that is acting for the judgment creditor in giving the enforcement instruction to the enforcement officer;*
- (c) *If the name of the judgment creditor that appears on the judgment is different than the name of the judgment creditor delivering the enforcement instruction, there should be a reference to documentation that explains the change in the name of the judgment creditor;*
- (d) *The name of the judgment debtor as it appears on the judgment;*
- (e) *Any alias or alternative name used by the judgment debtor or by which the judgment debtor may be known;*
- (f) *The current address of the judgment debtor if it is known to the judgment creditor;*
- (g) *The amount recoverable on the judgment;*
- (h) *The enforcement proceeding or proceedings that the judgment creditor requests the enforcement officer to utilize; and*
- (i) *A description and location of exigible property of the judgment debtor that is known to the judgment creditor.*

A judgment creditor may deliver an enforcement instruction to an enforcement officer to utilize a specific enforcement proceeding or proceedings in relation to specified items of the judgment debtor's property. Alternatively, a judgment creditor may give an enforcement instruction that instructs the enforcement officer to utilize whatever enforcement proceedings are necessary to satisfy the amount recoverable.

The types of orders referred to in subsection (3) (a) that will preclude enforcement of the judgment include an order staying enforcement proceedings and a receiving order made under the Bankruptcy and Insolvency Act. The type of action under a statute that will preclude an enforcement proceeding includes the filing of an assignment into bankruptcy by the judgment debtor under the Bankruptcy and Insolvency Act.

The requirement of subsection (3) (d) that an enforcement instruction to be accompanied by a copy of the judgment to be enforced means that a judgment must be formally entered in the records of the court before an enforcement instruction may be given to an enforcement officer.

Under subsection (6), an enforcement officer may decline to undertake an enforcement proceeding if the enforcement officer receives an enforcement instruction that is not in accordance with this Act or a court order made with regard to the enforcement proceeding. Alternatively, the enforcement officer may apply to the court under section 7 for directions. The requirement in clause (a) that an enforcement proceeding must be in accordance with the Act includes the requirement imposed by section 10 that the exercise of any function or power must be done in good faith and in a commercially reasonable manner. If the enforcement instruction is a proper instruction and the enforcement officer declines to undertake a enforcement proceeding contained in the instruction, a judgment creditor may apply to the court under section 7 for an order directing the enforcement officer to undertake the enforcement proceeding.

Enforcement officer's authority

- 41** (1) Unless otherwise provided in another enactment, an enforcement officer has the power and authority to undertake enforcement proceedings contained in an enforcement instruction with respect to property located anywhere in the province/territory without the need for further authority from the court.

Source: SK, section 16 (1)

- (2) An enforcement proceeding taken by an enforcement officer is not invalid merely because it is carried out in the province/territory British Columbia at a place outside the area within which the enforcement officer is, under the laws of the province/territory British Columbia or under the terms of the enforcement officer's contract, authorized to operate.

Source: original

- (3) If an enforcement officer receives subsisting enforcement instructions from 2 or more instructing judgment creditors, the enforcement officer has the power and authority to undertake any or all of the enforcement proceedings contained in the enforcement instructions that are necessary to satisfy the amount recoverable under the judgments relating to each subsisting enforcement instruction.

Source: original

ULCC Comment: An enforcement officer's authority to take enforcement proceedings is derived from the judgment granted by the court and the enforcement instruction given to the enforcement officer by the judgment creditor. It is no longer necessary for a judgment creditor to request the court to issue a writ of seizure and sale or other form of a writ of execution before commencing an enforcement proceeding.

Supplementary enforcement instruction

- 42** (1) An enforcement instruction given to an enforcement officer may be amended or supplemented by a supplementary enforcement instruction.
- (2) A supplementary enforcement instruction must:
- (a) be in the prescribed form; and
 - (b) identify any enforcement proceedings that the enforcement officer is being requested to undertake or refrain from undertaking if a prior enforcement instruction instructed the enforcement officer to take the enforcement proceeding.
- (3) An instructing judgment creditor

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- (a) must, in any of the following cases, promptly give to the enforcement officer a supplementary enforcement instruction or withdraw the enforcement instruction if:
 - (i) all or any portion of the judgment is discharged by court order, payment of money or transfer of property,
 - (ii) enforcement proceedings with respect to the judgment are stayed by an order of the court, by an agreement or otherwise,
 - (iii) material circumstances affecting the enforcement of the judgment have changed, to the knowledge of the judgment creditor, since the giving of the enforcement instruction,
 - (iv) the instructing judgment creditor receives, from the enforcement officer, a written demand to deliver a supplementary enforcement instruction or withdraw the enforcement instruction; and
- (b) may, in any other case, deliver to the enforcement officer a supplementary enforcement instruction.

Source: *cf.* SK, section 18

ULCC Comment: Under subsection (2), the prescribed form should contain information fields that will call upon the judgment creditor to provide the following types of information:

- (a) The amount of any money or value of property referred to in subsection (3) (a) (i),
- (b) The amount recoverable that remains under the judgment,
- (c) A description of any circumstances referred to in subsection (3) (a) (iii),
- (d) Any changes to information provided by the judgment creditor in a previous enforcement instruction, and
- (e) Any other prescribed information.

Under subsection (3), examples of where the enforcement officer may, clause (a) (iv) [sic], demand a supplementary instruction include:

- (a) The enforcement officer receives information that the judgment debtor has become a bankrupt under the Bankruptcy and Insolvency Act, or
- (b) The enforcement officer becomes aware of a court order staying enforcement proceedings.

If a judgment creditor fails to deliver a supplementary instruction when required by the Act, the judgment creditor may be liable for damages under section 11 to any person who suffers loss or damage as a consequence of such a failure. The judgment debtor or other person with standing may make an application under section 7 for an order directing the judgment creditor to deliver a supplementary instruction to the enforcement officer and that all enforcement proceedings be stayed until the judgment creditor complies with the Act and the orders of the court.

Withdrawal of enforcement instruction

- 43** (1) An instructing judgment creditor may withdraw an enforcement instruction at any time by giving a notice in writing to the enforcement officer.
- (2) If an instructing judgment creditor withdraws an enforcement instruction under subsection (1):
- (a) the enforcement officer must release from seizure any property that had been seized under the authority of the enforcement instruction unless the enforcement officer has received an enforcement instruction from another instructing judgment creditor to seize that property of the judgment debtor, and
 - (b) the instructing judgment creditor is obligated to pay the enforcement officer any fees and expenses which the enforcement officer is entitled to receive for services provided in relation to actions taken by the enforcement officer under the enforcement instruction that is withdrawn.

Source: original

ULCC Comment: Self-explanatory.

Termination of enforcement instruction

- 44** (1) If an enforcement instruction requests an enforcement officer to undertake an enforcement proceeding or to do any act that is not in accordance with this Act or a court order, the enforcement officer may terminate the enforcement instruction by giving a notice in writing to the instructing judgment creditor.
- (2) An enforcement officer may terminate an enforcement instruction by giving a notice in writing to the instructing judgment creditor
- (a) when all enforcement proceedings that the enforcement officer is instructed to take under the enforcement instruction are completed;
 - (b) if the enforcement officer is unable to locate any property of the judgment debtor that will satisfy the enforcement instruction; or
 - (c) at any time after 6 months have elapsed from the date that the enforcement instruction or the last supplementary enforcement instruction relating to it was received, if no enforcement proceeding undertaken by the enforcement officer under the enforcement instruction is continuing.

Source: original

PART 8—OBTAINING DISCLOSURE

ULCC Introductory Comment: *An effective process for compelling a judgment debtor to disclose information with regard to the name or names under which a judgment debtor holds property as well as the description and location of such property is a crucial aspect of a judgment creditor's ability to enforce satisfaction of a judgment.*

BCLI Introductory Comment: Although there is some overlap between Part 8 and the two existing disclosure mechanisms contained in Rule 42 (23)–(33) and Rule 42A of the *Supreme Court Rules*, significant differences remain. These differences justify retaining the procedures set out in the *Supreme Court Rules*.

Compelling disclosure of information

- 45** (1) Subject to subsection (2), an instructing judgment creditor may do one or more of the following:
- (a) deliver an enforcement instruction requiring a judgment debtor to complete and return a questionnaire to the enforcement officer that discloses:
 - (i) all property in which the judgment debtor has an interest and any relevant information about that property including, without limitation, its whereabouts, any serial numbers or other identifying information by which the property can be identified, the name or alias under which it is registered, its estimated market value, the outstanding balance of any mortgage, lien or other encumbrance against the property and the identity of the person who holds the mortgage, lien or encumbrance,
 - (ii) all debts, accounts or other funds that are currently due and payable, or that will in the future become payable, to the judgment debtor, and any relevant information about each of those debts, accounts or other funds including, without limitation, the amount that is or will become payable, from whom it is payable, when it became or becomes payable and the name of the person to whom it is to be paid, and
 - (iii) any other information specified by an instructing judgment creditor that may reasonably assist the judgment creditor with the enforcement of a judgment against the judgment debtor including, without limitation, copies of any documents or records in the possession or control of the judgment debtor that contain information pertaining to the matters specified in sub-

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clauses (i) and (ii), or that are specified by the enforcement officer;

Sources: *cf.* NL, section 65; SK, section 6

- (b) deliver an enforcement instruction requiring a judgment debtor to attend before the enforcement officer, or before any person designated by the enforcement officer, at a set time and place for examination under oath to answer questions about any matter referred to in clause (a);

Source: *cf.* NL, section 69

- (c) apply to the court for an order requiring a judgment debtor or any other person the court considers appropriate to
 - (i) disclose to a person appointed by the court information that the disclosing person possesses about any matter referred to in clause (a), or
 - (ii) attend before the enforcement officer, or before any person designated by the court, at a set time and place for examination under oath to answer questions about any matter referred to in clause (a); and

Source: original

- (d) apply to the court for an order requiring a judgment debtor to provide an authorization, in form and content satisfactory to the court, authorizing the person to whom the authorization is addressed to disclose to the judgment creditor or the enforcement officer, as the court may direct, information contained in the recipient's records respecting the judgment debtor and any property in which the judgment debtor has an interest.

Source: original

- (2) Under subsection (1) (d), a court may make an order requiring a judgment debtor to provide an authorization addressed to:
 - (a) [insert name of the vital statistics registry in the enacting province/territory] the Vital Statistics Agency,
 - (b) [insert name of the motor vehicles registry in the enacting province/territory] the Insurance Corporation of British Columbia,

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- (c) [insert name of the medical services plan in the enacting province/territory] the Medical Services Plan.

Source: original

- (3) Nothing in subsection (1) requires a lawyer to disclose communications that are subject to lawyer–client privilege.

Source: original

- (4) If there is no person present during an examination who is authorized to administer an oath, then the enforcement officer may administer the oath.

Source: *cf. Court Order Enforcement Act, R.S.B.C. 1996, c. 78, section 77*

BCLI Comment: Enforcement officers are not authorized generally to administer oaths in British Columbia. This section, however, contemplates examinations taking place under oath before an enforcement officer. The proposed amendment gives enforcement officers a limited authority to administer an oath. It is modelled on an existing provision of the *Court Order Enforcement Act*, which gives the sheriff a limited authority to administer an oath to an appraiser, in circumstances where there is no other person present who can administer the oath.

ULCC Comment: Subsection (1) describes four methods that may be utilized to compel a judgment debtor to disclose information.

- (a) A questionnaire directed to a judgment debtor under clause (a) is the most expeditious and cost effective means of obtaining information from a judgment debtor. The judgment debtor's responses to the questionnaire are not under oath; however, it is an offence if a judgment debtor fails to complete the questionnaire or fails to provide complete and accurate information in response to the questionnaire.
- (b) If it is desirable to obtain answers from a judgment debtor under oath, clause (b) provides for examination of the judgment debtor under oath; however, this will be a more costly method of obtaining information from the judgment debtor.
- (c) If information with regard to the matters referred to in clause (a) is within the knowledge of persons other than the judgment debtor, clause (c) provides for an application to be made to the court for an order that the judgment debtor or other person that the court considers appropriate disclose the information or attend for examination under oath. Examples of an "other person" may include a spouse of the judgment debtor, a banker to the judgment debtor, or a judgment debtor's accountant or broker.
- (d) Judgment creditors may have difficulty ascertaining the legal name or other name that a judgment debtor has used in transactions involving property owned by the judgment debtor. Such information may be in the possession of various types of agencies that will not provide such information without the authorization of the person to whom the information pertains. Under clause (d), the court may order the judgment debtor to provide the required authorization. Subsection (2) contains examples of several government agencies that may have information about a judgment debtor that may provide assistance with regard to the enforcement of a judgment. A province/territory may consider

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permitting a court to require a judgment debtor to authorize the disclosure by such agencies to a judgment creditor of specified information. Clauses (a) to (c) are placed within square brackets to indicate that these agencies or government departments are optional examples.

Examination of corporate, partnership or firm debtor

- 45.1** An officer or director of a corporate judgment debtor, or a person liable to execution upon a judgment in the case of a partnership or firm judgment debtor, may, without an order, be examined upon the matters referred to in section 45 (1) (a).

Source: *Supreme Court Rules, Rule 42A (2)*

BCLI Comment: The purpose of this section is to remove all doubt about who can be examined in cases involving corporate, partnership, or firm debtors.

Time within which to respond to demand for disclosure

- 46** A judgment debtor who is required to complete and return a questionnaire under section 45 (1) (a) or to attend at an examination under section 45 (1) (b), or a person who is required to disclose information under section 45 (1) (c) or to authorize disclosure of information under section 45 (1) (d), must comply with that requirement within 10 days after receipt of the applicable demand or order or within such further time as the enforcement officer may stipulate or the court may order.

Source: *SK, section 7 (1)*

ULCC Comment: *Self-explanatory.*

Expenses

- 46.1** Before examining a judgment debtor or other person under this Part, a judgment creditor must tender any expenses that the person to be examined would be entitled to were he or she required to attend court as a witness.

Source: *Supreme Court Rules, Rule 42 (25)*

BCLI Comment: This section is intended to make it clear that a judgment debtor, or other person examined under this Part, is entitled to reasonable expenses, in the same manner as a witness attending court.

Consequences of failing to make a required disclosure

- 47** (1) On application, the court may do one or more of the following:
- (a) order a judgment debtor to provide to the enforcement officer complete and accurate information in response to

- (i) a questionnaire that the judgment debtor is required to complete under section 45 (1) (a), or
 - (ii) an examination that the judgment debtor is required to attend under section 45 (1) (b);
- (b) if a judgment debtor fails to complete a questionnaire that the judgment debtor is required to complete under section 45 (1) (a) or fails to attend an examination that the judgment debtor is required to attend under section 45 (1) (b) or if the court is satisfied that the response to a questionnaire or an examination is incomplete or erroneous, authorize the enforcement officer or a person appointed by the enforcement officer to enter any specified premises of the judgment debtor in which it is reasonable to assume are located records and documents disclosing the existence or location of property of the judgment debtor, and to
 - (i) examine those records and documents, or
 - (ii) take temporary possession of those records and documents and remove them from the premises for the purpose of making copies;
- (c) order a judgment debtor or other person referred to in section 45 (1) (c) to refrain from destroying, hiding or removing from the province any records or documents indicating the existence and location of property of the judgment debtor.

Source: SK, section 7 (3)

- (2) An order must not be made under subsection (1) (b) unless the court is satisfied that information, specified in the application, regarding property of a judgment debtor cannot otherwise be reasonably obtained.

Source: SK, section 7 (4)

- (3) A person commits an offence who, without lawful excuse,
 - (a) fails to comply with an order made under subsection (1) (a) or (c), or section 45 (1) (c) or (d); or
 - (b) fails to provide complete and accurate information in any questionnaire, examination or disclosure in accordance with a court order made under subsection (1) (a) or section 45 (1) (c).

Source: SK, section 7 (2)

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- (4) An offence is not committed under subsection (3) and an order must not be made under subsection (1) unless the requirement that a judgment debtor complete a questionnaire under section 45 (1) (a), the requirement that a judgment debtor attend an examination under section 45 (1) (b) or the requirement that a person disclose information or attend an examination under section 45 (1) (c), as the case may be, was personally delivered to the person to whom the requirement is directed.

Source: SK, section 7 (5)

ULCC Comment: Prosecution of an offence under subsection (3) is a last resort if the judgment debtor does not properly respond to a court order made under subsection (1).

Enforcement officer must disclose information to other judgment creditors who request

- 48** If information respecting a judgment debtor or property of a judgment debtor is disclosed to an enforcement officer under this Part, the enforcement officer must, on receiving a written request to do so, disclose requested information to another instructing judgment creditor who has a judgment against the judgment debtor.

Source: SK, section 8

ULCC Comment: The purpose of this section is to ensure that information gathered by an enforcement officer on behalf of one judgment creditor is made available to all instructing judgment creditors. A judgment debtor should not be put through the disclosure process by a series of judgment creditors and other instructing judgment creditors not be put to the expense of compelling disclosure of information that a judgment debtor has already disclosed to the enforcement officer.

Limitation

- 48.1** Unless the court otherwise orders, a person examined under section 45 or 45.1 must not be examined again for a year.

Source: *cf. Supreme Court Rules, Rule 42A (3)*

BCLI Comment: This section is meant to embody the policy described in the ULCC comment to section 48.

Costs

- 48.2** Unless the court otherwise orders, a person conducting an examination under this Part is entitled to recover the costs of the examination from the judgment debtor.

Source: *Supreme Court Rules, Rule 42A (8)*

BCLI Comment: The purpose of this section is to remove any doubts about the judgment creditor's entitlement to recover the costs of any examination conducted under this Part.

PART 9—ENFORCEMENT PROCEEDINGS AGAINST PERSONAL PROPERTY

Division 1—Personal Property Generally

ULCC Introductory Comment: This Part deals with the seizure and sale of personal property. It is divided into several Divisions. Division 1 applies generally to the seizure and sale of all forms of personal property except to the extent that a subsequent Division excludes the application of all or some part of Division 1 or creates special rules that apply to a specific type of personal property.

Definitions

49 In this Part,

“**exigible property**” means exigible property as defined in section 1 that is personal property;

“**license**” includes, without limitation, any right or interest, whether or not exclusive, that entitles the licensee to manufacture, produce or reproduce, sell or otherwise deal with property, to transport persons or property, to provide services, to perform or copy a work or to engage in an undertaking that is granted under any statutory authority, which right is transferable by a judgment debtor with or without the consent of the grantor of the license.

Source: original

Application of this Division

- 50** (1) Except as otherwise provided in this Part, all personal property of a judgment debtor, whether legal, equitable or statutory, is subject to seizure and disposition or to an order of the court including, but not limited to:
- (a) a chose in action;
 - (b) a license;
 - (c) a copyright, patent, trade-mark, industrial design, trade secret or other form of intellectual property; and
 - (d) a beneficial interest in a trust.
- (2) Unless otherwise provided in this Part, this Division applies to enforcement proceedings under this Part.

Sources: *cf.* AB, section 43; NL, section 70 (1)–(2); SK, section 22 (1)

ULCC Comment: Self-explanatory.

Enforcement officer entitled to seize sufficient exigible property

- 51** Except as otherwise provided in this Act, when an enforcement officer receives enforcement instructions from an instructing judgment creditor with regard to a judgment debtor, he or she is entitled to seize sufficient exigible property of the judgment debtor that when sold or otherwise disposed of by the enforcement officer will satisfy, in whole or in part:
- (a) the amount recoverable under the judgments of any instructing judgment creditor with regard to that judgment debtor; and
 - (b) the amount of any claim known to the enforcement officer that must be paid out of a distributable fund constituted under Part 14 in priority to the eligible claims of the instructing judgment creditors referred to in clause (a).

Source: *cf.* SK, section 23 (1)

ULCC Comment: An enforcement officer's authority to seize a judgment debtor's personal property is derived from this Act upon receiving enforcement instructions from a judgment creditor. It is no longer necessary to request the court to issue a writ of execution to give an enforcement officer authority to seize and sell a judgment debtor's personal property. In section 1 (1), "exigible property" is defined as property that is subject to an enforcement charge.

An enforcement officer may seize exigible property, whose value at a sale conducted by an enforcement officer, may exceed the amount recoverable. This may arise in the following examples:

- (a) *The seized property is the only exigible asset that the enforcement officer can find with sufficient value to satisfy the amount recoverable, or*
- (b) *It would not be commercially reasonable to expect the enforcement officer to seize and sell many items of small value, if the judgment could be satisfied by the seizure of one item despite the fact that the price that the one item may bring at an enforcement officer's sale will exceed the amount recoverable.*

Any surplus remaining after paying out the amount recoverable on the judgments of all instructing judgment creditors is payable to the judgment debtor.

Methods of seizure by an enforcement officer

- 52** (1) An enforcement officer is entitled to seize exigible property of a judgment debtor:
- (a) if property is tangible property, subject to subsection (2),
 - (i) by taking physical possession of property;
 - (ii) without taking immediate physical possession, by giving a notice of seizure at the place where the property is located to

- (A) the judgment debtor or an adult member of the judgment debtor's household, or
- (B) an adult person who is in possession or control of the property;
- (iii) without taking immediate physical possession, by posting a notice of seizure to a conspicuous place on the property or in a conspicuous place in close proximity to the seized property;
- (b) if property is intangible property other than an account under Division 4, a security or securities entitlement under Division 5 or a license, by giving a notice of seizure
 - (i) to the judgment debtor, or
 - (ii) to the person whose obligation comprises the property;
- (c) if property is an account, by effecting seizure under Division 4;
- (d) if property is a security or security entitlement, as those terms are defined in Division 5, by effecting a seizure under Division 5;
- (e) if property is intellectual property, by effecting seizure under Division 6;
- (f) if property is a license, other than a license of intellectual property, by giving a notice of seizure to the judgment debtor and the licensor;
- (g) if property is a license of intellectual property by giving a notice of seizure to the judgment debtor, the licensor and if appropriate to the office in which the intellectual property is registered;
- (h) if property is a negotiable instrument, by taking possession of the instrument;
- (i) if property is a fixture or crops, by giving a notice of seizure to the judgment debtor and the owner of the land to which the fixture is affixed or on which the crops are growing;
- (j) by any other method that is ordered by the court.

Sources: *cf.* AB, section 45; NL, section 75; SK, section 25

- (2) An enforcement officer must not seize personal property of a judgment debtor if the seizure interferes with the possession, or a right to possession, of a person that was lawfully acquired before the creation of the enforcement charge on the property.

Source: original

- (3) If an enforcement officer effects the seizure of a license that contains a provision that the license is or may be terminated by or by reason of its seizure, such a provision is not effective and an enforcement officer is entitled to maintain the seizure of the license despite that provision.

Source: original

- (4) If it is subsequently determined under Part 12 that one or more of the items of property seized under subsection (1) is exempt property or is not required to satisfy the amount recoverable under the judgments of the instructing judgment creditors, and the property has not been disposed of by the enforcement officer, the property must be released from seizure by the enforcement officer as soon as practicable after the determination is made.

Source: original

- (5) In this section, “**intellectual property**” has the same meaning as in section 126.

Source: original

***ULCC Comment:** In this Part, exigible property of the judgment debtor means personal property of the judgment debtor that is subject to an enforcement charge including property held in joint tenancy whether or not the property is in the possession of the judgment debtor. Clause (a) applies to tangible personal property. Subclause (ii) applies if it is not practicable for the enforcement officer to take immediate physical possession of seized property. Under paragraph (B), an adult person may be an employee of the judgment debtor or a custodian of the judgment debtor’s property. Subclause (iii) applies if an enforcement officer is unable to take immediate physical possession of seized property and there is nobody in possession or control under subclause (ii) to whom a notice of seizure can be given.*

Under clause (b), intangible property includes a chose in action.

With regard to clause (d), Division 5 provides a complete code in respect of the seizure of a security or security entitlement as those terms are defined in Division 5.

With regard to clause (i), Division 2 contains specific provisions with regard to the severance or sale of fixtures and crops.

Clause (j) enables the court to make an order with regard to the method of seizing forms of personal property that do not readily fit into the preceding clauses. Examples may include foreshore leases and water lots.

Under subsection (2), an enforcement officer must not take physical possession of personal property of the judgment debtor that is in the possession of a third party if taking physical possession will interfere with the possession or right to possession of the third party that was lawfully acquired before the creation of an enforcement charge on the property. For example, if the judgment debtor has leased the property to a third person or has sold the property to a third person under a contract of sale, taking physical possession of the

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property would interfere with the rights of the lessee or buyer respectively. In these circumstances, the enforcement officer may seize the lessor's or seller's interest under Division 3 of this Part.

If a judgment debtor has an immediate right to possession of property in the possession of a third party, section 54 applies.

In subsection (3), exempt property is defined in section 1. If, in the circumstances described in subsection (3), the property is sold by an enforcement officer and there are excess proceeds of sale, section 184 (1) (i) provides that the balance remaining in a distributable fund is paid to the judgment debtor or person who is otherwise entitled to the funds.

If a notice of seizure is not given to the judgment debtor at the time of seizure, section 62 requires an enforcement officer to give the judgment debtor a notice of seizure as soon as practicable after the seizure.

Seizure powers of enforcement officer

- 53** (1) Subject to subsection (2), for the purpose of carrying out a seizure of exigible property under this Part, an enforcement officer:
- (a) is entitled to enter a location or premises occupied by the judgment debtor to carry out a seizure of a judgment debtor's property;
 - (b) who has reasonable grounds to believe that property of the judgment debtor is located on premises of a person other than the judgment debtor, may, after giving notice to the owner or occupant of the premises, enter the premises to carry out the seizure of the judgment debtor's property and remove the seized property;
 - (c) is entitled to use reasonable force to gain access to a location or premises referred to in clause (a) or (b) to carry out a seizure of a judgment debtor's property;
 - (d) who gained lawful entry to a location or premises referred to in clause (a) or (b) to carry out a seizure of a judgment debtor's property, is entitled to gain entry by any means that are reasonable in the circumstances to any interior room, enclosure or container within the location or premises;
 - (e) who used force to gain entry to a location or premises referred to in clause (a) or (b) must make the location or premises reasonably secure before leaving; and
 - (f) is entitled, at or after the time of seizure of a judgment debtor's property, to take possession of, and remove the property from the location or premises where the seizure occurred.
- (2) An enforcement officer may not enter or use force for the purposes of gaining access to a residence, unless the enforcement officer does so in accordance with
- (a) permission granted by the occupant of the residence; or

- (b) an order of the court.

Sources: *cf.* AB, section 13; NL, section 76; SK, section 26

ULCC Comment: *This section describes an enforcement officer's general powers to seize personal property. With regard to those forms of personal property that are dealt with in one of the subsequent Divisions of this Part, an enforcement officer may have additional powers of seizure. For example, an account owing to a debtor may, under Division 4, be seized by delivering a notice of seizure to the account debtor.*

This section does not entitle an enforcement officer to conduct a search of the judgment debtor's person to find exigible property in the form of jewels or money that may be located on the person.

Property in possession of or under control of third parties

- 54** (1) If a judgment debtor has an immediate right to possession of exigible property, an enforcement officer may seize and remove that property from the possession of a person who:
- (a) acquired the property or the right to possession of the property subject to the enforcement charge;
 - (b) is a gratuitous bailee or custodian of the property who is in possession with the consent of the judgment debtor; or
 - (c) subject to section 57, is a landlord of the judgment debtor who exercised a right of distress in respect of property of the judgment debtor.
- (2) Despite section 52 (2), and subject to Part 11, an enforcement officer is entitled to seize and remove exigible property that is co-owned by a judgment debtor even though, at the time of seizure, the property is in the possession of or is subject to the right of possession of a co-owner other than the judgment debtor.
- (3) A third party referred to in subsections (1) or (2) must:
- (a) do whichever of the following is applicable:
 - (i) immediately deliver the property to the enforcement officer, or
 - (ii) if the property is not at the location where a copy of the notice of seizure is given to the third party, inform the enforcement officer of the place at which the enforcement officer may take physical possession of the property and take reasonable steps to ensure that the property remains at that place until the enforcement officer takes possession of the property; and
 - (b) comply with the direction of the enforcement officer to do any one or more of the following:

- (i) immediately take any action that is necessary to transfer the property to the enforcement officer,
 - (ii) take or refrain from taking any action in relation to the property as directed by the enforcement officer, and
 - (iii) if the third party is, as against the judgment debtor, entitled to retain the property, or if the third party does not have possession or control of the property, inform the enforcement officer of that fact and that, as a result, the third party is not required to comply with subclauses (i) and (ii) of this clause.
- (4) A direction given by an enforcement officer under subsection (3) (b) (i) or (ii), is not binding on a person who is in possession of the property, other than a third party referred to in subsection (2), to the extent that the directions are inconsistent with possessory rights of the third party that arose before the enforcement charge charged the property.
- (5) If a person complies with a direction given by an enforcement officer made under this section, the enforcement officer must compensate that person for expenses reasonably incurred by the third party in compliance with that direction.
- (6) If a person declines to comply or continue to comply with a direction given by an enforcement officer under subsection (3) (b) (ii), the third party must immediately surrender and deliver up possession of the property to the enforcement officer.
- (7) If an enforcement officer seizes and removes exigible property of a judgment debtor from the possession of a person other than the judgment debtor, that person is discharged from any responsibility that the person may have had to hold the property for, or to return it to, any person.
- (8) If an enforcement officer seizes and removes exigible property of the judgment debtor from the possession of a person other than the judgment debtor and the enforcement officer is subsequently satisfied that the person has a right to retain the property, the enforcement officer must revoke the seizure and release the property to that person.
- (9) If an enforcement officer seizes and takes possession of exigible property of the judgment debtor from the possession of a person other than the judgment debtor and that person does not assert any claim to possession of the seized property as soon as practicable after the seizure of the property, the enforcement officer is not liable for any pecuniary loss suffered by that person.

Sources: SK, section 25 (2); *cf.* AB, section 44; NL, section 74

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ULCC Comment: The term “exigible property” is defined in section 49 as meaning property of the judgment debtor, including property held in joint tenancy, whether or not owned or in the possession of the judgment debtor that is subject to an enforcement charge. Co-owned property and the rights of co-owners in respect of seized property are dealt with more extensively in Part 11.

Licenses

- 55
- (1) When an enforcement officer seizes a judgment debtor’s right under or interest in a license referred to in section 52 (1) (f), the enforcement officer may dispose of it only in accordance with the terms and conditions under which the license was granted or that otherwise pertain to it.
 - (2) If it is a term of a license that the license may not be transferred without the consent or agreement of the licensor, the licensor must not unreasonably withhold his or her consent or agreement to a sale, transfer or other disposition by the enforcement officer who effected the seizure of the license.
 - (3) If a licensor refuses to consent or agree to a transfer of a license by an enforcement officer who effected the seizure of the license, the enforcement officer may:
 - (a) release the seizure; or
 - (b) apply to the court with notice to the licensor for an order requiring the licensor to consent or agree to the transfer of the license.
 - (4) On an application made under subsection (3), after considering the reason why the licensor has refused to consent or agree to the transfer of the license and the interests of the instructing judgment creditors including whether or not the judgment debtor has other property from which the amount recoverable under the judgments to which the seizure relates may be satisfied, the court may order that the licensor consent or agree to a transfer of a license with or without conditions.

Source: original

ULCC Comment: If a license provides that it is not transferable, subsections (2) to (4) do not apply. If a license provides that it is transferable subject to the consent or agreement of the licensor, and the proposed transferee is a competitor, for example, the licensor may have a good reason for not consenting to a transfer. If refusal appears to be arbitrary or the judgment debtor does not appear to have any other property from which the judgments of the instructing judgment creditors may be satisfied, the court may be persuaded to override a refusal to consent or agree to a transfer.

Products of aquaculture

- 56
- (1) In this section,
“**aquaculture**” means the cultivation of plants and animals that, at most stages of their development or life cycles, live in an aquatic environment;

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“fish” means fish, including shellfish and crustaceans and marine mammals;

“products of aquaculture” includes plants, fish and animals that

- (a) are in their unmanufactured state,
- (b) are in the possession of a person whose business or occupation is aquaculture, and
- (c) at most stages of their development or life cycles, live in an aquatic environment.

Sources: NL, section 2 (1) (c), (v), and (pp); cf. *Bank Act*, S.C. 1991, c. 46, section 425 (1)

- (2) When an enforcement officer seizes products of aquaculture, sections 77 to 81 apply to the harvesting, harvesting expenses and sale of products of aquaculture by the enforcement officer.

Source: cf. NL, section 85

ULCC Comment: Products of aquaculture are personal property. If they are harvested and sold before they have matured, the proceeds of sale will likely be much less than if the sale or disposition is postponed until they have matured. In clause (a) of the definition of products of aquaculture, “unmanufactured state” means a product that has not been processed or canned.

Property subject to a landlord’s statutory right of distress

- 57 When an enforcement officer seizes exigible property of a judgment debtor that is subject to the right of distress by a lessor of land by virtue of the tenant’s default in payment of rent, the enforcement officer must neither maintain the seizure nor sell the property unless the enforcement officer has reasonable grounds to believe that the price recoverable on the sale of the seized property will be more than sufficient to pay
- (a) the amount of rent owing at the date of seizure, to any maximum provided by [insert name of the tenancy legislation of the province/territory] to a maximum of one year’s rent; and
 - (b) the costs of seizure and sale.

Source: SK, section 25 (3)

ULCC Comment: If a province/territory does not have landlord and tenant legislation that protects the landlord’s right of distress against seizure of a tenant’s property by a judgment creditor, this section may be omitted. If a province/territory has landlord and tenant legislation that provides that a judgment creditor may only seize the property of a judgment debtor located on a landlord’s premises if any arrears of rent (usually to a maximum is one year’s arrears of rent) are paid to the landlord, this section should be included. Under the latter type of legislation, a judgment creditor is entitled to recover the amount paid to the landlord from the proceeds of execution; however, the requirement that a judgment creditor pay the landlord before proceeding with the seizure is a significant deterrent to seizing a judgment debtor’s prop-

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erty located on rented premises. This section overcomes this problem by permitting the enforcement officer to proceed with the seizure if the conditions stipulated in the section are satisfied. When an enforcement officer seizes personal property of a judgment debtor, the enforcement officer is required to:

- (a) ascertain whether the premises, where the seized property is located, are occupied by the judgment debtor as a tenant;
- (b) if so, ascertain from the landlord if there are any arrears of rent owing by the judgment debtor and, if so, the amount of the arrears; and
- (c) if there are arrears of rent owing, determine whether or not the price likely to be recovered on a sale of the seized property will likely be more than sufficient to pay the arrears of rent and the costs of the seizure and sale.

The enforcement officer may be able to make these determinations prior to making an actual seizure. If the determinations are not made until after the seizure of the property, and the enforcement officer determines that the likely proceeds of a sale will not be sufficient, the enforcement officer must release the seizure.

If the enforcement officer maintains the seizure and sells the seized property, the landlord has a claim for payment from the distributable fund under Part 14 that ranks with judgment creditors who have an eligible claim notwithstanding that the landlord has not reduced his or her claim for arrears to a judgment against the judgment debtor. The landlord's claim is limited to the proceeds in the distributable fund that are attributable to the sale of the judgment debtor's property that was seized from the landlord's premises. The landlord's claim is also limited to the arrears of rent for the period (normally one year) specified in the landlord and tenant legislation of the province or territory.

A coincidental amendment to landlord and tenant legislation of the province/territory will be necessary to remove any current obligation that requires an enforcement officer to pay arrears of rent to the landlord prior to seizure of a judgment debtor's property. The legislation should continue to specify

- (a) whether or not a landlord is entitled to any special preference or with regard to a claim for arrears of rent; and
- (b) if so, the maximum period for which a preference may be claimed by the landlord.

BCLI Comment: Section 1 of the *Commercial Tenancy Act*, R.S.B.C. 1996, c. 57 is an example of the type of legislation discussed in the ULCC Comment. Section 1 provides that "No chattels being in or on any land that is or shall be leased for life or lives, term of years, or at will, or otherwise, are liable to be taken by virtue of any execution, unless the party at whose suit the said execution is sued out, before the removal of such chattels from the premises, by virtue of such execution or extent, pays to the landlord of the premises or the landlord's bailiff such sum of money as is due for rent for the premises at the time of the taking of the chattels by virtue of the execution, if the arrears of rent do not amount to more than one year's rent; and in case the said arrears exceed one year's rent, then the party at whose suit such execution is sued out, paying the said landlord or bailiff one year's rent, may proceed to execute his or her judgment, as he or she might have done heretofore; and the sheriff or other officer is empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money." Instead of attempting to amend the archaic language of section, the provision should simply be repealed. The new rule, which in substance preserves a commercial landlord's priority to arrears of rent (up to a maximum of one year's rent), will be located in this section and section 184 of the Uniform Act.

Property subject to exclusive possession order under family property legislation

- 58** If an enforcement officer seizes exigible property of a judgment debtor that is subject to an order for exclusive possession under [Insert title of family property legislation in the enacting province/territory], the enforcement officer may only maintain the seizure and proceed with the enforcement proceeding if the order for exclusive possession was made after the creation of an enforcement charge that is being enforced in the enforcement proceeding.

Source: *cf.* SK, section 25 (9)

ULCC Comment: Family property legislation in many provinces and territories provides that the court may make an order giving exclusive possession of family property to one of the spouses. Such orders often relate to both real and personal property. With respect to land, family property legislation usually provides that an order for exclusive possession may be registered against an interest in land. The priority between such an order and other interests in land is normally determined either in accordance with rules found in the family property legislation or in accordance with priority rules that apply to interests in land generally. In many provinces and territories, the family property legislation is silent with regard to the priority between an order for exclusive possession of personal property and other interests in personal property. This section creates a priority rule. Each enacting province and territory should review its family property legislation with regard to the priority between an order for exclusive possession of personal property and other interests. The effectiveness of exclusive possession orders will be significantly enhanced if provinces and territories enact legislation that

- (a) permits an exclusive possession order to be registered in the registry prescribed under this Act; and
- (b) provides that upon registration, subsequently registered interests are subordinated to a registered order for exclusive possession.

Until provision is made for the registration of orders for exclusive possession in the registry, this section will apply. If an order for exclusive possession exists and an enforcement officer seizes property that is subject to the order, the onus is on the spouse in whose favour an order was made to satisfy the enforcement officer that the order was made prior to the registration of a notice of judgment giving rise to the enforcement charge that is being enforced. Normally, this would be done by providing the enforcement officer with a copy of the order.

BCLI Comment: A court may make an order for exclusive occupancy of the family residence or for exclusive use of all or part of the personal property at the family residence under section 124 of the *Family Relations Act*, R.S.B.C. 1996, c. 128. Orders made under section 124 are interim orders, which are meant to provide temporary property relief. Unlike family property legislation in other provinces, the *Family Relations Act* does not authorize the registration of such orders in either the land title office or the personal property registry. Since registration of exclusive possession orders is not a practice that is current in British Columbia, there is no need for a dedicated priority rule dealing with them in the British Columbia legislation implementing the Uniform Act.

Appointment of bailee to hold seized property

- 59** If an enforcement officer seizes exigible property without taking physical possession of it, the enforcement officer may appoint any person including the

judgment debtor to hold the seized exigible property as the enforcement officer's bailee if the person signs a written undertaking to act as bailee.

Sources: *cf.* NL, section 78 (2); SK, section 25 (6)

ULCC Comment: Under section 52, an enforcement officer may seize personal property without taking physical possession and removing the property from the location where the seizure occurred. In some circumstances, it may not be practical for the enforcement officer to immediately remove the seized property from the location where it was seized. In these circumstances, the enforcement officer may appoint a person to be a bailee of the enforcement officer. If the person declines to serve as a bailee, the enforcement officer must either remove the seized property or take other steps to protect the seized property such as placing a deputy or agent in possession of the property.

Obligations of bailee appointed by enforcement officer

- 60** (1) A person who is a bailee of property under section 59:
- (a) must hold it as a bailee of the enforcement officer subject to the terms and conditions contained in the written undertaking signed by the bailee;
 - (b) is subject to the obligations of a bailee of property for value at common law; and
 - (c) must deliver the property to the enforcement officer on demand of the enforcement officer.
- (2) A person who is a bailee of property under section 59 may terminate the bailment on giving reasonable notice to the enforcement officer and surrendering possession of the property to the enforcement officer.

Source: *cf.* NL, section 78 (3)

ULCC Comment: At common law, a bailee must use the care that a careful, vigilant person would use in relation to his or her own property of a similar nature. A bailee is responsible for the negligence of himself or herself and his or her agents or employees and for their fraud or malice if their acts are done within the scope of their employment. A bailee is not an insurer of the property; however, if the property is lost, stolen, or damaged, the onus is on the bailee to prove that he or she was not negligent.

Bailee entitled to costs incurred in preserving and protecting property

- 61** (1) A person who is a bailee of property under section 59, other than the judgment debtor, is entitled to reasonable costs incurred in
- (a) preserving and protecting the property; and
 - (b) delivering the property to the enforcement officer.

Source: SK, section 25 (8)

- (2) If a person who is a bailee of property under section 59 is the judgment debtor, the enforcement officer may agree, as a term of the bailment agreement, to compensate the judgment debtor with regard to reasonable costs incurred in
 - (a) preserving and protecting the property; and
 - (b) delivering the property to the enforcement officer.

Source: original

ULCC Comment: If the bailee is the judgment debtor, there is no entitlement to compensation for costs incurred by the bailee. However, there may be circumstances when an enforcement officer decides that a judgment debtor should be compensated for reasonable out-of-pocket expenses. For example, a judgment debtor may need to incur heating or refrigeration costs in order to preserve and protect the property.

When notice of seizure must be given to the judgment debtor and others

- 62** (1) Unless a notice of seizure is given to a judgment debtor at the time of a seizure by an enforcement officer, a notice of seizure of the judgment debtor's property must be given to the judgment debtor as soon as practicable after the seizure of property.
- (2) If property of a judgment debtor is seized and removed from the possession of a person other than the judgment debtor, the enforcement officer must give a copy of the notice of seizure to such person at the time of the seizure or as soon as practicable after the seizure.

Sources: AB, section 45 (3); NL, section 75 (2)

ULCC Comment: Under section 52, an enforcement officer may seize a judgment debtor's property when the judgment debtor is not personally present. In such cases, a copy of the notice of seizure must be given to the judgment debtor as soon as practicable after the seizure.

Irregularities

- 63** (1) A seizure or disposition of property by an enforcement officer under this Part is not invalidated by an irregularity in
 - (a) a notice of seizure, demand for delivery, direction, statement, enforcement instruction or registration of a notice of judgment creating an enforcement charge that is being enforced by the enforcement officer; or
 - (b) the procedure by which the seizure or disposition is carried out.

Sources: NL, section 77 (1); *cf.* SK, section 23 (3)

- (2) Despite subsection (1), if the court is satisfied that a person is or is likely to be prejudiced by an irregularity in the procedure by which the seizure was carried out or the disposition of the seized property is proposed to be conducted, the court may
- (a) order that the seized property be released from seizure by the enforcement officer; or
 - (b) give directions with regard to the proposed disposition of the seized property.

Source: NL, section 77 (2)

ULCC Comment: The irregularities referred to in subsection (1) are those such as typographical errors in names, addresses, or dates that do not have the effect of misleading anyone. These types of irregularities should not have the effect of invalidating a sale of seized property that is otherwise valid. A proposed sale is not invalidated unless a person affected by the irregularity satisfies the court that he or she is or is likely to be prejudiced by the irregularity. If a defect in the registration of a notice of judgment is seriously misleading, the effect of section 33 (1) (e) (which incorporates section 43 (7) of the Personal Property Security Act (British Columbia)) is that the registration of the notice of judgment is invalid.

Method of disposition to realize upon value of seized property

- 64** (1) Subject to section 10, an enforcement officer must, unless the court orders otherwise, dispose of seized property in the manner that the enforcement officer, acting reasonably, considers offers the best opportunity to maximize the proceeds that may be anticipated from a disposition of the seized property by the enforcement officer.

Source: cf. SK, section 66 (1)

- (2) On application, the court may delay the disposition of seized property if the court is satisfied that the method of disposition selected by the enforcement officer is unlikely to attract an offer to purchase the property at a price that could be obtained by another method of disposition or by utilizing the same method of disposition at a later time.

Source: original

- (3) Unless the court orders otherwise, any judgment creditor may bid at a sale conducted by the enforcement officer and purchase the seized property.

Source: cf. PPSA, section 59 (13)

ULCC Comment: The range of methods of disposition of seized property includes but is not limited to public auction, sealed tenders, and a private sale. With regard to some types of property, there may be an organized market that handles large volumes of transactions. In such cases, the enforcement officer may realize upon the value of the seized property by selling it in that market. Under section 13 (2), an enforce-

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ment officer may use assistance and advice, including the paid assistance and advice of agents, brokers, or advisors, in order to carry out a sale of seized property.

If an enforcement officer wishes to proceed with a sale of seized property in circumstances when a proposed sale is unlikely to bring the best price, this section reverses the common law rule that would require an enforcement officer to apply to the court for the issuance of a special form of writ of execution. Under subsection (1), no such special authority is required; however, this subsection imposes a duty on an enforcement officer to dispose of seized property in a manner that offers the best opportunity to maximize the proceeds from the disposition of the seized property. In addition, section 10 also imposes a duty on an enforcement officer to act in good faith and in a commercially reasonable manner. If there is any disagreement with the manner or timing of a proposed disposition of seized property by an enforcement officer, subsection (2), places the onus on the judgment debtor or other affected person to make an application to the court.

