

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

CIVIL ENFORCEMENT OF JUDGMENTS PROJECT

THIRD PROGRESS REPORT OF THE WORKING GROUP

DRAFT ACT

**Fredericton, N.B
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CIVIL ENFORCEMENT OF JUDGMENTS ACT

PART 1: INTERPRETATION

Definitions and interpretation

1 (1) In this Act:

"account" means a monetary obligation, however created, other than an obligation evidenced by a negotiable instrument or a negotiable debt security,

- (a) owing by a person, corporation, partnership, trustee or government or government agency 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;

"amount recoverable" means, in relation to a judgment being enforced, the total of the following:

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

"court" means the [insert the name of superior court of the enacting Province / Territory] unless the text otherwise provides;

"crops" means crops, whether matured or otherwise and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they are

- (a) being grown as nursery stock,**
- (b) being grown for uses other than for the production of lumber and wood products, or**
- (c) intended to be replanted in another location for the purpose of reforestation;**

"enforcement charge" means the charge on the interest of a judgment debtor in property that is, under section 38, created by the registration of a notice of judgment;

“enforcement officer” means a [the enacting province/territory must insert the name of the appropriate office (eg. “sheriff,” “High Sheriff” or similar official including their deputies) or the names or classes of private civil enforcement agencies whose employees or agents are authorized by contract with the Crown to carry out enforcement proceedings] who is authorized under the laws of the province to carry out the functions and duties of an enforcement officer under this Act;

"enforcement proceedings" means any action, step or measure authorized by this Act to be taken for the purpose of enforcing a money judgment;

“exempt income” means that portion of a judgment debtor’s income that is exempt from seizure under Part 11 in an enforcement proceeding under this Act;

“exempt property” means property of a judgment debtor that is exempt from seizure under Part 11 in an enforcement proceeding under this Act;

“exemption” means an entitlement to claim that property of a judgment debtor is exempt property and that income of a judgment debtor is exempt income that is exempt from seizure in an enforcement proceeding under this Act;

“exigible property” means real or personal property that may be subject to an enforcement proceeding under this Act and includes property outside the province/territory that would be subject to an enforcement proceeding were the property situated in the province/territory;

"fixture" means tangible personal property that has been annexed to land and that is regarded in law as part of the land to which it has been annexed, but does not include building materials that have not been incorporated into that tangible personal property;

"future account" means an account that becomes by its terms due any time after delivery of a notice of seizure to an account debtor or the appointment of a receiver under Part 12;

“give”, in relation to records, means give in accordance with section 5;

“growing crop” means a crop that has not been harvested by severing it from the land on which it is growing;

“instructing judgment creditor” means a judgment creditor who has give instructions to an enforcement officer to take enforcement proceedings;

"instrument" means

- (a) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada),**

- (b) a record that evidences a right to the payment of money and is of a kind that in the ordinary course of business is transferred by delivery with a necessary endorsement or assignment, or
- (c) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it, but does not include
- (d) chattel paper, a document of title or a security certificate,
- (e) a record that provides for or creates an interest in land, or
- (f) a record that provides for or creates a mortgage or charge in respect of an interest in land, and specifically identifies the interest in the record;

"judgment" includes any order, decree, certificate, duty or right that may be enforced as or in the same manner as a judgment of a court including a judgment of [insert name of the superior court of the enacting province/territory], **the Court of Appeal of** [insert name of the enacting province/territory], **the** [insert the name of the small claims *Act* of the enacting province/territory], **the Supreme Court of Canada and a judgment issued under the *Federal Court Act*, but does not include an order for maintenance or support;**

"judgment creditor" means a person in whose favour a money 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 that record;

"judgment debtor" means a person against whom a money 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 that record,

"land" includes

- (a) an interest in land, and
- (b) except otherwise provided in Part 9, Division 5, a fixture, but does not include
- (c) growing crops, or
- (d) an interest in land that secures an obligation or that arises in connection with an interest in or lease of land;

Comment

The Interpretation Act of some provinces/territories defines "land" as including buildings. For example, the British Columbia Interpretation Act provides:

"land" includes any 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;

If the Interpretation Act of a province/territory does not include such a provision, it should be added to the definition of “land” in this Act.

With regard to fixtures, at common law, when a fixture became attached to the land, it became part of the land. The PPSA permits a security interest to be taken in “fixture” as personal property and gives priority to the holder of the security interest, if the security interest attaches prior to the fixture being affixed to the land and the registration requirements found in the PPSA are satisfied. Part 9, Division 5 deals with enforcement proceedings against fixtures. Section 97 of this Act sets out circumstances where a fixture must be seized and sold as personal property.

"money judgment" means a judgment requiring a person to pay money or that part of a judgment that requires a person to pay money but does not include an order for contempt requiring the payment of money;

“notice of judgment” means notice of a money judgment registered in the registry in accordance with this Act and includes an amendment of a notice of judgment;

“person” when used to refer to a creditor includes the Crown in right of the province/territory;

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

“property” includes

- (a) things, as well as rights or interests in things,**
- (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, and**
- (e) a cause of action;**

“receive”, in relation to records, means receive in accordance with section 5;

"record" includes books, documents, notices, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

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

“registry” means the registry prescribed by regulation under this Act;

- “subsisting enforcement instruction” means an enforcement instruction, delivered by a judgment creditor to an enforcement officer under section 59, or a supplementary enforcement instruction, delivered by a judgment creditor to an enforcement officer under section 61, if that enforcement instruction or supplementary enforcement instruction has not been terminated by the enforcement officer under section 63 (1) and that has not lapsed under section 63 (2).**
- (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]:**
- (a) accession**
 - (b) equipment;**
 - (c) goods;**
 - (d) inventory;**
 - (e) money;**
 - (f) new value;**
 - (g) purchase;**
 - (h) purchase-money security interest;**
 - (i) purchaser;**
 - (j) secured party;**
 - (k) security interest;**
 - (l) value.**
- (3) A reference in this Act to "this Act" or "this enactment" includes a reference to the regulations made under this Act.**
- (4) A reference in this Act to a specific provision or Part of this Act includes a reference to any regulations made under this Act in respect of any matters that are the subject of that provision or Part.**

PART 2: GENERAL

General principles

- 2 The following principles apply to the enforcement, under this Act, of a money judgment:**
- (a) except as otherwise provided by any other enactment, a person wishing to enforce a money judgment must do so in accordance with this Act;**
 - (b) nothing in this Act authorizes the arrest or imprisonment of a person for default in payment of a money judgment;**
 - (c) subject to this Act, anything done by an enforcement officer with the written consent of all interested persons, including any**

judgment debtor whose rights may be affected, is deemed to have been done in accordance with this Act;

- (d) the waiver by a judgment debtor of any right or duty under this Act is void if given before the right or duty arose;**
- (e) nothing in this Act prevents a judgment creditor from soliciting payment from a judgment debtor by lawful means or accepting a payment from a judgment debtor that is otherwise lawful.**

Supplementary law

- 3 The principles of the common law, equity and the law merchant continue to apply and supplement this Act, but insofar as they are inconsistent with this Act, this Act prevails.**

Other statutory references to execution

- 4 (1) A reference in any other enactment to any of the following is deemed to be a reference to an enforcement proceeding under this Act:**
- (a) seizure under a writ of execution, a writ of *feri facias* or a similar term or process,**
 - (b) garnishment of a debt,**
 - (c) attachment of a debt,**
 - (d) equitable execution,**
 - (e) a charging order,**
 - (f) distress, other than distress for rent by a landlord.**

Comment:

Preferably the enacting province/territory will make consequential amendments in the relevant Acts.