Notice of disposition—redemption period

- 65** (1) At least days [Insert the number of days that is consistent with the comparable PPSA of the province/territory. For example, in the BC PPSA, section 59 (6) provides for a 20 day notice period] before disposing of property seized under this Division, an enforcement officer who effects a seizure under this Part must give a notice of disposition in the prescribed form to:
- (a) the judgment debtor;
 - (b) any person who is known by the enforcement officer to be a co-owner of the property;
 - (c) any person with a security interest in the property if the security interest was perfected by registration under the *Personal Property Security Act* before the day on which the notice of sale is given to the judgment debtor, even though the security interest is subordinate to an enforcement charge being enforced by the enforcement officer;
 - (d) any person with a security interest in the seized property if that security interest was perfected by possession before the seizure of the property by the enforcement officer;
 - (e) any other person with an interest in the property who has given a written notice to the enforcement officer of that person's interest before the day on which the notice of sale is given to the judgment debtor; and
 - (f) any judgment creditor who has an enforcement charge on the seized property who has not delivered a subsisting enforcement instruction to the enforcement officer.

Sources: *cf.* PPSA, section 59 (6); SK, section 67 (1)

- (2) The notice of disposition referred to in subsection (1) must contain:

- (a) a description of the property to be sold;
- (b) a statement of the amount recoverable under the judgments of all instructing judgment creditors;
- (c) an estimate of the amount of other claims referred to in section 184 (1) that must be paid from the distributable fund before a distribution is made to judgment creditors with eligible claims under section 184 (1) (h);
- (d) a statement that, on payment of the amounts referred to in clause (b) and the claims referred to in clause (c), a person who is entitled to receive the notice may obtain release of the property from seizure; and
- (e) a statement as to the method of disposition to be utilized by the enforcement officer with respect to the disposition of the property.

Sources: SK, section 67 (2); *cf.* PPSA, section 59 (7)

ULCC Comment: With regard to subsection (1) (f), if a judgment creditor, who has not given a subsisting enforcement instruction to the enforcement officer, receives a notice of the proposed sale, the judgment creditor will be entitled to share in the distribution of the proceeds of disposition by delivering an enforcement instruction to the enforcement officer prior to a distributable fund being constituted. A distributable fund is constituted when the enforcement officer receives proceeds from an enforcement proceeding.

Release of seized property

- 66** Promptly after payment of the amounts referred to in section 65 (2) (d), the enforcement officer must release the property referred to in the notice of sale from seizure.

Source: SK, section 67 (3)

ULCC Comment: Self-explanatory.

Circumstances when notice of sale not required

- 67** An enforcement officer may sell exigible property seized under this Part without giving the notices mentioned in section 65 in any of the following cases:
- (a) the property is perishable, unsanitary or a hazard to health;
 - (b) the enforcement officer believes on reasonable grounds that the property will decline substantially in value if it is not disposed of immediately after seizure;
 - (c) the property is of a type that is to be disposed of by sale on an organized market that handles large volumes of transactions between many different sellers and many different buyers;

- (d) the seized property is personal property of which the cost of care and storage pending disposition of the property will be disproportionately large in relation to its value;
- (e) the seized property is unique or designed for a special purpose, and
 - (i) the enforcement officer receives an offer to buy the property at a reasonable price,
 - (ii) it is not probable that another reasonable offer will be received, and
 - (iii) interested persons have been given as much notice of the sale as is practicable in the circumstances;
- (f) each person entitled to receive a notice consents in writing to the sale;
- (g) a court on the application of the enforcement officer with or without notice to any person is satisfied that a notice is not warranted.

Sources: *cf.* PPSA, section 59 (17); SK, section 68

ULCC Comment: *This section is similar to the comparable section in PPSA legislation (section 59 (17) in the BC PPSA); however, comparable PPSA sections do not contain the equivalent of clause (e).*

Disposition of property not required to satisfy amount recoverable

- 68** If, after a seizure, the enforcement officer who conducted the seizure determines that there is property that is in excess of that required to satisfy the amount recoverable under the judgments of instructing judgment creditors and the amounts referred to in section 65 (2) (b) and (c), and before returning the excess property to the judgment debtor, the enforcement officer receives a further enforcement instruction to seize exigible property of the judgment debtor, the enforcement officer may retain the excess exigible property to satisfy the further enforcement instruction.

Source: original

ULCC Comment: *Self-explanatory.*

Purchaser's entitlement to a discharge of enforcement charges

- 69** A person who purchases personal property from an enforcement officer which is seized under this Part and who pays to the enforcement officer an amount equal to the lesser of
- (a) the amount recoverable on all judgments of all instructing judgment creditors; and

- (b) an amount that could reasonably be expected to be obtained on a sale conducted in an enforcement proceeding,

takes the judgment debtor's interest in the property free of any enforcement charge being enforced by the enforcement officer and any interest that is subordinate to such an enforcement charge and the enforcement charge of any judgment creditor who has an eligible claim under Part 14 with regard to the distributable fund constituted by the receipt of proceeds of sale from the seized property even though a judgment creditor does not receive full satisfaction of his or her judgment.

Source: *cf.* SK, section 70 (a)

ULCC Comment: *In the circumstances described in this section, a purchaser at a sale conducted by an enforcement officer who pays the lesser of the amounts described in clauses (a) and (b) takes the property free and clear of any enforcement charges against the property. If the purchaser pays the amount described in clause (b), the purchaser should take free of the enforcement charges because that is all that the property is worth at an enforcement officer's sale. If the purchaser comes within this section and a judgment creditor refuses to discharge the registration of his or her notice of judgment, on application by the purchaser, the court may order that the registration of the notice of judgment be discharged.*

The phrase in clause (b) "a price that could reasonably be expected to be obtained on a sale conducted as part of an enforcement proceeding . . ." will likely be a price that is less than the "fair market value" of the property.

The property purchased by a purchaser at an enforcement officer's sale remains subject to any security interests that have priority over an enforcement charge under this Act.

Protection of enforcement officer

- 70** (1) An enforcement officer is not liable for damages resulting from the seizure or disposition of property of a judgment debtor that is in excess of property required to satisfy the amount recoverable under the judgments of all instructing judgment creditors and all claims that must be paid out of a distributable fund under section 184 (1) before the eligible claims of judgment creditors under section 184 (1) (h), if the enforcement officer:
- (a) at the time of seizure, has reasonable grounds to believe that
 - (i) the property is exigible property of the judgment debtor; and
 - (ii) the seized property is required to satisfy the amounts referred to in this subsection; and
 - (b) as soon as practicable after he or she determines that the value of property seized by the enforcement officer or proceeds from the disposition seized property are in excess of that required to satisfy the amounts referred to in this subsection,
 - (i) releases the excess property from seizure, or

- (ii) pays the excess proceeds of disposition to the judgment debtor or person otherwise entitled.
- (2) Subject to section 161, an enforcement officer is not liable for any damages resulting from the seizure or disposition of property in accordance with this Act that is subsequently determined to be exempt property under Part 12 of this Act.
- (3) An enforcement officer is not liable for any damages resulting from the seizure or disposition of property in accordance with this Act if it is subsequently determined that the registration of the notice of judgment that created on the enforcement charge on the property was invalid.

Source: *cf.* SK, section 24

ULCC Comment: Under subsection (1), if an enforcement officer has reasonable grounds to believe that the seized property is the only property of the judgment debtor, after excluding exempt property, that will satisfy the amounts referred to in subsection (1), the enforcement officer is not liable for any damages as long as any excess proceeds of disposition are paid to the judgment debtor or person otherwise entitled.

Division 2—Fixtures and Crops

ULCC Introductory Comment: The term “fixture” is defined in section 1 (2) by incorporating the definition of that term from the Personal Property Security Act (PPSA) of the enacting province/territory. Most PPSA Acts do not define the term “fixture” except to the extent of excluding building materials from the scope of its meaning. Building materials that are essential to the integrity of a structure are excluded because if it were otherwise, a secured party seeking to enforce a security agreement or a judgment creditor seeking to enforce a judgment could destroy the integrity of the structure by removing some or all of the building materials. Subject to this exclusion, Personal Property Security Acts leave the term “fixture” to be defined by the common law. This Act takes the same approach.

The term “crops” is defined by section 1 (2) of this Act by incorporating the definition of that term from the PPSA of the enacting province/territory. Most PPSA Acts define “crops” to mean crops, whether matured or otherwise.

Division 1 of this Part applies to this Division except to the extent that its provisions are inconsistent with provisions in this Division.

Seizure of a fixture or crops

- 71** Subject to this Division, a fixture or crops may be seized and sold as personal property.

Source: SK, section 29 (1)

ULCC Comment: With regard to fixtures, at common law, when an item of personal property becomes affixed to the land, it becomes part of the land and it is no longer subject to enforcement proceedings as personal property. The common law rule is subject to an exception with regard to trade fixtures owned by a lessee or licensee. Under PPSA legislation, a personal property security interest can be given in relation to

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a fixture and a secured party may realize upon his or her security by seizing and severing the fixture from the land. Under this Act, registration of a notice of judgment creates an enforcement charge on personal property that has the same priority in relation to other interests in property as a perfected non-purchase-money security interest. The enforcement charge should be treated in the same manner as a security interest. Therefore, if the judgment to which a enforcement charge relates is not satisfied, an enforcement officer may seize and sever a fixture that is charged by an enforcement charge.

With regard to crops, at common law, growing crops that are sown by a person in possession of the land and intended to be reaped at maturity are regarded as personal property that is seizable under a writ of execution. Crops may be subject to a security interest under PPSA. If the owner of the land is not the judgment debtor, and crops are seized by an enforcement officer, the owner should be reimbursed for any damage caused by the removal of the crops.

Before a fixture or crops may be seized and severed or sold, they must be charged by an enforcement charge created under Part 5. The priority rules with regard to the priority of an enforcement charge on a fixture in relation to other interests are found in section 35 (7) to (9).

When fixtures may be seized and sold

- 71.1** (1) A fixture may be seized and sold as personal property
- (a) in the circumstances set out in subsection (2), or
 - (b) as authorized by the court.
- (2) A fixture that is charged by an enforcement charge may be seized and sold in accordance with this Part if
- (a) the fee simple interest in the land to which the fixture is affixed is not beneficially owned by the judgment debtor, and
 - (b) any interest in the fixture of a person who has an interest in the land is subordinate to the enforcement charge.

Sources: AB, section 53 (a)–(b); NL, section 86 (1) (a)–(b)

BCLI Comment: If a judgment debtor beneficially owns the land to which a fixture is affixed, then the judgment creditor may, in accordance with Part 10, enforce his or her judgment against the judgment debtor's land. Part 10 sets out the procedures for the sale of the judgment debtor's land. A sale of land under Part 10 would include fixtures.

Notice of intention to sever or sell

- 72** (1) An enforcement officer who seizes a fixture or crops must give each person who appears on the records of [insert the name of the land title or land registry office of the enacting province/territory] [the land title office] as having an interest in the land to which the fixture is affixed or the crops are growing at the time of the seizure a notice of intention to sever or sell the fixture or crops that contains

- (a) descriptions of the land, and the fixture that is affixed to the land or the crops that are growing on the land; and
- (b) a statement that the fixture or crops will be severed from the land unless payment is made to the enforcement officer on or before a day that is not less than 15 days after the day when the notice is given of an amount that is the lesser of
 - (i) amount recoverable under all the judgments to which the seizure of the fixture or crops relates, and
 - (ii) the market value of the fixture if it were severed from the land or the market value of the crops as crops.
- (2) Without limiting section 5, a notice of intention to sever or sell referred to in subsection (1) is sufficiently given to a person if it is sent by mail addressed to that person using the name and address that appears in those records referred to in subsection (1).
- (3) An enforcement officer must not sever a fixture or crops seized under this Division from the land to which the fixture is affixed or on which the crops are growing until at least 15 days after the day on which the notice of intention to sever or sell is given under subsection (1).

Sources: *cf.* AB, section 53 (c); NL, section 86 (1) (c); PPSA, section 36 (13)–(14); SK, section 29 (6)

ULCC Comment: *A notice of intention to sever or sell provides a person with an interest in the land with an opportunity to make an application to the court under section 73 for an order postponing the severance and sale of the fixture or crops and an opportunity to retain the fixture or crops under section 74.*

Application for order postponing severance

- 73** A person who is entitled to receive a notice of intention to sever or sell under section 72 may apply to the court for one or both of
- (a) an order postponing severance of a fixture or crops from the land; and
 - (b) the determination of an issue relating to the seizure of a fixture or crops.

Sources: AB, section 53 (e); NL, section 86 (1) (d); *cf.* PPSA, section 36 (15)

ULCC Comment: *Self-explanatory.*

Retention of a fixture or crops by person with a subordinate interest

- 74** (1) A person who has an interest in land that is subordinate to an enforcement charge under which a seizure is made under this Division may, before the

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fixture or crops are sold or severed from the land, retain the fixture or crops by paying to the enforcement officer who made seizure the amount referred to in section 72 (1) (b).

Sources: SK, section 29 (5); *cf.* AB, section 53 (g); NL, section 86 (1) (f); PPSA, section 36 (12)

- (2) On payment of the amount referred to in subsection (1):
- (a) a person who pays an amount that is equivalent to or greater than the market value of the fixture or crop becomes the owner of the fixture or crop subject to any security interest or lien that has priority over the enforcement charge;
 - (b) a person who pays an amount that is less than the market value of the fixture if it were severed from the land or the crop as a crop is deemed to have a security interest in the fixture or crop, to which the *Personal Property Security Act* applies, to the extent of the amount paid and interest thereon at the rate set for unpaid judgments, calculated from the date when the payment was made to the enforcement officer; and
 - (c) an enforcement charge referred to in subsection (1) under which the seizure was made no longer charges the fixture or crops.

Sources: *cf.* AB, section 53 (h); NL, section 86 (2)

ULCC Comment: A person whose interest in the land is subordinate to an enforcement charge should not be required to pay more than the market value of the fixture or crops to prevent the removal of a fixture or crops notwithstanding that on the distribution of a payment among eligible judgment creditors, the payment will not be sufficient to satisfy the amount of their judgments in relation to their respective enforcement charges.

Severance or sale

- 75** (1) If an enforcement officer severs a fixture from the land to which it is affixed or crops from the land on which they are growing, he or she must do so in a manner that causes no greater damage to the land and to other property situated on the land, and subjects the occupier of the land to no greater inconvenience than is necessarily incidental to the severance and removal of the fixture or crops.

Sources: *cf.* PPSA, section 36 (8); SK, section 29 (2)

- (2) If an enforcement officer sells a fixture or crops that have not been severed from the land, the person who buys the fixture or crops from the enforcement officer is subject to the obligations of an enforcement officer referred to in subsection (1).

Source: original

ULCC Comment: Self-explanatory.

Reimbursement for damage caused by severance and removal

- 76** (1) If a fixture or crops are severed from the land, a person, other than the judgment debtor, who had an interest in the land at the time of the seizure of the fixture or crops:
- (a) is entitled to reimbursement by the enforcement officer for damage to that person's interest in the land caused during the severance and removal of the fixture or crops; but
 - (b) is not entitled to reimbursement for diminution in the value of that person's interest in the land caused by the absence of the fixture or the need to replace it.

Sources: AB, section 53 (f); NL, section 86 (1) (e); PPSA, section 36 (9); SK, section 29 (3)

- (2) The amount of a reimbursement referred to in subsection (1) must be determined by
- (a) the enforcement officer upon the request of a person seeking reimbursement; or
 - (b) if the person does not accept the amount of reimbursement determined by the enforcement officer, the court on application by the person seeking reimbursement.

Source: SK, section 29 (4)

- (3) When an entitlement to reimbursement arises under subsection (2), the amount of the reimbursement paid by an enforcement officer is added to the costs of enforcement.

Source: original

- (2) The person entitled to reimbursement under subsection (1) may refuse permission to remove the goods until the enforcement officer or instructing judgment creditor has given adequate security for reimbursement.

Source: PPSA, section 36 (10)

- (3) The enforcement officer or instructing judgment creditor may apply to the court for one or more of the following orders:

- (a) determining the person entitled to reimbursement under this section;
- (b) determining the amount and kind of security to be provided by the enforcement officer or instructing judgment creditor;
- (c) designating a depository for the security;
- (d) authorizing the severance of the fixture or crops without the provision of security for reimbursement under subsection (2).

Source: PPSA, section 36 (11)

***ULCC Comment:** Under subsection (1) (a), an owner of a building, who is not the judgment debtor, is entitled to reimbursement for damage to, for example, walls and floors that occurs during the removal of a fixture that is a large and heavy piece of equipment but such person is not entitled to reimbursement for diminution of the value of that person's interest in the land caused by the removal of a fixture such as an escalator or an elevator and the need to replace it in order to make the premises usable by present occupants or attractive to future potential occupants.*

BCLI Comment: The proposed revisions give third parties who are entitled to reimbursement under this section some further protection. These provisions are taken directly from the equivalent section in the *Personal Property Security Act*.

No sale of crops before harvest except by court order

- 77** (1) Unless the court orders otherwise, if a judgment debtor has an undivided interest in crops, the enforcement officer may seize the crops and, without limitation, may do one or more of the following:
- (a) arrange for the harvest of the crops and divide them in proportion to the interests of the judgment debtor and any other person or persons;
 - (b) sell the crops and divide the proceeds in proportion to the interests of the judgment debtor and any other person or persons; or
 - (c) sell the judgment debtor's interest in the crops at a fair market price to another person or persons holding an interest in them.
- (2) In circumstances other than those referred to in subsection (1), and subject to subsection (3), an enforcement officer must not sell crops until they have been harvested.
- (3) On application, the court may make an order permitting the sale of crops that have not been harvested if the court is satisfied that the sale will be commercially reasonable.
- (4) For the purposes of determining whether a sale is commercially reasonable under this section, the court may
- (a) examine the terms of the proposed sale and compare them to the sale proceeds that would likely result if a sale takes place after harvest;

- (b) consider the risk that through the forces of nature there may not be any harvest if the sale is deferred; and
- (c) consider any other matter the court considers relevant.

Sources: *cf.* AB, section 52; NL, section 85; SK, section 29 (7)

ULCC Comment: Self-explanatory.

Judgment creditor may be required to provide security for harvesting expenses

- 78** Unless a judgment debtor undertakes to harvest crops seized by an enforcement officer, the enforcement officer may require the instructing judgment creditor, who delivered the instruction to seize the crops, to provide security for the payment of harvesting expenses that may be incurred by the enforcement officer.

Sources: AB, section 52 (d); NL, section 85 (d)

ULCC Comment: Self-explanatory.

Release of seizure if security for harvesting expenses not provided

- 79** If an enforcement officer has required a judgment creditor to provide security under section 78 and the judgment creditor does not provide the required security, the enforcement officer may release the crops from seizure.

Sources: AB, section 52 (e); NL, section 85 (e)

ULCC Comment: Self-explanatory.

Harvesting expenses are a first charge on proceeds of sale

- 80** (1) If crops seized under this Division are harvested by an enforcement officer, expenses incurred by the enforcement officer who made the seizure constitute a first charge on, and are payable out of, the proceeds realized from the disposition in priority to any other claim to or right in the crops or their proceeds, including, without limitation, a security interest, lien, charge, encumbrance, mortgage or assignment, whether or not arising under a statute.

Sources: AB, section 52 (f); NL, section 85 (f)

- (2) If any of the harvesting expenses incurred by an enforcement officer were paid by a judgment creditor, that portion of the charge to which the enforcement officer is entitled under subsection (1) that relates to those harvesting expenses vests in the judgment creditor who paid the expenses and

that charge has the same priority as it would have under subsection (1) were it held by the enforcement officer.

Sources: AB, section 52 (g); NL, section 85 (g)

ULCC Comment: Self-explanatory.

Marketing legislation

- 81** After seizing crops, an enforcement officer has the same rights and duties as the judgment debtor regarding the sale of the crops under any marketing legislation that is applicable to their disposition.

Sources: AB, section 52 (c); NL, section 85 (c)

ULCC Comment: Self-explanatory.

Division 3—Interest Under a Lease, Contract of Sale or Security Agreement

ULCC Introductory Comment: This Division provides for the seizure and disposition of either party's interest under a lease of personal property, a contract for the sale of personal property, or a security agreement.

Definition

- 82** In this Division, “**contract of sale**” means a contract under which the seller retains ownership of or title to the subject matter of the contract until a condition is met, but does not include a security agreement to which the *Personal Property Security Act* applies.

Source: SK, section 27 (9)

ULCC Comment: Self-explanatory.

Application of Division 1 to this Division

- 83** If there is a conflict between a provision in Division 1 and a provision in this Division, this Division prevails.

Source: original

ULCC Comment: Self-explanatory.

Seizure of lessor's, seller's or secured party's interest

- 84** (1) An enforcement officer may:
- (a) if a judgment debtor is a lessor, seize the lessor's interest, arising under a lease, in property in the possession of the lessee;

- (b) if a judgment debtor is a seller, seize the seller's interest, arising under a contract of sale, in property in the possession of the buyer;
- (c) if a judgment debtor is a secured party, seize the secured party's interest, arising under a security agreement, in property in the possession of the debtor.

Source: SK, section 27 (1)

- (2) A seizure under subsection (1) may be effected
 - (a) by giving a notice of seizure to:
 - (i) the lessee under a lease,
 - (ii) the buyer under a contract of sale, or
 - (iii) the debtor under a security agreement; or
 - (b) if a lease, contract of sale or security agreement constitutes chattel paper, by seizure of the chattel paper.

Source: cf. SK, section 27 (1)

ULCC Comment: A seizure under this section is effective when a notice of seizure is given to the lessee, buyer, or debtor as the case may be. Section 62 requires that a notice of seizure be given to a judgment debtor as soon as practicable after a seizure.

Section 1 (2) of this Act incorporates the PPSA definition of "chattel paper." Priority rules relating to purchasers of chattel paper are found in section 37.

Seizure includes payment obligation

- 85** When an enforcement officer makes a seizure referred to in section 84, any money payable to the judgment debtor under the lease, contract of sale or security agreement, as the case may be, must be paid to the enforcement officer for so long as the seizure remains in effect.

Source: cf. SK, section 27 (2)

ULCC Comment: This section makes it clear that when a seizure is made under section 84, the seizure applies to both the judgment debtor's property interest in the lease, contract of sale, or security agreement as well as the stream of payments that would but for the seizure be payable to the lessor, seller, or lender, as the case may be. Under section 13, an enforcement officer's powers include the power to assign a payment obligation to a third party for value.

Obligation of lessee, buyer or debtor to make payments to enforcement officer

- 86** (1) Subject to subsection (2), after a seizure referred to in section 84, the lessee, buyer or debtor to whom the notice of seizure is given must, for so

long as the seizure remains in effect, pay to the enforcement officer, all payments that are then due and payable to the judgment debtor and that subsequently become payable to the judgment debtor, under the lease, contract of sale or security agreement, as the case may be.

- (2) If an enforcement officer assigns a payment obligation referred to in section 85 the lessee, buyer or debtor to whom notice of the assignment is given must, for so long as the assignment remains in effect, pay to the assignee all payments that are then due and payable to the judgment debtor or that subsequently become payable to the judgment debtor under the lease, contract of sale or security agreement.

Source: original

ULCC Comment: Self-explanatory.

Enforcement officer may exercise same rights as lessor, seller or secured party

- 87** While the interests of a lessor, seller or secured party are held under seizure, the enforcement officer may exercise, in relation to the property to which the lease, sale or security agreement pertains and in relation to the lessee, buyer or debtor or in relation to any third party claiming an interest in the property, the same rights and powers that the lessor, seller or secured party had at the date of seizure or acquires before discharge of the seizure.

Source: SK, section 27 (5)

ULCC Comment: Self-explanatory.

Seizure of lessee's, buyer's or debtor's interest

- 88** (1) An enforcement officer may:
- (a) if the judgment debtor is a lessee, seize the lessee's interest, arising under a lease, in property in the possession of the lessee;
 - (b) if the judgment debtor is a buyer under a contract of sale, seize the buyer's interest, arising under the contract of sale, in property in the possession of the buyer;
 - (c) if the judgment debtor is a debtor under a security agreement, seize the debtor's interest, arising under the security agreement, in property in the possession of the debtor.
- (2) A seizure under subsection (1) is effected by giving a notice of seizure to:
- (a) the lessor under a lease;
 - (b) the seller under the contract of sale; or

(c) the secured party under the security agreement.

Source: original

ULCC Comment: This section applies to a true lease as well as a lease-to-purchase. A seizure under this section is effective when a notice of seizure is given to the lessor, seller, or secured party, as the case may be. Section 62 requires that a notice of seizure must be given to the judgment debtor as soon as practicable after a seizure.

Enforcement officer may exercise same rights as lessee, buyer or debtor

89 While the interests of a lessee under a lease, a buyer under a contract of sale or a debtor under a security agreement are held under seizure, the enforcement officer may exercise, in relation to the property to which the lease, contract of sale or security agreement pertains and in relation to the lessor, seller or secured party or in relation to any third party claiming an interest in the property, the same rights and powers that the lessee, buyer or debtor had at the time of seizure or acquires prior to discharge of the seizure.

Source: original

ULCC Comment: This section enables an enforcement officer to remedy any default under a lease, contract of sale, or security agreement if the judgment debtor could have remedied the default.

Effect of contractual provisions on seizure

90 An enforcement officer may effect and maintain seizure of the interest of a lessee, buyer or debtor referred to in section 88 even though it is a term of the lease, contract of sale or security agreement under which the lessee's, buyer's or debtor's interest in, or right to possession of, the property arose that the property may not be seized or that the lease, contract of sale or security agreement may be terminated by reason of a seizure of the property.

Source: SK, section 28 (1)

ULCC Comment: Many leases, sales contracts, and security agreements contain a clause that if the subject property is seized in enforcement proceedings against the lessee, buyer, or debtor, as the case may be, there is a deemed default by the lessee, buyer, or debtor. Upon such a default, the lessor, seller, or secured party, as the case may be, is entitled to terminate the contract and seize the property. At common law, the invocation of such an entitlement may be interpreted as terminating the seizure or rendering it illegal because maintaining the seizure interferes with the lessor's, seller's, or secured party's possessory right. The purpose of this section is to entitle the enforcement officer to seize and maintain a seizure despite the existence of the type of clause described above. Whether or not the enforcement officer can effectively realize on the value of the judgment debtor's interest in the property will depend on the application of the immediately following sections.

Alternatives if the lessor, seller or secured party seeks to exercise a contractual or statutory right to terminate judgment debtor's interest

- 91** When the interest in property of a lessee, buyer or debtor referred to in section 88 is seized and the lessor, seller or secured party seeks to exercise a contractual or statutory right to terminate the interest of the lessee, buyer or debtor in the property or to take possession of the property, the enforcement officer may do any or all of the following:
- (a) release the seizure, with or without conditions;
 - (b) apply to the court for an order maintaining the interest of the lessee, buyer or debtor in the property;
 - (c) in the case of seizure of the interest of a buyer or debtor, apply to the court for an order directing sale of the property by the enforcement officer.

Source: SK, section 28 (2)

ULCC Comment: Under clause (a), an enforcement officer may decide to release a seizure if he or she is satisfied that the proceeds that will likely be obtained at a sale by the enforcement officer would not be sufficient to warrant maintaining the seizure. Alternatively, a seizure may be released on the condition, for example, that the secured party will, in circumstances where the judgment debtor is in default under the security agreement, seize and sell the property and, after satisfying her or his claim, pay over any remaining balance to the enforcement officer. If the judgment debtor is a lessee, clause (c) does not permit an application to be made to the court for an order directing a sale of the property. In the case of a contract for sale or a security agreement, the prerequisite for making an order of sale is described in section 92.

Prerequisite for an order for sale

- 92** (1) Subject to subsection (2), on an application made under section 91 (c), the court may order that the property of a judgment debtor be sold.
- (2) An order for sale must not be made under this section unless the court is satisfied that the proceeds of the sale will exceed the total of
- (a) the present value of the amount owing to the seller or secured party under the contract of sale or security agreement; and
 - (b) the fees, taxable costs and expenses of the enforcement officer relating to the sale of the property.

Source: SK, section 28 (3)

ULCC Comment: This section protects the value of the seller's or secured party's interest in the property. The proceeds of sale constitute a distributable fund under Part 14; however, section 181 (2) provides that nothing in Part 14 shall be construed so as to prejudice any right to money based on an interest including a security interest if that interest has priority over the relevant enforcement charges.

If enforcement charge has priority over lessor or secured party's interest

- 93** If an enforcement charge that is being enforced against property in an enforcement proceeding under section 88, has priority over the lessor's, seller's or secured party's interest in that property, the enforcement officer may enforce the enforcement charge without regard to the lessor's, seller's or secured party's interest and sections 91 and 92 do not apply.

Source: original

ULCC Comment: Self-explanatory.

Division 4—Accounts Owing to the Judgment Debtor

ULCC Introductory Comment: This Division replaces the process known as garnishment of debts that are due or accruing due by an account debtor to a judgment debtor. The procedure with regard to the garnishment of debts varies among the provinces and territories. In most jurisdictions, the judgment creditor applies for a garnishing order or a garnishee summons that is issued by the court after cursory examination by court registry officials who ensure that the basic requirements of the garnishment process have been satisfied. The judgment creditor is responsible for arranging for service on the garnishee and the judgment debtor. If, at the time of service on the garnishee, there is still a debt that is due or accruing due from the garnishee to the judgment debtor, the garnishee is obliged to pay into court an amount that is the lesser of the amount of the debt and the amount stated in the garnishing order or garnishee summons. The judgment creditor must apply for payment out of court to satisfy his or her judgment. In some provinces/territories, a debt may also be seized under a writ of execution. The garnishment process has become encrusted with many technicalities and uncertainties.

A debt or an account that is due or accruing due by an account debtor to a judgment debtor is a form of personal property. As such, it should be subject to seizure by an enforcement officer in the same manner as other forms of personal property. However, accounts have some special characteristics that require special provisions that are found in this Division. In particular, an account owing to a judgment debtor that is salary or wages requires special provisions.

Attachment of debts by garnishment is no longer available under this Act. Similarly, garnishment before judgment is no longer available under this Act; however, a preservation order may be obtained prior to judgment under Part 4.

Application of Division 1

- 94** In the event of a conflict between a provision of Division 1 and a provision of this Division, the provision of this Division prevails.

Source: cf. SK, section 34 (5)

ULCC Comment: Self-explanatory.

Location of an account

- 95** For the purposes of this Division, an account is deemed to be located where it is recoverable.

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Source: SK, section 33

ULCC Comment: The term “account” is defined in section 1. Under this Act, property may only be seized by an enforcement officer if the property is located within the province/territory. An account is deemed to be located at the place where it is recoverable. There are two types of account debts, namely, ordinary debts and specialty debts. An ordinary debt is recoverable either where the parties agree that the debt is payable, or where the debtor resides. A specialty debt is created by a document under seal and it is recoverable at the place where the document under seal is located.

An enforcement officer is limited to carrying out his or her functions within the province/territory where he or she is appointed. If an account is not located in the province/territory, an enforcement officer does not have the authority to seize the account. The reason for this rule is that if it were otherwise, an account debtor could find himself or herself subject to conflicting demands issued by enforcement officers in different provinces/territories.

If an account is not located in a province or territory because it is not recoverable in the province/territory, an application may be made under Part 13 for the appointment of a receiver. If the court appoints a receiver under section 170, the court may give the receiver the power under section 173 (1) (g) to bring proceedings in the province/territory or elsewhere for the purpose of taking control and custody of the judgment debtor’s property including the recovery of accounts.

If a judgment debtor has a large number of accounts receivable or other accounts some of which may be located in another province or territory, an enforcement officer may purport to seize all of the accounts and, under section 13, assign the accounts to a factor for collection. The consideration that a factor is prepared to pay for a mass of accounts will depend on the factor’s assessment of how many of the accounts are collectible.

BCLI Comment: The purpose of this section is to provide a uniform rule governing jurisdiction to seize an account. For garnishment, the rules varied from province to province. In Saskatchewan, for example, the rule is similar to the one stated in this section—a debt must be recoverable in Saskatchewan in order to be subject to a garnishing order issued by a Saskatchewan court: see *Delaire v. Delaire*, [1996] 9 W.W.R. 469 (Sask. Q.B.). The courts of Ontario apply a different rule, which was stated in *McMulkin v. Traders Bank of Canada*, (1912) 26 O.L.R. 1 at 4 (Div. Ct.): “The Rule does not proceed upon any theory as to the *situs* of the cause of action to be taken in execution, but proceeds upon the theory that the creditor has a right to be subrogated to the position of his debtor, and to assert, for the purpose of enabling him to obtain satisfaction of the judgment, any right which the debtor himself could assert.” The British Columbia courts have followed the Ontario rule: see *Bank of Nova Scotia v. Mitchell*, (1981) 30 B.C.L.R. 213 at 219 (C.A.). In practice, application of these rules often leads to the same result, because a simple debt will be recoverable where the account debtor (or garnishee) is located. There is a potential for divergence of results in cases where, for example, a corporate account debtor is resident in more than one jurisdiction. The rule stated in section 95 accords better with the concept of seizure of an account debt. Under the current rules, jurisdiction to seize intangible property under a writ of execution (where permitted by statute) would turn on the *situs* of the intangible property. Further, the *McMulkin* rule has been criticized as being out of touch with the modern development of service outside a court’s jurisdiction as of right: see *Supreme Court Rules*, Rule 13. If the judgment creditor is “subrogated to the position of his debtor,” then the judgment creditor could conceivably rely on Rule 13 to seize debts that are recoverable outside British Columbia and that are payable by account debtors who are not resident in British Columbia. This would be an unfortunate result, as it could expose account debtors to multiple enforcement proceedings, each originating in different

provinces, and it could also create uncertainties over whether an account debtor has been validly discharged from the debt upon compliance with an out-of-province enforcement proceeding.

Seizure of an account

- 96** (1) An enforcement officer may seize an account including a deposit account referred to in section 98 or a future account by giving a notice of seizure to the account debtor.
- (2) Subject to Part 11, an enforcement officer may seize an account referred to in subsection (1) even though the account is owing to the judgment debtor and one or more other persons as co-owners.
- (3) When an account debtor is given a notice of seizure referred to in subsection (1) or a notice that an enforcement officer has assigned an account, the account debtor is deemed to have received from the judgment debtor a demand to discharge the account or in the case of a future account, an instruction to discharge the account when it becomes due and payable
- (a) in the case of a notice of seizure, by payment to the enforcement officer; and
 - (b) in the case of a notice that the enforcement officer has assigned an account, by payment to the assignee of the enforcement officer.
- (4) An enforcement officer who takes an action referred to in subsection (1) must, as soon as practicable thereafter, give a notice of seizure to the judgment debtor.
- (5) An enforcement officer who takes an action referred to in subsection (2) must, as soon as practicable thereafter, give a notice of seizure to the judgment debtor and any person known to the enforcement officer to be a co-owner of the account.
- (6) If an enforcement officer assigns an account to an assignee prior to giving a notice of seizure to the judgment debtor under subsections (4) or (5), the enforcement officer must, as soon as practicable thereafter, give a notice of seizure to the judgment debtor and any person known to the enforcement officer to be a co-owner of the account.

Source: *cf.* SK, section 34

ULCC Comment: Under the definition of “account” in section 1, an account is an obligation owing to a judgment debtor. The term “future account” is defined in section 1 as an account that becomes due and payable after its seizure. The definition of the term “account debtor” in section 1 includes a person who will become obligated to the judgment debtor under a future account.

An account is charged by an enforcement charge when the enforcement charge is created by registering a notice of judgment under Part 5. Seizure of an account is the means by which the account debtor becomes obliged to pay the account to either the enforcement officer or an assignee of the enforcement officer.

The period of time during which a notice of seizure is effective is determined by section 97. The ability to seize a future account will overcome many current problems that are associated with determining whether at the time when a garnishing order is issued there is a debt that is due or accruing due.

Under subsection (3), a notice of seizure is deemed to include a demand for payment of an account or future account. Different forms of a notice of seizure may be prescribed for seizing different types of property. The notice of seizure prescribed for the seizure of an account or future account should include a demand for payment of the account. The form may also include a statement that the judgment debtor is no longer entitled to receive or accept payment of a seized account or future account.

Effect of giving notice of seizure

- 97** (1) Subject to subsection (2) and section 98, a notice of seizure applies to
- (a) any account that is owing to the judgment debtor at the time that the notice of seizure is given to the account debtor; and
 - (b) any future account that becomes due and payable by the account debtor to the judgment debtor at any time within 12 months after the date on which a notice of seizure is given the account debtor.
- (2) Until the amount recoverable is satisfied, a notice of seizure applies to any future account that becomes due and payable after the date on which a notice of seizure is given to the account debtor without any limitation with regard to the period of time referred to in section (1) (b), if, at the time the notice of seizure is given to an account debtor
- (a) the account debtor is obligated to make a series of periodic recurring payments to the judgment debtor; or
 - (b) a legal relationship exists between the account debtor and the judgment debtor under which money becomes payable by the account debtor to the judgment debtor.

Source: original

ULCC Comment: *The definition of “future account” in section 1 requires that a legal relationship must exist between an account debtor and the judgment debtor at the time when the notice of seizure or notice of assignment is given to an account debtor. This requirement precludes a judgment debtor from giving a notice of seizure to all persons with whom the judgment debtor may enter into a contract within the period of the next 12 months.*

Under subsection (2) (a), if an account debtor is obligated to make a series of periodic recurring payments to the judgment debtor under a long-term lease, promissory note, or similar obligation, the notice of seizure is effective and applies to each recurring payment obligation notwithstanding that the payment obligation continues beyond the 12 month period referred to in subsection (1) (b). Subsection (2) (b) applies where, for example, a legal relationship of landlord and tenant exists at the time when the notice of seizure is given to the tenant; however, it is only a month-to-month tenancy. The effect of subsection (2) (b) will require the tenant to pay the rent to the enforcement officer each month until the amount recoverable is satisfied.

Seizure of a deposit account

98 (1) In this section:

“**central cooperative credit society**” has the same meaning as in the *Canadian Payments Act*;

“**deposit account**” means a savings, passbook, chequing or similar demand account at a deposit taking financial institution, but does not include

- (a) an account, a contract or an arrangement under which money is deposited for a fixed term, whether or not the term may be abridged, extended or renewed, or
- (b) an agreement to pay to the judgment debtor a specified sum of money with or without interest at a specified date in the future;

“**deposit taking financial institution**” means an institution that

- (a) is, or is eligible to become, a member of the Canadian Payments Association established under the *Canadian Payments Act*, or
 - (b) is a credit union that is a shareholder or member of a central cooperative credit society.
- (2) If a notice of seizure is given to a deposit taking financial institution with regard to a deposit account, the deposit taking financial institution must pay the money in the account to the enforcement officer even though the agreement between the deposit taking financial institution and the depositor may require the depositor to give notice of a withdrawal or present a passbook or a document, other than a negotiable instrument, as a condition of the depositor’s entitlement to enforce the obligation.
- (3) Despite section 97, a notice of seizure given to a deposit taking financial institution with regard to a deposit account affects only the obligation of the deposit taking financial institution existing at the time the notice of seizure is given.

Source: SK, section 36

ULCC Comment: This section creates special rules with regard to the seizure of deposit accounts with deposit taking financial institutions. This section relieves deposit taking financial institutions of some of the burdens that would otherwise apply under section 97. Without this section, deposit taking financial institutions would be required to monitor all existing deposit accounts of a judgment debtor for a period of 12 months and remit to the enforcement officer any funds that may be credited to such accounts during the 12-month period following receipt of a notice of seizure.

With regard to the seizure of deposit accounts, the “branch of account” rule found in the Bank Act, S.C. 1991, c. 46, section 462 and the Trust and Loan Companies Act, S.C. 1991, c. 45, section 448 will continue to apply. Under these sections, giving a notice of seizure to deposit taking financial institution only has the effect of seizing deposit accounts at the branch where the notice of seizure is given.

Obligations of account debtor

- 99** Subject to section 101, an account debtor who receives a notice of seizure in respect of an account or future account must, unless a written statement under section 100 is delivered to the enforcement officer:
- (a) pay to the enforcement officer, within the time prescribed by regulation, the lesser of
 - (i) the amount that the account debtor is obligated to pay to the judgment debtor at the time when the account debtor received the notice of seizure less any amounts deducted under sections 104 or 108; and
 - (ii) the amount recoverable as stated in the notice of seizure; and
 - (b) notify the enforcement officer of any person known by the account debtor to be a person who is a co-owner of the account or future account.

Source: *cf.* SK, section 38 (1)

ULCC Comment: Under section 96 (5) an enforcement officer who seizes a co-owned account must give a notice of seizure to the co-owners.

Dispute by account debtor that obligation to judgment debtor exists

- 100** Within 15 days after receiving a notice of seizure from an enforcement officer, a person who is not obligated to make a payment to the enforcement officer under section 99 must deliver to the enforcement officer a signed written statement in which the person does one or more of the following as applicable:
- (a) states that the person is not an account debtor and provides the basis of that assertion;
 - (b) states that the account has been assigned, charged or has been paid into court;
 - (c) states that the person is an account debtor but that the account was not payable at the date on which the person received the notice of seizure and is not payable at the date when the statement made under this section is given by the account debtor;
 - (d) in a case falling within clause (c), states, if it is known,
 - (i) the future times when any future accounts will or may become payable by the account debtor to the judgment debtor,

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- (ii) the happening of specified events on which any future accounts will or may become payable by the account debtor to the judgment debtor, and
- (iii) the amounts that will or may become payable under subclause (i) or (ii);
- (e) states that the person is an account debtor but is not legally obligated to make payments to the enforcement officer, stating the basis of this assertion.

Source: *cf.* SK, section 38 (3)

ULCC Comment: *On application made under section 7, the court may determine the validity of any statement or claim that a person is not obligated to make a payment to the enforcement officer.*

If an account debtor, to which this section applies, fails to deliver a written statement under this section, judgment may be taken against the account debtor under section 112.

If the person to whom a notice of seizure is given delivers a statement to the enforcement officer that no account debt is owed to the judgment debtor, and the enforcement officer has reasonable grounds to believe that the account may be owed by a person who is related to the person to whom the notice of seizure was given, an application may be made under Part 8 to obtain information with regard to whether an account is owed to the judgment debtor by a related person or in the case of a corporation, by a subsidiary or parent corporation or a corporation controlled by a same person.

Seizure of employment remuneration

- 101** (1) In this section, “**employment remuneration**” means amounts payable to a judgment debtor pursuant to a contract of service in relation to a pay period and includes the market value of all goods and services that the judgment debtor has received or is entitled to receive in relation to that pay period in lieu of money.

Source: *cf.* SK, section 1

BCLI Comment: The definition of employment remuneration may be moved to section 1, in order to do away with the need to make repeated cross-references to this section. The scope of this section should be broadened to embrace all payments of “income” (as that term is defined in section 1). This section recognizes that the administrative procedures many large employers have in place require some time in order to comply with a notice of seizure that affects employment remuneration. The same issue will arise in connection with payments of other forms of income. In addition, broadening the scope of this section will make the procedure for seizing payments of income parallel with the exemption provisions for income, which are located in Part 12 Division 3.

Seizure of income

- (2) **101** (1) In order to be effective with respect to the next payment of employment remuneration income to a judgment debtor after a notice of seizure is given

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to an account debtor, a notice of seizure must be given to the account debtor; at least 14 days before the end of a pay period of the judgment debtor.

Source: *cf. SK, section 40 (1)*

- (a) at least 5 days before the end of a payment period, if the period is 14 days or less;
- (b) at least 14 days before the end of a payment period, if the period is greater than 14 days.

Sources: SK, section 40 (1); Tamara M. Buckwold & Ronald C.C. Cuming, *Final Report on Modernization of Saskatchewan Money Judgment Law* (January 2005), section 48 (2)

BCLI Comment: In some cases, income is paid in periods of less than 14 days. When a shorter period is used, the notice of seizure should be effective even if it is given less than 14 days before the end of the period.

- (3) (2) A notice of seizure that is given outside the time period referred to in subsection (2) (1) is effective and applies to all subsequent pay payment periods of the judgment debtor ending within 12 months from the date on which the notice of seizure is given to the account debtor unless the enforcement officer notifies the account debtor that the notice of seizure is withdrawn.

Source: SK, section 40 (2)

- (4) (3) An account debtor who has received a notice of seizure in relation to employment remuneration income is required to pay to the enforcement officer the amount of employment remuneration income payable to the judgment debtor for each pay period periodic payment after deducting
 - (a) amounts that the account debtor is required by law or contract to deduct from employment remuneration income of the judgment debtor for income tax, employment insurance, Canada Pension Plan contributions, compulsory union or professional fees, registered pension plan contributions, health, disability and life insurance premiums and such other amounts as are prescribed;
 - (b) the amount that is exempt income under Part 12; and
 - (c) such amount for compensation of the account debtor as is prescribed under section 108.

Source: *cf. SK, section 40 (3)*

- (5) (4) If property or services are provided by an account debtor to a judgment debtor in full or partial satisfaction of the employment remuneration income payable to the judgment debtor in relation to a pay payment period, the enforcement officer, the account debtor or the judgment debtor may apply to the court, on giving notice to all instructing judgment creditors, for one or both of the following:
- (a) a determination, for the purposes of subsection (4) (3), of the employment remuneration income that is payable to the judgment debtor by the account debtor in relation to that pay payment period;
 - (b) an order that specifies the amount that the account debtor must pay to the enforcement officer in relation to that pay payment period.

Source: original

- (6) (5) At the end of the first pay payment period for which the notice of seizure is effective and, after that, as requested by the enforcement officer, the account debtor must provide to the enforcement officer a statement setting out, for the pay payment period in question
- (a) the judgment debtor's total employment remuneration income;
 - (b) all amounts deducted from that remuneration under subsection (4) (3); and
 - (c) the amount paid to the judgment debtor.

Source: original

ULCC Comment: With regard to the period of notice in subsection (2), garnishment legislation in most provinces/territories provides the provincial government and some local governments with a longer notice period than that specified in subsection (2) before they were required to deduct and remit garnisheed salaries or wages. A longer period may have been justifiable before the introduction of computerized payrolls when governments were among the largest employers in a province. Such special provisions may no longer be necessary. Other large employers must cope with the standard provision. Each province/territory should review its current payroll procedures and determine whether a period that is longer than the time referred to in subsection (1) is required for the government to respond to a notice of seizure of employment remuneration with regard to employees of the government.

Under subsection (5), an employee who receives remuneration in the form of stock options that have a nominal value that is in excess of their market value will be able to apply for an order determining the real value of the stock option and the amount of remuneration that is subject to seizure.

BCLI Comment: The phrase "payment period" is preferred over the phrase "pay period" in order to underscore that this provision applies to more than the traditional employment relationship, and

to distinguish the concept employed in this section from the defined term “pay period” in the *Employment Standards Act*.

Seizure of accounts owing by government to public servants

101.1 (1) In this section:

“**agent of the government**” means a board or commission, whether incorporated or not, all the members of which, or all the board of directors or board of managers of which,

- (a) are appointed by an Act, or by, or on the recommendation of, the Lieutenant Governor in Council, and
- (b) in the carrying out of their duties are, directly or indirectly, responsible to the government;

“**public servant**” means an officer, clerk or employee holding office or employed in or under any ministry, branch, office, institution or service of the executive government of British Columbia, at a salary or for wages payable from the public money of British Columbia, within the meaning of section 1 of the *Financial Administration Act*, and includes an employee of an agent of the government.

- (2) Accounts or future accounts payable from the government, or from an agent of the government, or from any board or commission appointed by or acting under the government as employment remuneration to any public servant may be seized under this Division, and for that purpose this Division applies, subject to subsection (3), to the government or an agent of the government.
- (3) Despite section 5, all notices required to be given to the government as account debtor under this Division must be given by serving them on the Deputy Minister of Finance and Corporate Relations or by leaving them for that deputy minister at his or her office at Victoria and
 - (a) if the employment remuneration of the public servant is usually paid elsewhere than from that office, by also serving it on the board, commission, government agent or officer by or through whom the employment remuneration of the public servant is usually paid, and
 - (b) if the employment remuneration of the public servant is payable by an agent of the government, by also serving it on
 - (i) the chief officer or chair of the agent of the government, or
 - (ii) the officers by, or through, whom the employment remuneration of the public servant is usually paid.

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- (4) In all proceedings under this Division to which the government, or agent of the government, as account debtor is a party, the court may give a judgment or make an order or direction as to costs in favour of or against the government.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 6

BCLI Comment: This proposed section carries forward rules currently contained in the *Court Order Enforcement Act* dealing with garnishment of wages and salary of public servants. The same administrative issues arise for seizures of employment remuneration of public servants; therefore, the same types of rules should appear in the Uniform Act, or, as an alternative, in a regulation prescribed under section 5.

Seizure of employment remuneration not to affect employment

- 101.2** (1) An employer must not dismiss or demote an employee or terminate a contract of employment of an employee merely because of the receipt of a notice of seizure of employment remuneration for that employee.
- (2) An employer who contravenes subsection (1) is guilty of an offence and is liable on conviction to a fine of not more than \$500, or to imprisonment for a term of not more than 3 months, or to both.
- (3) In addition to the penalty imposed under subsection (2),
- (a) the employer must at once reinstate the employee in his or her employment on the terms and conditions that were in effect before the offence, and
 - (b) the employee is entitled to wages and benefits from the date of the offence to the date of the information and, to the extent ordered by the judge, from the date of the information to reinstatement, but only if the information is sworn within 14 days of the offence.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 27

BCLI Comment: This proposed section maintains a safeguard for employees that is currently in place in the *Court Order Enforcement Act*. The implementation of the Uniform Act could provide an opportunity to examine the policy underlying this provision. Such questions as whether this provision should apply beyond the traditional employment relationship to cover independent contractors and whether the scope of this provision should be broadened to cover all kinds of enforcement proceedings, rather than simply seizure of employment remuneration should be considered. In addition, other provinces (such as Alberta) have located this protection in their employment standards legislation. An argument could be made that the *Employment Standards Act* is a more logical home for this section.

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Seizure of RRSPs, RRIFs and DPSPs

- 102** (1) Section 5 (a) of the *Uniform Registered Plan (Retirement Income) Exemption Act* [or the section of an Act of the province/territory that enacts the provisions of the Uniform Act] applies to property of a judgment debtor under this Act that is a DPSP, RRIF and a RRSP.

Source: original

- (2) In this section,
- “**DPSP**” means a deferred profit sharing plan as defined in section 147 of the federal Act;
- “**federal Act**” means the *Income Tax Act* (Canada);
- “**RRIF**” means a registered retirement income fund as defined in section 146.3 of the federal Act;
- “**RRSP**” means a registered retirement savings plan as defined in section 146 of the federal Act.

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

BCLI Comment: British Columbia has not enacted the *Uniform Registered Plan (Retirement Income) Exemption Act*, but, section 5 (a) of that uniform statute will be implemented through the Uniform Act by virtue of the definition of “income” in section 1 and the provisions of section 101.

ULCC Comment: The definitions of “DPSP,” “RRIF,” and “RRSP” are taken from the Uniform Registered Plan (Retirement Income) Exemption Act. The Uniform Registered Plan (Retirement Income) Exemption Act specifically refrained from exempting payouts to planholders of RRSPs, RRIFs, and DPSPs; however, payouts are deemed to be wages or salary for the purposes of enforcing a judgment. Section 5 of the Act provides:

- 5** For the purposes of enforcing a creditor’s rights against payments out of a registered plan to a debtor planholder:
- (a) the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person’s wages or salary within the meaning of [insert name of relevant statute]; and
 - (b) the exemptions set out in [insert section number(s) of that Act] apply, with any necessary modification.

Section 5 (b) of the Uniform Registered Plan (Retirement Income) Exemption Act is implemented by including payouts to a judgment debtor from RRSPs, RRIFs, and DPSPs in the definition of “income,” along with employment income, in Division 3 of Part 12 of this Act. A portion of a judgment debtor’s net income for a prescribed period is exempt from seizure in accordance with a formula contained in Division 3 of Part 12 of this Act.

Trust obligation deemed to be an account

- 103** (1) An amount or obligation payable by a trustee under a trust to a judgment debtor as beneficiary of the trust is deemed to be in satisfaction of an account owing to the beneficiary and payable by the trustee as an account debtor when and to the extent that, under the law of trusts or otherwise, the judgment debtor is entitled to payment or to demand payment of money to discharge the trust obligation in whole or in part.
- (2) A trustee referred to subsection (1) who is given a notice of seizure by an enforcement officer must comply with all obligations of an account debtor under this Act who is given a notice of seizure by an enforcement officer.

Source: *cf.* SK, section 35

ULCC Comment: By deeming a payment by a trustee to a beneficiary under a trust to be a payment in satisfaction of an account, this section overcomes an objection that may be based on an argument that amounts payable by a trustee to a beneficiary are not subject to seizure because they are not based on a debtor–creditor relationship. The inclusion of amounts payable to the judgment debtor who is entitled to “to demand payment” applies to amounts payable to a beneficiary of a trust under the rule in *Saunders v. Vautier*. If a trustee receives a notice of seizure, any payment under the trust that would otherwise have been made to the judgment debtor in the 12-month period following delivery of the notice of seizure to a trustee must be paid to the enforcement officer.

BCLI Comment: This section does not represent a significant departure for British Columbia law. Section 3 (1) of the *Court Order Enforcement Act* defines the key phrase “debts, obligations, and liabilities” as “. . . not includ[ing] an obligation or liability not arising out of trust or contract. . . .” Section 103 has the advantage of clearly stating in a substantive provision that trust obligations may be seized in the same manner as any other account, rather than arriving at that position inferentially, through the application of a double negative in a definition.

Set-off permitted

- 104** Subject to section 105, an account debtor is entitled to exercise a right of set-off against an account seized by an enforcement officer to the same extent as the account debtor could exercise a right of set-off against the claim of the judgment debtor to payment of the account.

Source: SK, section 41 (1)

ULCC Comment: The same opportunity to exercise the right of set-off will apply to the seizure of an account as applies to the garnishment of a debt.

Set-off not permitted

- 105** An account debtor is not entitled to set off against an account seized by the enforcement officer a claim or obligation that arose after the notice of seizure is given to the account debtor unless the claim or obligation could have been set off against an assignee of the account.

Source: SK, section 41 (2)

ULCC Comment: Self-explanatory.

Payment discharges account debtor

- 106** Payment to an enforcement officer in accordance with a notice of seizure discharges an account debtor's obligation to a judgment debtor to the extent of the amount paid to the enforcement officer.

Source: original

ULCC Comment: Self-explanatory.

Assigned accounts

- 107** (1) Despite that an account has been assigned or is the subject of a security interest, an account debtor who is given a notice of seizure by an enforcement officer
- (a) may, unless the account debtor has received notice that the account has been assigned by the enforcement officer, pay to the enforcement officer the lesser of
 - (i) the amount of the account payable, and
 - (ii) the amount recoverable as stated in the notice of seizure or otherwise stated in writing by the enforcement officer; and
 - (b) must, within 20 days of payment of the account to the enforcement officer, notify the assignee or the secured party of the payment.
- (2) Payment to an enforcement officer as provided for in subsection (1) is a defence to any action brought for failure to honour an assignment or security interest to the extent of the amount paid to the enforcement officer.
- (3) Upon receipt of a written notice of a claim by an assignee or secured party referred to in subsection (1), the enforcement officer may
- (a) pay to the assignee or secured party, the amount paid to the enforcement officer by the account debtor under to in subsection (1); or
 - (b) proceed as provided in Part 15.

Source: SK, section 39

ULCC Comment: Priority between an enforcement charge and either an assignment of an account or a security interest is determined by the priority rules contained in Part 6. Under this section, if an account debtor receives a notice of seizure after receiving a notice of assignment with regard to same account debt, the account debtor may either determine which has priority and make payment accordingly or pay the

amount of the account debt to the enforcement officer. Under subsection (2), payment to the enforcement officer is a defence to any action brought for failure to honour the assignment to the extent of the amount paid to the enforcement officer. The reason why this section permits an account debtor to pay an account to the enforcement officer and get protection from any claims by an assignee or secured party is that an account debtor should not be expected to incur the cost and risk of determining whether the notice of seizure has priority over a notice of assignment or security interest. If the account debtor pays the account debt to the enforcement officer, the latter has the burden of determining the priorities. If the enforcement officer determines that the assignment or the security interest has priority, the enforcement officer is obliged, prior to making any distribution under Part 14, to satisfy any entitlements that have priority. If there is a dispute between the enforcement officer and the assignee with regard to priorities, this dispute may be resolved under Part 15 (Third Person Claims).

The defence provided to the account debtor by subsection (2) is limited to the amount paid to the enforcement officer under subsection (1). If the amount paid to the enforcement officer does not equal the whole account debt owing by the account debtor to the judgment debtor, the account debtor remains liable to an assignee or secured party, as the case may be, for the balance.

Compensation for account debtor

- 108** An account debtor who pays money to an enforcement officer to discharge an account may retain, from the amount that would otherwise be payable to the enforcement officer, the amount prescribed as compensation for complying with the notice of seizure.

Source: original

ULCC Comment: An account debtor who receives a notice of seizure is an innocent third party who is drawn into an enforcement proceeding. An account debtor who pays an account to the enforcement officer will often incur additional administrative expenses and perhaps legal fees. This section permits provinces/territories to prescribe an amount that an account debtor is entitled to retain from the amount that would otherwise be payable to the enforcement officer as compensation for complying with a notice of seizure.

Seizure of money in possession of enforcement officer that is payable to judgment debtor

- 109** If an enforcement officer has funds in his or her possession or control that are payable under this Act to a person who is a judgment creditor in a legal proceeding and in a different legal proceeding that person is a judgment debtor in respect of whom the enforcement officer has received an enforcement instruction, the enforcement officer may seize the funds by giving a notice of seizure to the judgment debtor.

Source: original

ULCC Comment: Self-explanatory.

Seizure of money in court that is payable to judgment debtor

- 110** (1) If a judgment debtor is or may become entitled to money that is held in court as a consequence of legal proceedings between the judgment debtor and another person, an enforcement officer may seize the money in court by giving a notice of seizure to the [insert the name of the court official that is appropriate for the enacting jurisdiction] Registrar or District Registrar of the court in whose registry the money is held.
- (2) On receiving a notice of seizure under subsection (1), the [insert the name of the court official referred to in subsection (1)] Registrar or District Registrar must pay an amount to the enforcement officer that is the lesser of the amount of the funds in court and the amount recoverable
- (a) immediately, if the judgment debtor is entitled to receive immediate payment of the funds in court; or
 - (b) when the judgment debtor becomes entitled to receive payment of the funds in court, if the judgment debtor is not entitled to receive immediate payment of the funds but may become entitled to receive payment of all or part of the funds in court if a judgment is issued in favour of the judgment debtor,
- (3) Except for sections 106 and 107, none of the other sections of this Part apply to the seizure of money in court.

Source: *cf. SK, section 47*

ULCC Comment: *Self-explanatory.*

BCLI Comment: This section will replace the antiquated procedure of executing against funds in court by obtaining an equitable charging order.

Application to release portion of seized account

- 111** On request of a judgment debtor, an enforcement officer who has seized an account under this Division may, or, if ordered by the court on application by the judgment debtor, must, release from the seizure an amount sufficient to permit the judgment debtor to maintain property leased to the account debtor or to perform a contract with the account debtor under which the account became or will become payable.

Source: *SK, section 44*

ULCC Comment: *An example of the application of this section is the seizure of rental payments that are payable by a tenant to the judgment debtor who is a lessor. Under the terms of the lease, the judgment debtor may have covenanted to provide heat, electricity, and other services as well as keep the premises in good repair. In most cases, the judgment debtor relies on the rental payments to pay the fuel and utility*

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bills associated with the rented premises. In these circumstances, the court may release a sufficient portion of the rental payments to permit the judgment debtor to provide the services that the judgment debtor has covenanted to provide.

Judgment against account debtor who fails to honour seizure of account

- 112** (1) On application by an instructing judgment creditor who delivered an enforcement instruction to seize to an account and on being satisfied that the account debtor received the notice of seizure or had actual notice of its contents, and that the account debtor, without legal excuse, failed to comply with section 99 or 100, the court may order that judgment be entered against the account debtor in favour of an instructing judgment creditor in an amount that is the total of
- (a) the amount that the account debtor is obligated to pay to the enforcement officer under the notice of seizure; and
 - (b) the costs of the proceedings and the enforcement officer's fees, taxable costs and expenses relating to the seizure.

Source: SK, section 43 (1)

- (2) A judgment creditor who makes an application under subsection (1) may give notice to all instructing judgment creditors requesting a proportional contribution to the cost of the application and taxable costs of a judgment creditor who makes a contribution in response to such a request are regarded as taxable costs under section 184 (1) (c).

Source: original

- (3) Money received by an enforcement officer on a judgment against the account debtor made under an order made under subsection (2) must be dealt with by the enforcement officer in accordance with section 180 (4).

Source: original

***ULCC Comment:** If money is recovered on a judgment entered against an account debtor under this section, the effect of subsection (3) and section 180 (4) is to require distribution of the money among those eligible claimants who would have been entitled to a distribution if the account debtor had paid the account to the enforcement officer at the time that the account was seized by giving a notice of seizure to the account debtor rather than those judgment creditors who are eligible claimants at the time that the funds are received by the enforcement officer.*

Division 5—Securities and Security Entitlements

***ULCC Introductory Comment:** This Division applies to the seizure and sale of a “security” or a “security entitlement” as those terms are defined in the Uniform Securities Transfer Act (USTA). Because of the relationship between this Act and the USTA in respect of securities and security entitlements, this Division in-*

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incorporates by reference many of the definitions of the USTA. This will avoid any conflict with regard to the terminology used in the two Acts.

Sections 115 to 118 of this Act describe the method and mechanics by which the seizure of a security or a security entitlement must be carried out by an enforcement officer. Sections 119 to 122 of this Act describe the effect of a seizure. It will be important for users of the USTA to be able to determine from reading the USTA when an effective seizure of a security or security entitlement occurs. Sections 56 to 59 of the USTA inform its readers with regard to what constitutes a valid seizure of a security or security entitlement. It will be important to ensure that there is no inconsistency between the provisions of this Act and the USTA.

Definitions

113 (1) The following terms have the same meaning as in the [insert name given to the USTA in the province/territory]:

“appropriate person”,

“bearer form”,

“broker”,

“certificated security”,

“clearing agency”,

“commodity contract”,

“corporation”,

“endorsement”,

“entitlement holder”,

“entitlement order”,

“financial asset”,

“instruction”,

“investment fund”,

“investment fund security”,

“issuer”,

“purchase”,

“purchaser”,

“registered form”,

“representative”,

“securities account”,

“securities intermediary”,

“security”,

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“security certificate”,
“security entitlement”,
“transfer agent”, and
“uncertificated security”.

- (2) If there is a conflict between a definition of a term incorporated by reference under subsection (1) and a definition contained in another Division or Part of this Act, the definition provided by subsection (1) applies to this Division.

Source: original

***ULCC Comment:** The definition of the term “security” is one of the definitions of the USTA that is incorporated by this section for the purposes of this Division. Where the term “security” is used in this Division, the definition of “security” in the USTA applies. With regard to other Divisions and Parts of this Act, the definition of “security” found in the Personal Property Security Act applies. The latter definition is incorporated by section 1 (2) of this Act.*

BCLI Comment: The Uniform Act incorporates by reference a number of defined terms from the *Uniform Securities Transfer Act*. British Columbia, however, has not enacted the *Uniform Securities Transfer Act*. The following proposed section reproduces the defined terms in the version of the *Uniform Securities Transfer Act* approved at the 2004 ULCC annual meeting. Some minor changes have been made to these definitions to eliminate cross-references to provisions of the *Uniform Securities Transfer Act* and defined terms that are not used in the Uniform Act. If British Columbia enacts the *Uniform Securities Transfer Act*, then the proposed section 113 should not be enacted. Given the close relation between the Uniform Act and the *Uniform Securities Transfer Act* envisioned by the drafters of these statutes, it is desirable that the Uniform Act incorporate by reference the terms listed in section 113.

Definitions

113 (1) In this Division,

“appropriate person” means

- (a) with respect to an endorsement, the person specified by a security certificate or by an effective special endorsement to be entitled to the security;
- (b) with respect to an instruction, the registered owner of an uncertificated security;
- (c) with respect to an entitlement order, the entitlement holder;
- (d) in the case of a person referred to in paragraphs (a) to (c) being deceased, that person’s successor taking under the law, other than this Act, or that person’s personal representative acting for the estate of the decedent;

(e) in the case of a person referred to in paragraphs (a) to (c) lacking capacity, that person's guardian or other similar representative who has power under the law, other than this Act, to transfer the security or financial asset;

“bearer form” means, in respect of a certificated security, a form in which the security is payable to the bearer of the security certificate according to the security certificate's terms but not by reason of an endorsement;

“broker” means a person defined as a dealer under the *Securities Act*;

“certificated security” means a security that is represented by a certificate;

“clearing agency” means a person that carries on a business or activity as a clearing agency or clearing house within the meaning of the *Securities Act* or the securities regulatory law of another province or territory in Canada

(a) who is recognized or otherwise regulated as a clearing agency or clearing house by the British Columbia Securities Commission or by a securities regulatory authority of another province or territory in Canada; and

(b) whose clearing and settlement system is designated under Part I of the *Payment Clearing and Settlement Act* (Canada) or who is a securities and derivatives clearing house for the purposes of section 13.1 of that Act;

“commodity contract” means a commodity contract as defined in the *Personal Property Security Act*;

BCLI Comment: The term “commodity contract” does not exist in the current version of the *Personal Property Security Act*. The concept will only be introduced on the coming into force of the *Uniform Securities Transfer Act*. Since there are no further references to commodity contracts in the Uniform Act, this definition may be struck out.

“corporation” means any body corporate with share capital whether or not it is incorporated under the laws of British Columbia;

“endorsement” means a signature that, alone or accompanied by other words, is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring or redeeming the security or granting a power to assign, transfer or redeem the security;

“entitlement holder” means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary and includes a person who acquires a security entitlement by virtue of paragraph 106 (1) (b) or (c) as a result of a securities intermediary

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(a) receiving a financial asset from the person or acquiring a financial asset for the person and, in either case, accepting it for credit to the person's securities account; or

(b) becoming obligated under another statute, law, regulation or rule to credit a financial asset to the person's securities account;

BCLI Comment: The proposed amendment to this definition replaces the cross-reference to the *Uniform Securities Transfer Act* with the actual wording of the provision referred to.

“entitlement order” means a notification communicated to a securities intermediary directing the transfer or redemption of a financial asset to which the entitlement holder has a security entitlement;

“financial asset” means, except as otherwise provided for in sections 14 to 20,

- (a) a security;
- (b) an obligation of a person that
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any area in which it is issued or dealt in as a medium for investment;
- (c) a share, participation or other interest in a person, or in property or an enterprise of a person, that
 - (i) is, or is of a type, dealt in or traded on financial markets, or
 - (ii) is recognized in any area in which it is issued or dealt in as a medium for investment;
- (d) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this Act;
- (e) a credit balance in a securities account, unless the securities intermediary has expressly agreed with the person for whom the account is maintained that it is not to be treated as a financial asset under this Act;

BCLI Comment: Sections 14 to 20 set out a series of rules, unique to the *Uniform Securities Transfer Act*, for determining whether certain obligations or interests are securities or financial assets.

“instruction” means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed;

“investment fund”;

“investment fund security”;

BCLI Comment: These two terms do not appear in the latest version of the *Uniform Securities Transfer Act*.

“issuer”,

- (a) with respect to a registration of a transfer, means a person on whose behalf transfer books are maintained;
- (b) with respect to an obligation on or a defence to a security, includes
 - (i) a person who places or authorizes the placing of the person’s name on a security certificate, other than as authenticating trustee, registrar, transfer agent or the like, to evidence
 - (A) a share, participation or other interest in the person’s property or in an enterprise, or
 - (B) the person’s duty to perform an obligation represented by the certificate;
 - (ii) a person who creates a share, participation or other interest in the person’s property or in an enterprise or undertakes an obligation that is an uncertificated security;
 - (iii) a person who directly or indirectly creates a fractional interest in the person’s rights or property, if the fractional interest is represented by a security certificate;
 - (iv) a person who becomes responsible for, or in place of, another person described as an issuer in this paragraph;

“purchase” means a taking by sale, discount, negotiation, mortgage, hypothec, pledge, security interest, issue or re-issue, gift or any other voluntary transaction that creates an interest in property;

“purchaser” means a person who takes by purchase;

“registered form” means, in respect of a certificated security, a form in which

- (a) the security certificate specifies a person entitled to the security, and
- (b) a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate so states;

“representative” means any person empowered to act for another including an agent, an officer of a corporation or association, a trustee, executor or administrator of an estate;

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“securities account” means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that constitute the financial asset;

“securities intermediary” means

- (a) a clearing agency, or
- (b) a person, including a broker, bank or trust company, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity;

“security” means, except as otherwise provided for in sections 14 to 20, an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer,

- (a) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer,
- (b) that is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests or obligations, and
- (c) that
 - (i) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or
 - (ii) is a medium for investment and by its terms expressly provides that it is a security for the purposes of this Act;

BCLI Comment: This definition of “security” is, like many of the concepts in the *Uniform Securities Transfer Act*, taken from the latest revision of Article 8 of the American Uniform Commercial Code: see U.C.C. § 8–102 (a) (15). There was some uncertainty about the scope of this definition as it appeared in earlier versions of U.C.C. art. 8; but it is now clear that the definition of “security” embraces all kinds of shares, including shares in closely-held companies which are subject to transfer restrictions: see e.g. *Gross v. Vogel*, 81 A.D.2d 576, 437 N.Y.S.2d 431 at 432 (1981); *Kenney v. Porter*, 604 S.W.2d 297 at 300–301 (Tex. Civ. App. 1980). This broad interpretation of “security” should also apply to the definition contained in the *Uniform Securities Transfer Act*.

A definition of “security” has not been a feature of British Columbia company law. Section 48 (2) of the *Canada Business Corporations Act*, however, does contain a definition of “security” that is based on a definition in an earlier version of U.C.C. art. 8, and that bears some resemblance to the definition in the *Uniform Securities Transfer Act*

Sections 14 to 20 set out a series of rules, unique to the *Uniform Securities Transfer Act*, for determining whether certain obligations or interests are securities or financial assets.

“security certificate” means a certificate representing a security;

“security entitlement” means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 6;

“transfer agent”;

BCLI Comment: This term is not defined in the latest version of the *Uniform Securities Transfer Act*.

“uncertificated security” means a security that is not represented by a certificate.

Source: *Uniform Securities Transfer Act*, section 1 (1)

- (2) If there is a conflict between a definition of a term under subsection (1) and a definition contained in another Division or Part of this Act, the definition provided by subsection (1) applies to this Division.

Source: *Uniform Civil Enforcement of Money Judgments Act*, section 113 (2)

Application of Division 1 to this Division

- 114** (1) Sections 51, 52 (1) (d) and 70 of Division 1 of this Part apply to an enforcement proceeding under this Division.
- (2) Subject to subsection (1), Division 1 of this Part does not apply to enforcement proceedings under this Division.

Source: original

ULCC Comment: This Division describes the method by which a security or security entitlement may be seized and the process under which the value of a seized security or security entitlement may be realized by the enforcement officer. With the exception of sections 51, 52 (1) (d), and 70, Division 1 does not apply to this Division. Section 51 is a section with general application to personal property and it gives an enforcement officer authority to seize personal property upon receiving an enforcement instruction from a judgment creditor. Section 51 provides that an enforcement officer is entitled to seize exigible property of a judgment debtor that is a security or security entitlement by effecting a seizure under this Division. Section 70 is a section of general application to personal property that provides an enforcement officer with protection from liability for damages in the circumstances described in the section.

Seizure of certificated security

- 115** (1) Except as otherwise provided in subsection (2) or section 118, a certificated security may be seized only by actual seizure of the security certificate by an enforcement officer.

Sources: AB, section 57 (1) (b); *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, section 74; NL, section 90 (1) (a); SK, section 31 (3) (a); *Uniform Securities Transfer Act*, section 56 (1)

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- (2) A certificated security for which the security certificate has been surrendered to the issuer may be seized by an enforcement officer giving a notice of seizure in the prescribed form to the issuer at the issuer's chief executive office.

Sources: *Uniform Securities Transfer Act*, section 56 (2); cf. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, section 74

BCLI Comment: Section 74 of the *Canada Business Corporations Act* provides that “no seizure of a security or other interest evidenced thereby is effective until the person making the seizure obtains possession of the security.” Unless section 74 is repealed (which it likely will be upon the coming into force of the *Uniform Securities Transfer Act*), the utility of the procedure for seizing certificated securities of federal corporations set out in section 115 (2)—and in section 118—will be limited. No equivalent to section 74 exists in the British Columbia *Business Corporations Act*.

- (3) If a judgment debtor claims that a security certificate is lost, or that a security certificate has been destroyed or wrongfully taken, the court, on an application by an instructing judgment creditor, with notice to the judgment debtor and the issuer, may order
- (a) the judgment debtor to
 - (i) request the issuer to issue a new security certificate under section 103 of the [insert the name given to the USTA by the enacting jurisdiction];
 - (ii) satisfy any reasonable requirements imposed by the issuer with regard to the issue of a new security certificate; and
 - (b) the applicant or the judgment debtor, to provide with the issuer an indemnity bond as may be [, if required under section 103 of the [insert the name given to the USTA by the enacting jurisdiction].

Source: original

- (4) If an order is made by the court under subsection (3) and the judgment debtor does not within 15 days after the making of the order request the issuer to issue a new security certificate, the court, on the application of the applicant under subsection (3), may make an order that the judgment debtor forfeits some or all of the exemptions that the judgment debtor would otherwise be entitled to claim under Part 12.

Source: original

ULCC Comment: A “certificated security” is defined in the USTA as meaning a security that is represented by a certificate. The term “issuer” has an extended definition in the USTA that includes a person who directly or indirectly creates a fractional interest in rights or property if the fractional interest is represented by a security certificate.

BCLI Comment: The *Uniform Securities Transfer Act* is not currently in force in British Columbia. Section 109 of the British Columbia *Business Corporations Act* and section 80 (2) of the *Canada Business Corporations Act* each provide mechanisms for shareholders in British Columbia or federal corporations to request a replacement share certificate. These provisions are not exact equivalents of section 103 of the *Uniform Securities Transfer Act*. If the *Uniform Securities Transfer Act* is brought into force, then section 115 of the Uniform Act should be enacted without amendment.

Seizure of uncertificated security

- 116** Except as otherwise provided in section 118, an uncertificated security may be seized only by an enforcement officer giving a notice of seizure in the prescribed form to the issuer at the issuer's chief executive office.

Source: *Uniform Securities Transfer Act*, section 57

ULCC Comment: An "uncertificated security" is defined in the USTA as meaning a security that is not represented by a certificate.

Seizure of a security entitlement

- 117** Except as otherwise provided in section 118, a security entitlement may be seized only by an enforcement officer giving a notice of seizure in the prescribed form to the securities intermediary with whom the judgment debtor's securities account is maintained.

Source: *Uniform Securities Transfer Act*, section 58

ULCC Comment: A "security entitlement" is defined in the USTA as meaning the rights and property interest of an entitlement holder with respect to a financial asset. A "securities intermediary" is defined in the USTA as meaning:

- (1) a clearing agency, or
- (2) a person, including a broker, bank, or trust company that in the ordinary course of its business maintains security accounts for others and is acting in that capacity.

Seizure where judgment debtor's interest is subject to security interest

- 118** The interest of a judgment debtor in any of the following may be seized by an enforcement officer giving a notice of seizure in the prescribed form to the secured party:
- (a) a certificated security for which the security certificate is in the possession of a secured party;
 - (b) an uncertificated security registered in the name of a secured party;
 - (c) a security entitlement maintained in the name of a secured party.

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Sources: *Uniform Securities Transfer Act*, section 59; cf. *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, section 74

ULCC Comment: Self-explanatory.

Effect of seizure of certificated security

- 119** (1) If a certificated security in bearer form is seized under this Division, the enforcement officer who makes the seizure may, in accordance with this Division
- (a) dispose of the security; or
 - (b) otherwise realize upon its value.

Sources: cf. AB, section 61; NL, section 94 (1); SK, section 31 (9)

- (2) If a certificated security in registered form is seized under this Act, the enforcement officer is an appropriate person to endorse the security for the purposes of [Insert the name given to the USTA by the enacting jurisdiction] [transfer].

Source: original

- (3) Subject to [Insert the appropriate section number and name of the USTA. In the June 18, 2002 preliminary draft, the section number is section 97.] any other enactment, if an enforcement officer presents a certificated security in registered form to the issuer with a request to register a transfer of the security, the issuer is required to register the transfer.

Source: original

ULCC Comment: In the case of a certificated security in bearer form, the enforcement officer may realize upon the value of the security by delivering it to a securities intermediary with an instruction to sell.

In the case of a certificated security in registered form, an enforcement officer, as the appropriate person, may endorse the security and request the issuer to register a transfer of the security. Subject to section 97 of the USTA, the issuer is required to register the requested transfer. Section 97 of the USTA provides that an issuer must register a transfer if the conditions set out in that section are met. Section 97 (1) (e) provides that the issuer must register the transfer as requested if the transfer does not violate any restriction on transfer imposed by the issuer in accordance with section 72. Section 72 of the USTA provides:

- 72** A restriction on the transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless
- (a) the security is a certificated security and the restriction is noted conspicuously on the security certificate, or
 - (b) the security is an uncertificated security and the registered owner has been notified of the restriction.

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With regard to transfer restrictions on a security of a corporation that is not an offering or distributing corporation, section 125 of this Division applies.

If a certificated security is transferred into the name of the enforcement officer, the latter, as the registered owner of the certificated security, is entitled to receive all notices, dividends, etc.

BCLI Comment: The proposed amendments to section 119 remove cross-references to the *Uniform Securities Transfer Act*, which is not currently in force in British Columbia. Sections 114 and 117 of the British Columbia *Business Corporations Act* and section 76 of the *Canada Business Corporations Act* are roughly equivalent to section 97 of the *Uniform Securities Transfer Act*. If the *Uniform Securities Transfer Act* is brought into force in British Columbia, then section 119 of the Uniform Act should be enacted without amendment.

Effect of seizure of uncertificated security

- 120** (1) If an uncertificated security is seized under this Division:
- (a) the issuer must not act upon or comply with any instruction, direction, request or consent given by the judgment debtor for the duration of the period that the seizure is effective; and
 - (b) if the issuer would be required to comply with a direction or request to transfer the security if it were given by the judgment debtor when the security was not under seizure, the enforcement officer who made the seizure may require the issuer to register a transfer of the security from the name of the judgment debtor to the name of the enforcement officer.
- (2) On completion of a transfer of a security referred to in subsection (1),
- (a) the enforcement officer as the registered owner of the security is entitled to
 - (i) receive any information from the issuer that the judgment debtor would otherwise be entitled to receive;
 - (ii) present or give an instruction to the issuer that the judgment debtor would otherwise be entitled to present or give;
 - (iii) give any instructions, directions or consent to the issuer that the judgment debtor would otherwise be entitled to give,
 - (iv) exercise any voting rights in respect of the security;
 - (b) the issuer must comply with any instruction, direction, request or consent given by the enforcement officer if the issuer would be required to comply with the instruction, direction, request or consent were it given by the judgment debtor when the interest of the judgment debtor was not under seizure;

- (c) if the issuer is or becomes obliged to make any payment or distribution with regard to an uncertificated security that the issuer would otherwise have been obliged to make to the judgment debtor, the issuer is obliged to make the payment or distribution to the enforcement officer.
- (3) If the substance of a duty imposed on an issuer by another statute, regulation or rule is the subject of this section, compliance with this section by the issuer satisfies the duty imposed by that other statute, regulation or rule.

Source: original

ULCC Comment: If an uncertificated security is seized by an enforcement officer, he or she may require the issuer to register a transfer of the security into the name of the enforcement officer. As the registered owner of the security, the enforcement officer is entitled to sell the security.

If, prior to the seizure by the enforcement officer, the judgment debtor entered into a control agreement with a secured party, the judgment debtor may be precluded by the control agreement from requesting a transfer of the registration of the uncertificated security. In these circumstances, the enforcement officer will likewise be precluded from requesting a transfer of the registration of the uncertificated security.

Effect of seizure of security entitlement

121 (1) If a security entitlement is seized under this Act:

- (a) the enforcement officer who made the seizure is:
 - (i) entitled to receive any information that the judgment debtor would otherwise be entitled to receive,
 - (ii) an appropriate person who is entitled to originate an entitlement order directed to the securities intermediary that the judgment debtor would otherwise be entitled to originate, and
 - (iii) entitled to give any directions or consent to the securities intermediary that the judgment debtor would otherwise be entitled to give;
- (b) a securities intermediary must comply with any entitlement order, direction or consent given by the enforcement officer if the securities intermediary would be required to comply with an entitlement order, direction or consent were it given by the judgment debtor when the interest of the judgment debtor was not under seizure;
- (c) the securities intermediary must not act upon or comply with any entitlement order, direction, consent or other instruction given by the judgment debtor for the duration of the period that the seizure is effective; and

- (d) if the securities intermediary is or becomes obliged to make any payment or distribution with regard to a security entitlement that the securities intermediary would otherwise have been obliged to make to the judgment debtor, the securities intermediary is obliged to make the payment or distribution to the enforcement officer.
- (2) If the substance of a duty imposed on a securities intermediary by another statute, regulation or rule is the subject of this section, compliance with this section by the securities intermediary satisfies the duty imposed by that other statute, regulation or rule.

Source: original

ULCC Comment: Self-explanatory.

Effect of seizure of the interest of judgment debtor that is subject to prior security interest

- 122** If a judgment debtor's interest in a security or security entitlement is seized under this Division and a judgment debtor's interest is subject to a prior security interest:
- (a) the enforcement officer who made the seizure acquires all of the rights and powers of the judgment debtor in relation to the seized property and may take any action in relation to that property that could have been taken by the judgment debtor; and
 - (b) the judgment debtor loses all rights and powers to deal with the seized property for the duration of the period that the seizure is effective.

Source: original

ULCC Comment: Self-explanatory.

No prejudice to prior security interest of securities intermediary

- 123** (1) Despite sections 117 and 121, the seizure of a security entitlement does not affect a prior security interest of a securities intermediary in the security entitlement for the amount owed by the judgment debtor to the securities intermediary at the time of seizure.
- (2) A securities intermediary is deemed to have taken possession of the security when the appropriate entries have been made in the records of the securities intermediary.

Source: original

ULCC Comment: Securities intermediaries often advance funds to a client for the purpose of acquiring investments and the securities intermediary takes a security interest in the security entitlement of the client as security for the amount of the funds that are advanced.

When securities intermediary may complete a sale

- 124** (1) If a notice of seizure of a security entitlement is served on a securities intermediary after the securities intermediary has received an entitlement order directing the transfer or redemption of a financial asset to which the security entitlement relates, and the securities intermediary entered into commitments with third parties to implement the entitlement order, the securities intermediary may complete the entitlement order without regard to the notice of seizure.
- (2) If, in the circumstances described in subsection (1), the entitlement order directs the proceeds of any transfer or redemption be paid to the judgment debtor or be credited to the judgment debtor's securities account and payable to the judgment debtor on demand, the securities intermediary must, upon receipt of the proceeds, pay the proceeds to the enforcement officer.

Source: original

ULCC Comment: Section 113 of this Division incorporates the USTA definition of "entitlement order." The purpose of subsection (1) is to permit a securities intermediary to complete a transaction in circumstances where cancelling the transaction, after receiving a notice of seizure, could result in a liability for the securities intermediary who has already entered into commitments on the strength of the entitlement order received from the judgment debtor.

Instructions to sell are often accompanied by simultaneous instructions to buy, and it may be difficult, if not impossible, to isolate one transaction from another. However, the judgment debtor may be liquidating financial assets and the judgment debtor may have given directions to the securities intermediary that upon the completion of a transaction of a series of transactions, the remaining balance is to be paid to the judgment debtor or held in a securities account. In these circumstances, subsection (2) requires the securities intermediary, who has received a notice of seizure, to pay the funds over to the enforcement officer.

Transfer restrictions

- 125** (1) Except as otherwise provided in this section, if an enforcement officer seizes a security of a corporation [an issuer] other than a corporation [an issuer] that is an offering corporation [insert the term used in the *Business Corporations Act* of the enacting province/territory to describe corporations that are "offering" corporations. For example, Alberta uses the term "distributing" corporation.] [a public company] the enforcement officer is not bound by a prohibition of or restriction on the transfer, disposition of or dealing with, a seized security that is contained in the bylaws, articles or internal rules of the issuer of that [the] security or a unanimous shareholders' agreement relating to that [the] security to the extent that compliance

would prevent the enforcement officer from selling the security at all or within a reasonable time or for a reasonable price.

- (2) After seizing a security referred to in subsection (1), the enforcement officer may give a written demand to the issuer to provide the names and addresses of all registered holders of that security the issuer's securities to the enforcement officer within 15 days.
- (3) The enforcement officer who seizes a security referred to in subsection (1) may give a written demand to the judgment debtor, other registered holders of that security the issuer's securities and the issuer of that the security, requiring disclosure to the enforcement officer of any transfer restrictions or preferential rights to acquire that security.
- (4) If a person who is given a demand referred to in subsection (3) does not disclose any transfer restrictions or preferential rights that are related to the seized security within 15 days of receiving the demand, that person may not subsequently assert any transfer restrictions or preferential rights in relation to that security against the enforcement officer or a person who acquires that security from the enforcement officer.
- (5) Prior to selling a security referred to in subsection (1), an enforcement officer must give a notice of intended sale that sets out the method or sale or disposition to:
 - (a) the issuer;
 - (b) any person who, to the knowledge of the enforcement officer, has a preferential right to acquire the seized security on a voluntary sale by the judgment debtor; and
 - (c) every registered holder of that security the issuer's securities as disclosed by the issuer pursuant to subsection (2).
- (6) A notice of intended sale
 - (a) may be sent to the address of a registered holder of the security as set out in the records of the issuer disclosed by the issuer pursuant to subsection (2); and
 - (b) is deemed to have been given to all holders of that security of the issuer the issuer's securities when it is given to all registered holders of the security disclosed by the issuer pursuant to subsection (2).
- (7) Despite subsection (1) and subject to subsections (9) to (13), an enforcement officer must in selling a seized security use a method of sale that
 - (a) follows as closely as possible the method that the judgment debtor would be required to follow in order to sell the security; and

- (b) provides the issuer and other persons who own a security of that issuer all registered holders of the issuer's securities with a reasonable opportunity to redeem or buy the security before it is offered for sale to any other person.
- (8) After complying with subsection (5), an enforcement officer must not take any further steps to sell the security until 15 days have elapsed from the day that the notice of intended sale was given.
- (9) On application by the issuer of a seized security or a person who owns a security of that issuer a registered holder of a security of the issuer, the court may, after considering
 - (a) the interests of the issuer and persons who own securities of the issuer registered holders of a security of the issuer in maintaining any restrictions on the sale or disposition of the security,
 - (b) the interests of the judgment creditor including whether or not the judgment debtor has other exigible property from which the amount recoverable under the judgments to which the seizure relates may be satisfied, and
 - (c) whether the judgment being enforced was obtained as a consequence of collusion between the judgment creditor and the judgment debtor for the purpose of circumventing a prohibition or restriction on the transfer of the security by the judgment debtor,order that the method of sale or disposition of the seized security by the enforcement officer must comply with restrictions on the transfer, disposition of or other dealing with the seized security contained in the bylaws, articles or internal rules of the issuer or in a unanimous shareholders' agreement relating to the seized security.
- (10) Subject to subsections (11) to (13), a person who would otherwise be entitled to buy or redeem a security referred to in subsection (1) for a predetermined price or at a price fixed by reference to a predetermined formula is entitled to buy or redeem the security from the enforcement officer for that price.
- (11) If an instructing judgment creditor believes that the price at which the security may be bought or redeemed under subsection (10) is conspicuously less than the value of the security, the judgment creditor may make an application to the court to fix the price at which the security referred to in subsection (1) may be bought or redeemed.
- (12) On an application made under subsection (11) and subject to an order of the court made under subsection (9), the court may fix the price that a per-

son who would otherwise be entitled to buy or redeem the security must pay to acquire or redeem the security if the court determines that:

- (a) the corporate bylaws, articles or internal rules of the issuer, or a unanimous shareholders' agreement relating to the seized security under which a person would be entitled to buy or redeem the security for a predetermined price or at a price fixed by reference to a predetermined formula was made, agreed to by the judgment debtor or created within the period beginning on the day that is 5 years before the day on which the enforcement charge that charges the security was created;
 - (b) the price at which the security may be bought or redeemed under subsection (10) is conspicuously less than the value of the security; and
 - (c) permitting a person to buy or redeem the security at the predetermined price or the price fixed by reference to a predetermined formula will have the effect of preventing the applicant from recovering the amount recoverable under the judgments to which the seizure relates because the judgment debtor does not have enough other exigible property from which his or her judgment may be satisfied.
- (13) If, on an application made under subsections (11) and (12), the court decides to fix the price at which the seized security may be redeemed by the issuer or purchased by another holder of the security registered holder of a security of the issuer, the price fixed by the court must bear a reasonable relationship to the value of the security after taking into account the effect that a prohibition of or restriction on transfer, disposition of or dealing with the security by the transferee has on the value of the seized security.
- (14) Subject to subsections (11) to (13), at any time before the sale or other disposition of a security referred to in subsection (1), the issuer or any person who owns a security of that issuer other than the judgment debtor a registered holder, other than the judgment debtor, of a security of the issuer may pay to the enforcement officer an amount that is the lesser of:
- (a) an amount sufficient to:
 - (i) discharge the judgments of all instructing judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer,
 - (ii) pay the enforcement officer's fees, taxable costs and expenses incurred to the date of payment in connection with enforcing the judgment against the security, and

- (iii) pay the taxable costs of the judgment creditor who made the application under subsection (11); or
 - (b) an amount equal to the value of the security.
- (15) Upon payment of the amount referred to in subsection (14):
 - (a) the enforcement officer must release the seized security from seizure and notify the issuer of the release;
 - (b) a person, other than the judgment debtor, who paid an amount equal to the value of the security is entitled to be recorded as the registered owner of the security by the issuer;
 - (c) a person who paid an amount that is less than the value of the security is deemed to have acquired a security interest in the security, to which the *Personal Property Security Act* applies, to the extent of the amount paid and interest thereon at the rate set for unpaid judgments, calculated from the date when the payment is made to the enforcement officer.
- (16) If no person exercises a right to redeem or buy the security under subsection (10) or (14) within the 15 days referred to in subsection (8), another owner of that security registered holder of a security of the issuer and, if the seizure by the enforcement officer did not include all of the securities of the issuer owned by the judgment debtor, the judgment debtor may request the enforcement officer to offer for sale, along with the seized security, all the securities of the issuer owned by that person on terms identical to those applicable to the seized security, by tendering to the enforcement officer
 - (a) executed transfer documents in respect of all of securities of that issuer owned by that person; and
 - (b) proof satisfactory to the enforcement officer of compliance with the bylaws, articles or internal rules of the issuer or the terms of a unanimous shareholders' agreement relating to the seized security that affect the disposal of the security.
- (17) Nothing in subsection (16):
 - (a) precludes an enforcement officer from selling only the seized security if, in the opinion of the enforcement officer, all of the securities tendered for sale under subsection (16) cannot be sold; or
 - (b) permits an enforcement officer to sell, without the consent of the person who has tendered securities for sale, fewer than the total number of securities tendered for sale under subsection (16).