- (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] is deemed to be a reference to this Act.**

Comment

Preferably an enacting province or territory will make consequential amendments to the relevant Acts.

- (3) Nothing in this Act affects [insert the name of statutes in the enacting province/territory related to family support such as Maintenance Orders Enforcement Act and the Reciprocal Enforcement of Maintenance Orders Act].**
- (4) Every means of enforcing a monetary judgment that was available immediately before the coming into force of this Act, in common law**

or under any other Act, that is not specifically continued or enacted by this Act, is terminated.

Giving and receiving notices and records

- 5 (1) A notice, demand or other record that must or may be given or delivered under this Act may be given or delivered to**
- (a) an individual,**
 - (i) by physically delivering it**
 - (A) to the individual,**
 - (B) to the individual's agent,**
 - (C) to the individual's residence,**
 - (D) if the individual is the sole proprietor of a business and the matter to which the notice or record refers relates to the business, at to the address of the business, or**
 - (E) in the manner prescribed by the regulations, or**
 - (ii) by registered mail addressed to the individual at the address of the individual,**
 - (b) a partnership,**
 - (i) by physically delivering it**
 - (A) to one or more of the partners who is not a limited partner,**
 - (B) to a person who, at the time the notice is delivered, has control or management of the partnership business,**
 - (C) to 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 registered 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 is delivered, has control or management of the partnership business, at the address of the partnership business,**
 - (c) a corporation,**
 - (i) by physically delivering it**
 - (A) to an officer or director of the corporation or to a person in charge of any office or place of business of the corporation,**
 - (B) to the registered or head office of the corporation during hours when it is open to the public,**

relates, under circumstances in which a reasonable person would take cognizance of it, or

- (ii) the information is delivered in writing to the offices of the deputy minister of a government ministry or the head office of a government agency responsible for the matter to which the information relates.**

Applications to court for orders and directions

- 7**
- (1) The court may, on application by a judgment creditor, judgment debtor, enforcement officer or an interested person, give directions in respect of, or determine any matter or issue that arises out of, any enforcement proceedings under this Act.**
 - (2) On considering an application under this Act, the court may make any order it considers appropriate, including, without limitation, 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) giving directions respecting the carrying out of enforcement proceedings;**
 - (d) temporarily staying the enforcement of rights provided in this Act;**
 - (e) directing that a judgment creditor replace another judgment creditor as the instructing judgment creditor;**
 - (f) extending or abridging any period of time provided for under this Act;**
 - (g) in the case of an application made under a provision of this Act other than subsection (1) of this section, giving any other order, direction or relief that is permitted or otherwise provided for under that provision;**
 - (h) enjoining any person from interfering with an enforcement officer while the enforcement officer is carrying out a seizure of property or otherwise taking measures to enforce a judgment under this Act;**
 - (i) directing a police authority with authority and responsibility for public safety in the locality where an enforcement proceeding will be carried out to provide protection to an enforcement officer while the enforcement officer is carrying out a seizure of property or otherwise taking enforcement proceedings;**

- (j) imposing on an order any terms or conditions that the court considers appropriate in the circumstances;
- (k) awarding costs in connection with enforcement proceedings taken or actions taken under this Act;
- (l) providing for substituted service or substituted delivery of a notice or document.

Appeal from an order of the court made under s. 7

- 8** (1) An appeal lies to the Court of Appeal [of the province/territory] 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.

Crown is bound by this Act

- 9** (1) This Act binds the Crown in exercising any rights or remedies as a creditor in enforcement proceedings.
- (2) Despite subsection (1), nothing in this Act prevents the Crown from collecting a debt through proceedings otherwise available to the Crown as a prerogative right or under any other enactment.
- (3) The prerogative rights of Her Majesty in the Right of [insert name of the Province/Territory] in the form of priority of execution and priority to payment are abolished.

Standard of conduct

- 10** Any person, including an enforcement officer and a receiver appointed under this Act, 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 exercising that right or power, do so in good faith and in a commercially reasonable manner.

Failure to comply with Act – cause of action for loss or damage

- 11** A person who has suffered loss or damage as a result of another person's failure 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 the damages suffered or \$200, whichever is greater.

Interference with an enforcement proceeding - liabilities

- 12** (1) On application by an enforcement officer or by a judgment creditor who has delivered a subsisting enforcement instruction to an enforcement officer, the court may order that any person who has interfered with or delayed any duty or function of the enforcement

officer or a receiver under this Act that relates to an enforcement proceeding, pay to the enforcement officer or the judgment creditor, as the case may be, 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 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;**
 - (c) the amount by which exigible property has diminished value as a consequence of the interference or delay;**
 - (d) costs of the application.**
- (2) Without limiting subsection (1), a person who, without lawful justification, interferes with or delays an enforcement officer or a receiver appointed under this Act in carrying out any duty or function provided by this Act is guilty of an offence.**

Application of sections of Personal Property Security Act

- 13 Except as otherwise specifically provided in this Act, the following sections of the [insert title of PPSA of enacting jurisdiction] apply, with the necessary modifications, to matters arising under this Act:**

Comment:

The sections of the PPSA will be listed in the final draft.

PART 3: ENFORCEMENT OFFICERS

Duties and functions

- 14 (1) An enforcement officer has the duties and functions described in this Act.**
- (2) An enforcement proceeding taken by an enforcement officer is not invalid merely because it is carried out at a place outside the area within which the enforcement officer is, under the laws of the province or under the terms of the enforcement officer's contract of employment, authorized to operate.**

Seizure powers

- 15 (1) For the purpose of carrying out enforcement proceedings under this Act in relation to an enforcement charge within the meaning of Part 5,**
- (a) subject to paragraph (d) of this subsection, an enforcement officer has the power to enter a location or premises occupied by**

- the judgment debtor to carry out a seizure of property or remove seized property,
- (b) subject to paragraph (d), an enforcement officer who has reasonable grounds to believe that personal 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, remove seized property or otherwise take measures to enforce a judgment,
 - (c) subject to paragraph (d), an enforcement officer has the power to use reasonable force to gain access to a location or premises to carry out a duty or function under this Act,
 - (d) 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
 - (i) permission granted by the occupant of the residence, or
 - (ii) an order of the court,
 - (e) an enforcement officer who has gained lawful entry to a location or premises in order to carry out a duty or function the enforcement officer is entitled or required to carry out under this Act may gain entry by any means that are reasonable in the circumstances to any interior room, enclosure or container within the location or premises,
 - (f) an enforcement officer who has used force to gain entry to a location or premises must make the location or premises reasonably secure before leaving, and
 - (g) an enforcement officer may, at or after the time of seizure, remove for safekeeping any personal property that has been seized.
- (2) Unless otherwise ordered by the court, an irregularity in the procedure by which a seizure is carried out does not invalidate the seizure.
- (3) The court may order a seizure to be discontinued or reversed if the court is satisfied that a person has been or is likely to be prejudiced by an irregularity in the procedure by which the seizure was carried out.

Appointment of bailee by enforcement officer to hold seized property

- 16** An enforcement officer who seizes personal property but does not take physical possession of it may appoint any person including the judgment debtor to hold the seized personal property as bailee if the person signs an undertaking to act as bailee.

Obligations of bailee appointed by enforcement officer

17 A bailee of property under section 16

- (a) **must hold it as a bailee of the enforcement officer subject to the terms and conditions specified in writing by the enforcement officer,**
- (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.**

Failure of bailee to deliver property to enforcement officer - liabilities

18 (1) On application, the court may find a person liable for civil contempt if the person

- (a) **is under a duty to deliver personal property under seizure to an enforcement officer under section 17, and**
 - (b) **fails to deliver it to the enforcement officer within a reasonable time after being required to do so.**
- (2) If the court finds a person liable for civil contempt under subsection (1), the court may order that person to pay to the enforcement officer an amount not exceeding the total of the following:**
- (a) **the value of the property, if the property has been lost or destroyed, or**
 - (b) **the amount by which property has diminished in value as a consequence of the bailee's failure to deliver the property to the enforcement officer when required to do so, and**
 - (c) **costs of the proceedings under this section.**

Bailee entitled to costs incurred in preserving and protecting property

- 19 (1) A bailee of property under section 16, other than the judgment debtor, is entitled to reasonable costs incurred in preserving and protecting the property or delivering the property to the enforcement officer.**
- (2) If a judgment debtor becomes a bailee under section 16, the enforcement officer may agree, as a term of the bailment agreement, to compensate the judgment debtor with regard to reasonable costs incurred in preserving and protecting the property.**

Enforcement officer's powers to deal with seized personal property

- 20 An enforcement officer who has seized personal property may, until the property has been disposed of or the seizure terminated, exercise any power or right with respect to the property or its disposition that the judgment debtor had at the date of seizure or acquires after that date, including, without limitation,**

- (a) the power to sell, assign, transfer or otherwise realize the value of an interest in the property,
- (b) the power of election,
- (c) the powers of a beneficiary under a trust,
- (d) the power to give a release or discharge,
- (e) the power to collect an account associated with or related to the property,
- (f) the power to endorse a security,
- (g) the power to present an instrument for payment and receive payment,
- (h) the power to sue or take any action in the name of the judgment debtor to enforce payment of an obligation evidenced by an instrument,
- (i) the power to negotiate an instrument or security without recourse.

Enforcement officer's powers to execute or endorse

- 21** For the purposes of dealing with or disposing of property under this Act, an enforcement officer may
- (a) do any act or thing that could have been or may be done by the judgment debtor, or
 - (b) execute or endorse any document that could have been or may be executed or endorsed by the judgment debtor.

Delegation of delivery functions by enforcement officer to judgment creditor

- 22**
- (1) An enforcement officer may delegate to a judgment creditor the giving of any notice that the enforcement officer is required to give under this Act.
 - (2) If an enforcement officer takes or omits to take any action that the enforcement officer would be entitled to take or omit to take had a notice been given in accordance with this Act, the enforcement officer may take or omit to take that action if the enforcement officer does so in reliance on a sworn written declaration of a judgment creditor that the judgment creditor has given the notice in compliance with a delegation under subsection (1), and the enforcement officer faces no liability for so acting.
 - (3) If a judgment creditor fails to deliver a notice under a delegation under subsection (1), the court may order the judgment creditor to
 - (a) pay damages to the person to whom the notice should have been delivered, in an amount equal to the loss or damage suffered due to the failure, and

- (b) reimburse the enforcement officer for costs that the enforcement officer incurred as a consequence of the judgment creditors failure to deliver the notice.**

Circumstances where Enforcement officer relieved of liability

- 23**
- (1) An enforcement officer is not liable for damages arising out of the seizure and sale of property if, at the time of seizure, the enforcement officer had reasonable grounds to believe that the seized property**
 - (a) was the property of the judgment debtor or was property in which the judgment debtor had an interest, and**
 - (b) was exigible property.**
 - (2) If the enforcement officer determines that all of seized property will not be required to satisfy the judgment of the instructing judgment creditor, the judgments of those judgment creditors who have given a subsisting enforcement instruction to the enforcement officer, and any claims that must under Part 13 be satisfied in preference to the eligible claims of judgment creditors including the enforcement officer's fees and costs, the enforcement officer is not liable for damages arising out of the seizure or of any sale of the property if**
 - (a) at the time of seizure, the enforcement officer had reasonable grounds to believe that all of seized property would be required to satisfy the judgment of the instructing judgment creditor, the judgments of those judgment creditors who have given a subsisting enforcement instruction to the enforcement officer, and any claims that must under Part 13 be satisfied in preference to the eligible claims of judgment creditors including the enforcement officer's fees and costs, and**
 - (b) the seized property that is not required is released from seizure as soon as possible.**
 - (3) If the proceeds of sale from the disposition of property seized by an enforcement officer are in excess of the amount required to satisfy the judgment of the instructing judgment creditor, the judgments of those judgment creditors who have given a subsisting enforcement instruction to the enforcement officer, and any claims that must under Part 13 be satisfied in preference to the eligible claims of judgment creditors including the enforcement officer's fees and costs, the enforcement officer is not liable for damages arising out of the seizure or sale of the property if**
 - (a) at the time of the seizure, the enforcement officer had reasonable grounds to believe that all of seized property would be required to satisfy the judgment of the instructing judgment creditor, the judgments of those judgment creditors who have given a subsisting enforcement instruction to the enforcement officer, and any claims that must under Part 13 be satisfied in**

preference to the eligible claims of judgment creditors including the enforcement officer's fees and costs, and

- (b) any excess proceeds of sale of the disposition of the seized property are paid to the judgment debtor as soon as possible after the sale.

Offences and penalties

- 24
- (1) A person is guilty of an offence who carries out or attempts to carry out an enforcement proceeding when that person is not an enforcement officer or otherwise authorized by the legislation of the province/territory to carry out that function.
 - (2) A corporation that commits an offence under subsection (1) is liable to a fine of not more than \$100 000.
 - (3) An individual who commits an offence under subsection (1) is,
 - (a) in the case of a first offence, liable to a fine of not more than \$25 000, and
 - (b) in the case of a second or subsequent offence, liable to a fine of not more than \$50,000 or to imprisonment for not more than 6 months or to both .

PART 4: PRE-JUDGMENT AND POST-JUDGMENT PRESERVATION MEASURES

Definitions

25 In this Part:

“defendant” means the defendant in a proceeding, and includes

- (a) a respondent or other person opposing a proceeding in which a monetary claim is asserted, and
- (b) a defendant against whom a judgment has been rendered on the claim;

“originating application” means a proceeding commenced by petition or praecipe;

“plaintiff” means a plaintiff in a proceeding, and includes

- (a) a petitioner or other person asserting a monetary claim in a proceeding,
- (b) a plaintiff by way of counterclaim, and
- (c) a plaintiff who has obtained a judgment on its claim;

“preservation order” means an order, made under section 27, to preserve or protect some or all of the exigible property of a defendant;

“proceeding” means an action, suit, cause, matter, appeal or originating application and includes a proceeding in another province or territory of Canada regardless of how it is commenced.