- (18) Unless a written notice of intention to exercise the right referred to in subsection (10) or (14) is given to the enforcement officer within 15 days referred to in subsection (8), the enforcement officer may proceed to dispose of a security referred to in subsection (1).
- (19) If an enforcement officer has given a notice of an intended sale to the persons mentioned in subsection (5) and no person has exercised his or her right under subsections (10) or (14) before the security referred to in subsection (1) is sold, the method of sale set out in the notice of intended sale is deemed to have met the requirements of this Act.
- (20) A person who purchases a security referred to in subsection (1) from an enforcement officer as provided in this Division:
 - (a) acquires all of the rights and obligations in the security or associated with it that the judgment debtor had prior to the seizure of the security by the enforcement officer;
 - (b) is entitled to be registered as owner of the security in the records of the issuer in place of the judgment debtor; and
 - (c) takes the security subject to any lien that the corporation may have on its shares for a debt of the judgment debtor to the corporation that was incurred before the security was seized by the enforcement officer.
- (21) If, at the time of the purchase, a purchaser referred to in subsection (20) has knowledge of a unanimous shareholders' agreement to which the judgment debtor was a party at the time of the seizure, the purchaser is deemed to be a party to the unanimous shareholders' agreement.

Source: original

ULCC Comment: *This section is directed at securities issued by a closely-held corporation that is not an “offering corporation” as that term is defined in section 1 (1) and (6) of the Ontario Business Corporations Act, a “distributing corporation” as that term is defined in section 1 (p) of the Alberta Business Corporations Act, or a “public company” as that term is defined in section 1 of the British Columbia Business Corporations Act, or such similar term that is used in corporations statutes of other provinces/territories. Section 1 (1) of the Ontario Business Corporations Act defines “offering corporation” as meaning “a corporation that is offering its securities to the public within the meaning of subsection (6). . . .” The Alberta Business Corporations Act, in section 1 (p), defines “distributing corporation” as meaning a corporation*

- (i) *any of whose issued shares, or securities that may or might be exchanged for or converted into shares, were part of a distribution to the public, and*
- (ii) *that has more than 15 shareholders.*

The objective of this section is to strike a balance between the right of a judgment creditor to satisfy a money judgment rendered by a court by seizing and realizing upon the value of any exigible property of the judgment debtor including securities and the desire of other shareholders to determine their future business

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“partners” by placing transfer restrictions on the transferability of the corporation’s securities. If such transfer restrictions could never be overridden, a person could render himself or herself judgment proof by transferring their assets to a non-offering or non-distributing corporation.

The balance referred to in the previous paragraph is achieved by several provisions. Under subsection (1), an enforcement officer who seizes a security is not bound by a prohibition or restriction on transfer of the seized security that would be applicable to the judgment debtor; however, under subsection (7) (a), the enforcement officer must, in disposing of a seized security, follow, as closely as possible, the process that the judgment debtor would be required to follow if the judgment debtor wishes to voluntarily dispose of his or her shares. Under subsection (7) (b), other shareholders of the company are given an opportunity to purchase a seized security before the enforcement officer offers it for sale to other persons. Under subsection (16), if shareholder is unhappy with the prospect of a stranger acquiring the seized security, he or she may tender his or her securities for sale by the enforcement officer along with the judgment debtor’s security. Furthermore, under subsection (9), upon the application of issuer or another owner of the security, the court, after considering that factors referred to in subsection (9), may make an order requiring the enforcement officer to comply with any applicable transfer restrictions.

If there is a blanket prohibition on transfer of a security, subject only to a consent to transfer being granted in the absolute discretion of the board of directors or the shareholders, subsection (7) (a) requires the enforcement officer who seized the security to request the consent to transfer. If the consent is denied, the enforcement officer would not, under subsection (1), be bound by the prohibition. However, the issuer or another holder of the same security could apply to the court under subsection (9) for an order that the enforcement officer is bound by the prohibition on transfer without the consent of the board or the shareholders.

Under subsection (7) (b), other holders of the security must be given a reasonable opportunity to purchase the seized security before the enforcement officer offers the seized security to any other person. In order to prevent the acquisition of additional shares from changing the balance of power or control of a corporation, a unanimous shareholder’s agreement may limit the number of shares that other holders of the security may acquire.

The 15-day period specified by subsection (8) provides the judgment debtor with a final opportunity to satisfy the judgment before the sale of the securities by the enforcement officer and it provides other holders of the security with an opportunity to exercise any rights they may have to acquire the seized security.

With regard to subsection (11), if a nominal value is attached to a security and another holder of the security is entitled to purchase the security at that value if the judgment debtor voluntarily disposes of the security, an instructing judgment creditor may make an application to the court to fix the price at which the security may be redeemed or purchased. If such an application is made, the court, before making an order, must consider the factors referred to in subsection (12). If a corporation has a process by which its securities are valued on a periodic basis and another holder of the security is entitled to purchase the security at that value if the judgment debtor wishes to voluntarily dispose of the security, an instructing judgment creditor may make an application to the court to determine whether or not the value is conspicuously less than value of the security.

In subsection (12) (a), the 5-year period corresponds to the “reach-back” period in section 91 (2) of the Bankruptcy and Insolvency Act. In subsection (12) (b), the description of the price being “conspicuously less” than the value of the security is drawn from section 100 of the Bankruptcy and Insolvency Act. Under the Uniform Act, the applicant has the burden of proving that the price at which a security may be redeemed by the issuer or purchased by another holder of the security is conspicuously less than the value of the security. The value of a security that is subject to a prohibition of or restriction on transfer cannot be determined by reference to a market value because there is no open market for such securities. Neverthe-

less, a value can be determined by an assessment of the assets and liabilities of the corporation. In most cases, an applicant will likely need to adduce evidence from qualified appraisers. Under subsection (12) (c), the applicant must demonstrate that he or she is unable to satisfy his or her judgment from other exigible property of the judgment debtor.

A person who is deemed to have acquired a security interest under subsection (15) (c) may perfect that security interest by registering a financing statement in accordance with the Personal Property Security Act or by obtaining possession of a security certificate.

Division 6—Intellectual Property

Definition

126 In this Division, “**intellectual property**” includes, without limitation, any property right or interest in

- (a) a copyright,
- (b) letters patent for an invention,
- (c) a trade-mark,
- (d) an industrial design,
- (e) an integrated circuit topography,
- (f) plant breeders’ rights,
- (g) a trade secret, and
- (h) a transferable license, interest or right derived from or associated with clause (a) to (f) whether the license, interest or right arose or is recognized under the law of Canada or any other country.

Source: original

Seizure and disposition of intellectual property

- 127** (1) An enforcement officer may seize intellectual property by giving a notice of seizure to the judgment debtor and where appropriate to
- (a) the office in which the right or interest is registered;
 - (b) a licensee of the rights under or interest in intellectual property.
- (2) When a seizure of intellectual property is made by an enforcement officer,
- (a) the judgment debtor loses the power to dispose of or otherwise deal with it; and
 - (b) the enforcement officer
 - (i) acquires the rights and powers to dispose of and otherwise deal with it, and

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- (ii) is entitled to take any action with regard to it that, before the seizure, could have been taken by the judgment debtor.
- (3) If an enforcement officer seizes intellectual property that is a trade secret,
 - (a) the seizure and taking possession of the trade secret by the enforcement officer does not put secret information into the public domain; and
 - (b) an enforcement officer must take reasonable precautions to maintain the secrecy of the trade secret.

Sources: original; cf. SK, section 69

ULCC Comment: Most forms of intellectual property, including copyrights, patents, trade-marks, industrial designs, and plant breeders' rights, are governed by federal legislation. An enforcement officer may seize these forms of intellectual property; however, a transfer by the enforcement officer is subject to the applicable federal legislation and any rights that have been acquired under that legislation.

Under section 13 (1) of this Act, an enforcement officer has the power to execute or endorse any document that could have been or may be executed or endorsed by the judgment debtor. Under section 7 (2) (g), the court, on application, may order a judgment debtor or other person to execute an assignment, transfer, or other document or record that is required to complete the sale of other disposition of property by an enforcement officer.

With regard to copyright, the Copyright Act makes a distinction between the right to assign the copyright and a waiver of "moral rights" in respect of the work. Moral rights, which are dealt with in sections 14.1 and 14.2 of the Copyright Act, relate to control over the integrity of the work. Under section 14.1 (2) of the Copyright Act, moral rights may not be assigned but may be waived in whole or in part. An assignment of copyright does not by that act alone constitute a waiver of any moral rights. Section 13 (1) entitles the enforcement officer to take any action that could have been taken by the judgment debtor. Under this power, the enforcement officer could waive a judgment debtor's moral rights in respect of a work. If the exercise of this power by the enforcement officer is not recognized under the Copyright Act, the enforcement officer may apply under section 7 of this Act for an injunctive relief that directs the judgment debtor to waive her or his moral rights either in whole or in part.

Trade secrets are not governed by federal legislation. With regard to trade secrets, a secret formula or process that has been developed by a judgment debtor may have a marketable value. A trade secret is a property right: in *R.I. Crain Limited v. Ashton*, [1949] O.R. 303 at 388–389 (H.C.J.), *Chevrier J.*, quoting from *Progress Laundry Co. v. Hamilton*, 270 S.W. 834 at 835 (Ky. 1925), described a trade secret as "... a property right [that] differs from a patent in that as soon as the secret is discovered, either by an examination of the product or any other honest way, the discoverer has the full right of using it." Some of the attributes of a trade secret were described by *Chevrier J.*, quoting from *Glucol Manufacturing Co. v. Shulist*, 214 N.W. 152 at 153 (Mich. 1927), at 308–309, as:

... a secret formula or process not patented, but known only to certain individuals using it in compounding some article of trade having a commercial value, and does not denote the mere privacy with which an ordinary commercial business is carried on.

The importance of maintaining the secrecy of information relating to a trade secret was the subject of a comment in *Faccenda Chicken Ltd. v. Fowler*, [1986] 1 All E.R. 617 at 625 (C.A.) where the Court stated

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that the obligation not to use or disclose information clearly covered such things as “. . . secret processes of manufacture . . . or designs or special methods of construction . . . and other information which is of a sufficiently high degree of confidentiality as to amount to a trade secret.”

If the owner of intellectual property has granted a license or other interest in the property under which the owner is entitled to receive royalty or other payments, such payments are subject to seizure under Part 9 Division 4 (Seizure of Accounts).

PART 10—LAND

ULCC Introductory Comment: *Enforcement proceedings against land are included in this Act. Some provinces/territories may wish to enact this Part as an amendment to their Land Title Act or similar statute.*

The process by which a judgment is enforced against a judgment debtor’s land varies significantly among the provinces and territories. In particular, the manner in which a judgment is recorded against land of the judgment debtor varies significantly. For example, in British Columbia, judgments do not become a charge on land until the judgment is registered against the judgment debtor’s interest recorded on a specific title to land identified by a lot and plan number. Subject to some exceptions relating to Crown liens and property tax liens, an examination of the title to a parcel of land in either British Columbia or Alberta will reveal any charges or encumbrances against a judgment debtor’s interest in the land. In Saskatchewan, judgments are registered in a general registry of judgments maintained by the Land Titles Office under the Land Titles Act. In Newfoundland and Labrador, judgments are registered in a judgments registry. In some provinces, a writ of execution is filed in the Land Registry or the Land Title Office. In order to accommodate some of the fundamental differences in the manner and effect of registering a judgment against land, the Uniform Act provides two options for registering an enforcement charge against land.

Option #1 (sections 128–131) reflects the current practice in Newfoundland and Labrador and the recommendations contained in the Saskatchewan Interim Report on the Enforcement of Money Judgments by Professors Buckwold and Cuming. Option #2 (sections 128–131) is intended to be enacted by those provinces/territories that do not wish to have a judgment be a charge against land until it is registered in accordance with the Land Title Act or similar Act of the province/territory.

Option #2 reflects the current practice in Alberta and British Columbia.

In this Part, the terms “register” and “registration” are used to describe the process of lodging judgments and other documents in the Land Titles Office or Land Registry Office. If a province/territory uses terms such as “file” or “filing” to describe this process, these terms may be used in place of or in conjunction with the terms “register” and “registration.”

BCLI Introductory Comment: As the ULCC Introductory Comment explains, Option #2 was designed with current British Columbia practice in mind. Option #1 reflects the older practice of registering judgments in a general registry. This older practice could compromise the integrity of the land title system. Therefore, Option #2 should be preferred over Option #1.

OPTION #1 (sections 128–131)

Creation of enforcement charge on land

- 128** (1) The registration of a notice of judgment in the registry under section 27 creates an enforcement charge on all land held by the judgment debtor at

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the time of registration and any land acquired by the judgment debtor after the registration and before its discharge.

Sources: SK, section 2 (1) [N.B. The provisions of the *Interim Report on Modernization of Saskatchewan Money Judgment Law* dealing with land are contained in an appendix to the main text of the model statute.]; cf. NL, section 46

- (2) An enforcement charge referred to in subsection (1) charges land of a judgment debtor despite any provision in this or any other Act that declares land to be free from seizure and sale to enforce a judgment.

Source: original

- (3) Unless otherwise ordered by the court, an enforcement charge created under subsection (1) remains in effect even though an appeal is taken against the judgment or an order is made staying enforcement of the judgment.

Source: original

ULCC Comment: Wherever the term “registry” is used in this Part, it means “registry” as defined in section 1. In section 1 “registry” is defined to mean the registry prescribed by regulation under this Act. In most provinces/territories, the Personal Property Registry established under the Personal Property Security Act will likely be prescribed as the registry for the purpose of this Act. If a province/territory decides to enact this Part as an amendment to the Land Title Act or a similar statute, it will be necessary to define the term “registry” in that Act in the same manner as it is defined in this Act.

Under this option, registration of a notice of judgment in the registry under section 27 creates an enforcement charge on the property of a judgment debtor including land without the need of registering a notice of judgment in the land title or land registry office. However, the priority of this charge created in this manner is determined under the next section.

Priority of enforcement charge

- 129** (1) Subject to subsection (2), an enforcement charge referred to in section 128 has priority over:
- (a) an interest in the land that, at the date the enforcement charge was created, could have been registered but was not registered as provided by [insert the title of the *Land Titles Act* or similar statute of the enacting jurisdiction];
 - (b) a registered or unregistered interest in the land acquired from the judgment debtor after the enforcement charge was created;
- but, does not have priority over an interest in the land acquired by a transferee unless:

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- (c) a search of the registry using the name of the transferor as recorded in the records of the land titles office discloses the enforcement charge; or
 - (d) the enforcement charge is registered as provided in section 130 of this Act [or insert the section number and title of the *Land Titles Act* or similar statute of the enacting jurisdiction that provides for the registration of judgments].
- (2) An enforcement charge referred to in section 128, whether or not registered under section 130, does not have priority over:
 - (a) a mortgage, registered before the enforcement charge was created, that secures:
 - (i) a specific principal sum, even though advances and obligations under the mortgage are made or incurred after the enforcement charge referred to in section 128 was created or was registered under section 130, or
 - (ii) a revolving line of credit up to a specific principal sum, even though advances and obligations under the mortgage are made or incurred after the enforcement charge referred to in section 128 was created or was registered under section 130 and even though, at any time during the term of the mortgage, there may not be any outstanding advances to be secured;
 - (b) a mortgage, registered after the enforcement charge was created,
 - (i) if and to the extent that the mortgage secures value given and used to acquire the interest mortgaged, and
 - (ii) if the mortgage is registered in accordance with [insert the name of the *Land Titles Act* or similar statute in the enacting jurisdiction] not later than 15 days following the registration of the transfer by which the judgment debtor acquired the interest mortgaged.
- (3) A person who buys land from a judgment debtor that is exempt as provided in section 159 takes free from the enforcement charge if:
 - (a) the consideration given by the buyer is equivalent to the market value of the judgment debtor's land; and
 - (b) the buyer becomes registered owner of the land.

Sources: SK, section 3; *cf.* NL, section 59

ULCC Comment: The effect of subsection (1) is that an enforcement charge against a judgment debtor's land created under section 128 has priority over the interests referred to in clauses (a) and (b), however,

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unless a notice of judgment is registered in the land titles office or land registry, as the case may be, in accordance with section 130, the enforcement charge created under section 128 does not have priority over a registered interest in land if, at the time that the registered interest was acquired, a search of the records of the registry, using the name of the grantor as that name appears in the records of the land titles office or land registry, would not disclose the enforcement charge. Under this option, a person who contemplates acquiring an interest in land would obtain a search result from the registry designated for the purposes of Part 5 using the name of the grantor. If a search using this name does not reveal any enforcement charges, the grantee is entitled to assume, that there are no enforcement charges on the land of the grantor.

The effect of subsection (1) (a) is to reverse the effect of judicial decisions that gave an unregistered transfer priority over a registered judgment based on the nemo dat quod non habet rule.

Subsection (3) recognizes that land of the judgment debtor specified in section 159 is exempt from enforcement proceedings and the proceeds from the sale of exempt property remain exempt under section 163 as long as they remain segregated and identifiable in the hands of the judgment debtor. The purpose of subsection (3) is to enable the judgment debtor to sell exempt land and permit the purchaser to acquire the land free of the enforcement charge. An enforcement charge applies to all property of the judgment debtor. Therefore, as a practical matter, it will be necessary to obtain and register a discharge with respect to the exempt land that a judgment debtor proposes to sell. Section 131 (2) (c) requires the judgment creditor to provide a discharge if subsection (3) applies; however, if, upon receiving a request for a discharge, the judgment creditor does not believe that the land qualifies as exempt property or does not believe that the consideration being paid by the transferee is equivalent to market value, an application may be made to the court under section 131 (5) for an order confirming that the registration of the notice of judgment need not be discharged.

Registration of an enforcement charge under *Land Titles Act*

- | | |
|------------|---|
| 130 | (1) If a notice of judgment is registered as provided in section 27, an application may be made by the judgment creditor, in accordance with [insert the name and applicable section number of the <i>Land Titles Act</i> or similar statute on the enacting jurisdiction], to register a notice of judgment on the land identified in the application. |
| | (2) If a notice of preservation order in the same proceeding is registered on the land of the judgment debtor under Part 4, a notice of judgment referred to in subsection (1) is deemed to be registered at the time when the notice of preservation order was registered. |
| | (3) The registration of a notice of judgment as provided in subsection (1) creates an enforcement charge on the land described in the registration. |
| | (4) Subject to subsection (2), an enforcement charge referred to in subsection (3) is effective for the purposes of this Part from the time of the registration of a notice of judgment under this section. |
| | (5) Registration of a notice of judgment under this section does not constitute notice to or knowledge by any person of the existence of the notice of judgment. |

Source: *cf.* SK, section 4

***ULCC Comment:** If the name under which an interest in land of the judgment debtor is recorded in the records of the land titles office or land registry, when used to search the registry designated for the purposes of Part 5 of this Act, would not disclose an enforcement charge on the property of the judgment debtor, the judgment creditor will need to register a notice of judgment in the land titles office or land registry, as the case may be, in order to create an enforcement charge against the judgment debtor's interest in land.*

Discharge of registration

131 (1) In this section:

“judgment debtor” includes any person named in a registration as a judgment debtor, and

“judgment creditor” includes any person named in a registration as a judgment creditor.

(2) A judgment creditor must discharge a registration of a notice of judgment if:

- (a) the judgment to which the registration relates has been satisfied, withdrawn or is otherwise not enforceable;
- (b) the person named in the registration is not a judgment debtor of the person named as judgment creditor in the registration; or
- (c) the registration affects land of a judgment debtor that is exempt as provided by section 159 and the land is sold to a buyer for consideration equivalent to the market value of the land.

(3) A judgment debtor or a person with an interest in property affected by the registration of notice of judgment may deliver a written demand to the judgment creditor requiring the discharge of a registration in cases referred to in subsection (2) and the judgment creditor must discharge the registration.

(4) A person giving a demand referred to in subsection (3) may register a discharge of the registration, in the form prescribed, if he or she provides the registrar with proof satisfactory to the registrar that

- (a) the demand was delivered to the judgment creditor; and
- (b) the judgment creditor did not, within 15 days after delivery of the demand,
 - (i) comply with a demand, or
 - (ii) file with the registrar an order of the court confirming that the registration of the notice of judgment need not be discharged.

(5) On application to the court by a judgment creditor, a judgment debtor or a person with an interest in property affected by an enforcement charge, the

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court may order that the registration creating the enforcement charge be maintained, amended or discharged.

- (6) A demand referred to in subsection (3) may be delivered in accordance with section 5 of this Act or by mail addressed to the address of the judgment creditor as it appears in the registration of the judgment.
- (7) A fee or expense may not be charged, and no amount may be accepted, by a judgment creditor for compliance with a demand made pursuant to subsection (3).

Source: *cf.* SK, section 8–9

OPTION #2 (Sections 128–131)

Creation of enforcement charge on land

- 128** (1) If a notice of judgment is registered in the registry in accordance with Part 5 of this Act, a judgment creditor may,
- (a) in the case of land registered under the [insert the title of the *Land Titles Act* or similar Act in the enacting province/territory] *Land Title Act* make an application in accordance with [insert the title of the *Land Titles Act* or similar Act in the enacting province/territory] *the Land Title Act* to register the notice of the judgment against the title to the land of the judgment debtor described in the application;
 - (b) in the case of land that is not recorded under the [insert the title of the *Land Titles Act* or similar Act in the enacting Province or Territory] *Land Title Act*, make an application to register the notice of judgment against the land of the judgment debtor described in the application that is filed in accordance with the regulations.

Source: AB, section 26 (b)

- (2) If a notice of preservation order in the same proceeding is registered on the land of the judgment debtor under Part 4, a notice of judgment referred to in subsection (1) is deemed to be registered at the time when a notice of preservation order was registered.

Source: *cf.* AB, section 23

- (3) The registration of a notice of judgment in accordance with subsection (1) creates an enforcement charge on the land of a judgment debtor against which the notice of judgment is registered.

Source: *cf.* AB, section 26 (b)

- (4) Subject to subsection (2), an enforcement charge referred to in subsection (3) is effective for the purposes of this Part from the time of the registration of a notice of judgment under this section.

Source: original

- (5) An enforcement charge referred to in subsection (3) charges land of a judgment debtor despite any provision in this or any other Act that declares land to be free from seizure and sale to enforce a judgment.

Source: original

- (6) Unless otherwise ordered by the court, an enforcement charge referred to in subsection (3) remains in effect even though an appeal is taken against the judgment or an order is made staying enforcement of the judgment.

ULCC Comment: Under this Option, a judgment does not become a charge on land until the judgment is registered in accordance with the Land Titles Act or similar Act in the province/territory. Before a notice of judgment may be registered under the Land Titles Act or similar Act, the judgment creditor must register a notice of judgment in the registry under Part 5 of this Act.

Priority of enforcement charge

- 129** (1) Except as otherwise provided in this or any other Act, an enforcement charge created under section 128 has priority over
- (a) an interest in land that, at the date the enforcement charge is created, could have been registered but was not registered as provided by [insert the title of the *Land Titles Act* or similar Act of the enacting Province or Territory] the *Land Title Act*;
 - (b) a registered or unregistered interest in land acquired from the judgment debtor after the enforcement charge was created.
- (2) An enforcement charge created under section 128 does not have priority over
- (a) a mortgage, registered before the enforcement charge was created, that secures:
 - (i) a specific principal sum, even though advances and obligations under the mortgage are made or incurred after the enforcement charge was created under section 128, or
 - (ii) a revolving line of credit up to a specific principal sum even though advances and obligations under the mortgage are made or incurred after the enforcement charge was created under

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section 128 and even though, at any time during the term of the mortgage, there may not be any outstanding advances to be secured;

- (b) a mortgage, registered after the enforcement charge was created,
 - (i) if and to the extent that the mortgage secures value given and used to acquire the interest mortgaged, and
 - (ii) if the mortgage is registered in accordance with [insert the name of the *Land Titles Act* or similar statute in the enacting jurisdiction] [the *Land Title Act*] not later than 15 days following the registration of the transfer by which the judgment debtor acquired the interest mortgaged.
- (3) A person who buys land from a judgment debtor that is exempt as provided in section 159 takes free from the enforcement charge if:
 - (a) the consideration given by the buyer is equivalent to the market value of the interest; and
 - (b) the buyer becomes registered owner of the interest.

Source: original

ULCC Comment: Under this option, a person who contemplates acquiring an interest in land must search the title to the land to determine whether an enforcement charge is registered against the interest of the grantor. It will not be sufficient to search the registry designated for the purposes of Part 5 using the name of the grantor.

The effect of subsection (1) (a) is to reverse the effect of judicial decisions that gave an unregistered transfer priority over a registered judgment based on the nemo dat quod non habet rule.

Discharge of registration

130 An enforcement charge on land of a judgment debtor must be discharged:

- (a) if the registration of a notice of judgment in the registry is discharged, by making an application to register a discharge in accordance with [insert the title of the *Land Titles Act* or similar Act of the enacting province/territory] [the *Land Title Act*];
- (b) if the [insert the name of the Registrar of Titles or similar official] [Registrar of Titles] is satisfied on an application made in the prescribed manner that the judgment to which the enforcement charge relates is satisfied, withdrawn or otherwise not enforceable.

Source: original

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ULCC Comment: The reference in clause (a) to the “registry” is a reference to the registry referred to in Part 5 of this Act.

Registration does not constitute notice or knowledge of notice of judgment

- 131** Registration of a notice of judgment under section 128 does not constitute notice to or knowledge by any person of the existence of the notice of judgment.

Source: original

SECTIONS APPLICABLE TO BOTH OPTIONS DESCRIBED ABOVE

Sale of judgment debtor’s land

- 132** (1) Subject to sections 10, 133 and 134, an enforcement officer is entitled, unless a court orders otherwise, to dispose of land of a judgment debtor that is subject to an enforcement charge in the manner that the enforcement officer, acting reasonably, considers offers the best opportunity to maximize the proceeds that may be anticipated from a disposition of the land.
- (2) Unless the court orders otherwise, any judgment creditor may bid at a sale conducted by the enforcement officer and purchase land of a judgment debtor.

Sources: *cf.* AB, sections 68–69; NL, sections 101–102

ULCC Comment: Self-explanatory.

Notice of intention to sell

- 133** (1) Before selling or otherwise disposing of land under this Part, an enforcement officer must give a notice of intention to sell to
- (a) the judgment debtor; and
 - (b) each co-owner of the land whose interest is registered in accordance with [insert the name of the *Land Title Act* or similar statute governing the registration of interest in land in the province or territory] the *Land Title Act*.

Sources: *cf.* AB, section 70; NL, section 103

- (2) After a notice of intention to sell is given under subsection (1), the enforcement officer may enter on or gain access to the land for the purpose of conducting any inspection that is reasonably required to effect a sale of the land.

Source: original

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ULCC Comment: A notice of intention to sell signifies the commencement of the process for selling a judgment debtor's land that is subject to an enforcement charge. Under Part 11, if land is co-owned by the judgment debtor and another person or persons, a co-owner may exercise a right to purchase the judgment debtor's interest during the waiting period described in the next section.

Waiting period between notice of intention to sell and offering land for sale

- 134** (1) Unless otherwise permitted by the court, an enforcement officer must not offer or advertise land of a judgment debtor for sale until a waiting period of [insert period of time chosen by the enacting jurisdiction] **6 months** has elapsed from the day on which the notice of intention to sell is given to the judgment debtor if
- (a) the judgment debtor is a natural person and the judgment debtor or a dependent of the judgment debtor resides on the land;
 - (b) the judgment debtor is a corporation, the primary business of the corporation is farming and an officer or director of the corporation or a dependent of the officer or director resides on the land; or
 - (c) the court otherwise orders.
- (2) The court may extend or shorten the waiting period referred to in subsection (1).

Sources: *cf.* AB, section 72 (180 days); NL, section 105 (60 days)

ULCC Comment: The purpose of the waiting period required by this section is to provide judgment debtors who reside on the land or who are resident farmers with a final opportunity to satisfy the judgments relating to enforcement charges on the land before it is sold. The length of the waiting period that is fixed by regulation by each province/territory should correspond with the length of the redemption period that is normally granted in foreclosure proceedings relating to land used for residential purposes.

BCLI Comment: In addition to corresponding with the redemption period normally granted in foreclosure proceeding in British Columbia, a 6-month waiting period corresponds to the waiting period currently established by section 96 of the *Court Order Enforcement Act*.

Method of disposition

- 135** (1) At least 30 days before offering land for sale, an enforcement officer must deliver a notice of the method of disposition in the prescribed form to:
- (a) the judgment debtor;
 - (b) judgment creditors who have given a subsisting enforcement instruction to the enforcement officer;
 - (c) a person with an interest in land that is subordinate to an enforcement charge on the land; and
 - (d) any other person specified by the regulations.

- (2) The notice of the method of disposition referred to in subsection (1) must set out
 - (a) the method of disposition including any proposed terms of the disposition; and
 - (b) any additional information prescribed by regulation.
- (3) The notice of the method of disposition may set out a minimum price for which the land will be sold.
- (4) If a person referred to in subsection (1) objects to the proposed method of disposition, proposed terms of disposition or minimum price, a notice of objection must be given in writing to the enforcement officer within 15 days after receiving delivery of the notice of the method of disposition.
- (5) If a notice of objection is given to an enforcement officer within the time referred to in subsection (4), the enforcement officer must not complete a disposition of the land unless authorized to do so by the court.
- (6) On application, the court may
 - (a) approve or modify the proposed method of disposition, the proposed terms of disposition or the minimum price set by the enforcement officer; or
 - (b) delay the disposition by the enforcement officer if the court is satisfied that the method of disposition selected by the enforcement officer is unlikely to attract an offer to purchase the land at a price that could be obtained by another method of disposition or by utilizing the same method of disposition at a later time.
- (7) A sale of land by an enforcement officer under this Part is not invalidated by an irregularity in
 - (a) a notice of intention to sell, direction, statement, enforcement instruction or registration of a notice of judgment creating an enforcement charge that is being enforced by the enforcement officer; or
 - (b) the procedure by which the sale is carried out.
- (8) Despite subsection (7), if, on application, the court is satisfied that a person is or is likely to be prejudiced by an irregularity in the procedure by which a sale of land under this Part is proposed to be conducted, the court may
 - (a) order that the notice of intention to sell given by the enforcement officer under section is invalid and the enforcement officer may not proceed with the proposed sale; or
 - (b) give directions with regard to the proposed sale.

- (9) An enforcement officer is not liable for damages resulting from the disposition of land under this Part if:
- (a) at the time of disposition, the enforcement officer has reasonable grounds to believe that
 - (i) the land is exigible property of the judgment debtor; and
 - (ii) the land is required to satisfy the amount recoverable under the judgments of all instructing judgment creditors and all claims that must be paid out a distributable fund under section 184 (1) before the eligible claims of judgment creditors under section 184 (1) (h);
 - (b) as soon as practicable after he or she determines that the proceeds from the disposition land are in excess of that required to satisfy the amounts referred to clause (a), the excess proceeds of disposition are paid to the judgment debtor or person otherwise entitled; or
 - (c) it is subsequently determined that the registration of the notice of judgment that created on the enforcement charge on the property is invalid.

Sources: cf. AB, section 74; NL, section 106

ULCC Comment: If a province/territory has procedures that apply to the method of sale of land where there is a default under a mortgage, those procedures may be adopted or modified and used in place of those described in subsections (1) to (5).

The irregularities referred to in subsections (6) are those such as typographical errors in names, addresses, or dates that do not have the effect of misleading anyone. These types of irregularities should not have the effect of invalidating a sale of land that is otherwise valid. A proposed sale is not invalidated unless a person affected by the irregularity satisfies the court that he or she is or is likely to be prejudiced by the irregularity. If a defect in the registration of a notice of judgment in the Personal Property Registry is seriously misleading, the effect of section 33 (1) (e) (which incorporates section 43 (7) of the Personal Property Security Act (British Columbia)) is that the registration of the notice of judgment, as provided by Part 5, is invalid.

Transfer of land following a sale

- 136** (1) After completion of the sale of land under this Part, the enforcement officer must execute a conveyance [or insert the term used in the enacting jurisdiction such as “deed”, “transfer”, etc.] transfer of that land to the purchaser.
- (2) A conveyance [or substitute the term used in subsection (1) to describe a conveyance] transfer executed by an enforcement officer is proof of the enforcement officer’s authority.

- (3) If an enforcement officer executes a conveyance [transfer] of the judgment debtor's land under this Part, the [insert the name of the appropriate official in the Land Titles Office of the enacting province/territory such as the Registrar of Titles] [Registrar of Titles] must, unless otherwise ordered by the court and subject to subsection (5), transfer the land to the purchaser and issue a new title accordingly after there is filed with the [insert the name of the appropriate official in the Land Titles Office referred to above] [Registrar of Titles]:
- (a) an application for the registration of the conveyance [or substitute the term used in subsection (1) to describe a conveyance] [transfer];
 - (b) the conveyance [or substitute the term used in subsection (1) to describe a conveyance] [transfer] executed by the enforcement officer in accordance with subsection (1);
 - (c) a certificate of the enforcement officer certifying that the enforcement officer has complied with the requirements of this Part; and
 - (d) such other records as may be prescribed by regulation.
- (4) After land is registered in the name of the purchaser under subsection (3), all interests that charged the land of the judgment debtor and that were subordinate to an enforcement charge under which the enforcement proceeding was conducted, are cancelled.
- (5) If the court makes an order on an application under section 135 (6), the [insert name of appropriate Land Titles official named in subsection (3)] [Registrar of Titles] must not transfer the interest until the [insert name of official from above] [Registrar of Titles] is satisfied by the enforcement officer that:
- (a) the time for filing an appeal of that order has expired and no appeal has been filed;
 - (b) all persons who have a right to appeal that order have given written undertakings not to appeal the order; or
 - (c) if the order was appealed, the appeal was dismissed or withdrawn, and the order is no longer subject to a further appeal.
- (6) If an enforcement officer sells land for which a title has not been issued [under the *Land Titles Act* or similar enactment] under the *Land Title Act*, a transfer of the land executed by the enforcement officer in the form prescribed by regulation conveys the land to the purchaser.

Sources: *cf.* AB, section 75; NL, section 108; SK, section 72

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ULCC Comment: If a province/territory has procedures that apply to the sale of land by a sheriff, court bailiff, or enforcement officer, these procedures may be adopted or modified in place of those in this section.

Purchaser from enforcement officer takes free of subordinate interests

- 137** (1) A person who purchases land from an enforcement officer under this Part and who pays to the enforcement officer an amount equal to the lesser of
- (a) the amount recoverable under the judgments of all instructing judgment creditors; and
 - (b) a price that could reasonably be expected to be obtained on a sale conducted as part of an enforcement proceeding
- takes the judgment debtor's land free of all interests that are subordinate to the enforcement charge being enforced by the enforcement officer and the enforcement charge of any judgment creditor who has an eligible claim under Part 14 with regard to the distributable fund constituted by the receipt of proceeds of sale from the land, despite that a judgment creditor does not receive full satisfaction of the judgment.
- (2) A purchaser referred to in subsection (1) is entitled to have any subordinate interests referred to in subsection (2) discharged and removed from the purchaser's title.

Source: original

Proceeding not to abate by marriage, death or bankruptcy

- 137.1** (1) For this Part, a proceeding must not be considered to have abated, and an order for the sale of land or any sale under it is not in any way affected, by reason of the marriage, death or bankruptcy of any of the persons named in the judgment.
- (2) The intent and object of this Part is to pass to a purchaser at a sale, under an order for the sale of land, an absolute title to the estate and interest of the judgment debtor in the land purchased at the sale.
- (3) Nothing in this Part affects the right of the judgment debtor to receive rent or interest that is due for the land previous to the day of the sale of it.

Source: *Court Order Enforcement Act, R.S.B.C. 1996, c. 78, section 108*

Power of purchasers to satisfy encumbrances

- 137.2** (1) A purchaser may remove or satisfy a mortgage or other encumbrance that, at the time of the sale, existed on land purchased, in a similar manner as the judgment debtor might have done and, on removing or satisfying the mortgage or other encumbrance, the purchaser acquires the same estate,

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right, title and interest as the judgment debtor would have acquired in case the removal or satisfaction had been effected by the judgment debtor.

- (2) The mortgagee or other encumbrancer must, if required, give to the purchaser, at the cost of the purchaser, a certificate of the satisfaction of mortgage or other encumbrance.
- (3) The presentation of the certificate referred to in subsection (2) to the registrar of titles is sufficient authority for the registrar of titles to cancel the registration of the mortgage or other encumbrance for which it is given.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 109

BCLI Comment: These two sections, which are taken from provisions of the *Court Order Enforcement Act* that are currently in force, may be added to this Part to provide purchasers of land with some additional rights and safeguards.

PART 11—CO-OWNED AND PARTNERSHIP PROPERTY

Definitions

138 In this Part:

“**deposit account**” has the same meaning as in section 98 (1);

“**partnership property**” has the same meaning as in the [insert the title of the *Partnership Act* of the enacting province/territory] *Partnership Act*.

Source: original

ULCC Comment: In most provinces and territories, “partnership property” is defined in the Partnership Act of the province or territory in a manner similar to the definition in the British Columbia Partnership Act. The latter Act defines “partnership property” as meaning property and rights and interests in property

- (a) originally brought into the partnership stock,
- (b) acquired, whether by purchase or otherwise, on account of the firm, or
- (c) acquired for the purposes and in the course of the partnership business.

Application of this Part

139 Unless otherwise provided, this Part applies to enforcement proceedings under Parts 9 and 10.

Source: original

ULCC Comment: Part 9 applies to the seizure and sale of personal property. Part 10 deals with enforcement proceedings in relation to land.

Severance of joint tenancy

- 140** (1) If co-owned property is owned by a judgment debtor and one or more persons in joint tenancy, the creation of an enforcement charge on the judgment debtor's property severs the joint tenancy and the enforcement charge charges only the judgment debtor's interest in the property as a tenant in common.
- (2) Subsection (1) does not apply to partnership property.
- (3) If a joint tenancy in co-owned property is severed under subsection (1) and the enforcement charge that caused the severance is discharged before the disposition of the property by an enforcement officer, the joint tenancy is deemed not to have been severed under subsection (1) unless in the interval between the severance of the joint tenancy and the discharge of the enforcement charge there has been some other act or event that would have severed the joint tenancy.

Source: *cf.* SK, section 30 (2)

ULCC Comment: "Co-owned property" is defined in section 1 as meaning "property that a judgment debtor owns with one or more persons as a joint tenant or tenant in common." If property owned by a judgment debtor is co-owned by the judgment debtor and one or more persons in joint tenancy, the creation of an enforcement charge under this Act severs a joint tenancy. An enforcement charge on personal property is created by the registration of a notice of judgment under Part 5. With regard to land, under Option #1 of Part 10, an enforcement charge is created by registration of a notice of judgment under Part 5. Under Option #2 of Part 10, an enforcement charge on land is not created until a notice of judgment is registered in the Land Title Office.

Under subsection (3), if an enforcement charge is discharged before the enforcement officer sells or otherwise disposes of the property, the joint tenancy is deemed not to have been severed unless, in the interval, there has been some other act or event that would have severed the joint tenancy. For example, if in the interval, one of the joint tenants has mortgaged his or her interest, the co-owned property would continue to be owned as tenants in common.

Presumption of equal and separate shares

- 141** Subject to an order made under section 146, co-owners of property charged by an enforcement charge are presumed to own equal and separate shares in the property.

Source: *cf.* SK, section 30 (1)

ULCC Comment: The term "co-owner" is defined in section 1. Under section 140, creation of an enforcement charge on property co-owned by a judgment debtor and one or more other persons in joint tenancy severs the joint tenancy and a tenancy in common results. Under this section, tenants in common, whether as a result of section 140 or otherwise, are presumed to own equal and separate shares in the property. This presumption may be rebutted on an application made to the court made under section 146.

Seizure of co-owned personal property

- 142** (1) If an enforcement officer seizes personal property of a judgment debtor that is co-owned property, the enforcement officer is entitled to take possession of, receive and collect the seized property in its entirety.

Source: *cf.* SK, section 30 (2)

- (2) If co-owned personal property that is seized under subsection (1) is an account or chattel paper, an account debtor who pays an account or a person who satisfies a payment obligation under chattel paper, by payment to the enforcement officer or an assignee of the enforcement officer, is discharged to that extent from his or her obligation to
- (a) the judgment debtor; and
 - (b) a co-owner of the account or chattel paper to the extent that the amount paid exceeds the interest of the judgment debtor.

Source: original

ULCC Comment: Under Part 9, an enforcement officer is entitled to seize exigible personal property of a judgment debtor that is subject to an enforcement charge. “Exigible property” is defined in section 1. Even though an enforcement officer is entitled to seize co-owned property in its entirety, under section 145 (3) each co-owner, other than the judgment debtor, is entitled to receive a share of the proceeds that is proportionate to his or her share in the property.

Giving notice to co-owners

- 143** (1) Within 5 days from the date on which an enforcement officer seizes co-owned property that is personal property or gives a notice of intention to sell land, the enforcement officer must give to each co-owner that is known to the enforcement officer:
- (a) a copy of the notice of seizure in respect of personal property or a copy of the notice of intention to sell in respect of land; and
 - (b) a notice of the right under section 144 to purchase the judgment debtor’s interest in the co-owned property.
- (2) An enforcement officer must not sell or otherwise dispose of co-owned property until a date that is at least 15 days from the date that the notices referred to in subsections (1) are given.

Source: *cf.* SK, section 30 (5)–(6)

ULCC Comment: With regard to the seizure of personal property, unless a notice of seizure is given to a judgment debtor at the time of a seizure, section 62 requires the enforcement officer to give a notice of sei-

zure to the judgment debtor as soon as practicable after the seizure. With regard to land, section 133 (1) requires that a notice of sale be given to the judgment debtor.

Right of co-owners to purchase judgment debtor's interest

- 144** (1) Within the 15-day period referred to in section 143 (2), a co-owner, other than the judgment debtor, has the right to purchase the judgment debtor's interest in co-owned property by
- (a) giving a written notice of intention to exercise this right to the enforcement officer; and
 - (b) paying an amount to the enforcement officer that equals the fair market value of the judgment debtor's interest in the property or providing security, in form and content satisfactory to the enforcement officer, to secure such payment.
- (2) After the expiration of the period referred to in subsection (1), a co-owner, other than the judgment debtor, may purchase the judgment debtor's interest in the co-owned property under section 145.

Source: *cf.* SK, section 30 (4)

ULCC Comment: During the period referred to in subsection (1), co-owners have a right to purchase the judgment debtor's interest in co-owned property before the enforcement officer disposes of the property under Part 9. If the fair market value under subsection (1) (b) exceeds the amount recoverable under the judgment of an instructing judgment creditor, the balance remaining in the distributable fund is paid to the judgment debtor under section 184 (1) (i).

Sale of co-owned property and disposition of proceeds of sale

- 145** (1) Subject to an order made under section 146, an enforcement officer who seizes a judgment debtor's personal property, which is co-owned property, is entitled to dispose of the property in its entirety under Part 9.
- (2) Subject to an order made under section 146, an enforcement officer who gives a notice of intention to sell a judgment debtor's land, which is co-owned property, is entitled to sell or dispose of the judgment debtor's interest as a tenant in common under Part 10.
- (3) When an enforcement officer receives, collects, sells or otherwise disposes of co-owned property referred to in subsection (1) or (2), the enforcement officer must divide the proceeds in accordance with the respective interests of the co-owners as follows:
- (a) by application of the portion attributable to the judgment debtor's interest in the property to the distributable fund constituted under section 180; and

- (b) by payment of the portion attributable to the interest of a co-owner, who is not a judgment debtor, to such person or the person entitled to it.
- (4) Unless otherwise ordered by the court, all costs of the seizure, collection and disposition of co-owned property must be deducted from the portion attributable to the judgment debtor's share under subsection (3) (a).

Source: original

ULCC Comment: Under subsection (3), if the portion attributable to the judgment debtor under clause (a) exceeds the amount recoverable under the judgment of an instructing judgment creditor, any balance remaining in the distributable fund is paid to the judgment debtor under section 184 (1) (i).

Application to court

- 146** (1) On application by an enforcement officer, an instructing judgment creditor or a person who has an interest or asserts an interest in co-owned property, the court may make one or more of the following orders:
- (a) determine that a person does or does not hold an interest as joint tenant or as a tenant in common with the judgment debtor in co-owned property;
 - (b) determine that a judgment debtor's interest in co-owned property as a tenant in common is greater or less than that specified in section 141;
 - (c) extend the period of time referred in section 144 to permit a co-owner to exercise the right referred to in section 144; or
 - (d) determine the fair market value of a judgment debtor's interest for the purpose of section 144.

Source: SK, section 30 (7)

- (2) The onus of proof that a person other than the judgment debtor holds an interest in seized property and the extent of that interest is on such person.

Source: SK, section 30 (8)

ULCC Comment: Self-explanatory.

Enforcement proceedings against partnership property

- 147** (1) If a judgment debtor is a general partner in a partnership, an enforcement officer may take one or more of the following actions to satisfy the amount recoverable under the judgment of an instructing judgment creditor:

- (a) seize personal property that is partnership property of a partnership in respect of which the judgment debtor is a partner and take possession, receive or collect the seized property in its entirety;
 - (b) under Part 10, give a notice of intention to sell or otherwise dispose of land that is partnership property of a partnership in respect of which the judgment debtor is a partner.
- (2) When enforcement proceedings are taken under subsection (1) against partnership property, an enforcement officer is not bound by any restrictions, limitations or other terms of a partnership agreement or an article of the partnership relating to the judgment debtor's interest in partnership assets or the effect of enforcement proceedings against partnership assets.