Who may apply for a preservation order

- 26 An application for a preservation order may be made**
- (a) without notice, or by notice of motion, by a plaintiff, or**
 - (b) without notice by the plaintiff, if on an application by the defendant, the court sets aside a default judgment in order to allow the defendant to file a defence.**

Preservation orders

- 27 (1) Subject to subsection (1.1), the court may, in an application made in accordance with section 26, make an order to preserve or protect some or all of the exigible property of the defendant in that proceeding.**
- (1.1) The court may make a preservation order under subsection (1) if**
- (a) the proceeding was commenced in the province/territory and includes a monetary claim, or**
 - (b) the proceeding was commenced in the court of another province or territory of Canada and**
 - (i) a judgment or award of the that court could be enforced in the province/territory, and**
 - (ii) the defendant appears to have exigible property in the province/territory.**
- (1.2) The court may make a preservation order under subsection (1) with respect to**
- (a) all exigible property of the defendant existing at the time of the making of the preservation order and all exigible property of the defendant that is acquired after the time of the making of the preservation order and before its termination, or**
 - (b) exigible property of the defendant that is specified in the preservation order.**
- (2) Two or more plaintiffs who are entitled under this section to obtain a preservation order may jointly apply for that order.**
- (3) The court must not grant a preservation order unless the court is satisfied that**
- (a) the plaintiff's proceeding is not groundless or frivolous,**
 - (b) the plaintiff's proceeding, if successful, is likely to result in a judgment for an amount greater than \$500,**
 - (c) if the preservation order is not granted, the enforcement of a judgment against the defendant will likely be seriously hindered as a result of future disposition, dissipation, destruction, concealment or any other dealing with the property by the defendant, other than disposition for the purposes of meeting**
 - (i) reasonable living expenses of the defendant and the dependents of the defendant,**

- (5) The court must not make an order under this section that does any of the following:**
- (a) affects the title to property located outside the [province or territory];**
 - (b) affects income that the defendant or dependents of the defendant would be entitled to claim as exempt if the defendant were a judgment debtor;**
 - (c) adversely affects**
 - (i) an interest in the property, or**
 - (ii) any other rights to the property that are held through the defendant by any person other than the defendant, whether as tenant or lessee of the defendant or otherwise, acquired before the date of the application;**
 - (d) interferes with the rights of the defendant or a person other than the defendant to an extent greater than is necessary to realize the objective of subsection (4)(c).**
- (6) The court must not make a preservation order in relation to property that, in the aggregate, has a value greater than the amount of the plaintiff's monetary claim, including the claim for interest and costs, unless it appears to the court that there are no reasonable alternatives to such an order.**
- (7) If a preservation order is granted on an application made without notice,**
- (a) subject to paragraph (b), the order must specify a date, not more than 21 days after the day that the order is granted, on which the order expires, unless the order is extended on application on notice to the defendant;**
 - (b) if the court is satisfied that it would be inappropriate for a preservation order granted without notice to expire automatically after 21 days, the order may specify a later expiry date or specify that the order remains in effect until it terminates in accordance with section 34;**
 - (c) on an application of which the defendant is given notice, the court may direct that the preservation order remains in effect until the order terminates under section 34 (c) or as otherwise directed by the court;**
 - (d) if an application under paragraph (c) of this subsection cannot reasonably be heard and determined before the expiry date of the preservation order, the court may, on application without notice, extend the expiry date to a date that the court considers is reasonably likely to follow that determination of the application;**
 - (e) when an application is made on notice to the defendant under paragraph (c),**

- (i) the onus is on the plaintiff to establish that the preservation order should be continued, and
 - (ii) the court may terminate the preservation order if the court is satisfied that the plaintiff failed to make full and fair disclosure of the material information that existed at the time the plaintiff made the application for the preservation order without notice.
- (8) An order under subsection (1) or (7) obtained in an application without notice is not binding on the defendant or on any other person named in it until a copy of the order is given to the defendant or such other person by physical delivery as provided in section 5(1).
- (9) On application by a plaintiff whether brought without notice or by notice of motion, the court may make an order requiring the payment into court of an account or future account that is due or may become due to the defendant.
- (10) Subsections (1) to (8) apply to an application under subsection (9).

Effect of a preservation order

- 28 (1) Subject to section 30 (3), a preservation order
- (a) applies to the defendant and the other persons named in the order, but gives no property interest or priority to the plaintiff, and
 - (b) does not affect the rights of a person, other than the defendant and the other persons named in the order, acquired before the order is issued.
- (2) Unless the court otherwise orders, property subject to a preservation order under section 27 is subject to an enforcement proceeding under this Act, by a judgment creditor who has delivered enforcement instructions to an enforcement officer, to the same extent it would be had the preservation order not been granted.

Registration of preservation order

- 29 (1) A plaintiff may register a notice of a preservation order in the registry with regard to the property of the defendant.
- (2) A notice of preservation order referred to in subsection (1) must be in the prescribed form and must be registered in accordance with Part 6 and the regulations.

Comment:

The issues of whether registration of a notice of preservation order should be permitted will be reconsidered by the Working Group in the context of the discussion of priorities and related issues in Part 5.

Priorities of a registered notice of preservation order

- 30** If, before a notice of preservation order ceases to be effective, a notice of judgment is registered in respect of property that was subject to the preservation order, the date and time when the registration of the notice of judgment is deemed to relate back to and be effective from the date and time when the notice of preservation order was registered and the priority of the notice of judgment under Part 5 is determined by reference to the date and time when the notice of preservation order was registered under section 29.

Comment

The issue of whether the date and time of the registration a notice of judgment should be deemed to relate back to the date and time of the registration of a notice of preservation order will be reconsidered by the Working Group in the context of the priority of a notice of judgment in relation to other interests in the property charged by reason of the registration of a notice of judgment.

Security required from plaintiff

- 31** (1) Subject to subsections (2) and (3), a preservation order and any order modifying or extending a preservation order under section 32 must include an order requiring the plaintiff to provide security in an amount and form that, in the opinion of the court, is sufficient to compensate for loss that may be caused to the defendant or other person in the circumstances specified in subsection (4) (a) and (b).
- (2) The plaintiff may apply for an order dispensing with the requirement to provide security imposed or to be imposed under subsection (1) and, on that application, the court must
- (a) consider whether
 - (i) a requirement for security would cause undue hardship to the plaintiff, and
 - (ii) the absence of such an requirement would cause undue hardship to the defendant, and
 - (b) make the order that it considers will cause the least hardship.
- (3) Subject to subsection (4), if the proceeding in relation to which a preservation order was made is dismissed or discontinued, on application by the defendant or any other person who has suffered loss or damage as a consequence of the preservation order, the court may order that there be paid, out of the security referred to in subsection (1), if any, to the applicant, an amount to compensate for the pecuniary loss or damage suffered by the applicant as a result of the preservation order.

- (4) The court may make an order under subsection (3) if the court concludes that**
- (a) the dismissal of the proceeding by the court or discontinuance of the proceeding by the plaintiff resulted from**
 - (i) failure on the part of the plaintiff to pursue the claim,**
 - (ii) presentation by the plaintiff of evidence that was false or misleading, or**
 - (iii) any other misconduct on the part of the plaintiff, or**
 - (b) at the date the proceeding was initiated, the plaintiff had no reasonable expectation of obtaining judgment.**

Modification of a preservation order

- 32**
- (1) The plaintiff on whose application a preservation order has been made, a defendant, or any person affected by a preservation order may apply to the court that made the preservation order to have the order extended, modified or terminated.**
 - (2) On an application under subsection (1), the court may make any order in respect of a preservation order that it could have made when the preservation order was originally granted including, without limitation, an order substituting different property for the property originally specified in the preservation order and an order that a different form or amount of security be provided by the defendant to replace the form or amount of security originally ordered.**

Enforcement proceedings against property subject to a preservation order

- 33**
- (1) Enforcement proceedings may be commenced or continued in one proceeding against property that is subject to a preservation order in a different proceeding, and money realized through those enforcement proceedings may be distributed under Part 13 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 13 at the time the distributable fund is created under Part 13.**
 - (2) Despite subsection (1), the court may, if the court considers that it would be just and equitable to do so, make one or more of the following orders:**
 - (a) that enforcement proceedings 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) that money realized through enforcement proceedings against property that is the subject to a preservation order not be distributed without leave of the court until the preservation order terminates;**

- (c) **that the plaintiff in an application for the preservation order have the status of an instructing creditor for the purpose of the distribution of the proceeds under Part 13.**

Termination of preservation order

- 34**
- (1) **A preservation order made under section 27 or extended or modified by an order made under section 32 terminates at the earlier of**
 - (a) **the date provided in the applicable order under either section 27 or section 32,**
 - (b) **the date of an by the court made an application where the court is satisfied**
 - (i) **the proceeding in which the plaintiff asserted a money claim has been discontinued, dismissed or otherwise**
 - (ii) **61 days have elapsed after entry of a 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,**
 - (iii) **the defendant or other person has provided security in a form and in an amount considered sufficient by the court, or**
 - (e) **a judgment obtained by the plaintiff in the proceeding has been satisfied.**
 - (2) **After a preservation order has terminated, section 50 applies to the registration of a notice of preservation order.**

Sale of property which is subject to a preservation order may be permitted

- 35**
- (1) **An application may be made to the court to authorize the sale or other disposition of property that is subject to a preservation order and the court may authorize that sale or disposition by an enforcement officer instructed by the plaintiff if, in the opinion of the court,**
 - (a) **the property, if not sold or disposed of, will**
 - (i) **depreciate substantially in value, or**
 - (ii) **be unduly expensive to keep under a preservation order, or**
 - (b) **it is necessary or prudent to sell or dispose of the property for any other reason not referred to in paragraph (a).**
 - (2) **If the court authorizes the sale or disposition of property under subsection (1),**
 - (a) **the sale of personal property must be conducted in a manner consistent with the sale of seized property under Part 9 of this Act, and**
 - (b) **the sale of land must be conducted in a manner consistent with Part 10.**

- (3) **If a sale or disposition of property is conducted under subsection (2), the enforcement officer must pay the proceeds of the sale or disposition, after deducting the fees and expense of the enforcement officer, into court.**

Compensation if dealings with property are inconsistent with preservation order

- 36**
- (1) **If a person 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 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) in respect of a dealing referred to in that subsection must not exceed the value of property that was dealt with by that person. .**
- (3) **The court must not make an order under subsection (1) against a person if the person's dealing that caused the loss was necessary to meet a legal duty of the person that**
- (a) **arose before the person acquired knowledge of the preservation order, and**
- (b) **was owed to someone other than the defendant.**
- (4) **Nothing in this section restricts the power of the court to punish for contempt.**

PART 5: CREATION AND PRIORITY OF AN ENFORCEMENT CHARGE

Registration of notice of judgment

- 37**
- (1) **Unless the court which issued the judgment otherwise orders under subsection (3), a judgment creditor may register a notice of judgment in the registry.**
- (2) **A notice of judgment registered under subsection (1) must be in the prescribed form and must be registered in accordance with Part 6 and the regulations.**
- (3) **At any time after it grants a judgment, the court may, if a notice of judgment has not been registered with respect to that judgment, order that a notice of judgment not be registered with respect to the judgment until further order of the court.**

Creation of an enforcement charge

- 38** **Registration of a notice of judgment under section 37 creates a charge on the judgment debtor's interest in**

- (a) **all personal property, including fixtures and growing crops, existing at the time of registration and all personal property acquired by the judgment debtor after the registration of the notice of judgment and before its discharge, or**
- (b) **those items or kinds of personal property, including fixtures or growing crops, that are described in the prescribed manner in the registration of the notice of judgment .**

Priority of enforcement charge

39 (1) In this Part:

“consumer goods” means goods that are used or acquired for use primarily for personal, family or household purposes;

“equipment” means goods, other than consumer goods, that are not

- (a) **held by the judgment debtor for sale or lease,**
- (b) **leased by the judgment debtor as lessor,**
- (c) **furnished or to be furnished by the judgment debtor under a contract of service,**
- (d) **raw materials or work in progress held by the judgment debtor,**
or
- (e) **materials used or consumed in a business of the judgment debtor;**

“serial numbered goods” means an aircraft, a motor vehicle, trailer, mobile home, boat or an outboard motor for a boat, as those terms are defined by the regulations under the *Personal Property Security Act*.

- (2) **Except as otherwise provided in this Act, an enforcement charge has the same priority in relation to interests in personal property charged by it, whether those interests arose before or after the creation of the enforcement charge, as would a perfected non-purchase money security interest in that personal property under the *Personal Property Security Act*.**
- (3) **Even though property charged by an enforcement charge is inventory or proceeds of inventory, as those terms are defined in the *Personal Property Security Act*, of a judgment debtor, the property is deemed, for the purposes of subsection (2), not to be inventory or proceeds of inventory.**
- (4) **Subject to subsections (5) to (8), as between an enforcement charge charging serial numbered goods that are consumer goods or equipment and a security interest in those goods, the first to be registered has priority.**
- (5) **An enforcement charge does not have priority over a security interest unless the notice of judgment that was registered to create the**

enforcement charge includes a description of the goods by serial number in the manner prescribed by the regulations under the *Personal Property Security Act* for serial number registrations.

- (6) **A security interest does not have priority over an enforcement charge with respect to any advance made after the secured party knows the enforcement charge has come into existence.**
- (7) **Subsection (6) does not apply to the following:**
 - (a) **advances made under a legally binding obligation that was**
 - (i) **owed to a person other than the judgment debtor, and**
 - (ii) **incurred by the secured party before knowing the enforcement charge had come into existence;**
 - (b) **reasonable costs incurred and expenditures made by the secured party for protection, preservation or repair of the property charged by the enforcement charge.**
- (8) **If an enforcement charge charges goods that are a fixture or a growing crop and the goods are also charged by a security interest, other than an interest to which [insert the name of the Land Title Act or similar statute in the enacting Province / Territory that governs interests in land] applies, the priority between the enforcement charge and the security interest must be determined without regard to the fact that the goods are a fixture or a growing crop.**
- (9) **Sections [insert relevant section numbers of the Personal Property Security Act, eg. sections 36 and 37 of the Saskatchewan PPSA] of the *Personal Property Security Act* do not apply to an enforcement charge charging a fixture or growing crop.**

Protection of buyers and lessees of goods in the ordinary course of business

40 (1) In this section:

“buyer of goods” includes a person who obtains vested rights in goods, under a contract to which the person is a party, as a consequence of the goods becoming a fixture or an accession to property in which the person has an interest;

“ordinary course of business of the seller” includes the supply of goods in the ordinary course of business as part of a contract for services and materials;

“seller” includes a person who supplies goods that become a fixture or an accession under a contract with a buyer of goods or with a person who is party to a contract with a buyer.

- (2) **A buyer of goods, or a lessee of goods, if those goods are sold or leased in the ordinary course of business of a judgment debtor, takes them free of any enforcement charge otherwise affecting the goods, whether or not the buyer or lessee knows of the charge, unless the**

buyer or lessee also knows that the goods bought or leased have been seized under this Act.

- (3) A buyer of goods, or a lessee of goods, if those goods are of serial numbered goods that are consumer goods or equipment, takes them free of any enforcement charge charging the goods if the buyer or lessee buys or leases the goods without knowledge of the enforcement charge, unless
 - (a) the notice of judgment that was registered to create the enforcement charge includes a description of the goods by serial number in the manner prescribed by the regulations under the *Personal Property Security Act* for serial number registrations, and
 - (b) the registration of the notice of judgment was effected before the interest of the buyer or lessee arises.
- (4) A buyer of goods, or a lessee of goods, if the goods are exempt from seizure under Part 11 takes them free of an enforcement charge charging the goods.
- (5) Subsection (4) does not apply to a sale or lease of goods unless accompanied by the immediate, actual and continued change of possession of the goods to the buyer or lessee.
- (6) A sale or lease mentioned in this section
 - (a) may be for cash, by exchange for other property or on credit, and
 - (b) includes a delivery of 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.
- (7) For the purposes of this section, a buyer of goods, or a lessee of goods, is deemed to have knowledge of an enforcement charge if that person has knowledge that the property being bought or leased is the subject of enforcement proceedings or has been seized.