Source: *cf.* NL, section 88

ULCC Comment: *This section represents a change from the law found in the Partnership Act of most provinces and territories. In most provinces and territories, the Partnership Act contains a provision that is similar to the following provision of the British Columbia Partnership Act:*

- 26 (1) *A writ of execution must not issue against partnership property except on a judgment against the firm.*

Notice of enforcement proceedings in relation to partnership property

- 148 (1) Before selling partnership property in an enforcement proceeding referred to in section 147, an enforcement officer must give a copy of the notice of seizure in respect of the seizure of personal property or a copy of the notice of intention to sell in respect of land, accompanied by the statement referred to in subsection (2) to:
- (a) all general partners who are identified in the records maintained pursuant to [insert the title of the *Partnership Act* or the Act pertains to partnerships] the *Partnership Act*,
 - (b) any other person known by the enforcement officer to be a general partner in the partnership or a co-owner of the property, and
 - (c) any person known to the enforcement officer to have a security interest in the property.
- (2) The statement referred to in subsection (1) must state that unless an application is made to the court not later than 15 days from day that the notice referred to in subsection (1) is given, the joint tenancy in partnership property that is subject to the enforcement proceeding will be severed.
- (3) The notice referred to in subsection (1) and the statement referred to in subsection (2) may be delivered to the address of the person as it appears in the records of the partnership as provided in [insert the title of the *Part-*

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nership Act or the Act pertains to partnerships] the *Partnership Act* or such other address as is known to the enforcement officer.

- (4) An enforcement officer must not sell or otherwise dispose of partnership property until a date that is at least 15 days from the date that notice referred to in subsection (1) and the statement referred to in subsection (2) are given.

Source: original

ULCC Comment: Self-explanatory.

Disposition of partnership property

- 149** (1) When an enforcement officer sells or otherwise disposes of partnership property under this Part, the proceeds must be divided and paid as provided in section 145 (3).
- (2) Unless otherwise ordered by the court, all costs of the seizure, collection and disposition of partnership property must be deducted from the portion of the proceeds attributable to the judgment debtor under section 145 (3).

Source: original

ULCC Comment: Self-explanatory.

Application to court

- 150** (1) On application by a person entitled to receive the notice referred to in section 148 (1), and after considering the interests of the applicant and the interests of a judgment creditor whose judgment is being enforced, the court may, without limitation, make one or more of the following orders:
- (a) an order permitting a partner who is not the judgment debtor to exercise an option or automatic accruer contained in the partnership agreement or articles of the partnership if the court is satisfied that the price to be paid is not conspicuously less than the market value of the judgment debtor's interest;
 - (b) an order permitting a partner who is not the judgment debtor to purchase the judgment debtor's interest in the partnership property by paying the purchase price in installments over the period of time specified;
 - (c) an order suspending an enforcement proceeding against partnership property and appointing the enforcement officer or another person as a receiver of the judgment debtor's share of the profits of the partnership or of any money payable or to be paid to the judgment debtor or

- property of the partnership to be transferred to the judgment debtor while the order is in effect;
- (d) an order suspending enforcement proceedings against partnership property on specified conditions;
 - (e) an order that an enforcement officer release some or all of a partnership's personal property from a seizure made by the enforcement officer;
 - (f) an order that an enforcement charge be discharged in respect of some or all of a partnership's property;
 - (g) an order permitting the sale by an enforcement officer of some or all the partnership property that is subject to an enforcement proceeding.
- (2) When an order is made pursuant to subsection (1) (a), section 125 (11) to (13) applies.
- (3) When an order is made under subsection (1) (b):
- (a) the partner who is given the right to purchase the property does not acquire an interest in the property until the full purchase price is paid; and
 - (b) unless the court orders otherwise, the right to purchase the property terminates if the purchaser defaults in making any payment of the purchase price as required by the order.
- (4) On application, the court may terminate or modify an order made under subsection (1).
- (5) If an application referred to in subsection (1) is not made prior to expiry of the 15 days referred to in section 148 (4):
- (a) the enforcement officer may proceed with the disposition of the partnership property; and
 - (b) a joint tenancy in respect of partnership property is severed when the enforcement officer enters into an agreement for the sale of the property.

Source: original

***ULCC Comment:** Section 125 (11) to (13) applies in the case of a seizure of a share or security of a corporation that is not an offering corporation or distributing corporation, if a holder of the same class or type of security has a right to purchase the seized shares or security at predetermined price or at a price established by a predetermined formula.*

Appointment of a receiver of partnership profits, income and money

- 151** On application, the court may appoint an enforcement officer or another person as a receiver of the judgment debtor's share, as a partner of a partnership or limited partner of a limited partnership, of the profits or income of the partnership whether already accrued or accruing and of any money that is due and payable or may be coming to the judgment debtor in respect of the partnership or property of the partnership to be transferred to the judgment debtor while the order is in effect.

Sources: original; *cf. Partnership Act, R.S.B.C. 1996, c. 348, sections 26 (2) (b) and 76 (1) (b)*

ULCC Comment: *This section is similar to provisions found in the Partnership Act of some provinces and territories.*

BCLI Comment: The proposed change does not affect the substance of this provision; it simply avoids the use of the defined word "income" (see the proposed change to section 1 for the definition of "income") and makes the section parallel to sections 26 (2) (b) and 76 (1) (b) of the *Partnership Act*, allowing for the repeal of those two sections upon the coming into force of the Uniform Act.

PART 12—EXEMPTIONS

ULCC Introductory Comment: *All present and after-acquired property of a judgment debtor is subject to an enforcement proceeding after an enforcement charge on the property is created by the registration of a notice of judgment. However, it is not in society's interest to have a judgment debtor and his or her dependents become a charge on the welfare of the state because a judgment creditor has seized and sold all the property and income of a judgment debtor. This Part provides exemptions from enforcement proceedings for specified types of property and a specified portion of a judgment debtor's income. These exemptions are intended to enable the judgment debtor to support himself or herself and his or her dependents at a reasonable standard of living and to retain property that is necessary to enable the judgment debtor to continue to earn income.*

This Part is divided into three Divisions. Division 1 describes the process for claiming an exemption and how determinations are made with regard to whether or not an exemption claim is valid. Division 2 describes the types of property that may be claimed as exempt property. Division 3 defines income for the purpose of this Part and defines the portion of a judgment debtor's income that is exempt from an enforcement proceeding.

Division 1—General

Application of this Division

- 152** Unless otherwise provided, Division 1 applies to the whole of this Part.

Source: original

ULCC Comment: *Self-explanatory.*

Who may claim an exemption under this Part

- 153** (1) Save as provided in this Part, only a natural person is entitled to claim an exemption.

Sources: SK, section 60 (1); *cf.* AB, section 93; NL, section 130 (1)

- (2) A natural person who holds the controlling interest in a corporation that is a judgment debtor may claim property of the judgment debtor as exempt property if that natural person would be entitled to claim the exemption if the natural person were the judgment debtor.

Source: SK, section 60 (2)

- (3) Subsection (2) applies only with respect to tangible personal property that a natural person personally uses to earn income for the corporation where:
- (a) the principal portion of the net income earned by the corporation is paid to the natural person claiming the exemption by way of dividends or as employment remuneration; and
 - (b) the amount paid as dividends or as employment remuneration is the primary source of income for the natural person claiming the exemption.

Source: SK, section 60 (3)

- (4) Subsection (2) does not apply to an item of property if the natural person claiming the exemption owns or has the use of an equivalent item of property not owned by the judgment debtor.

Source: SK, section 60 (4)

- (5) A dependent of a judgment debtor for whose financial support the judgment debtor is totally or in substantial part responsible is entitled to claim property of the judgment debtor as exempt property to the extent that the judgment debtor does not claim an exemption that the judgment debtor is entitled to claim.

Source: SK, section 60 (5)

- (6) In the case of a deceased judgment debtor, a person who is the principal beneficiary of the judgment debtor's estate is entitled to claim property of the judgment debtor's estate as exempt property if

- (a) the person would have been able to claim an exemption under subsection (5) if the judgment debtor was alive; and
- (b) the property could have been claimed as exempt property by the judgment debtor if the judgment debtor was alive.

Sources: SK, section 60 (5); *cf.* AB, section 92; NL, section 137

- (7) The total quantity and value of property of a judgment debtor that may be claimed as exempt by a person mentioned in subsection (5) and by the judgment debtor must not exceed the quantity and value of exempt property available to the judgment debtor alone.

Source: SK, section 60 (6)

- (8) If a judgment debtor does not claim the exemption with respect to exempt income that he or she is entitled to claim under Division 3, a person for whose financial support the judgment debtor is totally or in substantial part responsible is entitled to claim the exemption on behalf of the judgment debtor.

Source: original

- (9) The onus of proof that the requirements of this section are satisfied is on the person claiming the exemption.

Source: SK, section 60 (7)

***ULCC Comment:** The term “exempt property” is defined in section 1. The reason for permitting a person who holds a controlling interest in a judgment debtor corporation to claim property of the corporation as exempt property under subsection (2) is that a person should not be deprived of an exemption because the person chooses to utilize a closely-held corporation to carry on his or her business. The corporation may own tools, equipment, or motor vehicles that the person would be entitled to claim as exempt property if the business was carried on as a sole proprietorship. Subsections (3) and (4) place limitations on the ability to claim an exemption under subsection (2).*

Subsections (5) to (8) describe the circumstances where a dependent of a judgment debtor may claim an exemption that the judgment debtor would otherwise have been entitled to claim. An example of where these subsections may be utilized is where the spouse of the judgment debtor is living in a residence that is owned by the judgment debtor and the judgment debtor disappears or fails to claim the exemption.

Under section 2 (5), a waiver of a right under this Act whether contained in a contract or otherwise including a waiver of an exemption is void if it was made before a dispute arises between the judgment debtor and the judgment creditor.

Requirement of providing judgment debtor with written information on exemptions

- 154** When an enforcement officer seizes personal property or income of a judgment debtor or gives a notice of intention to sell or otherwise dispose of land of a judgment debtor, he or she must at the time of seizure or as soon thereafter as practicable give to the judgment debtor a written notice, in the prescribed form, that:
- (a) describes the types and maximum value, if any, of property that may be claimed as exempt from disposition in an enforcement proceeding;
 - (b) describes the portion of a judgment debtor's income that may be claimed as exempt from seizure;
 - (c) describes the procedure for claiming an exemption and the procedure for determining the validity of a claim to an exemption;
 - (d) includes a copy of the prescribed notice of exemption claim that must be used to claim an exemption; and
 - (e) describes the effect of exemptions in respect of co-owned property.

Source: *cf.* SK, section 61 (2)

ULCC Comment: *Self-explanatory.*

Giving notice of exemption claim to enforcement officer

- 155** (1) If personal property of a judgment debtor is seized by an enforcement officer, a judgment debtor who claims that the seized property or the proceeds of such property are exempt must give a notice of exemption claim in the prescribed form to the enforcement officer who effected the seizure.

Source: SK, section 61 (3)

- (2) If an enforcement officer gives a notice of intention to sell a judgment debtor's land, a judgment debtor who claims that the land is exempt property must give a notice of exemption claim in the prescribed form to the enforcement officer who gave the notice of intention to sell to the judgment debtor.

Source: original

- (3) If income of a judgment debtor is seized, and the exempt income that the judgment debtor is entitled to receive under Division 3 of this Part is not received by the judgment debtor, the judgment debtor must give a notice of

exemption claim in the prescribed form to the enforcement officer who effected the seizure.

Source: original

- (4) If a notice of exemption claim is not received by the enforcement officer who seized a judgment debtor's personal property before he or she enters into an agreement to sell or otherwise dispose of the seized property, the judgment debtor is no longer entitled to claim an exemption in respect of the seized property.

Source: original

- (5) If a notice of exemption claim is not received by the enforcement officer who issued a notice to sell or otherwise dispose of a judgment debtor's land before the enforcement officer enters an agreement to sell or otherwise dispose of the land, the judgment debtor is no longer entitled to claim an exemption in respect of the land.

Source: original

- (6) If a notice of exemption claim is not received by the enforcement officer who seized a judgment debtor's personal property or who issued a notice to sell or otherwise dispose of a judgment debtor's land under section 133 until after the enforcement officer enters into an agreement to sell or otherwise dispose of the judgment debtor's property, the enforcement officer may proceed with the sale or disposition of the property and the judgment debtor's notice of exemption claim is limited to that portion of the distributable fund referred in subsection (7) that results from the sale of the judgment debtor's exempt property.

Source: *cf.* SK, section 61 (9)

- (7) If an enforcement officer receives a notice of exemption claim in respect of a portion of a distributable fund that represents proceeds of disposition of property claimed to be exempt property or exempt and the exemption claim is determined to be valid under section 156 or 157, the judgment debtor is entitled to receive payment from the distributable fund of the proceeds of disposition of the judgment debtor's property determined to be exempt and any amount determined to be exempt income after deducting the enforcement officer's fees, taxable costs and expenses in respect of the property and income to which the claim of exemption relates.

Source: *cf.* SK, section 61 (8)–(9)

- (8) If a notice of exemption claim by a judgment debtor with regard to exempt income of a judgment debtor or proceeds of disposition from the sale of exempt property of a judgment debtor is not received by the enforcement officer before the enforcement officer distributes the distributable fund under Part 14, the exemption claim of the judgment debtor is invalid and must be rejected.

Source: original

ULCC Comment: The term “exempt income” is defined in section 1. Under section 161, an enforcement officer is directed not to seize property that is likely exempt.

Determination of validity of exemption claim by enforcement officer

- 156** (1) Within 10 days of receiving a notice of exemption claim, an enforcement officer must determine whether to accept or reject the exemption claim either in whole or in part and must notify the judgment debtor of the determination.

Source: SK, section 61 (4)

- (2) Except as otherwise provided in this Act, a determination of whether to accept or reject a judgment debtor’s exemption claim must be made based on the circumstances that are known to the enforcement officer to exist at the time when the determination is made by the enforcement officer.

Source: original

ULCC Comment: The enforcement officer must make his or her determination of the validity of the exemption claim based on the circumstances that are known to the enforcement officer at the time when determination is made. Circumstances may change between the time of seizure and the time of determination. For example, the judgment debtor may have a fewer or greater number of dependents or the nature of the judgment debtor’s occupation may have changed.

Review by the court of enforcement officer’s determination of validity of exemption claim

- 157** (1) Within 10 days after receiving notification of an enforcement officer’s decision to accept or reject an exemption claim, an application may be made to the court by the judgment debtor or a judgment creditor who has given a subsisting enforcement instruction to the enforcement officer who seized the property, requesting the court to determine whether to accept or reject the exemption claim either in whole or in part.

Source: cf. SK, section 61 (5)

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- (2) The court must determine the validity of the exemption claim on the basis of the circumstances that are known to the court at the time of the determination of the application by the court.

Sources: *cf.* AB, section 91; NL, section 138

ULCC Comment: *If circumstances have changed between the time of the determination by the enforcement officer or new circumstances are brought to the attention of the court, these circumstances must be considered.*

Onus of proving that seized property or income is exempt

- 158** Under section 156 and 157, the onus of proving a judgment debtor's property or income is exempt from an enforcement proceeding is on the judgment debtor.

Source: original

ULCC Comment: *Self-explanatory.*

Recovery of taxes, rent and other debts

- 158.1** Nothing in this Part must be construed as exempting any property
- (a) from sale in satisfaction of debts owed to the government, including taxes, or
 - (b) from distress for rent.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 79

BCLI Comment: This proposed addition maintains the existing policy under British Columbia law of limiting the application of exemptions contained in the civil enforcement statute to the enforcement of judgment debts. The Uniform Act does not expressly state a policy on this issue. The proposed section will remove any doubts on this point that may arise from the silence of the Uniform Act.

Section 2 of the *Rent Distress Act*, R.S.B.C. 1996, c. 403 contains a list of property that is exempt from distress. The list is badly out of date; revisions to it should be considered.

Division 2—Property Exemptions

ULCC Introductory Comment: *There is a significant degree of diversity among the provinces/territories with regard to the types of property and maximum value of items within a type of property that may be claimed as exempt from enforcement proceedings. The types of property that may be claimed as exempt are often related to the cultural and economic history of a province/territory. Consequently, the descriptions of the types of property that may be exempt are intended to reflect and accommodate this diversity. In determining the types of property that should be exempt, a number of models have been examined, including the provisions of judgment enforcement legislation across Canada. In addition, the exemptions from seizure that are found in the Personal Property Security Acts of the maritime provinces have been examined.*

The approach taken in this Division is to describe types of property that are reasonably required by a judgment debtor to maintain a reasonable standard of living for the judgment debtor and his or her dependents and that are reasonably required by a judgment debtor to enable him or her to continue to earn income. With regard to some types of property, such as medical aids and devices, all items of that type of property are exempt regardless of their value. With regard to some types of property, some provinces/territories may wish to prescribe a maximum value of property that may be claimed as exempt. It is not necessary to prescribe a maximum value for any type of property; however, with regard to some types of property, text appears in square brackets at the end of the description of the type of property indicating that a province/territory may wish to prescribe a maximum value if it is determined to be necessary. If a province/territory decides to prescribe a maximum value, it is recommended that the regulations to the Act provide for a regular adjustment of the maximum value to reflect increases in the cost of living. Without an automatic adjustment feature, history suggests that such values will continue unchanged for long periods of time that may extend to several decades.

If a province/territory does not prescribe a maximum value with regard to a type of property that may be claimed as exempt, the enforcement officer will be required to make the determination under section 156 with regard to whether or not an exemption claim should be allowed. If there is a disagreement with the enforcement officer's determination of the validity of the exemption claims, an application may be made to the court to review the enforcement officer's determination.

Exemptions with regard to life insurance and pensions are not dealt with in this Act. The exemption with regard to life insurance is dealt with in a uniform manner by the Insurance Acts of the provinces/territories. Exemptions with regard to pensions are comprehensively dealt with in both the federal and provincial/territorial legislation.

Exemptions of specific types of property

159 (1) A judgment debtor is entitled to claim the following property as property that is exempt from an enforcement proceeding:

- (a) food required by the judgment debtor and his or her dependents during the 12 month period following the commencement of an enforcement proceeding;

Sources: AB, section 88 (a); NL, section 131 (1) (a)

- (b) aids and devices that assist the judgment debtor and his or her dependents in overcoming a disability, or a medical or dental condition;

Sources: AB, section 88 (e); NL, section 131 (1) (e); SK, section 62 (1) (b)

- (c) ordinary clothing, not including jewellery, needed by the judgment debtor and his or her dependents;

Sources: SK, section 62 (1) (a); cf. AB, section 88 (b); NL, section 131 (1) (b)

- (d) household furnishings, utensils, equipment and appliances needed by the judgment debtor and his or her dependents to maintain a func-

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tional household [that are of up to the a value not exceeding the amount prescribed by regulation];

Sources: SK, section 62 (1) (c); cf. AB, section 88 (c); NL, section 131 (1) (c)

- (e) an interest in a house, condominium, mobile home, house boat or equivalent facility, if it is used by the judgment debtor as a principal residence that is of a size and quality to enable the judgment debtor and his or her dependents to have a minimally reasonable standard of residential accommodation, and, if it is situated on land owned by the judgment debtor, the land on which it is permanently situated [to the extent of a value not exceeding the amount prescribed by regulation];

Sources: SK, section 62 (1) (k); cf. AB, section 88 (g); NL, section 131 (1) (h)

- (e) the principal residence of the judgment debtor, including a residence that is a manufactured home, up to the value prescribed by regulation for that residence, but if the judgment debtor is a co-owner of the residence, the amount of the exemption allowed under this provision is reduced to an amount that is proportionate to the judgment debtor's ownership interest in the residence;

Source: AB, section 88 (g)

- (f) a motor vehicle, as defined in the [insert the title of the *Motor Vehicle Act* or similar enactment] [to the extent of a value not exceeding the amount prescribed by regulation] that is
- (i) ordinarily used by the judgment debtor or his or her dependents, and
- (ii) necessary to enable the judgment debtor to earn an income for the support of the judgment debtor and his or her dependents or to meet the reasonable educational or health needs of the judgment debtor or his or her dependents;

Sources: cf. AB, section 88 (d); NL, section 131 (1) (d); SK, section 62 (1) (d)–(e)

- (f) one motor vehicle up to the value prescribed by regulation;

Sources: AB, section 88 (d); NL, section 131 (1) (d)

BCLI Comment: Paragraphs (d), (e), and (f) provide exemptions for items of property that can vary considerably in value. The Uniform Act allows enacting provinces and territories a choice of methods for dealing with the problems caused by such variation. The enacting province or terri-

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tory may choose to employ a functional approach, in which the exempt property is described with sufficient detail to ensure that a judgment debtor may only claim an exemption with respect to property needed to maintain a functional household, or to employ the dollar value approach, which relies on a maximum dollar value to limit the range of property that is exempt. The dollar value approach is already in use in British Columbia; employing it in the legislation that implements the Uniform Act will allow for a smoother process of implementation in this province. The dollar values should be prescribed by regulation and regularly reviewed, in order to ensure that the exemption is not eroded by inflation.

- (g) if the judgment debtor is earning income from an occupation or is actively engaged in earning income from carrying on a trade, business or calling,
 - (i) personal property that is ordinarily used by the judgment debtor and is necessary for earning income from the judgment debtor's occupation, trade, business or calling [that are of a value not exceeding the amount up to the value prescribed by regulation],;

Sources: SK, section 62 (1) (f); cf. NL, section 131 (1) (i) (i)

- (ii) if a judgment debtor's primary occupation or business is farming,

- (A) an area of land prescribed by regulation that is ordinarily used by the judgment debtor for farming,

Source: cf. AB, section 88 (f)

- (B) personal property, including an agricultural product, ordinarily used by the judgment debtor for farming that is necessary for the proper and efficient conduct of the judgment debtor's farming operation for a 12 month period following the commencement of an enforcement proceeding [that is of a value not exceeding an amount prescribed by regulation], and

Sources: cf. AB, section 88 (h); NL, section 131 (1) (i) (ii)

- (iii) if a judgment debtor's primary occupation is fishing, personal property ordinarily used by the judgment debtor that is necessary for the proper and efficient conduct of a the judgment debtor's fishing operation for a 12 month period following the commencement of an enforcement proceeding [that is of a value not exceeding the amount prescribed by regulation];

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Source: *cf.* NL, section 131 (1) (i) (iii)

BCLI Comment: Subparagraphs (ii) and (iii) set out generous exemptions for farming and fishing. In some provinces, farming and fishing have been accorded this privileged status for historical and cultural reasons. British Columbia law has historically not provided special treatment to specific industries.

- (h) money received by the judgment debtor pursuant to a legal entitlement to compensation for personal physical injury including
 - (i) loss of future income, and
 - (ii) payment of future medical or personal care expenses and any property acquired through the investment of such money and the investment of income received by the judgment debtor from such money;

Source: SK, section 62 (1) (h)

- (i) domestic animals that are kept by the judgment debtor solely as pets [that are of a value not exceeding the amount up to the value prescribed by regulation];

Source: NL, section 131 (1) (g)

- (j) a burial plot or plots intended for the internment of the judgment debtor, his or her dependents and members of his or her immediate family;

Source: SK, section 62 (1) (i)

- (k) funds representing prepaid funeral and cemetery maintenance costs that are held on behalf of or credited to the judgment debtor and that relate to the judgment debtor and his or her dependents;

Source: original

BCLI Comment: Since section 41 of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 already provides a similar exemption, paragraph (k) need not be enacted.

- (l) property of the judgment debtor [of a value not exceeding the amount up to the value prescribed by regulation] that
 - (i) has a religious or sentimental value to the judgment debtor, but

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- (ii) in the opinion of the enforcement officer, the costs of seizure and disposition of the property are likely to be approximately equal to or exceed the amount likely to be realized from disposition of the property; and

Sources: *cf.* NL, section 131 (1) (f); SK, section 62 (1) (j)

- (m) any property prescribed by regulation.

Sources: AB, section 88 (j); NL, section 131 (1) (k)

- (2) If a maximum value of property that may be claimed as exempt property under subsection (1) (e) is prescribed, the court, on application by a judgment debtor or a dependent of the judgment debtor, may order a stay of an enforcement proceeding in respect of the property of the judgment debtor specified in the application until a further order of the court, if the court is satisfied that
 - (a) the prescribed amount of the exemption will not enable the judgment debtor and his or her dependents to have a minimally reasonable standard of residential accommodation, or
 - (b) disposition of the property in an enforcement proceeding will cause serious hardship to the judgment debtor or his or her dependents having regard to the needs of the judgment debtor and his or her dependents and other circumstances considered to be relevant to a determination of the application.

Source: original

- (3) Section 3 of the *Uniform Registered Plan (Retirement Income) Exemption Act* [or the section of an Act of the province/territory that enacts the provisions of the Uniform Act] applies to property of a judgment debtor under this Act that is a Registered Retirement Savings Plan, Registered Retirement Income Fund and Deferred Profit Sharing Plan.

Source: original

- (3) Despite any enactment, all rights, property and interest of a planholder in a registered plan are exempt from any enforcement proceeding.

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 3

BCLI Comment: The *Uniform Registered Plan (Retirement Income) Exemption Act* is not in force in British Columbia and, therefore, cannot be incorporated by reference. The proposed revision to

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subsection (3) simply sets out section 3 of the *Uniform Registered Plan (Retirement Income) Exemption Act*, with some small changes in wording, for reasons of consistency. If the *Uniform Registered Plan (Retirement Income) Exemption Act* is enacted and brought into force before the Uniform Act, then the original wording of subsection (3) should be preserved. The terms “planholder” and “registered plan” are defined in section 1.

ULCC Comment: *The following lettered paragraphs contain comments with regard to the corresponding clauses in subsection (1) that describe the types of property that are exempt from enforcement proceedings.*

- (a) *Food: The reason for exempting food that a judgment debtor may require during the 12-month period following an enforcement proceeding is that in some areas of Canada a judgment debtor may grow, hunt, fish, or otherwise acquire food during a season that must supply the judgment debtor and his or her dependents with food from that source until the next season that may be 12 months away.*
- (b) *Aids and devices that assist in overcoming a disability, or a medical or dental condition: No maximum value should be prescribed for this type of property. There are some very expensive medical aids that should not be subject to seizure regardless of their value. A specially equipped motor vehicle may be claimed under this clause or under clause (f).*
- (c) *Clothing: The adjective “ordinary,” which modifies the term “clothing,” is intended to exclude from the exemption those extraordinary items of apparel such as mink coats.*
- (d) *Household furnishings: Only those furnishings that are required to maintain a functional household are exempt. A judgment debtor must give the enforcement officer a notice of exemption claim that records those furnishings that the judgment debtor claims are required to maintain a functional household. If the judgment debtor claims a 52-inch plasma screen television set as exempt property, the enforcement officer, subject to review by the court, must determine whether it is required to maintain a functional household.*
- (e) *House or equivalent residence: It is only a residence that will enable a judgment debtor and his or her dependents to maintain a minimally reasonable standard of residential accommodation that is exempt. If a judgment debtor is a single person and he or she claims a 5-bedroom and 3-bathroom house, the enforcement officer, subject to review by the court, must determine whether a house of that size is required to enable the judgment debtor to maintain a minimally reasonable standard of residential accommodation.*
- (f) *Motor vehicle: Self-explanatory.*
- (g)
 - (i) *Personal property used to earn income: Self-explanatory.*
 - (ii) *Farm Land: Under clause (A), it is not necessary for the judgment debtor to have his or her principal residence on the exempt farm land. Some provinces/territories may wish to locate this exemption in other legislation that deals with the security of farms such as the Farm Security Act in Saskatchewan. Under clause (B), agricultural products will include items such as seed and fertilizer.*
 - (iii) *Fishing: This is an important exemption in those provinces/territories where fishing is an important component of the economy and it is part of the cultural heritage of the province/territory.*
- (h) *Money received by the judgment debtor pursuant to a legal entitlement to compensation for personal physical injury: The capital of these types of compensation awards is in-*

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tended to generate an income stream to pay for medical and personal care expenses. The income received from the investment of these funds is dealt with under Division 3.

- (i) Domesticated pets: This exemption is designed to prevent the use of a threat to seize the family pet as a lever to persuade a judgment debtor to waive an exemption with regard to more valuable property, such as a motor vehicle, that the judgment debtor would otherwise be entitled to claim.*
- (j) Burial plots: Many provinces/territories have legislation that protects burial plots from seizure. If a province/territory already has legislation that prohibits seizure of burial plots, the legislation should be reviewed, and if necessary, amended to ensure that no duplication exists.*
- (k) Prepaid funeral and cemetery costs: The comment in respect of burial plot also applies to this exemption.*
- (l) Property with religious or sentimental value but low market value: The objective of this clause is to prevent the use of a threat to seize a family heirloom as a lever to persuade a judgment debtor to waive an exemption with regard to more valuable property that the judgment debtor would otherwise be entitled to claim.*
- (m) This clause permits individual provinces/territories to supplement the above-described types of property.*

Subsection (3) incorporates by reference section 3 of the Uniform Registered Plan (Retirement Income) Exemption Act or the relevant section of an existing Act of the province/territory that has enacted the provisions of the Uniform Act. Section 3 of the Uniform Act provides:

- 3** *Notwithstanding any other Act or regulation, all rights, property and interests of a planholder in a registered plan are exempt from any enforcement process.*

The commentary to section 3 of the Uniform Registered Plan (Retirement Income) Exemption Act provides:

This wording is absolute in its scope and subject only to the express exceptions set out within the Act itself. To the extent that individual jurisdictions wish to create further exceptions to this exemption, such as allowing exigibility to enforce maintenance orders, such exceptions would need to be added to this draft.

Property that may not be claimed as exempt

- 160** (1) If a judgment debtor carries on a business, the inventory of the business may not be claimed as property that is exempt from an enforcement proceeding.

Source: original

- (2) Despite any other provision of this Act, unless the court orders otherwise, exempt property must not include:
- (a) property abandoned by a judgment debtor and not reclaimed prior to the date of seizure; or

Sources: NL, section 130 (1) (b); SK, section 63 (1) (a)

- (b) property that the possession or control of which was voluntarily surrendered by a judgment debtor, other than for repair or short term storage or use, to a person who is not a dependent of the judgment debtor.

Source: SK, section 63 (1) (b)

ULCC Comment: Subsection (2) (b) applies where a judgment debtor has loaned or leased property, which would otherwise be exempt if it was in the possession of the judgment debtor, to a third person other than a dependent. In these circumstances there is no justification for maintaining the exemption if the judgment debtor has made the decision that he or she does not need the property.

Some provinces/territories have legislation that prohibits claiming property as exempt if the enforcement proceeding is based on a judgment to satisfy a debt incurred for the purpose of acquiring that property. This Act does not contain such a provision because in a system of pro rata sharing among judgment creditors, the application of such a provision is uneven. This may be illustrated by an example. Assume that judgment creditor “A” has a judgment for a debt incurred for the purpose of acquiring a car and judgment creditor “B” has a judgment for damages for defamation. If judgment creditor “B” instructs the enforcement officer to seize the car, the judgment debtor may claim an exemption for a car. However, if judgment creditor “A” instructs the enforcement officer, no exemption may be claimed. However, the proceeds of the seizure and sale are distributed on a pro rata basis among all judgment creditors who have an eligible claim under Part 14 including judgment creditor “B.”

Property must not be seized if it is likely exempt

- 161** (1) An enforcement officer must not seize an item of a judgment debtor’s property if the enforcement officer believes on the basis of information known to the enforcement officer at the time of the enforcement proceeding that the item of property is exempt property.

Source: SK, section 61 (1)

- (2) An enforcement officer must release property from seizure
 - (a) if the enforcement officer subsequently determines that the property is exempt property; or
 - (b) if a maximum value of exempt property is prescribed for the type of seized property and the enforcement officer determines that the realizable value of the seized property at a sale in an enforcement proceeding will likely be less than the maximum value prescribed for that type of exempt property.

Source: cf. AB, section 89 (3)–(4)

ULCC Comment: Self-explanatory.

Procedure if property claimed as exempt exceeds maximum value of permitted exemption

- 162** (1) An enforcement officer may sell property that a judgment debtor claims as exempt property if
- (a) the property is of a type for which a maximum value of the exemption has been prescribed; and
 - (b) the value of the judgment debtor's interest in the property exceeds the maximum value prescribed for that type of exempt property.

Source: *cf.* NL, section 133 (1)

- (2) On a sale of the judgment debtor's property referred to in subsection (1), any proceeds of sale up to the prescribed value of exempt property for that type of exempt property must be paid over to the judgment debtor.

Source: *cf.* NL, section 133 (4)

ULCC Comment: This section is needed only if a maximum value of property that may be claimed as exempt property is prescribed with regard to one or more of the types of exempt property that are listed in section 159.

Selection of property

- 162.1** (1) If
- (a) a judgment debtor owns more than one item of a type of property for which there is an exemption under section 159, and
 - (b) the total value of the items of property exceeds the maximum prescribed value of the exemption for that type of property,
- the judgment debtor may select the items, up to the maximum prescribed value of the exemption, that will be exempt.
- (2) If the judgment debtor does not in a timely manner make a selection under subsection (1), the enforcement officer may select the items that are exempt.

Sources: AB, section 90; NL, section 136

BCLI Comment: This proposed section sets out a procedure for selecting specific items of property that will be exempt, in cases where the judgment debtor owns more than one item of a type of property that is exempt under section 159 and the total value of those items exceeds the maximum value prescribed by regulation for the exemption. As an alternative, this provision may be placed in the regulations: see section 203 (i).

Proceeds of exempt property remain exempt as long as they remain segregated

- 163** (1) If a judgment debtor receives proceeds from the sale or disposition of exempt property under this Division, such proceeds remain as exempt property as long as they remain segregated from and identifiable or traceable in relation to other funds of the judgment debtor regardless of whether the proceeds are proceeds:
- (a) from the sale or other disposition of the exempt property under this Division;
 - (b) that are paid to the judgment debtor in a foreclosure or similar proceeding relating to exempt property; or
 - (c) of insurance relating to the exempt property.
- (2) For the purposes of subsection (1), “**traceable**” means proceeds that can be traced in equity or at law from the sale or other disposition of exempt property.

Source: *cf.* SK, section 64

ULCC Comment: The purpose of protecting the proceeds from seizure is to permit the judgment debtor to acquire property of that class or another class that will be exempt property. The language of proceeds being identifiable or traceable is taken from the definition of “proceeds” found in PPSA legislation.

Art exempt from seizure

- 163.1** (1) Works of art or other objects of cultural or historical significance brought into British Columbia for temporary public exhibit are exempt from enforcement proceedings.
- (2) Subsection (1) does not apply
- (a) to enforcement of a judgment respecting a contract for the transportation or warehousing in British Columbia of the work or object, or
 - (b) to a work or object that is offered for sale.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 72

BCLI Comment: This section carries forward a British Columbia exemption for art that is currently located in the *Court Order Enforcement Act*. Other provinces have placed a similar (though not identical) exemption in a freestanding statute: see e.g. *Foreign Cultural Objects Immunity from Seizure Act*, R.S.O. 1990, c. F.23; *Foreign Cultural Property Immunity Act*, R.S.A. 2000, c. F-17. The exemption was, in all likelihood, not included in the Uniform Act due to the consensus in other provinces to locate it in statute that stands apart from the province’s major civil enforcement statute. The policy embodied by this section remains a sound one; it should not be abandoned in British Columbia.

Division 3—Income Exemption

Definitions

164 For the purpose of this Division,

“DPSP” means a deferred profit sharing plan as defined in section 147 of the federal Act;

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

“employment remuneration” has the same meaning as in section 101 (1);

Source: original

“federal act” means the *Income Tax Act* (Canada);

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

“income” means property in the form of money or other form of personal property that a judgment debtor has received or has the right to receive as payment

- (a) of employment remuneration,
- (b) under a contract for personal services providing for a series of periodic payments,
- (c) under a retirement pension to the extent that it is not exempt from seizure or attachment under the laws of Canada or [insert name of enacting province/territory],
- (d) under an annuity,
- (e) from a registered plan,
- (f) from the investment of that portion of money received by the judgment debtor pursuant to a legal entitlement for compensation for a personal physical injury that is attributable to loss of future income, and
- (g) from a source prescribed by regulation;

Source: original

“net income” is determined by

- (a) deducting from employment remuneration those amounts that are required to be deducted by law or contract for income tax, employment insurance, Canada Pension Plan contributions, compulsory union or

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professional fees, registered pension plan contributions, health, disability and life insurance premiums and such other amounts as are prescribed, and

- (b) deducting from other income of a judgment debtor those amounts that are required to be deducted by law for income tax;

Source: original

“prescribed period” means the period prescribed by regulation with regard to which a proportion of net income received by a judgment debtor is exempt from seizure;

Source: original

“registered plan” means a DPSP, an RRIF or an RRSP;

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

“RRIF” means a registered retirement income fund as defined in section 146.3 of the federal Act;

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

“RRSP” means a registered retirement savings plan as defined in section 146 of the federal Act.

Source: *Uniform Registered Plan (Retirement Income) Exemption Act*, section 2

BCLI Comment: Most of the definitions in this section should be moved to section 1, in order to ensure that the procedure for seizing income set out in Part 9 Division 4 is parallel to the income exemption in this Division and to avoid repeated cross-references.

ULCC Comment: The definitions of “DPSP,” “registered plan,” “RRIF,” and “RRSP” are taken from the Uniform Registered Plan (Retirement Income) Exemption Act.

With regard to the definition of “income,” the types of payments included in this definition of income are subject to seizure under Part 9 Division 4. Under section 165 (1), a portion of a judgment debtor’s income is exempt from enforcement proceedings. Prior to this Act, a portion of employment income was normally exempt from attachment in an enforcement proceeding. The rationale for exempting a portion of employment income from attachment is that a judgment debtor requires a minimum level of income to support himself or herself and his or her dependents. The same rationale applies to the other forms of income included in this definition of income.

This definition of “income” includes income that a judgment debtor “has received” or has a right to receive. Therefore, if the judgment debtor has received a payment of income by means of a direct deposit to a deposit account, the funds remain “income” for the purposes of this Division and the exemption provided

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by section 165 applies as long as the funds remain segregated from other funds of the judgment debtor in accordance with section 165 (3).

Clause (a) of the definition of income refers to income received by an employee under a contract of service and clause (b) refers to income received by an independent contractor under a contract for personal services if the contract provides for a series of periodic payments. The effect of including both of these forms of income means that a judgment debtor is entitled to the exemption provided by section 165 with regard to either form of income.

Clause (c) in the definition of income has a limited application because pension legislation, at both the federal and provincial level, exempts most forms of pension income from seizure or attachment. However, pensions income payable by a foreign corporation or a foreign government is not covered by Canadian pension legislation. In many cases, this latter type of pension income may not be amenable to a notice of seizure; however, it may be received by a receiver appointed under Part 13. Where income is received by a receiver, section 152 (2) entitles a judgment debtor to the same exemptions that would apply if income had been seized by an enforcement officer.

Clause (e) includes payments to a judgment debtor out of an RRSP, RRIF, and DPSP within the definition of “income” for the purposes of this Division. The effect of including such payments within the definition of “income” means that they are included in income with regard to which a judgment debtor is entitled to an exemption in accordance with section 165. Under the Uniform Registered Plan (Retirement Income) Exemption Act, payouts to planholders of RRSPs, RRIFs, and DPSPs are not exempt from enforcement processes; however, the payouts are deemed to be wages or salary for the purposes of determining a judgment debtor’s entitlement to an exemption. This Act seeks to replicate the effect of the Uniform Registered Plan (Retirement Income) Exemption Act. Sections 4 and 5 of the Uniform Registered Plan (Retirement Income) Exemption Act provide:

- 4 (1) Subject to section 5 but notwithstanding any other Act or regulation, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process.*
- (2) For the purposes of subsection (1), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.*
- 5 For the purposes of enforcing a creditor’s rights against payments out of a registered plan to a debtor planholder:*
 - (a) the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person’s wages or salary within the meaning of [insert name of relevant statute]; and*
 - (b) the exemptions set out in [insert section number(s) of that Act] apply, with any necessary modification.*

Section 4 and section 5 (a) of the Uniform Registered Plan (Retirement Income) Exemption Act are implemented by incorporating these provisions into Part 9 Division 4 (Seizure of Accounts). Section 5 (b) of the Uniform Registered Plan (Retirement Income) Exemption Act is implemented by including RRSPs, RRIFs, and DPSPs in the definition of income in this Division.

The definition of “prescribed period” is used to calculate the amount of income that is exempt from seizure. It is recommended that the length of the prescribed period should be a common length of a pay period for employees in the province/territory such as 14 days or a calendar month.

Exempt income

- 165** (1) Except as otherwise provided in this Act, a judgment debtor is entitled to an income exemption with regard to his or her net income
- (a) to the extent of the minimum amount prescribed in respect of a prescribed period; and
 - (b) **fifty** ~~seventy~~ percent of the amount by which a judgment debtor's net income in respect of the prescribed period exceeds the minimum amount but the total amount of the income exemption must not exceed the maximum amount prescribed.

Sources: SK, section 65 (1); cf. NL, section 139

- (1.1) Despite any other provision of this Act, if the income of a person is seized under
- (a) a court order for alimony or maintenance,
 - (b) a duly executed separation agreement, or
 - (c) an order under section 18 (2) of the *Family Maintenance Enforcement Act*,
- the exemption allowed to that person is 50% of any net income if the net income does not exceed \$600 per month and 33 1/3% for net income in excess of \$600 per month but the amount of the exemption allowed under this subsection must not be less than \$100 per month, or proportionally for a shorter period.

Source: *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, section 3 (7)

BCLI Comment: The proposed revisions to this section are intended to preserve the current levels at which the exemption is set under the *Court Order Enforcement Act*. Some changes to this scheme could be considered, though. At a mechanical level, it may be advisable to replace the actual dollar figures in subsection (1.1) with the minimum figure set by regulation for each prescribed period. At a broader policy level, it may be worthwhile to investigate if the current level of the exemption is appropriate and how the family law creditors listed in subsection (1.1) should fit into this structure.

- (2) A judgment debtor is entitled to an income exemption with regard to all income the judgment debtor received or has a right to receive from
 - (a) money received by the judgment debtor pursuant to a legal entitlement to compensation due to a personal physical injury for payment of future medical or personal care expenses; and

- (b) income received from property acquired through the investment of money referred to in clause (a).

Source: original

- (3) If a judgment debtor receives income that is exempt income, it remains as exempt income as long as it remains segregated from and identifiable or traceable in relation to other funds of the judgment debtor.

Source: original

- (4) For the purposes of subsection (3), “**traceable**” means income that can be traced in equity or at law from identifiable exempt income.

Source: original

***ULCC Comment:** Subsection (1) describes the formula that is applied to a judgment debtor’s net income with regard to the forms of income included in the definition of “income.” With regard to this formula, each province/territory must prescribe the minimum amount under clause (a) that is exempt from seizure and the maximum amount that is exempt from seizure. The minimum prescribed amount should be based on the amount that is reasonably required to support the judgment debtor and his or her dependents for the prescribed period. The prescribed amount should vary depending on the number of dependents of the judgment debtor.*

Subsection (2) creates an absolute exemption with regard to income derived from money received by the judgment debtor pursuant to a legal entitlement to compensation due to a personal physical injury for payment of future medical or personal care expenses. When a court makes an award for this head of damage, the court determines the present value of a capital amount that will generate income that will be sufficient to pay for the future medical and personal care expenses of the plaintiff. The calculation of the present value assumes that the capital will be invested and produce a rate of return on the investment that will compensate for any inflation that occurs over the future period during which the judgment debtor is expected to incur medical and care expenses. Since the income from the investment is taxable, the required amount of capital is grossed-up to provide the after-tax stream of income. This stream of income is intended to provide for the payment of a judgment debtor’s medical and personal care expenses and should be exempt from seizure.

Exemption where income attributable to only part of prescribed period

- 166** If a judgment debtor is employed by an employer for only part of a prescribed period referred to in section 165 (1), the minimum and maximum amounts of exempt income prescribed under section 165 that are applicable to employment remuneration from that employer must be reduced by the proportion that the length of the period of employment is to the length of the prescribed period.

Source: SK, section 65 (3)

***ULCC Comment:** If employment remuneration that a judgment debtor is entitled to receive from an employer is attributable to only part of the prescribed period, this section assumes that the judgment debtor is*

receiving income from another income source for the balance of the prescribed period. If the judgment debtor is not receiving any income for the balance of the prescribed period, an application may be made to the court under section 168 to vary the amount of the income exemption.

Exemption where income attributable to period longer than prescribed period

- 167** If a judgment debtor is entitled to receive income that is attributable to a period that is longer than the prescribed period referred to in section 165, the minimum and maximum amounts of exempt income prescribed under section 165 must be increased proportionately.

Source: original

ULCC Comment: Self-explanatory.

Variation of exemption by court

- 168** On application by a judgment debtor, an instructing judgment creditor, an enforcement officer or a receiver, the court may:
- (a) increase the maximum amount of the income exemption under section 165 to account for special circumstances of the judgment debtor or dependents of the judgment debtor;

Source: SK, section 65 (5) (a)

- (b) reduce the amount of exempt income to account for money or property received by or available to the judgment debtor that is not income;

Sources: SK, section 65 (5) (b); *cf.* NL, section 142 (1)

- (c) determine the minimum and maximum amount of exempt income if
 - (i) income is received by the judgment debtor at irregular intervals,
 - (ii) the amount of income received by the judgment debtor varies from period to period, or
 - (iii) the circumstances of the judgment debtor are such that application of a minimum or maximum amounts prescribed under section 165 are inappropriate;

Sources: SK, section 65 (5) (c); *cf.* NL, section 142 (2)

- (d) declare income which the judgment debtor is entitled to receive from a particular income source to be exempt from seizure if

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- (i) the costs to the payor of complying with the notice of seizure and the enforcement officer's fees, taxable costs and expenses will likely exceed the amount payable to the enforcement officer under the notice of seizure,

Source: original

- (ii) income, which is not income as defined in section 164 [1], if it were added to the judgment debtor's exempt income, is approximately equivalent to the minimum amount of the exemption to which the judgment debtor would be entitled under section 165 if the income were part of the judgment debtor's income as defined in section 164 [1];

Source: SK, section 65 (5) (d)

- (e) if the judgment debtor is entitled to receive income from more than one source and the income from a particular source exceeds the maximum income exemption under section 165 (1), declare that the judgment debtor's income exemption applies to only one particular source of income;

Source: original

- (f) confirm or vary an order made under this section.

Source: cf. SK, section 65 (5) (e)

ULCC Comment: Under clause (b), the amount of exempt income may be reduced if, for example, a judgment debtor has realized capital gains or has received money by way of a gift or inheritance.

Clause (c) (i) will be applicable if, for example, a judgment debtor elects to receive a lump-sum payment out from a Registered Retirement Savings Plan. If such a payment is seized under Part 9, the minimum and maximum exemption amounts prescribed by section 165 may not be appropriate and an application may be made to determine the portion of the payment that is exempt.

An example of the application of clause (d) (ii) is where the minimum amount prescribed under section 165 for a prescribed period is \$1000; however the judgment debtor's income as defined in section 164 only amounts to \$700. If a judgment debtor has income that is not income as defined in section 164, such as interest income of \$300, the court may declare that the \$300 of interest income is income that is exempt from seizure.

Requirement that judgment debtor provide information on sources of income

- 169** (1) A judgment debtor is required to provide the enforcement officer with information requested by the enforcement officer with regard to:

- (a) the judgment debtor's sources of income;
 - (b) when a payment of income is likely to be made the judgment debtor;
and
 - (c) the effective date of any election, if the judgment debtor's entitlement to receive income is dependent on an election by the judgment debtor.
- (2) If a judgment debtor's entitlement to receive income is dependent on an election by the judgment debtor, the judgment debtor must give the enforcement officer sufficient notice prior to the effective date of the election to enable the enforcement officer to contact the payor of the income prior to any payment being made.
- (3) If a judgment debtor fails to provide the enforcement officer with the information required by this section or fails to provide the information within the time period specified by the enforcement officer or as required by subsection (2), the court, on application by the enforcement officer, may cancel the income exemption to which the judgment debtor would otherwise be entitled under section 165.

Source: original

PART 13—RECEIVERS

***ULCC Introductory Comment:** The appointment of a receiver has traditionally been regarded as a form of equitable execution; however, most provinces/territories have legislation and rules of court that pertain to the appointment of receivers. This Part provides for the appointment of a receiver if such an appointment is warranted.*

BCLI Introductory Comment: There is a brief set of rules dealing with the appointment of a receiver, the form of security required, the remuneration of a receiver, and the accounts of a receiver in the *Supreme Court Rules*: see Rule 47. Rule 47 tends to leave these issues to the court's discretion. An existing legislative provision is also of note in connection with receivers. Section 64 (2) of the *Law and Equity Act* adopts certain sections from the *Personal Property Security Act* for the purposes of a receivership of property to which the *Personal Property Security Act* does not expressly apply. These sections deal with the appointment and qualifications of receivers (section 64), the obligations of receivers (section 65), court supervision of receiverships and exemption from compliance (section 66 (1) and (3)), the duty to act in good faith and in a commercially reasonable manner (section 68 (2)), and the consequences of noncompliance with the *Personal Property Security Act* (section 69 (2) and (3)). These provisions may continue to apply to receiverships, as a supplement to this Part of the Uniform Act.

Appointment of receiver

- 170** Subject to section 171, on application made with or without notice by an instructing judgment creditor or an enforcement officer who has received a sub-

sisting enforcement instruction, the court may appoint a receiver with or without security, with respect to the property of the judgment debtor including without limitation:

- (a) specified property of a judgment debtor;
- (b) specified kinds of property of a judgment debtor;
- (c) all property of the judgment debtor.

Source: SK, section 50 (1) (a)

- (2) An order made under subsection (1) applies to property owned by a judgment debtor at the time of the appointment of the receiver and that is acquired by a judgment debtor during the period of the appointment of the receiver.

Source: original

- (3) An order made under subsection (1) must not appoint a receiver for a period of more than 6 months unless
 - (a) the application is made with notice to the judgment debtor and the court after considering the matters referred to in section 172 is satisfied that a longer period of appointment is warranted; or
 - (b) an application is made with notice to the judgment debtor to extend the appointment of the receiver.

Source: original

- (4) On an application to extend the appointment of a receiver, the onus is on the applicant to satisfy the court after considering the matters referred to in section 172 that an extension of the appointment of the receiver is warranted.

Source: original

ULCC Comment: Under subsection (1), only a judgment creditor who has delivered a subsisting enforcement instruction to an enforcement officer may apply for an appointment of a receiver because the enforcement officer has a role in the supervision of a receiver and receiving the net proceeds of a receivership for distribution in accordance with Part 14.

The requisite qualifications and experience that a receiver should have should be left for the court to determine after considering the complexity of the tasks that will likely be undertaken by the receiver. In some circumstances, a court may appoint the enforcement officer, the judgment creditor, or an employee of a judgment creditor as the receiver if the court is satisfied that the person has the requisite qualifications to serve as a receiver. This section does prohibit the appointment of a judgment creditor as a receiver. If a

province or territory believes that it necessary to set some minimum qualifications, the regulation-making power in Part 16 permits the Lieutenant Governor in Council to may make regulations "... respecting the qualifications for and appointment of receivers."

The appointment of a receiver can be an intrusive enforcement measure that should not continue indefinitely. The period of the appointment should not normally extend beyond 6 months unless the court determines, after considering the circumstances referred to in section 172, that a longer period of appointment is required.

Circumstances when receiver must not be appointed

- 171** A receiver must not be appointed with regard to property of a judgment debtor if the appointment of a receiver will
- (a) derogate from an interest in property that was acquired by a person other than the judgment debtor before the application for the appointment of a receiver; or
 - (b) interfere with a right to possession of property of a person other than the judgment debtor that was acquired before the application for the appointment of a receiver.

Source: original

ULCC Comment: An example of where the appointment of a receiver may derogate from an interest in the property acquired by another person is where the judgment debtor leased the property to that person before an application is made to appoint a receiver.

Circumstances court must consider on application to appoint a receiver

- 172** On an application for the appointment of a receiver, the court must consider any relevant fact or matter including, but not limited to, the following:
- (a) whether an appointment of a receiver is an effective means of realizing on the property;
 - (b) the practicability of enforcing the judgment through other enforcement proceedings under this Act;
 - (c) whether the money that a receiver may reasonably be expected to realize from the property of the judgment debtor is likely to be sufficient to:
 - (i) pay the costs relating to the appointment, supervision and discharge of the receiver,
 - (ii) pay the expenses and remuneration of the receiver,
 - (iii) pay the fees, taxable costs and expenses of the enforcement officer with regard to distribution of money realized by the receiver, and

- (iv) provide money for distribution among those judgment creditors who have an eligible claim under Part 14;
- (d) the conduct of the judgment debtor or other person that has made enforcement of the judgment more difficult or costly; and
- (e) the extent to which the appointment of a receiver may result in undue hardship or prejudice to the judgment debtor, a dependent of the judgment debtor or to a person in possession or control of property of the judgment debtor.

Sources: *cf.* AB, section 86, NL, section 127

ULCC Comment: *Under clause (d), the appointment of a receiver may be justified on the basis that the judgment debtor has attempted to arrange his or her affairs in a manner that makes the use of other types of enforcement proceedings more difficult.*

Under clause (e), an example of where the appointment of a receiver may result in undue prejudice to a judgment debtor is where the appointment of a receiver would trigger a demand for repayment of a demand loan or would prejudice the infusion of new capital into a business.

Order appointing receiver

173 (1) An order appointing a receiver may:

- (a) empower the receiver to collect, receive and take custody and control of property of the judgment debtor wherever the property is located or recoverable and to take such other action in relation to the property as may be appropriate;
- (b) order the judgment debtor or other person in possession or control of property of the judgment debtor to deliver it up to the receiver or another person named in the order;
- (c) require a person to pay to the receiver
 - (i) an account that would otherwise be payable to the judgment debtor, and
 - (ii) a future account when it would otherwise become payable to the judgment debtor;
- (d) enjoin the judgment debtor or any person from disposing of or otherwise dealing with property that is subject to a receiving order except in accordance with the order of the court;
- (e) enjoin a person who is in control or possession of property that is subject to a receiving order, or who may acquire control or possession of the such property, from disposing of or otherwise dealing with the property other than in a manner that is consistent with the

exercise of legal rights acquired by such person before the person had actual knowledge of the appointment of a receiver of the property;

- (f) make an order with respect to payment of the expenses and remuneration of the receiver;
- (g) give the receiver any powers that it considers necessary to realize the value of the judgment debtor's property, including
 - (i) the power to manage or sell, assign, transfer or otherwise dispose of the property, and
 - (ii) bring proceedings in relation to the property.

Sources: *cf.* AB, section 85 (1); NL, section 126 (1)

- (2) An order appointing a receiver must designate an enforcement officer to whom the receiver must remit the net amount realized through the receivership, after deducting the receiver's expenses and remuneration.

Source: *cf.* NL, section 128 (4) (a)

- (3) An order appointing a receiver may require that the receiver:
 - (a) promptly remit to the enforcement officer designated under subsection (2) money realized through the receivership that is not necessary to meet the anticipated expenses and remuneration of the receiver;
 - (b) at least every 6 months, deliver to the enforcement officer designated under subsection (2) a financial statement in the prescribed form with regard to the administration of the receivership;
 - (c) upon completion of the receiver's duties, deliver to the enforcement officer designated under subsection (2) a final report and accounting with regard to the administration of the receivership;
 - (d) remit to the enforcement officer designated under subsection (2) the net amount realized through the receivership after deducting the receiver's expenses and remuneration;
 - (e) if a demand is made by the enforcement officer designated under subsection (2), provide the enforcement officer with copies of all records relating to the collection, receipt and administration of property of the judgment debtor that have come into the possession or control of the receiver.

Sources: *cf.* NL, section 128 (4); SK, section 53

- (4) The court may make any additional order that the court considers necessary or appropriate in respect of the powers of the receiver.

Source: original

ULCC Comment: Under subsection (1) (d), the court may permit limited or specified dispositions or other dealings with the property by the judgment debtor for the purposes of meeting ordinary business and living expenses of the judgment debtor and the judgment debtor's family.

Powers of a receiver

- 174** (1) Unless otherwise ordered by the court, a receiver must take custody and control of the judgment debtor's property over which the receiver is appointed.

Source: original

- (2) Unless otherwise ordered by the court, a receiver may do any act or thing that could have been or may be done by the judgment debtor in relation to the judgment debtor's property over which the receiver is appointed.

Source: original

- (3) A receiver has the power to take conservatory measures, including sale, to protect the property identified in the order or its value.

Source: *cf.* SK, section 50 (3) (b)

- (4) In addition to the powers provided by this Act, a receiver appointed under this Act has the powers of a receiver in equity that are not inconsistent with this Act.

Source: original

- (5) A receiver may exercise the powers of a receiver under this Act or [insert the name and section number of applicable provincial/territorial enactment or rule of court that sets out the powers of a receiver] any other enactment free of those limitations pertaining to the appointment of receivers imposed by law or equity as it existed prior to the date this Act came into force.

Source: *cf.* SK, section 50 (4) (a)

ULCC Comment: The purpose of subsection (5) is to overcome previous limitations that required a receiver appointed by way of equitable execution to abide by the maxim that "equity follows the law."

Application of exemptions from enforcement proceedings

- 175** (1) Part 12 applies to property of a judgment debtor that is subject to an order made under this Part appointing a receiver.
- (2) A receiver appointed under this Part must provide a judgment debtor with any exemption from enforcement proceedings that a judgment debtor or a dependent of the judgment debtor would be entitled to claim under Part 12 if the judgment debtor's property or income was subject to an enforcement proceeding by an enforcement officer.
- (3) Part 12 applies to the giving of a notice of exemption claim by a judgment debtor to a receiver and to the determination by the receiver of the validity of an exemption claim.

Source: original

ULCC Comment: Self-explanatory.

Execution of documents

- 176** For the purposes of disposing of or otherwise dealing with property of a judgment debtor that is subject to an order under this Part, a receiver may execute or endorse any document that could have been or may be executed or endorsed by the judgment debtor.

Source: original

ULCC Comment: The powers to execute and endorse documents under this section are virtually identical to the powers given to an enforcement officer under section 13 (1) (b).

Supervision of receivers

- 177** (1) Subject to subsection (2), if authorized by an order of the court made at the time of the appointment of a receiver or at any later time, the enforcement officer designated under section 173 (2) may:
- (a) approve the form of the security if the receiver is ordered to provide security;
 - (b) give directions to the receiver on any matter relating to the duties of the receiver;
 - (c) approve the receiver's accounts;
 - (d) fix the remuneration of the receiver;
 - (e) discharge, remove or replace the receiver; and
 - (f) discharge any security provided by the receiver.

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Source: *cf.* SK, section 53 (2)

- (2) If an enforcement officer is appointed as a receiver under this Part, the court must not make an order giving the enforcement officer any authority referred to in subsection (1).

Source: original

- (3) Within 10 days after receiving notice of a decision, approval, direction or determination, made or given by an enforcement officer under subsection (1), on application by the receiver, the judgment debtor or a judgment creditor who has delivered a subsisting enforcement instruction to the enforcement officer, the court may review the decision, approval, direction or determination and the court may:
 - (a) revoke any approval given by the enforcement officer;
 - (b) revoke any decision, direction or determination given by an enforcement officer;
 - (c) refer any matter back to the enforcement officer with directions;
 - (d) substitute the court's approval, direction or determination in place of any made by the enforcement officer;
 - (e) fix the remuneration of the receiver.

Source: original

- (4) The powers that the court may exercise with regard to the appointment of a receiver under in this Part are in addition to other powers provided in [insert the name of any statute or rule of court of the enacting province/territory that sets out powers that the court may otherwise exercise in its jurisdiction over receiver] any other enactment.

Source: NL, section 128 (8)

ULCC Comment: The objective of this section is to reduce the cost of a receivership order by permitting the court to delegate to an enforcement officer some of the court's traditional supervisory responsibilities with regard to receivers. In those provinces/territories where the enforcement officer is an officer of the court, this may be a suitable approach. In those provinces/territories where enforcement officers have been privatized, the courts may not wish to delegate these responsibilities to an enforcement officer.

Disposition of judgment debtor's property on termination of receivership

- 178** (1) Upon termination of a receivership, any property of a judgment debtor that remains in the possession or under the control of the receiver must be de-

livered or transferred to the enforcement officer designated under section 173 (2).

- (2) If an enforcement officer receives the delivery or transfer of property from a receiver under subsection (1), the enforcement officer must deal with the property in the same manner as if the property was the subject of an enforcement proceeding by the enforcement officer.

Source: *cf.* SK, section 54

ULCC Comment: If the enforcement officer receives the delivery or transfer of property from a receiver under this section and he or she does not have any subsisting enforcement instructions from a judgment creditor, the enforcement officer must deliver or transfer the property to the judgment debtor or other person who is entitled to the property.

PART 14—DISTRIBUTION

Definition

179 In this Part, “**eligible claim**” means the amount recoverable by a judgment creditor on a judgment at the time when a distributable fund is constituted if the judgment creditor has

- (a) an enforcement charge on property of the judgment debtor, and
- (b) delivered a subsisting enforcement instruction to the enforcement officer.

Source: original

ULCC Comment: The terms “amount recoverable,” “distributable fund,” and “subsisting enforcement instruction” are defined in section 1.

Creation and composition of distributable fund

180 (1) A distributable fund is constituted when an enforcement officer receives money toward satisfaction of a judgment in respect of which the enforcement officer has received a subsisting enforcement instruction.

Source: original

- (2) A distributable fund constituted under this section is comprised of:
- (a) money received by an enforcement officer toward the satisfaction of a judgment after the receipt of an enforcement instruction regardless of the source of the money or a designation or allocation of the money made by the person paying it whether or not the money is re-

ceived as a result of an enforcement proceeding in respect of a judgment debtor's property;

- (b) money that is otherwise identified in this Act or another enactment as distributable or allocated to an enforcement charge on property of a judgment debtor; and
- (c) money paid to an enforcement officer in respect of fees, taxable costs and expenses of the enforcement officer incurred in connection with an enforcement instruction relating to a judgment debtor.

Sources: *cf.* AB, section 96 (1); NL, section 150 (1); SK, section 74 (1)

- (3) A judgment creditor who, after giving an enforcement instruction to an enforcement officer, receives a payment from any source in satisfaction of his or her judgment, including a judgment granted against an account debtor under section 112 (1), must pay the amount received to the enforcement officer to whom the enforcement instruction was given for distribution by the enforcement officer under this Part.

Source: SK, section 74 (3)

- (4) When a distributable fund is constituted by an enforcement officer receiving money under a judgment granted under section 112 (1), the distributable fund is deemed
 - (a) to be constituted in relation to the judgment debtor named in the notice of seizure referred to in section 112 (1); and
 - (b) to have been constituted on the date when the notice of seizure referred to in section 112 (1) was given to the account debtor referred to in that section.

Source: original

ULCC Comment: *A distributable fund is constituted if an enforcement officer receives money with regard to the satisfaction of a judgment at any time after the enforcement officer receives an enforcement instruction. Money received by the enforcement officer is not limited to money derived from an enforcement proceeding conducted by the enforcement officer. If the judgment debtor or another person makes a payment to the enforcement officer with regard to a judgment, a distributable fund is constituted that must be distributed by the enforcement officer in accordance with this Part. If an enforcement officer receives more than one subsisting enforcement instruction and a judgment debtor makes a payment to the enforcement officer, the judgment debtor cannot allocate the payment among the judgment creditors.*

Under subsection (2) (b), "money that is otherwise identified in this Act" includes money paid over to an enforcement officer by a receiver. Money otherwise identified in another Act may include:

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- (a) *proceeds from enforcement proceedings against land if an enacting jurisdiction includes the enforcement proceedings against land in a separate Act rather than in Part 10 of this Act.*
- (b) *any balance remaining if property of a judgment debtor, which is subject to an enforcement charge, is sold under the PPSA to enforce a security interest or lien that has priority over the enforcement charge.*

Enacting jurisdictions should review their PPSA for the purpose of ensuring that it contains a provision similar to section 61 (2) of the Newfoundland and Labrador PPSA. It provides:

- (2) *Where a security agreement secures an indebtedness and the secured party has dealt with the collateral under section 58, or has disposed of it, the secured party shall account for a surplus and shall, subject to section 150 of the Judgment Enforcement Act and to subsection (5) of this section or the agreement otherwise of all interested persons, pay a surplus in the following order to*
 - (a) *a creditor or person with a security interest in the collateral whose security interest is subordinate to that of the secured party and*
 - (i) *who has registered, before the distribution of the surplus, a financing statement that includes the name of the debtor or that includes the serial number of the collateral if the collateral is goods of a kind that are prescribed as serial numbered goods, or*
 - (ii) *whose security interest was perfected by possession when the secured party seized or repossessed the collateral;*
 - (b) *another person with an interest in the surplus who has given a written notice to the secured party of that person's interest before the distribution of the surplus; and*
 - (c) *the debtor and another person who is known by the secured party to be an owner of the collateral.*

Under subsection (3), if a judgment creditor receives a payment in satisfaction of a judgment from the judgment debtor or from another source without invoking any of the enforcement proceedings under this Act, the payment does not come within this Act and the funds are not subject to distribution under this Act. In effect, the payment is treated in the same manner as a payment prior to judgment. Depending on the circumstances surrounding the making of the payment, the payment may be attacked under legislation dealing with fraudulent transactions. The term "enforcement proceeding" is defined as including the giving of an enforcement instruction to an enforcement officer. Therefore, if a judgment debtor makes a payment to the judgment creditor after the judgment creditor delivered a subsisting enforcement instruction to an enforcement officer, the payment comes within this Act and the judgment creditor must pay the money over to the enforcement officer for distribution in accordance with this Part.

The effect of subsection (4) is that only those judgment creditors who would had eligible claims at the time a notice of seizure was given to an account debtor are regarded as having eligible claims in a distribution of money received by an enforcement officer under a judgment against an account debtor under section 112 (1).

BCLI Comment: British Columbia's equivalent to section 61 (2) of the Newfoundland and Labrador Personal Property Security Act is section 60 (2) of the Personal Property Security Act.

Distribution of distributable fund

- 181** (1) A distributable fund must be distributed by the enforcement officer as provided in this Part.

Source: SK, section 74 (2)

- (2) If an interest, including a security interest in, or lien over, the money in a distributable fund or the property from which the money is derived, has priority over the enforcement charges being enforced, nothing in this Part may be construed so as to prejudice any right to the money in a distributable fund that is based on that interest, security interest or lien.

Sources: AB, section 96 (3); NL, section 150 (3)

- (3) The application of this Part is not affected by the priority of any enforcement charge relative to any other interest in property of the judgment debtor, including a mortgage, security interest, lien or charge.

Source: SK, section 74 (4) (b)

***ULCC Comment:** Subsection (2) applies, for example, if under section 92 the court permits a sale of the seized property to satisfy a judgment against a buyer under a contract of sale and the court is satisfied that the proceeds of sale will exceed the present value of the amount owing to the seller under the contract of sale and the costs of enforcement proceeding. If a sale is permitted, the proceeds which are received by the enforcement officer constitute a distributable fund. However, under this section, the entitlement of the security interest of the seller to the money in a distributable fund is preserved and the enforcement officer is obliged to satisfy the claim of the secured party with the prior security interest before making any distribution to other eligible claimants.*

Subsection (3) makes it clear that:

- (a) *The priorities established by Part 6 do not govern distributions among judgment creditors; and*
- (b) *Judicial decisions in some provinces, which held that the pro rata distribution provisions of creditors' relief legislation did not apply when a security interest intervened among several writs of execution in the hands of a sheriff, are not applicable to this Act.*

Time for determining entitlement to distribution

- 182** When a distributable fund is constituted under section 180, the determination of those judgment creditors who have an eligible claim is made by the enforcement officer as of the time the distributable fund is constituted.

Sources: cf. NL, section 153 (1); SK, section 75

***ULCC Comment:** Between the time of a seizure by an enforcement officer and the time that the enforcement officer receives proceeds from the sale or other disposition of the seized property, additional judgment*

creditors may deliver enforcement instructions to the enforcement officer and thereby become eligible claimants who are entitled to share in the distribution of the distributable fund under this Part.

Enforcement officer's request to judgment creditors for information about claim

- 183** (1) An enforcement officer may deliver a demand in writing to each instructing judgment creditor with an eligible claim or other person who may have a claim on the distributable fund, requiring delivery to the enforcement officer of a statement in writing that:
- (a) states the unsatisfied amount recoverable under the judgment or claim as of the date of the statement;
 - (b) discloses any funds or property received in satisfaction or partial satisfaction of the judgment or claim after an enforcement instruction relating to the judgment or claim was delivered to the enforcement officer; and
 - (c) asserts any claim to a preference in the distribution of the distributable fund under section 184 to which the judgment creditor or other person is entitled.

Source: *cf.* SK, section 76 (3)

- (2) If a person fails to respond to a demand referred to subsection (1) within 10 days from the date the demand is received, the person is deemed to have waived a right to share in the distribution of the distributable fund.

Source: SK, section 76 (4)

- (3) If a person fails to claim a preference in respect of the distribution of a distributable fund under section 184 within 10 days from the date the demand referred to in subsection (1) is received, the person is deemed to have waived a right to a preference in the distribution of the distributable fund.

Source: original

- (4) Unless an enforcement officer had knowledge at the time of the distribution that the information provided in response to a demand made under subsection (1) was incorrect:
- (a) a distribution made by the enforcement officer in reliance on the information is not invalidated; and
 - (b) the enforcement officer is relieved of any liability for making a distribution in reliance on the information.

Source: SK, section 76 (5)

ULCC Comment: Self-explanatory.

Order of distributions from distributable fund

184 (1) Except as hereinafter provided, and subject to section 181 (2), a distributable fund must be distributed:

- (a) first, to the amount of the fees, taxable court costs and expenses of the enforcement officer earned or incurred in connection with the enforcement proceedings that relate to the money comprising the distributable fund, which amount must be paid to the enforcement officer or to the judgment creditor or other person to the extent that such fees, costs or expenses have been paid to the enforcement officer;

Sources: NL, section 154 (1) (b); SK, section 76 (1) (a)

- (b) second, to taxable court costs of a judgment creditor not falling within clause (a) incurred in a proceeding to obtain a preservation order under Part 4, third person or interpleader proceeding under Part 15, or an application to the court, to the extent that money in the distributable fund can be attributed to such a proceeding or application which amount must be paid to the judgment creditor or other person who incurred or paid such costs;

Sources: SK, section 76 (1) (b); *cf.* NL, section 154 (1) (c)

- (c) third, if the distributable fund consists of exempt income of the judgment debtor or proceeds of disposition from the sale of property of exempt property of the judgment debtor and the judgment debtor's exemption claim has been determined to be valid under section 156 or 157, the amount determined to be exempt must be paid to the judgment debtor in accordance with section 155 (7);

Source: original

- (d) fourth, to the eligible claim of each instructing judgment creditor whose enforcement instruction led directly to the contribution of money to the distributable fund up to an amount not exceeding the lesser of
 - (i) the sum of
 - (A) \$2 000 or such other sum that is prescribed by regulation, or such other amount as a court may order, plus

- (B) after the payments referred to in clauses (a) to (c) are made, 15% of the amount by which the remaining balance of the distributable fund exceeds \$15 000 or such other sum that is prescribed by regulation, and
- (ii) the amount of money in the distributable fund that is directly attributable to the enforcement proceeding of that instructing judgment creditor;

Sources: *cf.* NL, section 154 (1) (h); SK, section 76 (1) (d)

- (e) fifth, to eligible claims that by virtue of any other enactment or law in force in the [province/territory] British Columbia are entitled to priority over the claims of judgment creditors generally;

Source: *cf.* SK, section 76 (1) (g)

- (f) sixth, to eligible claims of judgment creditors who were parties to an interpleader proceeding under Part 15 or who made a proportional contribution to the cost of such a proceeding to the extent that money in the distributable fund can be attributed to those proceedings, which amount must be paid on a *pro rata* basis to the judgment creditors in those proceedings;

Source: SK, section 76 (1) (h)

- (g) seventh, to taxable costs not falling within clauses (a), (b) or (c), that are payable out of the distributable fund under a court order;

Source: original

- (h) eighth to
 - (i) judgment creditors with an eligible claim to the extent of their eligible claims have not been satisfied, and
 - (ii) if the distributable fund is comprised of the proceeds of sale of property seized from the premises of a landlord who had a right of distress with respect to arrears of rent that were owing by the judgment debtor at the time of the seizure of the property, to the payment to the landlord of amount equal to the lesser of
 - (A) arrears of rent owing by the tenant at the time of the seizure of the property to a maximum provided by [insert

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the title of the enacting jurisdiction's landlord and tenant legislation] of one year's rent, and

- (B) the proceeds of sale of the property seized from the landlord's premises;

Source: original

BCLI Comment: See section 57, above, for the parallel provision dealing with seizure of property subject to a landlord's statutory right of distress.

- (i) ninth, any amount remaining must be paid to the judgment debtor or person entitled to it unless, prior to payment to the judgment debtor, the enforcement officer receives a new enforcement instruction from a judgment creditor of the judgment debtor in which case:
- (i) the money must not be paid to the judgment debtor; and
 - (ii) the money is considered to be an amount received by the enforcement officer under section 180 as a result of an enforcement proceeding and a new distributable fund is constituted under section 180 with regard to such money.

Source: original

- (2) If the remaining balance in a distributable fund is inadequate to discharge the full amount of the claims payable to persons referred to in a clause of subsection (1), the remaining balance must be allocated to each eligible claim referred to in that clause in the proportion that the amount of each eligible claim is to the total amount to be distributed under the clause.

Source: SK, section 76 (2)

- (3) If an enforcement officer receives money as a result of an enforcement proceeding, and the enforcement officer is not able to determine which of two or more enforcement instructions led directly to contribution of money to the distributable fund, then for the purposes of determining the entitlement under subsection (1) (d), the earliest enforcement instruction received by the enforcement officer is presumed to be the instruction that led directly to the contribution of money to the distribution fund.

Source: original

- (4) The priority of an enforcement charge in relation to another interest in the judgment debtor's property is not affected by order of distribution of the distributable fund.

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Source: original

***ULCC Comment:** Subsection (1) sets out the order in which funds in a distributable fund must be distributed. Each clause of subsection (1) describes a claimant or class of claimants whose claims must be satisfied in full before moving down to the claimants described in the following clause. If there is not enough money to discharge the full amount of all claimants in one class, subsection (2) provides that the remaining balance in the distributable fund is distributed among the claimants in that class on a pro rata basis. The following lettered comments relate the clauses of subsection (1) with the corresponding letters:*

- (a) *Fees, taxable court costs, and expenses of the enforcement officer: If the term “taxable court costs” is not a term that is used in an enacting province/territory, a term with equivalent meaning should be substituted in clauses (a), (b), and (g).*
- (d) *The preference of a judgment creditor whose enforcement instruction led directly to the contribution of money to the distributable fund compensates that judgment creditor for the time that the judgment creditor devoted to finding exigible property of the judgment debtor and the unrecoverable costs that the judgment creditor has risked in his or her effort to find exigible property.*
- (e) *Claims that are entitled to priority under another enactment: Examples of such claims include family maintenance and support claims under family maintenance enforcement legislation, wage claims under employment standards legislation, and claims under workers’ compensation legislation.*
- (h) *Under this clause, the remaining balance in the distributable fund is distributed on a pro rata basis among:*
 - (i) *judgment creditors to the extent of the remaining balance of their eligible claims, and*
 - (ii) *landlords, if at the time of seizure, they had a right of distress under landlord and tenant legislation of the province/territory. Under section 57, an enforcement officer may only maintain a seizure of a judgment debtor’s property located on a landlord’s premises if the enforcement officer has reasonable grounds to believe that the amount recoverable in a sale of the property will be more than sufficient to pay the arrears of rent owing to the landlord at the date of seizure up to whatever maximum is provided in landlord and tenant legislation of the enacting jurisdiction.*

Subsection (3) deals with a situation where, for example, an enforcement officer receives instructions from two judgment creditors to seize a pleasure boat. Both instructions contain similar information with regard to the Canada Shipping Act registration number of the boat and the boat’s location. For the purpose of determining which judgment creditor is entitled to the preference under clause (d), subsection (3) gives the preference to the judgment creditor who gave the earliest instruction to the enforcement officer.

Delay of distribution after property seized

185 An enforcement officer may not make a distribution from a distributable fund until at least 15 days after

- (a) if the distributable fund consists of proceeds from the disposition of personal property, the date when the enforcement officer seized the personal property; and

- (b) if the distributable fund consists of proceeds from the disposition of land, the date when the enforcement officer receives the proceeds from the disposition of the land.

Sources: *cf.* AB, section 101 (1) (d); NL, section 156 (1) (b)

ULCC Comment: In most instances where tangible personal property is seized, it will take at least 15 days to sell the property. However, with regard to the seizure of cash and securities that are disposable in an established market, there must be a reasonable length of time (15 days) to permit third persons, who may have a claim to the seized property, to assert a claim. Third person claims are dealt with in Part 15.

Circumstances when enforcement officer may delay distribution

186 If the distributable fund does not exceed \$2 000 or such other amount that is prescribed by regulation, and two or more judgment creditors have eligible claims that exceed the amount in the distributable fund, the enforcement officer may postpone the distribution

- (a) until the accumulated funds with regard to a judgment debtor exceed \$2 000 or such other amount that is prescribed by regulation; or
- (b) a new distributable fund has been constituted with the same eligible claimants;

provided that a distribution must not be postponed

- (c) if the amount of the distributable fund will fully satisfy all eligible claims; or
- (d) for a period longer than 90 days.

Source: original

ULCC Comment: Self-explanatory.

Preparation and distribution of enforcement officer's distribution scheme

187 Prior to making a distribution under this Part, an enforcement officer must prepare a distribution scheme in accordance with section 184 and deliver it to:

- (a) the judgment debtor;
- (b) judgment creditors with eligible claims;
- (c) a secured party, lien holder or person with an interest referred to in section 181 (2);
- (d) a person with a security interest that was subordinate to the enforcement charge on personal property of the judgment debtor that was sold in an enforcement proceeding that led directly to the contribution of funds to the distributable fund; and

- (e) any person with a registered interest in the land of the judgment debtor that was extinguished by a sale of the land in an enforcement proceeding that led directly to the contribution of funds to the distributable fund.

Source: *cf.* AB, section 101 (1)

ULCC Comment: *Self-explanatory.*

Objection to and amendment of enforcement officer's distribution scheme

- 188** (1) A judgment creditor or other person who would receive, as provided in the distribution scheme, less than full payment of the person's claim may object to the distribution scheme or aspects of it by giving a notice of objection to the enforcement officer within 10 days from the date of receipt of the distribution scheme.
- (2) If a notice of objection referred to in subsection (1) does not state the reasons for the objection, the enforcement officer may disregard the objection and proceed with the distribution.
 - (3) An enforcement officer may amend a distribution scheme prepared under section 187 in response to a notice of objection given under subsection (1) if the basis for the objection is an error in calculation or a clerical error.
 - (4) If an enforcement officer amends the distribution scheme under subsection (3), the enforcement officer must deliver a copy of the amended distribution scheme to all persons to whom the distribution scheme was previously delivered and section 187 and subsections (1) to (3) of this section apply to the amended distribution scheme.
 - (5) Not later than 10 days from the date that a notice of objection is given to an enforcement officer, the judgment creditor or other person who gave the notice of objection must apply to the court with notice to the enforcement officer for an order determining the validity of the objection.
 - (6) Unless the court orders otherwise, a notice of the application under subsection (5) must be given to each person named in the distribution scheme.
 - (7) On an application under subsection (5) or on application of the enforcement officer who prepared the distribution scheme, the court may, without limitation, make one or more of the following orders:
 - (a) an order dismissing the application and confirming the distribution scheme prepared by the enforcement officer;
 - (b) an order directing the enforcement officer to amend the distribution scheme;

- (c) if the application is successful, order that the costs of the application be paid out of the distributable fund to the applicant; or
 - (d) if the application is not successful, order the applicant to pay the costs of the proceedings and such additional amounts to persons affected as the court determines is appropriate to compensate for costs incurred and loss suffered as a result of a delay in distributing the distributable fund caused by the application to the court.
- (8) Despite section 180, a payment of costs or other amount referred to in subsection (6) to the enforcement officer or another person is not treated as part of an existing distributable fund or as constituting a new distributable fund.
- (9) If the court orders an enforcement officer to amend a distribution scheme, the enforcement officer must deliver a copy of the amended distribution scheme to all persons to whom the distribution scheme was previously delivered under section 187.

Source: *cf.* AB, section 101 (1)

ULCC Comment: *Self-explanatory.*

Payments out of distributable fund

- 189** (1) An enforcement officer must proceed with the distribution in accordance with the distribution scheme or the distribution scheme as amended under section 188 (3) if:
- (a) on the expiry of 10 days from the date the distribution scheme was delivered to the persons referred to in section 187 or such further time as the court may order, the enforcement officer has not received a notice of objection; or
 - (b) on the expiry of 10 days from the date the distribution scheme was delivered to the persons referred to in section 187 or such further time as the court may order, the enforcement officer has received a notice of objection but on expiry 10 days from the date that the enforcement officer received a notice of objection, he or she has not received notice of an application to the court by the person who gave the notice of objection for an order determining the validity of the objection.
- (2) Despite subsection (1), an enforcement officer who receives a notice of objection may, upon expiry of 10 days from the date the distribution scheme is delivered to the persons referred to in section 187 or such further time as the court may order, distribute, in accordance with the distribution scheme,

so much of the distributable fund as can be distributed without prejudice to the claim of the person who has given a notice of objection.

Source: original

ULCC Comment: Self-explanatory.

Reporting and correcting errors in distribution

- 190** (1) If a judgment creditor or another person receives a payment by way of a distribution that is greater than the amount to which the person is entitled, the judgment creditor or other person must
- (a) immediately notify the enforcement officer; and
 - (b) pay to the enforcement officer the amount by which the payment received exceeds the payment to which the judgment creditor or other person is entitled.
- (2) If a judgment creditor or another person
- (a) receives a payment by way of a distribution that is greater than the amount to which the judgment creditor or other person is entitled; and
 - (b) does not immediately on the demand of the enforcement officer or other person affected repay to the enforcement officer the amount to which he or she was not entitled,
- the court on the application of the enforcement officer or other person affected by the distribution may order that judgment be entered in favour of the enforcement officer, as the representative of the class of persons who have eligible claims under section 184 (1), against a judgment creditor or a person in an amount equal to the amount to which the judgment creditor or other person was not entitled.
- (3) If an enforcement officer receives an amount under either subsection (1) or (2), the enforcement officer must recalculate the distribution and distribute the additional money as if the payment were part of the original distribution.

Source: original

ULCC Comment: Self-explanatory.

PART 15—THIRD PERSON CLAIMS

***ULCC Introductory Comment:** Whenever property is subject to an enforcement proceeding by an enforcement officer or property is taken into the custody or control of a receiver, the rights of third persons, who may be unknown to the enforcement officer or receiver, may be adversely affected. This Part contains the procedure that must be followed if a third person seeks to assert a claim to property that is subject to an enforcement proceeding. If a person with a third person claim does not assert his or her claim in a timely fashion after learning that an enforcement proceeding is being taken in respect of the property, the enforcement officer or receiver, or person who buys the property from an enforcement officer or receiver, is protected from any subsequent claim by the third person.*

Definition

- 191** In this Part, “**third person claim**” means a claim to property or to a right to possession of property that is subject to an enforcement proceeding and, if the claim is valid, the property would not be property of the judgment debtor or, in the case of a right to possession, the right to possession could be asserted against the judgment debtor.

Source: SK, section 55 (1)

***ULCC Comment:** An example of a third person claim is a claim based on an interest under a resulting or constructive trust.*

Notice of third person claim to property

- 192** (1) Subject to subsection 194, a person who asserts a third person claim must give a notice of third person claim in the prescribed form to the enforcement officer who has conduct of the enforcement proceeding or who is designated in an order appointing a receiver under section 173 (2).

Sources: cf. NL, section 159 (1); SK, section 55 (2)

- (2) If an enforcement officer is the enforcement officer designated under an order made under section 173 (2) and the enforcement officer receives a notice of third person claim in respect of property that is in the custody or control of a receiver, the enforcement officer must give the receiver a copy of the notice of third person claim.

Source: original

***ULCC Comment:** Self-explanatory.*

Limitations if third person claim not made in timely fashion

- 193** (1) If a person with a third person claim has knowledge of the enforcement proceeding in respect of the property under circumstances in which a reasonable person would take steps to assert a claim to the property but a no-

tice of third person claim is not given to the enforcement officer until after the disposition of the property in the enforcement proceeding, a third person claim may not be asserted against the enforcement officer or receiver, a person who purchases the property from the enforcement officer or receiver, or a successor in interest from the buyer in respect of the property, but may be asserted against the proceeds of disposition of the property that remain after deducting the fees, taxable costs and expenses of the enforcement officer or the receiver in relation to the disposition of the property.

- (2) If a person with a third person claim has knowledge of the enforcement proceeding in respect of the property under circumstances in which a reasonable person would take steps to assert a claim to the property but a notice of third person claim is not given to the enforcement officer until after the property is sold or otherwise disposed of by the enforcement officer or receiver and the proceeds of disposition or other money have been distributed under Part 14, the person is precluded from asserting a third person claim against the enforcement officer or receiver, a person who purchases the property from the enforcement officer or receiver, or a successor in interest from the buyer.
- (3) A person who has an interest as a joint tenant or tenant in common with the judgment debtor in the property that is the subject of an enforcement proceeding is not entitled to assert a third person claim.

Source: *cf.* NL, section 159 (2) (b)

ULCC Comment: *Unless a third person asserts a third person claim in a timely manner, this section relieves an enforcement officer of any liability in relation to a seizure if, at the time of the seizure, the enforcement officer had reasonable grounds to believe that the seized property was the property of the judgment debtor or the judgment debtor had an interest in the property that was exigible.*

Stay of sale or stay of distribution of proceeds from sale of property that is subject to a third person claim

- 194** If a notice of third person claim is received by an enforcement officer or a receiver prior to the disposition of the property, the property that is subject to the notice of third person claim must not be sold, and funds in the possession of an enforcement officer arising from an enforcement proceeding in respect of that property must not be distributed, until
- (a) the third person claim is withdrawn by the third person;
 - (b) the court makes an order that the third person claim is invalid; or
 - (c) the court otherwise orders.

Source: original

Procedure relating to third person claims

- 195** (1) After receipt of a notice of third person claim, an enforcement officer must give a notice in the prescribed form with a copy of the notice of third person claim to all judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer.

Source: SK, section 56 (1)

- (2) A judgment creditor who receives the notice referred to in subsection (1) may dispute the third person claim by giving a notice of dispute to the enforcement officer not later than 10 days after receiving the notice referred to in subsection (1).

Source: SK, section 56 (2)

- (3) A judgment creditor who does not give a notice of dispute to the enforcement officer as provided by subsection (2) is deemed to have accepted the validity of the third person claim.

Source: SK, section 56 (3)

- (4) Nothing in subsection (3) affects the rights of a judgment creditor in any proceedings other than as referred to in this Part.

Source: SK, section 56 (4)

ULCC Comment: Self-explanatory.

Release of seized property

- 196** (1) If a notice of dispute is not received in accordance with section 195 (2) by the enforcement officer who gave the notice under the section 195 (1), the enforcement officer must release from seizure the property claimed in the notice of third person claim.

Source: SK, section 57 (1)

- (2) On the application of an enforcement officer who releases property as provided in subsection (1), the court may, if enforcement officer acted in accordance with this Act, make one or more of the following orders:
- (a) an order relieving the enforcement officer from liability in respect of the seizure;
 - (b) an order dismissing an action brought against the enforcement officer in respect of the seizure.

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Source: *cf.* SK, section 57 (2)

ULCC Comment: In determining whether an enforcement officer acted in accordance with this Act, the court should consider whether, at the time of the seizure of the property, the enforcement officer had reasonable grounds to believe that the seized property was the property of the judgment debtor.

Notice by enforcement officer of intention to interplead

- 197** If a notice of dispute is delivered under section 195 (2) to the enforcement officer who gave the notice under the section 195 (1), the enforcement officer must give a notice of intention to interplead to the disputing judgment creditor indicating that the validity of the notice of third person claim is to be determined through interpleader proceedings as provided by the *Rules of Court* unless the judgment creditor withdraws his or her notice of dispute within 5 days after receiving the notice of intention to interplead.

Source: SK, section 58 (1)

ULCC Comment: Self-explanatory.

Application by enforcement officer for interpleader order

- 198** (1) If, after expiry of the 5 days referred to in section 197, a notice of dispute is not withdrawn by the judgment creditor, the enforcement officer must apply for an interpleader order.

Source: SK, section 58 (2)

- (2) If a person asserting a third person claim withdraws the claim or the judgment creditor accepts the claim before or on the return of the notice of motion for an interpleader order, the court may order the person asserting the third person claim or the judgment creditor to pay the costs of the other party and the enforcement officer's costs.

Source: SK, section 58 (3)

- (3) Notice of an application for an interpleader order by an enforcement officer must be given to the person who gave notice of the third person claim and each judgment creditor who gave a notice of dispute of third person claim to the enforcement officer unless the notice of dispute has been withdrawn.

Source: SK, section 58 (4)

ULCC Comment: Self-explanatory.

Possession of disputed property during interpleader proceeding

- 199** (1) Pending the outcome of an interpleader proceeding under section 198, an enforcement officer who is a party to those proceedings may, after provision of such security or bond as the enforcement officer may require, permit the person asserting a third person claim or another person to have possession or control of the property that is the subject of the interpleaded proceeding.

Source: SK, section 58 (5)

- (2) When a bond or security is taken under subsection (1), the enforcement officer is deemed to remain in possession or control of the property during the currency of the bond or security and the obligor under the bond is deemed to be the enforcement officer's bailee who is under obligation to deliver possession or control of the property to the enforcement officer on demand.

Source: SK, section 58 (6)

ULCC Comment: Self-explanatory.

Sale of perishable property

- 200** If the property specified in a notice of third person claim is perishable property or property that cannot be stored at a cost that is likely to be less than value of the property, the court may order that the property be sold by the enforcement officer in the same manner as if no claim had been made to the property.

Source: SK, section 58 (7)

ULCC Comment: Self-explanatory.

Onus of proof in interpleader proceeding

- 201** (1) Unless the court orders otherwise, in an interpleader proceeding under this Part:
- (a) if the property in dispute was in the possession or control of the judgment debtor or an agent of the judgment debtor at the date of seizure, the onus of proof that the third person claim is valid is on the person asserting the third person claim;
 - (b) if the property in dispute was in the possession or control of any person other than the judgment debtor or an agent of the judgment debtor at the date of seizure, the onus of proof that the third person claim is not valid is on the judgment creditor;

- (c) if the property in dispute is an account, the onus of proof that the third person claim to the account is valid is on the person asserting the third person claim.
- (2) If the property in dispute in an interpleader proceeding under this Part was in the possession or control of the person asserting the third person claim at the time of the seizure of the property by the enforcement officer or other enforcement proceeding, and the court is satisfied that the person asserting the third person claim and the judgment debtor have colluded to delay or prevent enforcement proceedings against the judgment debtor's property, the court may place the onus of proving the validity of the third person claim on the person asserting the third person claim.