Subordinate interests

- 41 (1) In this Act, a reference to an interest in property being subordinate to an enforcement charge means the interest is subordinate to the rights or interest arising under this Act of the judgment creditor who holds that enforcement charge.
- (2) An interest in property that is subordinate to an enforcement charge is also subordinate to the rights or interest of a representative of creditors, including a trustee in bankruptcy, for the purpose of enforcing rights of the judgment creditor under the enforcement charge.

- (3) If an interest in property is subordinate to an enforcement charge,**
 - (a) the property is subject to enforcement proceedings to the same extent that the property would have been if the subordinate interest did not exist, and**
 - (b) a person who acquires the property as a result of enforcement proceedings acquires the property free of the subordinate interest.**
- (4) An interest in property that is subordinate to an enforcement charge is subordinate to the extent of the amount outstanding under the judgment to which the enforcement charge relates at the time the enforcement proceedings are taken against the property.**

Subsequently acquired interests are subordinate to an enforcement charge

- 42** Except as otherwise provided in this or another Act, an interest acquired in the judgment debtor's property after the judgment debtor's property is charged by an enforcement charge is subordinate to the enforcement charge.

Termination of enforcement charge

- 43** An enforcement charge terminates on the earlier of
- (a) the discharge or expiry of the registration of the applicable notice of judgment, and**
 - (b) the time the judgment to which the enforcement charge relates has been satisfied, withdrawn or set aside or becomes otherwise unenforceable.**

Filing an appeal of judgment does not effect enforcement charge

- 44** Unless otherwise ordered by the court, an enforcement charge created by registration of a notice of judgment remains in effect even though an appeal has been taken against the judgment or an order has been made staying enforcement of the judgment.

PART 6: REGISTRATION OF NOTICE OF JUDGMENT

Duration of registration of notice of judgment

- 45** (1) An enforcement charge created by the registration of a notice of judgment under section 37 is effective from the time of the registration until the registration expires in accordance with the terms of the notice of judgment or until any earlier discharge of the notice of judgment under subsection (2) or section 49.
- (2) The court may order that a registered notice of judgment be discharged.

Amendment and renewal of a notice of judgment

- 46** (1) **At any time before the registration of a notice of judgment expires, the notice of judgment may be**
- (a) **amended by registering an amendment notice in the prescribed form, or**
 - (b) **renewed by registering a renewal notice in the prescribed form.**
- (2) **If any interested person satisfies an enforcement officer that information contained in a notice of judgment is incorrect, and that an amendment of the notice of judgment is necessary, the enforcement officer may register an amendment notice to ensure that the notice of judgment shows the correct information.**
- (3) **Without limiting subsection (1) (a) or (2), an amendment notice may be used to**
- (a) **disclose an assignment or transfer by the judgment creditor of the money judgment in relation to which the notice of judgment was registered**
 - (b) **disclose a transfer by operation of law of the right to enforce that judgment, or**
 - (c) **disclose any subordination by the judgment creditor of the rights of the judgment creditor to the interest or rights of another person.**
- (4) **An amendment notice is effective from the time of its registration for the remainder of the registration period of the notice of judgment and any renewal of it.**
- (5) **A notice of judgment that has been renewed under this section is renewed for the period indicated on the renewal notice and retains the same priority that it had before the registration of that renewal notice.**

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

- 47** **Within 30 days after the registration of a notice of judgment, an amendment notice or a renewal notice, “X” [an enacting jurisdiction may choose between placing this obligation on either the judgment creditor, the enforcement officer or the registrar of the registry] must send a statement to the judgment debtor advising of the registration.**

Defect in registration does not affect validity unless it is seriously misleading

- 48** (1) **Subject to subsection (2), the validity of the registration of a notice of judgment, amendment notice or renewal notice is not affected by a defect, irregularity, omission or error in the notice of judgment or in the registration of it.**

- (2) A registration of a notice of judgment, amendment notice or renewal notice is ineffective if there is a seriously misleading defect, irregularity, omission or error in the name of the judgment debtor.**
- (3) In order to establish that a defect, irregularity, omission or error is seriously misleading, it is not necessary to prove that anyone was actually misled by it.**

Discharge or amendment of notice of judgment

- 49**
- (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 notice of judgment relates is no longer in force,**
 - (ii) the registration of the notice of judgment is no longer effective as a result of the expiry of the period for which the notice of judgment was registered or as a result of a court order that the notice of judgment be discharged, or**
 - (iii) the person named in it as a judgment debtor is not the judgment debtor of the judgment creditor, or**
 - (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,**
 - (ii) the enforcement officer or the court has determined to be exempt under Part 11, or**
 - (iii) is not property of the judgment debtor.**
 - (2) If a person named in a notice of judgment as the judgment debtor or a person with an interest in property affected by the registration of the notice of judgment 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) 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 the registration of that notice of judgment, 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.**

- (4) If an order made under subsection (3) 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.**
- (5) 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] 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) (c), or**
 - (c) obtain and submit to the registrar for filing a copy of an entered court order, made under subsection (3), that the notice of judgment need not be discharged or amended.**
- (6) If a judgment creditor referred to in subsection (5) 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 of 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, concurrently with that record, proof satisfactory to the registrar that subsections (1) and (6) apply to the notice of judgment.**

Registration does not constitute notice or knowledge of notice of judgment

50 Registration of a notice of judgment in the registry does not constitute notice to or knowledge of any person of the existence of the notice of judgment.

Circumstances where a person is deemed to have knowledge of notice of judgment

51 For the purposes of this Part, a person is considered to have knowledge of a notice of judgment if that person has knowledge that property which is charged by an enforcement charge created by the registration of a notice of judgment is the subject of enforcement proceedings or has been seized.

Removal of expired data from the registry

52 When a notice of judgment is no longer effective, it may be removed from the records of the registry in accordance with the regulations.

Obtaining legal name of judgment debtor from Vital Statistics

53 (1) The Director of Vital Statistics must provide to a judgment creditor or to an agent of a judgment creditor the name or names contained in

the records under the Director's control that bear a close resemblance to the name of the judgment debtor as it appears on a judgment if the judgment creditor or agent

- (a) delivers to the Director**
 - (i) a certified copy of the judgment, and**
 - (ii) the prescribed fee, and**
 - (b) complies with the requirements of [insert appropriate section of Vital Statistics Act of province or territory].**
- (2) For the purposes of subsection (1), the question of whether a name contained in the records under the Director's control bears a close resemblance to the name of the judgment debtor must be determined by the Director.**

PART 7: OBTAINING DISCLOSURE

Compelling disclosure of information

- 54 (1) Subject to subsection (2), a judgment creditor may do one or more of the following:**
- (a) by issuing an enforcement instruction in accordance with Part 8, instruct an enforcement officer to require the judgment debtor to complete and return a questionnaire to the enforcement officer that discloses**
 - (i) all of the property in which the judgment debtor has a 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 of the 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 or alias to whom it is to be paid, and**
 - (iii) any other information specified by the judgment creditor that may reasonably assist the judgment creditor with the enforcement of the judgment against the judgment debtor including, without limitation, copies of any records in the possession or control of the judgment debtor that contain**

information pertaining to the matters specified in subparagraphs (i) and (ii), or that are specified by the enforcement officer;

- (b) by issuing an enforcement instruction in accordance with Part 8, instruct the enforcement officer to require the judgment debtor to attend before the enforcement officer, or before any person designated by the enforcement officer for this purpose, at a set time and place for an examination under oath to answer questions about any matter referred to in paragraph (a),**
 - (c) apply to the court for an order that requires the 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 paragraph (a), or**
 - (ii) attend before the enforcement officer, or before any person designated by the court at a set time and place for an examination under oath to answer questions about any matter referred to in paragraph (a), and****
 - (d) apply to the court for an order requiring the judgment debtor to provide to any or all of the following, as the court may direct, 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:
 - (i) [insert name of the vital statistics registry in the enacting Province / Territory];**
 - (ii) [insert name of the motor vehicles registry in the enacting Province / Territory];**
 - (iii) [insert name of the medical services plan in the enacting Province / Territory].****
- (2) An instruction under subsection (1) (a) or (b) must be accompanied by the prescribed fee.**

Time within which to respond to demand for information

55 A judgment debtor who is required to complete and return a questionnaire under section 55 (a) or to attend at an examination under section 55 (b), or a person who is required to disclose information under section 55 (c) or to authorize disclosure of information under section 55 (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.