Source: SK, section 59

ULCC Comment: Self-explanatory.

PART 16—TRANSITION, REGULATIONS, FORMS AND FEES

Transition provision

- 202** A registration of a judgment against a judgment debtor's land under [insert the name of the *Land Title Act* or similar Act] [the *Land Title Act*] continues until the expiration of the registration and for that period of time the registration is deemed to be a registration of a notice of judgment that creates an enforcement charge on the judgment debtor's land under Part 10 of this Act.

Source: original

ULCC Comment: Prior to the time when the Uniform Act comes into force, judgments will have been registered against the land of the judgment debtor in accordance with the Act of the province or territory governing registrations against land. The advantages of deeming a registration of judgment against land made prior to the coming into force of the Act to be a registration of a notice of judgment under this Act are two-fold. First, the procedure for obtaining an order for sale under this Act is much more streamlined than the current procedure in many provinces/territories. Second, the distribution of the proceeds of sale will take place under this Act. If this were not the case, it would be very confusing to have one distribution scheme apply to judgments registered prior to this Act and a different distribution scheme apply to notices of judgment registered under this Act.

In addition to this section, clause (n) of the next section enables the Lieutenant Governor in Council to make regulations respecting the transition from the law existing immediately before the commencement of this Act to this Act.

Regulation-making power

- 203** The Lieutenant Governor in Council may make regulations

- (a) defining, for the purpose of this Act, a term that is not otherwise defined by this Act;
- (b) respecting the registry and its operations under this Act;
- (c) respecting the posting of a bond for the purpose of supporting security or an undertaking required under this Act;
- (d) respecting the description of property that is to be included in notices of judgment and prescribing the kinds of goods that may be described wholly or in part by serial number and the requirements of a description by serial number;
- (e) respecting the identification of judgment debtors in registrations;
- (f) respecting the records to be entered, maintained, amended and deleted for the purpose of this Act;
- (g) prescribing property and income that is exempt and prescribing the value of property of a specific type that may be claimed as exempt from seizure;
- (h) respecting the calculation of net income including allowable deductions;
- (i) governing the selection of exempt property by judgment debtors and their representatives;
- (j) respecting the determination of persons who qualify as dependents for the purpose of this Act;
- (k) respecting the seizure of property, including the removal, handling, storage and release of seized property;
- (l) respecting the qualifications for and appointment of receivers;
- (m) respecting compensation for account debtors;
- (n) respecting the transition from the law existing immediately before the commencement of this Act to this Act;
- (o) defining a word for the purpose of the Act or the regulations which is not defined in the Act; and
- (p) generally to give effect to the purpose of this Act.

Source: *cf.* SK, section 90

ULCC Comment: Under clauses (b) and (f), a regulation that may be required with regard to the operation of the registry is a regulation providing that when a notice of judgment is no longer effective, it may be removed from the records of the registry in accordance with the regulations. The purpose of such a regulation is to enable the registry to remove data from the registry's data bank when the registration of a notice

of judgment including any renewal has expired. Otherwise, over time, the registry's data information system would become burdened with information that is no longer relevant.

Prescribed Forms

- 204** (1) When this Act states that a notice or document must be in a prescribed form, the form and the contents or information required on that form or document may be
- (a) prescribed by regulation; or
 - (b) established by the minister responsible for this Act.
- (2) The minister responsible for this Act may delegate the responsibility of prescribed forms and the contents or information required on a form or document
- (a) in the case of forms or documents that are required to be registered in the registry, to the registrar of the registry;
 - (b) in the case of forms or documents that are required to be registered in accordance with the [insert the name of the *Land Titles Act* or similar Act] *Land Title Act*, to the [insert the Registrar of Titles or similar official] *Registrar of Titles*; and
 - (c) in the case of forms that are required to be used in an enforcement proceeding, to the chief enforcement officer of the province/territory *British Columbia*.
- (3) If, by this Act, a form or document must contain specified information or statements, the regulations may require the form or document to contain information or statements that are additional to those specified by this Act.

Source: original

ULCC Comment: Self-explanatory.

Prescribed Fees

- 205** The minister responsible for this Act may establish fees that must be paid for registrations, filing of documents, searches, commissions, enforcement instructions, examinations under oath, questionnaires, services, documents, copies, orders, enforcement proceedings and other things necessary for the purpose of this Act.

Source: original

ULCC Comment: Self-explanatory.

APPENDIX B

Tables of Concordance

Note

These tables of concordance set out, in numerical order in the first column, the sections of British Columbia's leading statutory sources of substantive civil enforcement law, the *Court Order Enforcement Act* (the "COEA"), the *Creditor Assistance Act* (the "CAA"), and selected provisions of the *Law and Equity Act* (the "LEA"). Where an equivalent of a COEA, CAA, or LEA section may be found in the *Uniform Civil Enforcement of Money Judgments Act* (the "Uniform Act"), that equivalent is noted in the second column. A very broad view of equivalence has been taken in preparing this table; in many cases, the same issue arises in the COEA, the CAA, or the LEA and the Uniform Act, but it is treated in very different ways. The third column sets out the British Columbia Law Institute's recommendation for the disposition of each COEA, CAA, or LEA section upon the coming into force of the Uniform Act.

These tables are provided for readers' information. It must be emphasized that the drafters of the Uniform Act did not draw on the COEA, the CAA, or the LEA for inspiration. Indeed, the provisions of the COEA, the CAA, and the LEA were not considered during the preparation of the Uniform Act. There are numerous provisions in the Uniform Act that have no equivalent in the COEA, the CAA, or the LEA. That said, there is a family resemblance between some of the provisions of the statutes. It is hoped that these tables will provide some assistance to readers in making the transition from the current system to the Uniform Act. In addition, the first table serves to underscore the point that many of the provisions currently located in the COEA—such as the whole of Parts 2, 3, and 4, which respectively deal with reciprocal enforcement of court orders, asbestos litigation, and the Canada–United Kingdom Convention—have only a tenuous connection to the core of civil enforcement law, which is the subject of the Uniform Act. As a result, many of the provisions of the COEA will have to remain in force, or will have to become the subject of law reform projects in their own right.

1. *Court Order Enforcement Act*

COEA	Uniform Act	BCLI Recommendation
s.1 (Definitions for Part)	s. 1 (Definitions); s. 101 (Seizure of employment remuneration)	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 2 (Delegation of functions)	—	repeal
s. 3 (Attachment procedures and exemptions)		
subs. (1)	s. 1 (Definitions)	repeal
subs. (2)	s. 96 (Seizure of an account); s. 17 (1) (a) (Preservation orders)	repeal
subs. (3)	— <i>[a proposed amendment to s. 16 would permit a potential plaintiff to apply for a preservation order before commencing a proceeding]</i>	repeal
subs. (4)	—	repeal
subs. (5)	s. 165 (Exempt income)	repeal
subs. (6)	—	repeal
subs. (7)	—	reenact as section 165 (1.1) of the Uniform Act
subs. (8)	—	repeal
s. 4 (Variation of exemptions)	s. 186 (Variation of exemption by court)	repeal
s. 5 (Payment by installments)	s. 7 (2) (f) (Applications to court)	repeal
s. 6 (Attachment of money owing by government to public servants)	—	reenact as s. 101.1 of the Uniform Act
s. 7 (Form of affidavits and orders)	—	repeal
s. 8 (Affidavit may be on information and belief)	—	repeal
s. 9 (Debts bound by service of order)	s. 28 (Creation of enforcement charge)	repeal
s. 10 (Amount attached limited to amount due and reasonable costs)	s. 99 (Obligations of account debtor)	repeal
s. 11 (When judge may order payment by garnishee with costs)	s. 112 (Judgment against account debtor who fails to honour seizure of account)	repeal
s. 12 (Payment out of court)	—	repeal
s. 13 (Payment out of court without order)	—	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 14 (Execution may issue on order)	—	repeal
s. 15 (Order may apply to debt not matured)	s. 97 (Effect of giving notice of seizure)	repeal
s. 16 (If garnishee disputes debt, issue may be tried)	s. 112 (Judgment against account debtor who fails to honour seizure of account)	repeal
s. 17 (Judge may order appearance of third person)	—	repeal
s. 18 (Order for trial or payment on hearing third person)	—	repeal
s. 19 (Judge may take evidence in chambers)	—	repeal
s. 20 (Garnishee entitled to costs on complying with order)	s. 108 (Compensation for account debtor)	repeal
s. 21 (Payment into court is valid discharge)	s. 106 (Payment discharges account debtor)	repeal
s. 22 (Debt attachment book to be kept by registrar)	—	repeal
s. 23 (Procedure is regulated by this Part)	—	repeal
s. 24 (Procedure in attaching partnership, firm or company debts)	—	repeal
s. 25 (Service of attaching order or partnership, firm or company)	s. 5 (Delivery of notices, demands and documents)	repeal
s. 26 (Different debts may be included in one order)	—	repeal
s. 27 (Garnishment not to affect employment)	—	reenact as section 101.2 of the Uniform Act
Pt. 2—Reciprocal Enforcement of Court Orders (ss. 28–39)*	—	retain in force

* Sections 28–39 deal with the reciprocal enforcement of court orders. These provisions are out of date. British Columbia law would be improved if the *Enforcement of Canadian Judgments and Decrees Act*, S.B.C. 2003, c. 29 were brought into force. Even if that statute were brought into force, however, sections 28–39 would continue to be relevant, as the list of reciprocating states includes jurisdictions outside Canada. The provisions may be retained in force by re-enactment as a freestanding statute, by

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COEA	Uniform Act	BCLI Recommendation
Pt. 3—Asbestos Litigation (s. 40)*	—	retain in force
Pt. 4—Canada–United Kingdom Convention (ss. 41–46)**	—	retain in force
s. 47 (Definitions for this Part)	s. 1 (Definitions)	repeal
s. 48 (When order is payable)	—	reenact as section 12.1 of the Uniform Act
s. 49 REPEALED		
s. 50 (How time to be calculated)	—	repeal
s. 51 (No imprisonment for debt)	s. 2 (3) (General)	repeal
s. 52 (Court may order to preference claim to the extent of 3 months wages)	—	reenact as section 12.2 of the Uniform Act
s. 53 (Creditor may enforce claim for balance due)	—	repeal
s. 54 (Return of writ or order by sheriff)	—	repeal
s. 55 (Effect of writ of execution against goods)	s. 50 (1) (Application of this Division)	repeal
s. 56 (Land not to be sold under writ of execution against goods)	—	repeal
s. 57 (Interests subject to seizure and sale)	s. 50 (1) (b) (Application of this Division)	repeal
s. 58 (Sheriff empowered to seize money and securities for money)	s. 50 (1) (Application of this Division)	repeal

amending the *Enforcement of Canadian Judgments and Decrees Act* to include the remaining reciprocating states, or, possibly, by placing them in a regulation promulgated under the *Enforcement of Canadian Judgments and Decrees Act*.

* Section 40 deals with asbestos litigation. This section should be reviewed. If it is still relevant, and its policy continues to attract support, then it could be re-enacted as a freestanding statute, or as part of another statute (such as the *Law and Equity Act*) dealing with judgments and orders generally.

** Sections 41–46 deal with the Canada–United Kingdom Convention for the reciprocal enforcement of judgments. These sections could be re-enacted with sections 28–39 as a freestanding statute dealing with enforcement of judgments from outside British Columbia or they could be integrated into a modernized system based on the *Enforcement of Canadian Judgments and Decrees Act*.

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COEA	Uniform Act	BCLI Recommendation
s. 59 (Payment to or recovery by sheriff to be valid discharge)	—	repeal
s. 60 (Sheriff to satisfy writ of execution and pay surplus to execution debtor)	—	repeal
s. 61 (Sheriff not bound to sue until indemnified against costs)	s. 184 (1) (i) (Order of distributions from distributable fund)	repeal
s. 62 (Sale of equity of redemption in goods)	s. 88 (Seizure of lessee's, buyer's or debtor's interest)	repeal
s. 63 (Certain corporations are deemed to be incorporated companies)	—	repeal
s. 64 (Shares made liable to seizure)	s. 50 (1) (Application of this Division)	repeal
s. 65 (Seizure and sale of shares)	Pt. 9 Div. 5—Securities and Security Entitlements	repeal
s. 66 (Notice of seizure if company has more than one place for service of process)	—	repeal
s. 67 (Shares to be personal property at place where notice of seizure served)	—	repeal
s. 68 (Mode of proceeding to complete sale and transfer)	—	repeal
s. 69 (Other remedies preserved)	—	repeal
s. 70 (Definitions for sections 71 to 78)	—	repeal
s. 71 (Personal property of debtor)	s. 159 (Exemptions of specific types of property)	repeal
s. 71.1 (Principal residence of debtor)	s. 159 (1) (e) (Exemptions of specific types of property)	repeal
s. 71.2 (Property exceeding exempted values)	s. 162 (Procedure if property claimed as exempt exceeds maximum value of permitted exemption)	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 72 (Art exempt from seizure)	—	reenact as section 163.1 of the Uniform Act
s. 73 (Procedure for selection of exempt goods)	s. 155 (Giving notice of exemption claim to enforcement officer)	repeal
s. 74 (Procedure as to value of exempt goods)	—	repeal
s. 75 (If goods selected exceed in value to exempt amount)	—	repeal
s. 76 (Appraiser's fees)	—	repeal
s. 77 (Appraiser's oath)	—	repeal
s. 78 (Appeal from appraisal)	—	repeal
s. 79 (Recovery of taxes, rent and other debts)	—	reenact as section 158.1 of the Uniform Act
s. 80 (Writs of elegit or fi. fa. land abolished)	s. 2 (1) (General)	repeal
s. 81 (Definitions for sections 82 to 112)	s. 1 (Definitions)	repeal
s. 82 (Registration of judgment before October 31, 1979)	—	repeal
s. 83 (Expiration of lien)	—	repeal
s. 84 (Registration or renewal before October 31, 1979)	—	repeal
s. 85 (Section 84 limited in time)	—	repeal
s. 86 (Registration of Judgments after October 30, 1979)	s. 128 (Creation of enforcement charge on land)	repeal
s. 87 (<i>Fraudulent Preference Act</i>)	—	repeal
s. 88 (Application to register judgment)	s. 128 (Creation of enforcement charge on land)	repeal
s. 89 (Notice to owner)	— <i>[section 30 requires notice upon registration of notice of judgment in the personal property registry]</i>	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 90 (Additional compensation)	—	repeal
s. 91 (Expiration and renewal)	s. 31 (Discharge or amendment of notice of judgment); s. 130 (Discharge of registration)	repeal
s. 92 (Procedure for enforcing charge)	s. 133 (Notice of intention to sell)	repeal
s. 93 (Determination of disputed questions)	—	repeal
s. 94 (Reference to ascertain land and settle priorities)	s. 135 (Method of disposition)	repeal
s. 95 (Registrar may retain sufficient sum to satisfy claim under <i>Creditor Assistance Act</i>)	s. 180 (Creation and composition of distributable fund)	repeal
s. 96 (Order for sale of land)	s. 135 (Method of disposition)	repeal
s. 97 (Court may direct notification of claimants not before court)	—	repeal
s. 98 (Pending litigation)	—	repeal
s. 99 (Costs in discretion of court)	—	repeal
s. 100 (Time of sale of land)	—	repeal
s. 101 (Notice of sale)	s. 135 (Method of disposition)	repeal
s. 102 (Form of notice of sale)	—	repeal
s. 103 (Purchase of land by plaintiff or mortgagee)	—	repeal
s. 104 (No sale on day of sale)	—	repeal
s. 105 (Conveyance of land sold)	s. 136 (Transfer of land following a sale)	repeal
s. 106 (Proceeds of sale to registrar of Supreme Court)	—	repeal
s. 107 (Purchaser not to be affected by irregularities)	s. 135 (7) (Method of disposition)	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 108 (Proceeding not to abate by marriage, death or bankruptcy)	—	reenact as section 137.2 of the Uniform Act
s. 109 (Power of purchasers to satisfy encumbrancers)	—	reenact as section 137.3 of the Uniform Act
s. 110 (Payment into court of money from sale)	—	repeal
s. 111 (Distribution of money)	Pt. 14 (Distribution)	repeal
s. 112 (Registration of conveyance)	s. 136 (3) (Transfer of land following a sale)	repeal
s. 113 (Sheriff's fees)	—	repeal
s. 114 (Register of sales)	—	repeal
s. 115 (Register may be inspected)	—	repeal
s. 116 (Assessors may inspect register)	—	repeal
s. 117 (Power to make regulations)	s. 203 (Regulation-making power)	repeal

2. *Creditor Assistance Act*

COEA	Uniform Act	BCLI Recommendation
s.1 (Definitions)	s. 1 (Definitions); s. 179 (Definition)	repeal
s. 2 (Sheriff's notice of levy)	s. 183 (Enforcement officer's request to judgment creditors for information about claim); s. 187 (Preparation and distribution of enforcement officer's distribution scheme)	repeal
s. 3 (Distribution)	s. 184 (Order of distributions from distributable fund)	repeal
s. 4 (Exceptions)	s. 186 (Circumstances when enforcement officer may delay distribution)	repeal

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COEA	Uniform Act	BCLI Recommendation
s. 5 (Subsequent levy)	s. 184 (1) (i) (Order of distributions from distributable fund)	repeal
ss. 6–25, 29, and 35*	—	repeal
s. 26 (Fund in court)	s. 180 (Creation and composition of distributable fund)	repeal
s. 27 (Deficiency in levy)	s. 184 (Order of distribution of distributable fund)	repeal
s. 30 (Recovery for benefit of all)	—	repeal
s. 31 (Compelling payment by sheriff)	—	repeal
s. 32 (Statement pending distribution)	s. 187 (Preparation and distribution of enforcement officer's distribution scheme)	repeal
s. 33 (Sheriff to give information)	s. 48 (Enforcement officer must disclose information to other judgment creditors who request)	repeal
s. 34 (Attaching orders)	—	repeal
s. 36 (Priority for wages and salary)	s. 184 (1) (e) (Order of distributions from distributable fund)	repeal
s. 37 (Distribution to established claimants only)	s. 179 (Definition); s. 181 (Distribution of distributable fund)	repeal
s. 38 (Distribution if amount levied is insufficient)	s. 187 (Preparation and distribution of enforcement officer's distribution scheme)	repeal
s. 39 (Distribution and objections)	s. 188 (Objection to and amendment of enforcement officer's distribution scheme)	repeal

* Sections 6–25, 29, and 35 establish a procedure allowing creditors who have not reduced their claim to judgment to obtain a certificate and share in the proceeds of execution. This policy has not been maintained under the Uniform Act.

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COEA	Uniform Act	BCLI Recommendation
s. 40 (How objections are made and heard)	s. 188 (Objection to and amendment of enforcement officer's distribution scheme)	repeal
s. 41 (Intervening encumbrance)	—	repeal
s. 42 (Court's power on contest)	—	repeal
s. 43 (Powers of court)	—	repeal
s. 44 (Decisions binding on all creditors)	—	repeal
s. 45 (Deposit of money)	—	repeal
s. 46 (No priority)	s. 38 (4) (Relationship among interests in seized property)	repeal
s. 47 (Defects in form)	—	repeal
s. 48 (Rules of Court)	—	repeal
s. 49 (Fees)	s. 205 (Prescribed fees)	repeal
s. 50 (Application)	—	repeal
s. 51 (Power to make regulations)	s. 203 (Regulation-making power)	repeal

3. *Law and Equity Act*

COEA	Uniform Act	BCLI Recommendation
s. 35 (Writ of execution to bind goods only from time of seizure)	Pt. 5—Registration of Notice of Judgment and Creation of an Enforcement Charge; Pt. 6—Priority of an Enforcement Charge	repeal
s. 55 (Art exempt from seizure)	— <i>[counterpart of proposed s. 163.1 of the Uniform Act]</i>	retain in force in LEA
s. 64 (Receivers and receiver-managers)	Pt. 13—Receivers	retain in force in LEA (as a supplement to Pt. 13)

APPENDIX C

Transition Scenarios

Note

The *Uniform Civil Enforcement of Money Judgments Act* (the “Uniform Act”) does not contain detailed transitional provisions. Instead, the general principles governing repeal and replacement of enactments that are found in sections 35–37 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 will govern. The rules in section 36 (1) are particularly important:

- 36** (1) If an enactment (the “former enactment”) is repealed and another enactment (the “new enactment”) is substituted for it,
- (a) every person acting under the former enactment must continue to act as if appointed or elected under the new enactment until another is appointed or elected in his or her place,
 - (b) every proceeding commenced under the former enactment must be continued under and in conformity with the new enactment so far as it may be done consistently with the new enactment,
 - (c) the procedure established by the new enactment must be followed as far as it can be adapted in the recovery or enforcement of penalties and forfeitures incurred under the former enactment, in the enforcement of rights existing or accruing under the former enactment, and in a proceeding relating to matters that happened before the repeal,
 - (d) when a penalty, forfeiture or punishment is reduced or mitigated by the new enactment, the penalty, forfeiture or punishment if imposed or adjusted after the repeal must be reduced or mitigated accordingly,
 - (e) all regulations made under the former enactment remain in force and are deemed to have been made under the new enactment, in so far as they are not inconsistent with the new enactment, until they are repealed or others are made in their place, and
 - (f) a reference in an unrepealed enactment to the former enactment must, for a subsequent transaction, matter or thing, be construed as a reference to the provision of the new enactment relating to the same subject matter, but if there is no provision in the new enactment relating to the same subject matter, the former enactment must be con-

strued as being unrepealed so far as is necessary to give effect to the unrepealed enactment.

Section 203 (n) of the Uniform Act is also of note in this context. This provision allows the Lieutenant Governor in Council to make regulations “respecting the transition from the law existing immediately before the commencement of this Act to this Act.” Such regulations may be used to address special situations where the transition may require detailed rules.

This approach reflects the experience in Alberta, where the transition to the *Civil Enforcement Act*, R.S.A. 2000, c. C-15 similarly relied on the general principles in Alberta’s *Interpretation Act*, R.S.A. 2000, c. I-8 and on specialized regulations.

This Appendix illustrates the operation of the general principles by setting out a number of scenarios involving common transitional issues. It also makes suggestions for the use of regulations to address specific transitional issues.

SCENARIO (1)

JC has obtained a money judgment against JD before the coming into force of the Uniform Act. JC has taken no steps to enforce that judgment by the day that the Uniform Act comes into force.

Result: JC must now enforce the judgment in accordance with the Uniform Act. This will require registration of a notice of judgment in the Personal Property Registry.

SCENARIO (2)

JC has obtained a money judgment against JD before the coming into force of the Uniform Act and has also begun to enforce that judgment by way of writ of execution.

Result: JC will be able to continue the enforcement proceedings to their conclusion. The proceeds of execution will be subject to sharing in accordance with the Uniform Act.

SCENARIO (3)

JC has obtained a money judgment against JD before the coming into force of the Uniform Act and has also begun to enforce that judgment by way of garnishment proceedings.

Result: JC will be able to continue the garnishment proceedings to their conclusion. The proceeds will not be subject to sharing in accordance with the Uniform Act.

SCENARIO (4)

JC has obtained a money judgment against JD before the coming into force of the Uniform Act and has also registered that judgment against title to JD's land in the land title office, but has taken no steps to sell the land.

Result: The registered judgment will be deemed to be a notice of judgment (this result may be brought about by a regulation). The procedure for selling the land and the distribution of the proceeds of the sale will be governed by the Uniform Act.*

SCENARIO (5)

JC has obtained a money judgment against JD before the coming into force of the Uniform Act and has also registered that judgment against title to JD's land in the land title office and commenced proceedings to sell the land.

Result: The registered judgment will be deemed to be a notice of judgment. The procedure for selling the land and the distribution of the proceeds of the sale will be governed by the *Court Order Enforcement Act*.

* Notice, however, that section 40 of the Uniform Act requires that enforcement instructions be accompanied by "a search result from the [personal property] registry indicating that a notice of judgment [that] has been registered in the registry with regard to the judgment to be enforced, and the registration of that notice of judgment remains in effect." This provision will have the effect of requiring a further registration of a notice of judgment in the Personal Property Registry, which will then permit JC validly to instruct an enforcement officer to take enforcement proceedings. If this effect is to be avoided, then a regulation could authorize those creditors who have a "deemed notice of judgment" to give valid enforcement instructions without have to register a notice of judgment in the Personal Property Registry.

APPENDIX D

Legislative Review and Consequential Amendments

Note

The Uniform Law Conference of Canada recommends that each province considering implementation of the *Uniform Civil Enforcement of Money Judgments Act* (the “Uniform Act”) review its legislation for references to various types of enforcement proceedings that will not be used under the new legislation. (See the ULCC Comment to section 7.) This Appendix contains the results of a legislative review focused on older enforcement proceedings and references to British Columbia’s major civil enforcement statutes. Some patterns emerge from this review. In general, provisions that refer to an enforcement proceeding or a civil enforcement statute fall into three broad types, which are identified in this Appendix as follows:

E = a provision that exempts a fund or asset, or the assets of a specified entity, from civil enforcement;

P = a provision that establishes a procedure for enforcing a claim granted to a statutory creditor;

O = other provisions.

Identifying the type of provision goes a long way toward determining the action that should be taken in response to the implementation of the Uniform Act.

The “E” type provisions usually state exemptions by prohibiting the use of a long list of enforcement proceedings. There is no need to change this approach in response to the implementation of the Uniform Act, so long as that list at least includes a reference to “seizure.” Indeed, it may be desirable to retain the comprehensive list in a provision since other creditors (for example, Federal Court creditors) may be able to use remedies such as attachment or garnishment.

The “P” type provisions tend to fall into one of two categories. In many cases, the procedure described is freestanding. There is no need to amend these provisions at this time (but some thought may in the future be given to integrating these statutory creditors into the Uniform Act civil enforcement system). In other cases, however, the procedure operates by reference to the *Court Order Enforcement Act* or to an outmoded enforcement remedy. These provisions, by and large, must be amended; but care must be taken with

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references to “execution,” as this word may embrace more than the enforcement of a money judgment.

The catchall category of “O” type provisions will have to be reviewed carefully. No general rule may be applied to this type.

In order to avoid the necessity of repeated cross-references to the Uniform Act, the following definitions should be added to section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238:

“enforcement charge” means an enforcement charge as defined in the *Civil Enforcement of Money Judgments Act*;

“enforcement instruction” means an enforcement instruction as defined in the *Civil Enforcement of Money Judgments Act*;

“enforcement proceeding” means an enforcement proceeding as defined in the *Civil Enforcement of Money Judgments Act*;^{*}

“notice of judgment” means a notice of judgment as defined in the *Civil Enforcement of Money Judgments Act*.

This Appendix only reviews legislation; no attempt has been made to review and suggest amendments to regulations or the *Supreme Court Rules*. Finally, in accordance with the policy of the Uniform Act, the *Family Maintenance Enforcement Act* and the *Interjurisdictional Support Orders Act* have been excluded from this review.

Builders Lien Act, S.B.C. 1997, c. 45

- 13** (1) In the case of money owing to a contractor or subcontractor that would, if paid to the contractor or subcontractor, be subject to a trust under section 10, the money, if it is paid into court under an attachment under the *Court Order Enforcement Act*, is subject to a trust as if it had been paid to the contractor or subcontractor, and the interest of the garnishor is subordinate to the interest of the beneficiaries of the trust.
- (2) A garnishee under an attachment referred to in subsection (1) must, at the time of payment into court, file in the court registry a notice in the prescribed form and deliver a copy of the notice to the garnishor.

* “Enforcement proceeding” is used in one other place in the statute book: sections 14.1–14.3 of the *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127. To avoid confusion, the term should be specifically defined in that statute for the purposes of sections 14.1–14.3.

...

- (4) Money held in a holdback account established under section 5 is not subject to garnishment.

Type: E

Action: Amend subsection (1) by striking out “attachment under the *Court Order Enforcement Act*” and replacing it with “enforcement proceeding.” Amend subsection (2) by striking out “A garnishee . . . attachment . . . garnishor” and replacing it with “An account debtor . . . enforcement proceeding . . . enforcement officer.” Amend subsection (4) by adding “, seizure, or enforcement proceedings” after “garnishment.”

- 21** A claim of lien filed under this Act takes effect from the time work began or the time the first material was supplied for which the lien is claimed, and it has priority over all judgments, executions, attachments and receiving orders recovered, issued or made after that date.

Type: O

Action: Amend section 21 by adding “, enforcement proceedings” between “attachments” and “and.”

Business Corporations Act, S.B.C. 2002, c. 57

- 349** (3) If the minister is satisfied that the applicant under subsection (2) is entitled to recover some or all of the dissolved company’s assets in satisfaction of a judgment referred to in that subsection, the minister may,
- (a) if the dissolved company’s assets have not yet been disposed of, provide those assets to the sheriff who may realize on those assets in accordance with the *Court Order Enforcement Act*, or

...

- (4) If assets are provided to the sheriff under subsection (3) (a), the sheriff must apply the money realized from the disposition of those assets firstly in payment of the government’s costs of obtaining, maintaining and disposing of those assets, and secondly in accordance with the scheme for payment under the *Court Order Enforcement Act*.

Type: P

Action: Amend paragraph (a) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.” Amend subsection (4) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2

- 41** Money paid under a preneed cemetery or funeral services contract is not subject to any process of garnishment, attachment, execution or seizure under any legal process against
- (a) the consumer,
 - (b) the legal representative of the consumer,
 - (c) the beneficiary,
 - (d) the legal representative of the beneficiary,
 - (e) the trustee of the money, or
 - (f) the supplier obligated to provide the cemetery services or funeral services covered by the contract.

Type: E

Action: None required.

Note: See BCLI Comment to section 159 (1) (k).

- 138** (1) If, in respect of a compensation fund, the administrative authority is designated as the director,
- ...
- (d) money paid into the fund, or received by the authority for the fund, is not subject to any process of garnishment, attachment, execution or seizure under any legal process by any creditor of the administrative authority,

Type: E

Action: None required.

- 148** (3) Money paid into the trust account is not subject to any process of garnishment, attachment, execution or seizure under any legal process by a creditor of the licensee.

Type: E

Action: None required.

Child Care Subsidy Act, R.S.B.C. 1996, c. 26

- 8** (1) Child care subsidies are exempt from garnishment, attachment, execution or seizure under any Act.

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Type: E

Action: None required.

Class Proceeding Act, R.S.B.C. 1996, c. 50

- 33** (4) The court must supervise the execution of judgments and the distribution of awards under this Division and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

Type: P

Action: Amend subsection (4) by striking out “execution . . . execution” and replacing it with “enforcement . . . enforcement proceeding.”

Commercial Tenancy Act, R.S.B.C. 1996, c. 57

- 1** No chattels being in or on any land that is or shall be leased for life or lives, term of years, or at will, or otherwise, are liable to be taken by virtue of any execution, unless the party at whose suit the said execution is sued out, before the removal of such chattels from the premises, by virtue of such execution or extent, pays to the landlord of the premises or the landlord’s bailiff such sum of money as is due for rent for the premises at the time of the taking of the chattels by virtue of the execution, if the arrears of rent do not amount to more than one year’s rent; and in case the said arrears exceed one year’s rent, then the party at whose suit such execution is sued out, paying the said landlord or bailiff one year’s rent, may proceed to execute his or her judgment, as he or she might have done heretofore; and the sheriff or other officer is empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.

Type: O

Action: Repeal section 1.

Note: See BCLI Comment to section 57.

Corporation Capital Tax Act, R.S.B.C. 1996, c. 73

- 40** (1) If the administrator has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a financial corporation, the administrator may demand that the person pay all or part of the money otherwise payable to the financial corporation to the minister on account of the financial corporation’s liability under this Act.
- (2) Without limiting subsection (1), if the administrator has knowledge or suspects that a person is about to advance money to, make a payment on be-

half of, or make a payment in respect of a negotiable instrument issued by, a financial corporation, the administrator may demand that that person pay to the minister on account of the financial corporation's liability under this Act the money that would otherwise be so advanced or paid.

- (2.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (3) If, under this section, the administrator demands that a person pay to the minister, on account of the liability under this Act of a financial corporation, money otherwise payable by that person to the financial corporation as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) applies to all of those payments to be made by the person to the financial corporation until the liability under this Act is satisfied, and
 - (b) operates to require payments to the administrator out of each payment of the amount stipulated by the administrator in the demand.
- (4) Money or a beneficial interest in money in a savings institution
- (a) on deposit to the credit of a financial corporation at the time a demand is served, or
 - (b) deposited to the credit of a financial corporation after a demand is served
- is money for which the savings institution is indebted to the financial corporation within the meaning of this section, but money on deposit or deposited to the credit of a financial corporation as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a financial corporation in its capacity as a trustee.
- (5) A demand under this section continues in effect until the earlier of
- (a) the demand being satisfied, or
 - (b) the expiration of 90 days after the demand is served.
- (6) Despite subsection (5), a demand made in respect of a periodic payment referred to in subsection (3) continues in effect until satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.

- (6.1) Money demanded from a person by the administrator under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the financial corporation at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the financial corporation, in any other case.
- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3), as the case may be, to pay to the minister.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the minister.
- (9) The receipt of the minister for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (10) Money paid by any person to the minister in compliance with a demand under this section is deemed to have been paid by that person to the financial corporation in respect of which the demand was made.
- (11) If a person carries on business under a name or style other than the person's own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if served on one of the partners or left with an adult person employed at the place of business of the partnership.
- (13) In this section, “**savings institution**” means
 - (a) a bank,
 - (b) a credit union,
 - (c) an insurance company,
 - (d) a trust company, and

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- (e) a financial institution that accepts deposits from the public in the normal course of its business.

Type: P

Action: None required.

Court Rules Act, R.S.B.C. 1996, c. 80

- 1** (7) In addition, in relation to the Provincial Court, the rules may make provision for the enforcement, by any means, of judgments given and summonses issued under the *Small Claims Act* including rules

...

- (c) respecting garnishment before and after judgment.

Type: O

Action: Amend paragraph (e) by striking out “garnishment” and replacing it with “an enforcement proceeding.”

Cremation, Interment and Funeral Services Act, S.B.C. 2004, c. 35

- 33** Subject to section 32, but despite any other enactment, a care fund and any money held by an operator for deposit to a care fund

- (a) is not available to satisfy the liabilities of the operator of the care fund, and
- (b) is not subject to any process of garnishment, attachment, execution or seizure by a creditor.

Type: E

Action: None required.

Crime Victim Assistance Act, S.B.C. 2001, c. 38

- 21** (1) A benefit paid or payable under this Act is not subject to garnishment, attachment, seizure or another legal process except as authorized under the *Family Maintenance Enforcement Act*.

Type: E

Action: None required.

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Criminal Injury Compensation Act, R.S.B.C. 1996, c. 85

- 11** Any compensation awarded or other amount paid or payable by the board under this Act is not subject to garnishment, attachment, seizure or any other legal process and the right to it is not assignable.

Type: E

Action: None required.

Crown Proceeding Act, R.S.B.C. 1996, c. 89

- 13** (6) An execution or attachment or process of that nature must not be issued out of a court for enforcing payment by the government of money or costs.

Type: O

Action: Amend subsection (6) by adding “An enforcement proceeding must not be commenced or” before “an execution.” Amend section 13 by adding a new subsection as follows:

- (6.1) No one may register a notice of judgment in respect of a judgment against the government.

Note: See BCLI Comment to section 9.

Employment and Assistance Act, S.B.C. 2002, c. 40

- 29** (1) Income assistance, hardship assistance and supplements are exempt from garnishment, attachment, execution or seizure under any Act.

Type: E

Action: None required.

Employment Standards Act, R.S.B.C. 1996, c. 113

- 92** (2) The director must safely keep the assets under seizure until the earlier of the following, as applicable:
- (a) the determination, settlement agreement or order of the tribunal is filed in court under section 91 and a writ of seizure and sale has been executed.

Type: O

Action: Amend paragraph (a) by striking out “a writ of seizure and sale has been executed” and replacing it with “an enforcement proceeding has been completed.”

- 94** (1) A person must not remove, damage or dispose of assets seized under section 92 except in accordance with this Act, a writ of seizure and sale or a court order.

Type: O

Action: Amend subsection (1) by striking out “a writ of seizure and sale” and replacing it with “an enforcement instruction.”

Estate Administration Act, R.S.B.C. 1996, c. 122

- 105** (1) A lien or privilege on an insolvent estate, or any part or portion of it, must not be created for the amount of a judgment debt, or of the interest on it, by the issue or delivery of a writ or process of execution of any kind or nature to any sheriff or other officer lawfully entrusted with it in the lifetime of the deceased, if the due execution of the writ or process took place after the death of the deceased.
- (2) Subsection (2) [*sic*] does not affect any lien or privilege for costs.

Type: O

Action: Repeal section 105.

Note: Section 105 dates from the period when Canada had no bankruptcy legislation. In fact, it is virtually unchanged from the provision that was originally enacted as section 6 of the *Insolvent Estates Act*, S.B.C. 1897, c. 102. Insolvent estates legislation was a part of the province’s response to the problems caused by the absence of bankruptcy legislation at the federal level. When the federal government reintroduced bankruptcy legislation in 1920, British Columbia repealed most of its legislation that touched on this area. A few statutes, notably what became the *Creditor Assistance Act*, were considered to be useful even in light of the federal government’s reentry into the field of bankruptcy, and were retained in force. Other provisions appear to have been kept on the books, even though their purposes were spent. Section 105 appears to fall into the latter category.

Financial Administration Act, R.S.B.C. 196, c. 138

- 63** (7) The assets in a sinking fund established under this or any other Act for repayment of a borrowing by a government body from the government are not subject to any process of garnishment, attachment, execution or seizure by a creditor of the government body.

Type: E

Action: None required.

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Foreign Money Claims Act, R.S.B.C. 196, c. 155

- 3** The Lieutenant Governor in Council may make regulations that are considered necessary or advisable respecting

...

- (b) setting conversion dates, in respect of all processes to obtain money under the *Court Order Enforcement Act*, to satisfy an order for the payment of money that is made under section 1.

Type: O

Action: Amend paragraph (b) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Fraudulent Conveyance Act, R.S.B.C. 1996, c. 164

- 8** A disposition which, by the *Fraudulent Conveyance Act* or this Act or by any Act in force in British Columbia relating to conveyances prejudicial to creditors, is declared to be void, is void as against the lien and charge created by the registration in any land title office of a judgment under the *Court Order Enforcement Act*.

Type: O

Action: Amend section 8 by striking out “lien and charge” and replacing it with “enforcement charge,” by striking out “judgment” and replacing it with “notice of judgment,” and by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Homeowner Protection Act, S.B.C. 1998, c. 31

- 25** (2) Money paid to the credit of the program

...

- (c) is not subject to any process of seizure or attachment by any creditor of the office.

Type: E

Action: None required.

Hotel Room Tax Act, S.B.C. 1998, c. 207

- 28** (1) In this section, “**taxpayer**” includes an operator and a board member who is jointly and severally liable with a corporation under section 23.1 (1).

- (2) If the director knows or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the director may demand that that person pay all or part of the money otherwise payable to the taxpayer to the director on account of the taxpayer's liability under this Act.
- (3) Without limiting subsection (2), if the director knows or suspects that a person may advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the director may demand that that person pay the money that would otherwise be advanced or paid to the director on account of the taxpayer's liability under this Act.
- (3.1) A demand under this section may be served by
 - (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (4) If, under this section, the director demands that a person pay to the director, on account of the liability under this Act of a taxpayer, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
 - (a) applies to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the director out of each payment of the amount stipulated by the director in the demand.
- (5) A savings institution is indebted to a taxpayer within the meaning of this section for money or a beneficial interest in money in a savings institution on deposit to the credit of a taxpayer at the time a demand is served, or deposited to the credit of a taxpayer after a demand is served but not for money on deposit or deposited to the credit of a taxpayer in his or her capacity as a trustee.
- (6) Unless a demand under this section is satisfied earlier, it continues in effect as follows:
 - (a) until 3 years after the demand is served, if it is made in respect of an outstanding legal claim or insurance claim that, if resolved in the taxpayer's favour, will result in money becoming available to the taxpayer;
 - (b) until 90 days after the demand is served, in any other case.
- (7) Despite subsection (6), if a demand is made in respect of a periodic payment referred to in subsection (4), the demand continues in effect until it is

satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.

- (7.1) Money demanded from a person by the director under this section becomes payable
- (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (8) A person who fails to comply with a demand under subsection (2) or (4) is liable to pay to the government an amount equal to the amount that the person was required under subsection (2) or (4), as the case may be, to pay to the director.
- (9) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of
- (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (3) to pay to the director.
- (10) The receipt of the director for money paid under this section is a sufficient discharge of the original liability to the extent of the payment.
- (11) Money paid by any person to the director in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (12) If a person carries on business under a name or style other than his or her own name, the demand under subsection (2), (3) or (4) may be addressed to the name or style under which he or she carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (13) If persons carry on business in partnership, the demand under subsection (2), (3) or (4) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Hydro and Power Authority Act, R.S.B.C. 1996, c. 212

- 32 (3) Money owing, payable or accruing due from the authority as salary or wages to any of its members or employees may be attached under the *Court Order Enforcement Act* the same as money owing, payable or accruing due from any person to the Crown, and for that purpose that Act applies to the authority.

Type: O

Action: Amend subsection (3) by striking out “attached” and replacing it with “seized” and by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Income Tax Act, R.S.B.C. 1996, c. 215

- 51 (2) A warrant issued under subsection (1) has the same effect as a writ of execution issued out of the court.

Type: P

Action: Amend subsection (2) by striking out “a writ of execution issued out of the court” and replacing it with “an enforcement instruction.”

- 74 (1) Despite the *Court Order Enforcement Act*, if a collection agreement is entered into, a judgment of a superior court of an agreeing province under that province’s income tax statute, including any certificate registered in that superior court in a manner similar to that provided in section 223 (3) of the federal Act, as it applies for the purposes of this Act, may be enforced in the manner provided in section 223 of the federal Act, as it applies for the purposes of this Act, by registering a copy of the judgment or certificate, certified by the registrar of the proper superior court.

Type: O

Action: Amend subsection (1) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Insurance Act, R.S.B.C. 1996, c. 226

- 54 (2) While a designation in favour of a spouse, child, grandchild or parent of a person whose life is insured, or any of them, is in effect, the insurance money and the rights and interests of the insured in it and in the contract are exempt from execution or seizure.

Type: E

Action: None required.

- 107** (2) While there is in effect a designation of beneficiary in favour of any one or more of a spouse, child, grandchild or parent of the person insured or group person insured, the rights and interests of the insured in the insurance money and in the contract so far as either relate to accidental death benefits are exempt from execution or seizure.

Type: E

Action: None required.

Insurance Premium Tax Act, R.S.B.C. 1996, c. 232

- 25** (1) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the commissioner may demand that that person pay to the commissioner on account of the taxpayer's liability under this Act all or part of the money otherwise payable to the taxpayer.
- (2) Without limiting subsection (1), if the commissioner has knowledge or suspects that a person is about to advance money to a taxpayer, or make a payment on behalf of a taxpayer, or make a payment in respect of a negotiable instrument issued by a taxpayer, the commissioner may demand that that person pay to the commissioner on account of the taxpayer's liability under this Act the money that would otherwise be advanced or paid.
- (2.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (3) If under this section the commissioner demands that a person pay to the commissioner, on account of the liability under this Act of a taxpayer, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) is applicable to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount stipulated by the commissioner in the demand.
- (4) Money or a beneficial interest in money in a savings institution

- (a) on deposit to the credit of a taxpayer, at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is served
- is money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in that person's capacity as a trustee.
- (5) A demand under this section continues in effect until
 - (a) the demand is satisfied, or
 - (b) 90 days after the demand is served,whichever is earlier.
- (6) Despite subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.
- (6.1) Money demanded from a person by the commissioner under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3) to pay to the commissioner.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the commissioner.
- (9) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.

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- (10) Money paid by any person to the commissioner in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (11) If a person carries on business under a name or style other than the person's own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

International Financial Activity Act, S.B.C. 2004, c. 49

- 48** (2) A director is not liable under subsection (1) unless
- (a) a certificate for the amount of the corporation's liability referred to in that subsection has been filed under section 45 with the Supreme Court and execution for that amount has been returned unsatisfied in whole or in part.

Type: O

Action: Amend paragraph (a) by striking out "execution for that amount has been returned" and replacing it with "enforcement proceedings for that amount are."

Land Surveyors Act, R.S.B.C. 1996, c. 248

- 62** (4) A witness who disobeys a summons issued by the board or refuses to be sworn or give evidence is liable, on application to the Supreme Court, to attachment, fine or other punishment the court thinks fit.

Type: O

Action: None required.

Land Title Act, R.S.B.C. 1996, c. 250

- 1** In this Act

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“judgment” means a judgment as defined in the *Court Order Enforcement Act* or that is deemed to be or to be made registrable in the same manner as a judgment under that Act or by any other Act.

Type: O

Action: Repeal the definition of judgment and replace with:

“notice of judgment” means a judgment as defined in the *Civil Enforcement of Money Judgments Act* or a judgment that is deemed to be made registrable in the same manner as a notice of judgment under that Act or by any other Act.

- 210** (1) An application to register a judgment or to renew the registration of a judgment

...

- (b) must comply with Part 5 of the *Court Order Enforcement Act*. . . .

Type: O

Action: Amend subsection (1) by striking out “judgment” wherever it appears and replacing it with “notice of judgment.” Amend paragraph (b) by striking out “Part 5 of the *Court Order Enforcement Act*” and replacing it with “Part 10 of the *Civil Enforcement of Money Judgments Act*.”

- 212** (1) If an application is made to register an instrument under which the applicant claims

- (a) registration as an owner of an estate in fee simple or an estate or interest by way of charge, or
- (b) cancellation of a charge registered against the title to the applicant’s land,

and there is a judgment registered against

- (c) the grantor of the fee simple,
- (d) the person who created the estate or interest to be registered as a charge, or
- (e) the holder of the charge to be cancelled,

the registrar may, despite section 86 (3) (c) of the *Court Order Enforcement Act*, if the applicant claims priority to the judgment, serve a notice in the form approved by the director on the judgment creditor.

...

- (3) If a judgment creditor claims a lien on land because of the judgment, the judgment creditor must, within the time set by the registrar's notice, follow the procedure provided in Part 5 of the *Court Order Enforcement Act* for enforcing the judgment creditor's charge, and register a certificate of pending litigation; otherwise the registrar may effect registration or cancellation, as applied for, free from the judgment, and cancel the judgment as to the estate or interest in the land so registered or as to the charge so cancelled.

Type: O

Action: Amend section 212 by striking out “judgment” wherever it appears and replacing it with “notice of judgment.” Amend subsection (1) by striking out “despite section 86 (3) (c) of the *Court Order Enforcement Act*.” Amend subsection (3) by striking out “a lien” and replacing it with “an enforcement charge” and by striking out “Part 5 of the *Court Order Enforcement Act*” and replacing it with “Part 10 of the *Civil Enforcement of Money Judgments Act*.”

- 215** (1) A person who has commenced or is a party to a proceeding, and who is
- (a) claiming an estate or interest in land, or
 - (b) given by another enactment a right of action in respect of land,
- may register a certificate of pending litigation against the land in the same manner as a charge is registered, and the registrar of the court in which the proceeding is commenced must attach to the certificate a copy of the originating process, or, in the case of a certificate of pending litigation under Part 5 of the *Court Order Enforcement Act*, a copy of the notice of motion or other document by which the claim is made.

Type: O

Action: Amend subsection (1) by striking out “Part 5 of the *Court Order Enforcement Act*” and replacing it with Part 10 of the *Civil Enforcement of Money Judgments Act*.”

- 261** On application for registration, accompanied by
- (a) the conveyance to the purchaser of land sold under the *Court Order Enforcement Act* or the *Builders Lien Act*, the execution of which is proved to the satisfaction of the registrar, and
 - (b) the order of the court under which the sale is made,
- the estate or interest in the land sold may be registered under this Act, and an existing absolute certificate of title, duplicate indefeasible title or certificate of charge in respect of that land is deemed to be cancelled as to that estate or interest.

Type: O

Action: Amend paragraph (a) by striking out “*Court Order Enforcement Act*” and replacing it with “*Uniform Enforcement of Money Judgments Act*.”

Land Title and Survey Authority Act, S.B.C. 2004, c. 66

- 5 (3) The property is not subject to
- (a) any process of attachment, execution or seizure.

Type: E

Action: None required.

Legal Profession Act, S.B.C. 1998, c. 9

- 30 (6) The benchers must establish an insurance fund, comprised of the insurance fees and other income of the professional liability insurance program, and the fund
- ...
- (b) is not subject to any process of seizure or attachment by a creditor of the society.

Type: E

Action: None required.

- 31 (3) The fund
- ...
- (c) is not subject to any process of seizure or attachment by a creditor of the society.

Type: E

Action: None required.

- 50 (8) A sheriff, deputy sheriff or court bailiff executing an order under this Part has the same powers as that person has in the execution of a writ of seizure and sale.

Type: P

Action: Amend subsection (8) by striking out “the execution of a writ of seizure and sale” and replacing it with “enforcement proceedings.”

Limitation Act, R.S.B.C. 1996, c. 266

1 In this Act:

“**writ of execution**” includes an order for seizure and sale issued under the *Small Claims Rules*.

Type: O

Action: Repeal the definition of “writ of execution.”

- 11** (1) Despite section 3 or 9, if, on the expiration of the limitation period set by this Act with respect to actions on judgment, there is an enforcement process outstanding, the judgment creditor or the judgment creditor’s successors may do any of the following:
- (a) continue proceedings on an unexpired writ of execution, but the writ may not be renewed;
 - (b) commence or continue proceedings against land on a judgment registered under Part 5 of the *Court Order Enforcement Act*, but the registration may not be renewed unless those proceedings have been commenced;
 - (c) continue proceedings in which a charging order is claimed.
- (2) If a court makes an order staying execution on a judgment, the running of time with respect to the limitation period set by this Act for actions on that judgment is postponed or suspended for so long as that order is in force.

Type: O

Action: Amend paragraph (1) (a) by striking the whole of it out and replacing it with “continue any enforcement proceedings that have been commenced, but a notice of judgment with respect to the judgment being enforced may not be renewed.” Amend paragraph (1) (b) by striking the whole of it out and replacing it with “commence or continue enforcement proceedings against land, but the registration of a notice of judgment against title to that land may not be renewed unless those enforcement proceedings have been commenced.” Repeal paragraph (1) (c).

Logging Tax Act, R.S.B.C. 1996, c. 277

- 32** (1) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the commissioner may demand that the person pay the money otherwise payable to the taxpayer in whole or in part to the commissioner on account of the taxpayer’s liability under this Act.

- (2) Without limiting subsection (1), if the commissioner has knowledge or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the commissioner may demand that the person pay to the commissioner on account of the taxpayer's liability under this Act the money that would otherwise be advanced or paid.
- (2.1) A demand under this section may be served by
 - (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (3) If under this section the commissioner demands that a person pay to the commissioner, on account of the liability under this Act of a taxpayer, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
 - (a) applies to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount specified by the commissioner in the demand.
- (4) Money or a beneficial interest in money in a savings institution
 - (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is servedis money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in the taxpayer's capacity as a trustee.
- (5) A demand under this section continues in effect until the earlier of
 - (a) when the demand is satisfied, or
 - (b) 90 days after the demand is served.
- (6) As an exception to subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.

- (6.1) Money demanded from a person by the commissioner under this section becomes payable
- (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under the applicable subsection to pay to the commissioner.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
- (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the commissioner.
- (9) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (10) Money paid by any person to the commissioner in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (11) If a person carries on business under a name or style other than the person's own name, a demand under this section may be addressed to the name or style under which the person carries on business and, in the case of personal service, is validly served if it is left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, a demand under this section may be addressed to the partnership name and, in the case of personal service, is validly served if it is served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Medicare Protection Act, R.S.B.C. 1996, c. 286

- 32** (4) Without limiting subsection (2), the commission may enforce its lien under subsection (2) by proceedings under the *Court Order Enforcement Act*.

Type: O

Action: Amend subsection (4) by striking out “by proceedings under the *Court Order Enforcement Act*” and replacing it with “as if it were a judgment.”

Mineral Tax Act, R.S.B.C. 1996, c. 291

- 35** (1) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to an operator, the commissioner may demand that the person pay the money otherwise payable to the operator in whole or in part to the commissioner on account of the operator’s liability under this Act.
- (2) Without limiting subsection (1), if the commissioner has knowledge or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by an operator, the commissioner may demand that the person pay to the commissioner on account of the operator’s liability under this Act the money that would otherwise be so advanced or paid.
- (3) If under this section the commissioner demands that a person pay to the commissioner, on account of the liability under this Act of an operator, money otherwise payable by the person to the operator as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) applies to all of those payments to be made by that person to the operator until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount stipulated by the commissioner in the demand.
- (4) Money or a beneficial interest in money in a savings institution
- (a) on deposit to the credit of an operator, or held in trust by a depositor for an operator, at the time a demand is served, or
 - (b) deposited to the credit of an operator after a demand is served
- is money for which the savings institution is indebted to an operator within the meaning of this section.
- (5) A demand under this section continues in effect until the demand is satisfied or until the demand is cancelled by the commissioner.
- (6) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3), as the case may be, to pay to the commissioner.

- (7) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the commissioner.
- (8) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (9) If a person carries on business under a name or style other than the person's own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to be validly served if it is left with an adult person employed at the place of business of the addressee.
- (10) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership in its name and, in the case of personal service, is deemed to have been validly served if served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Mining Tax Act, R.S.B.C. 1996, c. 295

- 32** (1) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the commissioner may demand that the person pay the money otherwise payable to the taxpayer in whole or in part to the commissioner on account of the taxpayer's liability under this Act.
- (2) Without limiting subsection (1), if the commissioner has knowledge or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the commissioner may demand that the person pay to the commissioner on account of the taxpayer's liability under this Act the money that would otherwise be so advanced or paid.
- (2.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or

- (c) electronic mail or fax.
- (3) If under this section the commissioner demands that a person pay to the commissioner, on account of the liability under this Act of a taxpayer, money otherwise payable by the person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
 - (a) is applicable to all of those payments to be made by that person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount stipulated by the commissioner in the demand.
- (4) Money or a beneficial interest in money in a savings institution
 - (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is served

is money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in the taxpayer's capacity as a trustee.
- (5) A demand under this section continues in effect until
 - (a) the demand is satisfied, or
 - (b) 90 days after the demand is served,

whichever is earlier.
- (6) Despite subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.
- (6.1) Money demanded from a person by the commissioner under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.

- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required to pay to the commissioner under the applicable subsection.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under that subsection to pay to the commissioner.
- (9) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (10) Money paid by any person to the commissioner in compliance with a demand under this section is deemed to have been paid by the person to the taxpayer.
- (11) If a person carries on business under a name or style other than his or her own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Motor Fuel Tax Act, R.S.B.C. 1996, c. 317

- 32** (1) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the commissioner may demand that the person pay the money otherwise payable to the taxpayer in whole or in part to the commissioner on account of the taxpayer's liability under this Act.
- (2) Without limiting subsection (1), if the commissioner has knowledge or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued

by a taxpayer, the commissioner may demand that the person pay to the commissioner on account of the taxpayer's liability under this Act the money that would otherwise be so advanced or paid.

- (2.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (3) If under this section the commissioner demands that a person pay to the commissioner, on account of the liability under this Act of a taxpayer, money otherwise payable by the person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) is applicable to all of those payments to be made by that person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount stipulated by the commissioner in the demand.
- (4) Money or a beneficial interest in money in a savings institution
- (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is served
- is money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in the taxpayer's capacity as a trustee.
- (5) A demand under this section continues in effect until
- (a) the demand is satisfied, or
 - (b) 90 days after the demand is served,
- whichever is earlier.
- (6) Despite subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.
- (6.1) Money demanded from a person by the commissioner under this section becomes payable

- (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required to pay to the commissioner under the applicable subsection.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under that subsection to pay to the commissioner.
- (9) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (10) Money paid by any person to the commissioner in compliance with a demand under this section is deemed to have been paid by the person to the taxpayer.
- (11) If a person carries on business under a name or style other than his or her own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Motor Vehicle Act, R.S.B.C. 1996, c. 318

- 17** (2) If there is a transfer, by operation of law, of the title or interest of an owner of a motor vehicle or trailer registered under section 3, by way of inheri-

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tance, bequest, order in bankruptcy, execution sale, repossession on default in performance of a lease or conditional sale contract, or other means than the voluntary act of the person whose title or interest is transferred.

Type: O

Action: Amend subsection (2) by striking out “execution sale” and replacing it with “sale under the *Civil Enforcement of Money Judgments Act*.”

Notaries Act, R.S.B.C. 1996, c. 334

- 20** (5) The special fund is not subject to any process of seizure or attachment by any creditor of the society.

Type: E

Action: None required.

- 22** Money paid to the society consisting of the professional liability insurance fees
...
(b) is not subject to any process of seizure or attachment by any creditor of the society.

Type: E

Action: None required.

- 45** (5) A sheriff and any sheriff’s officer executing an order under section 43 have the same powers as in the execution of a writ of seizure and sale.

Type: P

Action: Amend subsection (5) by striking out “the execution of a writ of seizure and sale” and replace it with “carrying out an enforcement proceeding.”

Partnership Act, R.S.B.C. 1996, c. 348

- 1** In this Act:

“**writ of execution**” includes an order for seizure and sale issued under the *Small Claims Rules*.

Type: O

Action: Repeal the definition of “writ of execution.”

- 26** (1) A writ of execution must not issue against partnership property except on a judgment against the firm.

- (2) The Supreme Court within its territorial jurisdiction, may,
- (a) on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest on it, and
 - (b) by the same or a subsequent order appoint a receiver of that partner's share of profits, whether already declared or accruing, and of any other money that may be coming to him or her in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions that might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or that the circumstances of the case may require.
- (3) The other partner or partners is or are at liberty at any time to redeem the interest charged, or, in case of a sale being directed, to purchase it.

Type: O

Action: Repeal section 26.

Note: See Part 11.

- 76** (1) On application by a judgment creditor of a limited partner the Supreme Court may
- (b) appoint a receiver of that interest.

Type: O

Action: Repeal paragraph (b).

Note: See BCLI Comment to section 151.

- 87** (3) If the action is founded on any obligation or instrument in writing in which all or any of the partners bound by it are named, all the partners named in it must be made parties to the action and a judgment rendered against any member of such existing firm for a firm debt or liability may be executed by process of execution against all and every firm stock, property and effects in the same manner and to the same extent as if the judgment had been rendered against the firm.

Type: O

Action: Amend subsection (3) by striking out "executed by process of execution" and replacing it with "enforced by an enforcement proceeding."

Pension Benefits Standards Act, R.S.B.C. 1996, c. 352

- 63** (1) Subject to subsections (3) and (3.1),
- (a) benefits, and
 - (b) money transferred under section 32 (2), 33 (2), 34 (5) or 58 (4) or under a similar transfer made before January 1, 1993, and money earned by the transferred money,
- must not be assigned, charged, alienated or anticipated and are exempt from execution, seizure or attachment.

Type: E

Action: None required.

Personal Property Security Act, R.S.B.C. 1996, c. 359

- 14** (2) Unless the parties otherwise agree, an obligation owing to a debtor to make future advances is not binding on a secured party if the collateral has been seized, attached, charged or made subject to an equitable execution under the circumstances described in section 20 (a) (i) or (ii) and the secured party has knowledge of this fact before making the advances.

Type: O

Action: None required.

- 20** A security interest
- (a) in collateral is subordinate to the interest of
 - (i) a person who causes the collateral to be seized under legal process to enforce a judgment including execution, garnishment or attachment, or who has obtained a charging order or equitable execution affecting or relating to the collateral,
 - (ii) a sheriff who has seized or has a right to the collateral under the *Creditor Assistance Act*,
 - (iii) a judgment creditor entitled by law to participate in the distribution of property or its proceeds seized under legal process as provided in the *Creditor Assistance Act*, and
 - (iv) a representative of creditors, but only for the purposes of enforcing the rights of a person referred to in subparagraph (i),if that security interest is unperfected at the time
 - (v) the interest of a person referred to in subparagraph (i), (ii) or (iv) arises, or

- (vi) the judgment creditor referred to in subparagraph (iii) delivers a writ of execution or certificate to the sheriff under section 3 of the *Creditor Assistance Act*.

Type: O

Action: Repeal paragraph (a).

- 35 (6) A perfected security interest has priority over the interest of persons referred to in section 20 (a) only to the extent of
 - (a) advances made before the interests of the persons arise, or before the sheriff seizes the collateral or obtains a right to it under the *Creditor Assistance Act*.

Type: O

Action: Amend subsection (6) by striking out “has priority over the interest of persons referred to in section 20 (a)” and replacing it with “would otherwise have priority over an enforcement charge has that priority.” Amend paragraph (a) by striking out “the interests of the persons arise, or before the sheriff seizes the collateral or obtains a right to it under the *Creditor Assistance Act*” and replacing it with “before the secured party acquires knowledge of the enforcement charge within the meaning of section 39 of the *Civil Enforcement of Money Judgments Act*.”

Note: See BCLI Comment to proposed section 35.

- 36 (6) A security interest referred to in subsection (3) or (5) is subordinate to the interest of a creditor of the debtor who caused to be registered under the *Court Order Enforcement Act* a judgment in the appropriate land title office affecting the land, after the goods become fixtures, and before the notice of the security interest is filed in accordance with section 49.

Type: O

Action: Amend subsection (6) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*” and by striking out “judgment” and replacing it with “notice of judgment.”

- 37 (5) A security interest referred to in subsection (3) is subordinate to the interest of a creditor of the debtor who causes to be registered, in accordance with the *Court Order Enforcement Act*, a judgment in the appropriate land title office affecting the land on which the crops are growing before the notice of the security interest is filed in accordance with section 49.

Type: O

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Action: Amend subsection (5) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*” and by striking out “judgment” and replacing it with “notice of judgment.”

- 67** (1) Subject to section 58 (3), if a debtor is in default under a security agreement that provides for a security interest in consumer goods, the secured party may

...

- (d) subject to the terms of the agreement, bring action to recover a judgment or take proceedings to obtain a certificate under the *Creditor Assistance Act* against the debtor.

Type: O

Action: Amend subsection (d) by striking out “or take proceedings to obtain a certificate under the *Creditor Assistance Act* against the debtor.”

Petroleum and Natural Gas Act, R.S.B.C. 1996, c. 361

- 77** (1) If the royalty collector has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a producer, the royalty collector may demand that the person pay all or part of the money otherwise payable to the producer to the royalty collector on account of the producer’s liability under this Act.
- (2) Without limiting subsection (1), if the royalty collector has knowledge or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a producer, the royalty collector may demand that the person pay to the royalty collector on account of the producer’s liability under this Act the money that would otherwise be advanced or paid.
- (3) If under this section the royalty collector demands that a person pay to the royalty collector, on account of the liability under this Act of a producer, money otherwise payable by that person to the producer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) applies to all of those payments to be made by the person to the producer until the liability under this Act is satisfied, and
- (b) operates to require payments to the royalty collector, out of each payment, of the amount stipulated by the royalty collector in that demand.
- (4) Money or a beneficial interest in money in a savings institution

(a) on deposit to the credit of a producer at the time a demand is served,
or

(b) deposited to the credit of a producer after a demand is served

is money for which the savings institution is indebted to a producer within the meaning of this section, but money on deposit or deposited to the credit of a producer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a producer in the producer's capacity as a trustee.

(5) A demand under this section continues in effect until

(a) the demand is satisfied, or

(b) 90 days after the demand is mailed or served,

whichever is earlier.

(6) Despite subsection (5), a demand made in respect of a periodic payment referred to in subsection (3) continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is mailed or served, in which case the demand ceases to have effect on the expiration of that period.

(7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3), as the case may be, to pay to the royalty collector.

(8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of

(a) the aggregate of the money advanced or paid, and

(b) the amount that the person was required under subsection (2) to pay to the royalty collector.

(9) The receipt of the royalty collector for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.

(10) Money paid by any person to the royalty collector in compliance with a demand under this section is deemed to have been paid by that person to the producer in respect of which the demand was made.

(11) If a person carries on business under a name or style other than the person's own name, a demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to be validly served if it is left with an adult person employed at the addressee's place of business.

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- (12) If persons carry on a business in partnership, a demand under subsection (1), (2) or (3) may be addressed to the partnership in its name and, in the case of personal service, is deemed to be validly served if served on one of the partners or left with an adult person employed at the partnership's place of business.

Type: P

Action: None required.

Private Career Training Institutions Act, S.B.C. 2003, c. 79

- 13 (4) Money paid into the fund, or received by the board for the fund,

...

- (c) is not subject to any process of seizure or attachment by any creditor of the agency.

Type: E

Action: None required.

Property Law Act, R.S.B.C. 1996, c. 377

- 32 After the making of an order absolute for foreclosure or for cancellation of an agreement for sale, a mortgagee or vendor

...

- (b) may not issue execution on a judgment taken on the covenant to pay unless by process of law the order absolute is set aside or reopened.

Type: O

Action: Amend paragraph (b) by striking out “issue execution on” and replacing it with “commence enforcement proceedings with respect to.”

Property Transfer Tax Act, R.S.B.C. 1996, c. 378

- 27 (1) If the administrator has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the administrator may demand that the person pay the money otherwise payable to the taxpayer in whole or in part to the government on account of the taxpayer's liability under this Act.
- (2) Without limiting subsection (1), if the administrator has knowledge or suspects that a person is about to

- (a) advance money to a taxpayer,
- (b) make a payment on behalf of a taxpayer, or
- (c) make a payment in respect of a negotiable instrument issued by a taxpayer,

the administrator may demand that the person pay to the administrator on account of the taxpayer's liability under this Act money that would otherwise be advanced or paid.

(2.1) A demand under this section may be served by

- (a) personal service,
- (b) registered mail, or
- (c) electronic mail or fax.

(3) If under this section the administrator demands that a person pay to the government on account of a taxpayer's liability under this Act money otherwise payable by that person to the taxpayer as interest, rent, remuneration, dividend, annuity or other periodic payment, the demand

- (a) applies to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
- (b) operates to require payments to the government out of each payment of the amount stipulated by the administrator in the demand.

(4) Money or a beneficial interest in money in a savings institution

- (a) on deposit to the credit of a taxpayer at the time a demand is served, or
- (b) deposited to the credit of a taxpayer after a demand is served

is money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit with, or deposited to the credit of, a taxpayer in the taxpayer's capacity as a trustee.

(5) A demand under this section continues in effect until

- (a) the demand is satisfied, or
- (b) 90 days after the demand is served,

whichever is earlier.

(6) Despite subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within

90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.

- (6.1) Money demanded from a person by the administrator under this section becomes payable
- (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (7) A person who fails to comply with a demand under this section is liable to pay to the government an amount equal to the amount that the person was required by the demand to pay.
- (8) The receipt of the administrator for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (9) Money paid by any person to the government in compliance with a demand under this section is conclusively deemed to have been paid by that person to the taxpayer.
- (10) If a person carries on business under a name or style other than the person's own name, the demand under this section may be addressed to the name or style under which that person carries on business and, in the case of personal service, the demand is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (11) If persons carry on business in partnership, the demand under this section may be addressed to the partnership name and, in the case of personal service, the demand is deemed to have been validly served if it was served on one of the partners or left with an adult person employed by the partnership at the place of business of the partnership.

Type: P

Action: None required.

- 28** (4) Sections 89 and 90 of the *Court Order Enforcement Act* apply as if
- (a) the judgment debtor was the taxpayer,
 - (b) the judgment creditor was the administrator,
 - (c) the judgment was the lien, and

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(d) the certificate of judgment was the lien form.

Type: P

Action: Repeal subsection (4).

Note: The procedure in sections 89–90 of the *Court Order Enforcement Act* has no equivalent in the Uniform Act.

Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383

21 (8) No execution, attachment or other process of that nature may be issued out of a court for enforcing payment of money by the government under this section.

Type: E

Action: Amend subsection (8) by adding “, and no enforcement proceedings may be commenced,” between “court” and “for.”

Real Estate Services Act, S.B.C. 2004, c. 42

112 (3) The special compensation fund

...

(b) may not be subject to any process of seizure or attachment by a creditor of the compensation fund corporation.

Type: E

Action: None required.

School Act, R.S.B.C. 1996, c. 412

129 (6) Property in which a board has an ownership interest is,

...

(b) in any other case, not liable to be taken in execution.

Type: E

Action: Amend paragraph (b) by adding “or enforcement proceedings” after “execution.”

Securities Act, R.S.B.C. 1996, c. 418

45 (2) Subject to the regulations, registration under section 34 (1) (a) is not required for the following trades in securities:

(1) a trade in a security by

...

(vi) a sheriff conducting a sale under the *Court Order Enforcement Act*,

in the person's official capacity.

Type: O

Action: Amend subparagraph (vi) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Social Service Tax Act, R.S.B.C. 1996, c. 431

- 108** (1) In this section, “**taxpayer**” includes a person who is deemed to be an agent for the minister under section 93 (1) and a director who is jointly and severally liable with a corporation under section 102.1 (1).
- (2) If the commissioner has knowledge or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the commissioner may demand that that person pay all or part of the money otherwise payable to the taxpayer to the commissioner on account of the taxpayer's liability under this Act.
- (3) Without limiting subsection (2), if the commissioner has knowledge or suspects that a person may advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the commissioner may demand that that person pay to the commissioner on account of the taxpayer's liability under this Act the money that would otherwise be so advanced or paid.
- (3.1) A demand under this section may be served by
- (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (4) If under this section the commissioner demands that a person pay to the commissioner, on account of a taxpayer's liability under this Act, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
- (a) is applicable to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the commissioner out of each payment of the amount stipulated by the commissioner in the demand.

- (5) Money or a beneficial interest in money in a savings institution
 - (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is servedis money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in the taxpayer's capacity as a trustee.
- (6) Unless it is satisfied earlier, a demand under this section continues in effect as follows:
 - (a) until 3 years after the demand is served, if it is made in respect of an outstanding legal claim or insurance claim that, if resolved in the taxpayer's favour, will result in money becoming available to the taxpayer;
 - (b) until 90 days after the demand is served, in any other case.
- (7) Despite subsection (6), if a demand is made in respect of a periodic payment referred to in subsection (4), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect at the end of that period.
- (7.1) Money demanded from a person by the commissioner under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (8) A person who fails to comply with a demand under subsection (2) or (4) is liable to pay to the government an amount equal to the amount that the person was required under subsection (2) or (4), as applicable, to pay to the commissioner.
- (9) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of
 - (a) the total of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (3) to pay to the commissioner.

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- (10) The receipt of the commissioner for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (11) Money paid by any person to the commissioner in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (12) If a person carries on business under a name or style other than the person's own name, the demand under subsection (2), (3) or (4) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (13) If persons carry on business in partnership, the demand under subsection (2), (3) or (4) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Subpoena (Interprovincial) Act, R.S.B.C. 1996, c. 442

- 6** A person required to attend before a court in British Columbia by a subpoena adopted by a court outside British Columbia

...

- (b) is absolutely immune from seizure of goods, service of process, execution of judgment, garnishment, imprisonment or molestation of any kind relating to a legal or judicial right, cause, action, proceeding or process within the jurisdiction of the Legislature of British Columbia except a proceeding grounded on events occurring during or after the required attendance of the person in British Columbia.

Type: E

Action: None required.

Taxation (Rural Area) Act, R.S.B.C. 1996, c. 448

- 27** (12) Payment may be enforced by execution issued out of the court on order of the court.

Type: P

Action: None required.

- 35**
- (1) If the collector knows or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the collector may, by registered letter or by a letter served personally, demand that that person pay all or part of the money otherwise payable to the taxpayer to the collector on account of the taxpayer's liability under this Act.
 - (2) Without limiting subsection (1), if the collector knows or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the collector may, by registered letter or by a letter served personally, demand that that person pay to the collector on account of the taxpayer's liability under this Act the money that would otherwise be so advanced or paid.
 - (3) If under this section the collector demands that a person pay to the collector, on account of the liability under this Act of a taxpayer, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
 - (a) applies to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the collector out of each payment of the amount stipulated by the collector in the demand.
 - (4) Money or a beneficial interest in money in a savings institution
 - (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is servedis money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in his or her capacity as a trustee.
 - (5) A demand under this section continues in effect until
 - (a) the demand is satisfied, or
 - (b) 90 days after the demand is mailed or served,whichever is earlier.

- (6) Despite subsection (5), if a demand is made in respect of a periodic payment referred to in subsection (3), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is mailed or served, in which case the demand ceases to have effect on the expiration of that period.
- (7) A person who fails to comply with a demand under subsection (1) or (3) is liable to pay to the government an amount equal to the amount that the person was required under subsection (1) or (3), as the case may be, to pay to the collector.
- (8) A person who fails to comply with a demand under subsection (2) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (2) to pay to the collector.
- (9) The receipt of the collector for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (10) Money paid by any person to the collector in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (11) If a person carries on business under a name or style other than his or her own name, the demand under subsection (1), (2) or (3) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (12) If persons carry on business in partnership, the demand under subsection (1), (2) or (3) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

Type: P

Action: None required.

Tobacco Tax Act, R.S.B.C. 1996, c. 452

- 32** (1) In this section, “**taxpayer**” includes a collector, a dealer and a board member who is jointly and severally liable with a corporation under section 28.1 (1).

- (2) If the director knows or suspects that a person is or is about to become indebted or liable to make a payment to a taxpayer, the director may demand that that person pay to the director on account of the taxpayer's liability under this Act all or part of the money otherwise payable to the taxpayer.
- (3) Without limiting subsection (2), if the director knows or suspects that a person is about to advance money to, or make a payment on behalf of, or make a payment in respect of a negotiable instrument issued by a taxpayer, the director may demand that that person pay to the director on account of the taxpayer's liability under this Act the money that would otherwise be so advanced or paid.
- (3.1) A demand under this section may be served by
 - (a) personal service,
 - (b) registered mail, or
 - (c) electronic mail or fax.
- (4) If under this section the director demands that a person pay to the director, on account of the liability under this Act of a taxpayer, money otherwise payable by that person to the taxpayer as interest, rent, remuneration, a dividend, an annuity or other periodic payment, the demand
 - (a) applies to all of those payments to be made by the person to the taxpayer until the liability under this Act is satisfied, and
 - (b) operates to require payments to the director out of each payment of the amount stipulated by the director in the demand.
- (5) Money or a beneficial interest in money in a savings institution
 - (a) on deposit to the credit of a taxpayer at the time a demand is served, or
 - (b) deposited to the credit of a taxpayer after a demand is served,is money for which the savings institution is indebted to the taxpayer within the meaning of this section, but money on deposit or deposited to the credit of a taxpayer as described in paragraph (a) or (b) does not include money on deposit or deposited to the credit of a taxpayer in his or her capacity as a trustee.
- (6) A demand under this section continues in effect until
 - (a) the demand is satisfied, or
 - (b) 90 days after the demand is served,whichever is earlier.

- (7) Despite subsection (6), if a demand is made in respect of a periodic payment referred to in subsection (4), the demand continues in effect until it is satisfied unless no periodic payment is made or is liable to be made within 90 days after the demand is served, in which case the demand ceases to have effect on the expiration of that period.
- (7.1) Money demanded from a person by the director under this section becomes payable
 - (a) as soon as the person is served with the demand, if the person is indebted or liable to make a payment to the taxpayer at the time the demand is served, or
 - (b) as soon as the person becomes indebted or liable to make a payment to the taxpayer, in any other case.
- (8) A person who fails to comply with a demand under subsection (2) or (4) is liable to pay to the government an amount equal to the amount that the person was required under subsection (2) or (4), as the case may be, to pay to the director.
- (9) A person who fails to comply with a demand under subsection (3) is liable to pay to the government an amount equal to the lesser of
 - (a) the aggregate of the money advanced or paid, and
 - (b) the amount that the person was required under subsection (3) to pay to the director.
- (10) The receipt of the director for money paid under this section is a good and sufficient discharge of the original liability to the extent of the payment.
- (11) Money paid by any person to the director in compliance with a demand under this section is deemed to have been paid by that person to the taxpayer.
- (12) If a person carries on business under a name or style other than the person's own name, the demand under subsection (2), (3) or (4) may be addressed to the name or style under which the person carries on business and, in the case of personal service, is deemed to have been validly served if it was left with an adult person employed at the place of business of the addressee.
- (13) If persons carry on business in partnership, the demand under subsection (2), (3) or (4) may be addressed to the partnership name and, in the case of personal service, is deemed to have been validly served if it was served on one of the partners or left with an adult person employed at the place of business of the partnership.

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Type: P

Action: None required.

Utilities Commission Act, R.S.B.C. 1996, c. 473

- 95** (2) On registration in a land title office, an order is a lien and charge on all the land of the person ordered to make the payment that is in the land title district in which the order is registered, to the same extent and with the same effect and realizable in the same way as a judgment of the Supreme Court under the *Court Order Enforcement Act*.

Type: P

Action: Amend subsection (2) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

Warehouse Receipt Act, R.S.B.C. 1996, c. 481

- 15** If goods are delivered to a warehouser by the owner or person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot after that while in the possession of the warehouser be levied under an execution, unless the receipt is first surrendered to the warehouser.

Type: O

Action: Amend section 15 by adding “or an enforcement proceeding” between “execution” and “, unless.”

Woodworker Lien Act, R.S.B.C. 1996, c. 491^{*}

- 4** (5) If no defence or dispute note is filed, judgment may be signed and execution issued according to the practice of the court.

Type: P

Action: Amend subsection (5) by striking out “execution issued according to the practice of the court” and replacing it with “enforced in accordance with the *Civil Enforcement of Money Judgments Act*.”

^{*}

As an alternative to making these consequential amendments to the *Woodworker Lien Act*, the government could implement the recommendations that the British Columbia Law Reform Commission made in its *Report on the Woodworker Lien Act* (LRC 137) (Vancouver: The Commission, 1994), which called for the repeal of the *Woodworker Lien Act* in favour of a statute based on personal property security legislation principles.

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- 6 (1) If an execution has issued and has been placed in the sheriff's hands for execution, and no attachment has been issued, the proceedings for the enforcement of the lien must be by sale under the execution.

Type: P

Action: Amend subsection (1) by striking out "If an execution has issued and has been placed in the sheriff's hands for execution" and replacing it with "If enforcement proceedings have been commenced" and by striking out "under the execution" and replacing it with "under the *Civil Enforcement of Money Judgments Act*."

- 9 (2) If additional claims are made, or the amount of claim is increased, or a sufficient seizure has not been made, a second or subsequent seizure may be made either under execution or attachment.

Type: P

Action: Amend subsection (2) by striking out "execution" and replacing it with "an enforcement proceeding."

- 20 (1) In default of payment into court under section 19 within the time named in the order, the logs or timber must, within 20 days after that, be sold by the sheriff holding them, in the same manner and subject to the same law as goods seized or taken in execution, unless the court directs that additional publicity be given to the sale.

Type: P

Action: Amend subsection (1) by striking out "or taken in execution" and replacing it with "under the *Civil Enforcement of Money Judgments Act*."

- 21 (3) Execution may be issued on the certificate as in the case of other judgments in the court.

Type: P

Action: Amend subsection (3) by striking out "Execution may be issued on the certificate as is the case of" and replacing it with "The certificate may be enforced in the same manner as any."

Workers Compensation Act, R.S.B.C. 1996, c. 492

- 15 A sum payable as compensation or by way of commutation of a periodic payment in respect of it is not capable of being assigned, charged or attached, nor must it pass by operation of law except to a personal representative, and a claim must not be set off against it, except for money advanced by way of financial or

other social welfare assistance owing to the Province or to a municipality, or for money owing to the accident fund.

Type: E

Action: Amend section 15 by adding “, seized” between “charged” and “or.”

- 46** Where an employer defaults in the payment of an assessment, and an execution issued on a judgment entered with respect to the assessment is returned with a certificate from a sheriff or the sheriff’s deputy that he or she was unable wholly to satisfy it, and where the judgment debtor continues to carry on an industry within the scope of this Part in which workers are employed, the Supreme Court, on an application made on behalf of the Board, without the issue of a writ or the commencement of an action, may restrain the judgment debtor from carrying on an industry within the scope of this Part until the amount due on the execution, and all assessments made by the Board, and the costs of the application are paid.

Type: O

Action: Amend section 46 by striking out “an execution issued on a judgment entered with respect to the assessment is returned with a certificate from a sheriff or the sheriff’s deputy that he or she was unable wholly to satisfy it” and replacing it with “an enforcement proceeding relating to a judgment entered with respect to the assessment is unsatisfied,” by striking out “the issue of a writ or,” and by striking out “execution” and replacing it with “judgment.”

- 52** (3) Without limiting subsection (1), the Board may enforce its lien by proceedings under the *Court Order Enforcement Act*.

Type: P

Action: Amend subsection (3) by striking out “*Court Order Enforcement Act*” and replacing it with “*Civil Enforcement of Money Judgments Act*.”

APPENDIX E

Amendments for Local Governments and Drainage and Diking Districts

Note

Local governments and drainage and diking districts receive special treatment under the current civil enforcement law in British Columbia. The legislation governing these entities restricts the ability of their creditors to satisfy judgments by execution against their assets. Instead, a procedure allowing for the raising of funds through local taxes is employed.

The coming into force of the *Uniform Civil Enforcement of Money Judgments Act* (the “Uniform Act”) need not alter this policy choice. In order to preserve it, however, one of the special features of the Uniform Act must be dealt with. Registration of a notice of judgment under the Uniform Act gives a judgment creditor an enforcement charge over the present and after-acquired personal property of the judgment debtor. In order to prevent this result from occurring for judgments against local governments and drainage and diking districts, the court’s supervisory jurisdiction must be engaged before registration of a notice of judgment.

Drainage, Ditch and Dike Act, R.S.B.C. 1996, c. 102

- 153** Any writ of execution on a judgment against the commissioners must be endorsed with a direction to the sheriff to levy the amount of it by a levy, and the following rules apply to the proceedings on the writ of execution:
- (a) the sheriff must deliver a copy of the writ and endorsement to the clerk of the commissioners, with a statement in writing of the sheriff’s fees and of the amount required to satisfy the execution, including in the amount the interest calculated to a day as near as is convenient to the day of service;
 - (b) if the amount, with interest on it from the day mentioned in the statement, is not paid to the sheriff within one month after the service, the sheriff must examine the plan and assessment roll filed, and must, in the same manner as taxes are levied by the commissioners for general purposes, make a levy, based on and in accordance with the assessment roll, sufficient to cover the amount due on the execution, with the addition to it of the interest, the sheriff’s own fees and

the collector's percentage up to the time when the taxes will probably be available;

- (c) the sheriff must then issue precepts directed to the clerk of the commissioners, and must annex to every precept the roll of the rate, and must by the precept, after reciting the writ, and that the commissioners have neglected to satisfy it, and referring to the plan filed under section 72, command the clerk to levy the rate at once on the land shown in that plan;
- (d) if at the time the rate is levied the clerk has a general rate roll delivered to him or her, the clerk must add a column to it, headed "Execution Rate in A.B. vs. Commissioners", and must insert in it the amount in the precept required to be levied on each person, and must levy the amount of the execution rate, and must, with all reasonable expedition, return to the sheriff the precept with the amount levied on it, after deducting the percentage for collection;
- (e) the sheriff must satisfy the execution and all fees on it, and pay the surplus, if any, to the clerk for the general purposes of the commissioners within 10 days after receiving it;
- (f) all employees of the commissioners are, for all purposes connected with the sheriff levying a rate to satisfy an execution, deemed to be officers of the court out of which the writ was issued, and are amenable to the court, and may be proceeded against by attachment or otherwise to compel them to perform the duties imposed on them, and a judge of the court out of which execution issues may make an order as necessary for carrying out these provisions.

Action: Repeal section 153 and replace with it the following:

- 153** (1) No one may register a notice of judgment against in respect of a judgment against the commissioners without leave of the Supreme Court, which may:
- (a) permit registration at a time and on conditions the court deems proper, or
 - (b) despite the *Civil Enforcement of Money Judgments Act*, permit a judgment creditor to give an enforcement instruction in accordance with this section without first registering a notice of judgment.
- (2) An enforcement instruction given in respect of a judgment against the commissioners must be endorsed with a direction to the sheriff to satisfy the judgment by a levy, and following rules apply to an enforcement proceeding taken under such enforcement instruction:

- (a) the sheriff must deliver a copy of the enforcement instruction and endorsement to the clerk of the commissioners, with a statement in writing of the sheriff's fees and of the amount required to satisfy the judgment, including in the amount the interest calculated to a day as near as is convenient to the day of service;
- (b) if the amount, with interest on it from the day mentioned in the statement, is not paid to the sheriff within one month after the service, the sheriff must examine the plan and assessment roll filed, and must, in the same manner as taxes are levied by the commissioners for general purposes, make a levy, based on and in accordance with the assessment roll, sufficient to cover the amount due on the judgment, with the addition to it of the interest, the sheriff's own fees and the collector's percentage up to the time when the taxes will probably be available;
- (c) the sheriff must then issue precepts directed to the clerk of the commissioners, and must annex to every precept the roll of the rate, and must by the precept, after reciting the enforcement instruction, and that the commissioners have neglected to satisfy the judgment, and referring to the plan filed under section 72, command the clerk to levy the rate at once on the land shown in that plan;
- (d) if at the time the rate is levied the clerk has a general rate roll delivered to him or her, the clerk must add a column to it, headed "Enforcement Rate in A.B. vs. Commissioners", and must insert in it the amount in the precept required to be levied on each person, and must levy the amount of the enforcement rate, and must, with all reasonable expedition, return to the sheriff the precept with the amount levied on it, after deducting the percentage for collection;
- (e) the sheriff must satisfy the judgment and all fees on it, and pay the surplus, if any, to the clerk for the general purposes of the commissioners within 10 days after receiving it;
- (f) all employees of the commissioners are, for all purposes connected with the sheriff levying a rate to satisfy a judgment, deemed to be officers of the Supreme Court, and are amenable to the court, and may be proceeded against by attachment or otherwise to compel them to perform the duties imposed on them, and a judge of the Supreme Court may make an order as necessary for carrying out these provisions.

Local Government Act, R.S.B.C. 1996, c. 323

- 293** (1) A writ of execution against a municipality may be endorsed with a direction to the sheriff to levy its amount by rate, and the proceedings on it are to be as provided in this Division.
- (2) A writ of execution against a municipality must not be issued without leave of the Supreme Court, which may
- (a) permit its issue at a time and on conditions the court considers proper, or
 - (b) refuse to permit it to be issued or suspend action under it on terms and conditions the court thinks proper or expedient, having regard to the reputed insolvency of the municipality and the security afforded to the person entitled to the judgment by the registration of the judgment.
- (3) On being satisfied by affidavit by a competent person on behalf of the municipality that the municipality intends to appeal with due diligence from the judgment, the court may refuse to permit a writ of execution for costs to be issued unless security is given to the satisfaction of the court by the person to whom the costs are payable for their repayment to the municipality in the event the judgment is reversed or varied on appeal.

Action: Repeal section 293 and replace it with the following:

- 293** (1) No one may register a notice of judgment against in respect of a judgment against a municipality without leave of the Supreme Court, which may:
- (a) permit registration at a time and on conditions the court deems proper, or
 - (b) despite the *Civil Enforcement of Money Judgments Act*, permit a judgment creditor to give an enforcement instruction in accordance with this Division without first registering a notice of judgment.
- (2) An enforcement instruction in respect of judgment against a municipality may be endorsed with a direction to the sheriff to satisfy the judgment by levy, and an enforcement proceeding taken under the enforcement instruction is to be as provided in this Division.
- (3) On application, the Supreme Court may suspend an enforcement proceeding on terms and conditions the court thinks proper or expedient having regard to the reputed insolvency of the municipality and the security afforded to the person entitled to the judgment by the registration of a notice of judgment.

- (4) On being satisfied by affidavit by a competent person on behalf of the municipality that the municipality intends to appeal with due diligence from the judgment, the court may refuse to permit an enforcement proceeding in respect of costs unless security is given to the satisfaction of the court by the person to whom the costs are payable for their repayment to the municipality in the event the judgment is reversed or varied on appeal.

294 The sheriff must deliver to the municipal corporate officer, or leave at the office or dwelling house of that officer,

- (a) a copy of the writ of execution and endorsement, and
- (b) a statement in writing of the sheriff's fees, and of the amount required to satisfy the execution, including in the amount the interest calculated to a day as near as is convenient to the date of the delivery.

Action: Amend paragraph (a) by striking out "writ of execution" and replacing it with "enforcement instruction." Amend paragraph (b) by striking out "execution" and replacing it with "judgment."

295 (1) If the amount, with interest on it from the day mentioned in the statement under section 294, is not paid to the sheriff within one month after service under that section, the sheriff must

- (a) examine the assessment rolls of the municipality, and
- (b) establish a rate sufficient to cover the amount due on the execution, with an addition to it that the sheriff believes sufficient to cover the interest and the sheriff's own fees.

...

(3) After establishing the rate, the sheriff must

- (a) issue a direction to the collector of the municipality,
- (b) attach to the direction either the roll of the rate or particulars of it, and
- (c) after
 - (i) stating the writ,
 - (ii) stating that the municipality had neglected to satisfy it, and
 - (iii) referring to the roll or the particulars,

direct the collector to levy the rate promptly.

Action: Amend paragraph (1) (b) by striking out “execution” and replacing it with “judgment.” Amend subparagraph (3) (c) (i) by striking out “writ” and replacing it with “enforcement instruction.” Amend subparagraph (3) (c) (ii) by striking out “it” and replacing it with “the judgment.”

- 296** (1) If at the time of levying a rate under a direction of the sheriff the tax demand notices for that year have not been issued, the collector must add a column on the notices, headed “Execution Rate in A.B. v. the Corporation”, and must insert in it the amount required to be levied under the direction.
- (2) If subsection (1) does not apply, the collector must proceed to issue separate tax demand notices for the execution rate.
- ...
- (4) After satisfying the execution and all fees on it, the sheriff must pay any surplus within 10 days after receiving it to the municipal financial officer, for the general purposes of the municipality.

Action: Amend subsection (1) by striking out “Execution” and replacing it with “Enforcement.” Amend subsection (2) by striking out “execution” and replacing it with “enforcement.” Amend subsection (4) by striking out “execution” and replacing it with “judgment.”

- 297** (1) For all purposes connected with carrying into effect, or permitting or assisting the sheriff to carry into effect, the provisions of this Act for executions, the municipal corporate officer, the municipal financial officer and the collector are deemed to be officers of the court in which the writ was issued.

Action: Amend subsection (1) by striking out “court in which the writ was issued” and replacing it with “Supreme Court.”

- 743** (1) A writ of execution against an improvement district may be issued only with the permission of the Supreme Court, and on the terms and conditions the court may specify.

Action: Amend subsection (1) by striking out “A writ of execution against an improvement district may be issued” and replacing it with “A notice of judgment relating to a judgment against an improvement district may be registered only.”

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