Consequences of failing to disclose demanded information

- 56** (1) A person commits an offence who, without lawful excuse, fails to comply with section 56 or fails to provide complete and accurate information in any questionnaire, examination or disclosure under that section.
- (2) 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 55 (a), or
 - (ii) an examination that the judgment debtor is required to attend under section 55 (b);
 - (b) if the judgment debtor fails to complete a questionnaire that the judgment debtor is required to complete under section 55 (a) or fails to attend an examination that the judgment debtor is required to attend under section 55 (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 disclosing the existence or location of assets of the judgment debtor, and to
 - (i) examine those records, or
 - (ii) take temporary possession of those records and remove them from the premises for the purpose of making copies;
 - (c) order the judgment debtor or other person referred to in section 55 (c) to refrain from destroying, hiding or removing from the province any records indicating the existence and location of property of the judgment debtor.
- (3) An order must not be made under subsection (2) (b) unless the court is satisfied that information, specified in the application, regarding property of the judgment debtor cannot otherwise be reasonably obtained.
- (4) An offence is not committed under subsection (1) and an order must not be made under subsection (2) unless the requirement that the judgment debtor complete a questionnaire under section 55 (a), the requirement that the judgment debtor attend an examination under section 55(b) or the requirement that a person disclose information or attend an examination under section 55 (c), as the case may be, has been personally delivered to the person to whom the requirement is directed.

Enforcement officer must disclose information to other judgment creditors who request

- 57** If information respecting a judgment debtor or any property in which the judgment debtor has an interest has been disclosed under this Part to an enforcement officer, the enforcement officer must, on receiving a written request to do so from any person who has given a subsisting enforcement instruction relating to a judgment obtained against the judgment debtor, disclose the requested information to that person.

PART 8:- ENFORCEMENT INSTRUCTIONS

Enforcement instructions given by judgment creditor to enforcement officer

- 58** (1) A judgment creditor who wishes to initiate an enforcement proceeding must give an enforcement instruction to an enforcement officer.
- (2) An enforcement instruction must
- (a) be in the prescribed form,
 - (b) include the amount of the judgment to be enforced,
 - (c) identify any enforcement proceedings that the enforcement officer is being requested to undertake, and
 - (d) include any prescribed information.
- (3) Enforcement instructions delivered to an enforcement officer must be accompanied by the following:
- (a) a statement in the prescribed form, signed by the either the judgment creditor delivering 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 and dated not more than 5 days before the date on which the enforcement instruction is delivered, indicating that
 - (i) a notice of judgment has been registered in the registry by the judgment creditor against the name of the judgment debtor, and
 - (ii) the registration of that notice of judgment remains in effect;
 - (c) if the enforcement officer to whom the enforcement instruction is delivered is directed 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, indicating that the notice of judgment registered by the judgment creditor identified the serial number of the goods;

- (d) a copy of the judgment to be enforced,
 - (e) if an enforcement proceeding to be taken by the enforcement officer is ordered by a court, a copy of the entered court order,
 - (f) payment of the fee prescribed for the delivery of an enforcement instruction to an enforcement officer or an undertaking satisfactory to the enforcement officer, for the payment of the enforcement officer's fees and costs;
 - (g) any other prescribed records.
- (4) Unless the court otherwise orders, an enforcement officer may refrain from taking any enforcement measures until the enforcement officer receives
- (a) an undertaking, satisfactory to the enforcement officer, for the payment of the enforcement officer's fees and costs, and
 - (b) if required by the enforcement officer, security, satisfactory to the enforcement officer, to secure that payment.
- (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 costs to the extent those fees and costs are 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.
- (6) Subject to subsection (4) and section 49, an enforcement officer to whom an enforcement instruction is delivered must, promptly after receipt of the records referred to in subsections (1) and (3), take the enforcement proceeding that is requested in the enforcement instruction if, in the opinion of the enforcement officer, the enforcement proceeding is
- (a) in accordance with this Act,
 - (b) in accordance with any court order made in relation to it, and
 - (c) commercially reasonable and practicable.

Enforcement officer's authority

- 59** Unless otherwise provided in this Act, enforcement officers have, in respect of money judgments, the power and authority to implement enforcement proceedings under this Act with respect to property located anywhere in [insert name of enacting Province / Territory] without the need for further authority from the court.

Supplementary enforcement instructions

- 60**
- (1) Information contained in 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,**
 - (b) include the amount of the judgment to be enforced,**
 - (c) identify any enforcement proceedings that the enforcement officer is being requested to undertake, and**
 - (d) include any prescribed information.**
 - (3) A judgment creditor who has given an enforcement instruction to an enforcement officer in relation to a judgment**
 - (a) must, in any of the following cases, promptly give to the enforcement officer a supplementary enforcement instruction to confirm the following or withdraw the enforcement instruction:**
 - (i) all or any portion of the judgment has been discharged by court order, set-off, the payment of money or the 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 judgment creditor receives, from the enforcement officer, a written demand to deliver the supplementary enforcement instruction or withdraw the enforcement instruction, as the case may be, and**
 - (b) may, in any other case, deliver to the enforcement officer a supplementary enforcement instruction.**

Effect of withdrawal of enforcement instructions by judgment creditor

- 61**
- (1) A judgment creditor who has given an enforcement instruction to an enforcement officer may withdraw the enforcement instruction at any time after its delivery by giving a notice writing to the enforcement officer withdrawing the enforcement instructions.**
 - (2) If a 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 judgment creditor of the judgment debtor, and

- (b) the judgment creditor is obligated to pay the enforcement officer any fees to which the enforcement officer has become entitled for services provided in relation to, and any expenses incurred by the enforcement officer with regard to actions taken by the enforcement officer under the enforcement instruction that has been withdrawn.**

Termination and expiration of a subsisting enforcement instruction

- 62**
- (1) If the 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 the enforcement officer is unable to locate any property of the judgment debtor that will satisfy the subsisting enforcement instruction, the enforcement officer may terminate a subsisting enforcement instruction by giving a termination notice to the judgment creditor who provided the enforcement instruction.**
 - (2) A subsisting enforcement instruction given by a judgment creditor to an enforcement officer lapses on the later of**
 - (a) the date that is 6 months after the date on which the enforcement instruction or the last supplementary enforcement instruction relating to it was given to the enforcement officer, and**
 - (b) the date on which all enforcement proceedings which the enforcement officer has been instructed to take under the enforcement instruction are completed.**

If 2 or more enforcement instructions are delivered to an enforcement officer

- 63**
- Unless the court otherwise orders, if an enforcement officer receives enforcement instructions from 2 or more judgment creditors, the enforcement officer must proceed under the earliest enforcement instruction received by the enforcement officer unless**
- (a) that enforcement instruction is withdrawn by the judgment creditor who issued the enforcement instruction,**
 - (b) that enforcement instruction is terminated by the enforcement officer, or**
 - (c) the judgment creditor who gave that enforcement instruction gives to the enforcement officer**
 - (i) a supplementary enforcement instruction instructing the enforcement officer to on behalf of that judgment creditor and one or more other specified judgment creditors, and**
 - (ii) from each of the specified judgment creditors,**

- (A) an undertaking, satisfactory to the enforcement officer, for the payment of the enforcement officer's fees and costs, and
- (B) if required by the enforcement officer, security, satisfactory to the enforcement officer, to secure that payment.

PART 9 – ENFORCEMENT PROCEEDINGS AGAINST PERSONAL PROPERTY

Division 1: PERSONAL PROPERTY GENERALLY

Application of this Division

- 64** Unless otherwise provided, Division 1 applies to enforcement proceedings under this Part.

Methods of seizure

- 65** (1) An enforcement officer may seize personal property of a judgment debtor
- (a) by taking physical possession of it unless this interferes with the possession, or a right to possession, of another person that was lawfully acquired before the seizure,
 - (b) while at the place where the property is located, by giving notice of seizure to
 - (i) the judgment debtor or an adult member of the judgment debtor's household,
 - (ii) an adult person occupying or working at the location at which the property is located, or
 - (iii) any person who has possession or control of the property,
 - (c) by attaching the notice of seizure to a conspicuous place on the property or in a conspicuous place in close proximity to the property, or
 - (d) by any other method ordered by the court.

Seizure of property in possession of third parties

- 66** (1) Subject to section 65(1)(a), if a judgment debtor has an immediate right to possession of personal property and there are reasonable grounds for believing that the property is in the possession or control of a third party, the enforcement officer may, and, if instructed to do so by the instructing creditor, must, give the notice of seizure and a demand for delivery in the prescribed form to the third party.
- (2) A third party on whom a demand is served under this section must

- (a) if the property is at the location where the notice of seizure is given to the third party, immediately deliver the property to the enforcement officer, or
 - (b) if the property is not at the location where the notice of seizure is given to the third party, advise the enforcement officer of the place at which seizure of the property may be effected and take reasonable steps to ensure that the property remains at that place until it is seized,
and comply with the direction of the enforcement officer to do any one or more of the following
 - (c) immediately take any action that may be necessary to transfer the property to the enforcement officer,
 - (d) take or refrain from taking an action in relation to the property,
 - (e) 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, advise the enforcement officer of that fact and that, as a result, the third party is not required to comply with paragraphs (a) to (d) inclusive.
- (3) If a third party complies with a demand or direction made under this section, the enforcement officer must compensate the third party for expenses reasonably incurred by the third party in complying with that demand.
- (4) A third party who, without reasonable excuse, fails to comply with a demand made under this section, is liable under section 11 to a person who has suffered loss or damage as a result of the failure to comply.
- (5) If the enforcement officer takes possession of personal property of a judgment debtor from a third party on whom a demand given under this section, the third party is discharged from any responsibility that the third party may have had to hold the property for, or to return it to any person.
- (6) This section does not apply to a security or a security entitlement, as defined in Division 9 of Part 9 that is held on behalf of a judgment debtor by an intermediary, as defined in that Division.
- (7) If an enforcement officer seizes personal property of the judgment debtor from the possession of a third party and the enforcement officer is subsequently satisfied that the third party has a right to retain the property, the enforcement officer must revoke the seizure and release the property to the third party.
- (8) If an enforcement officer seizes personal property of the judgment debtor from the possession of a third party and the third party does not assert any claim to possession of the seized property as soon

practicable after the seizure of the property, the enforcement officer is not liable for any pecuniary loss suffered by the third party.

Seizure of personal property subject to statutory right of distress

67 When an enforcement officer seizes personal property 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 in the sale 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], and
- (b) the costs of seizure and sale.

Seizure of property subject to exclusive possession order under family legislation

68 If an enforcement officer seizes personal 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

- (a) must release the property from seizure if the enforcement officer is satisfied that the order for exclusive possession was made before the registration of a notice of judgment that creates an enforcement charge relating to the property, or
- (b) may maintain the seizure and proceed with the enforcement proceeding if a notice of judgment was registered to create an enforcement charge relating to the property before the exclusive possession order was made, but not otherwise.

Quantity of property to be seized

69 An enforcement officer must seek to seize enough of the judgment debtor's personal property to satisfy:

- (a) the judgment of the instructing judgment creditor and the judgments of all judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer, and
- (b) any claims, including the fees and expenses of the enforcement officer, that must be paid from the distributable fund under section 229(1) before payment to judgment creditors under section 229(1)(i).

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

70 (1) Unless a notice of seizure was given to a judgment debtor at the time of a seizure, a copy of the notice of seizure must be given to the judgment debtor as soon as practicable after the seizure of property.

- (2) If personal property of the judgment debtor is seized from the possession of a person other than the judgment debtor, unless a notice of seizure was given to such person at the time of the seizure, a copy of the notice of seizure must be given to that person as soon as practicable after the seizure.**

Irregularities in seizure

- 71 (1) A seizure or sale of personal property by an enforcement officer under this Part is not invalidated by an irregularity in**
- (a) the procedures by which a seizure or sale is carried out, or**
 - (b) a notice of seizure, demand for delivery, direction, statement, enforcement instruction or registration of the notice of judgment.**
- (2) Despite subsection (1), the court may order that a seizure be discontinued if the court is satisfied that a person has been or is likely to be prejudiced by an irregularity in the procedure by which the seizure was carried out.**

Method of Disposition to realize upon value of seized property

- 72 (1) Subject to sections 10 and 82, if an enforcement officer has seized a judgment debtor's interest in personal property, the enforcement officer**
- (a) must, unless the court orders otherwise, dispose of the judgment debtor's interest in personal property by utilizing the method that in the opinion of the enforcement officer is likely to produce the highest net proceeds of sale, and**
 - (b) may delay the disposition of seized property if it appears that 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 .**
- (2) Unless the court orders otherwise, any judgment creditor may bid at a sale conducted by the enforcement officer and purchase the judgment debtor's interest in property charged by the enforcement**

Notice of sale requirement - redemption of seized property

- 73 (1) At least "X" days [Insert the number of days that is consistent with the comparable section of the PPSA legislation in the province /territory. For example, in the BC PPSA, s. 57(6) provides for a 20 day notice period] before disposing of personal property seized under this Division, the enforcement officer must give a notice of sale in the prescribed form to:**
- (a) the judgment debtor,**

- (b) any person who is known by the enforcement officer to be an owner of the seized property as a joint tenant or a tenant-in-common,**
 - (c) any person with a security interest in the seized property perfected by registration under the Personal Property Security Act before the day on which the notice of sale is given to the judgment debtor notwithstanding that the security interest is subordinate to an enforcement charge against the judgment debtor,**
 - (d) any person with a security interest in the seized property perfected by possession at the time when the enforcement officer seized the property,**
 - (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 with an effective enforcement charge against the judgment debtor's property unless the enforcement officer has received a subsisting enforcement instruction from the judgment creditor.**
- (2) The notice of sale referred to in subsection (1) must contain**
- (a) a description of the property to be sold,**
 - (b) a statement of the aggregate amount recoverable under all of the judgments for which the enforcement officer has a subsisting enforcement instruction,**
 - (c) an estimate of the amount of the enforcement officer's fees and expenses,**
 - (d) a statement that, on payment of the amounts referred to in paragraph (b) and any portion of the costs referred to in paragraph (c) that have been incurred to the date of payment, 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 employed by the enforcement officer.**
- (3) Promptly after payment by a person described in subsection (1) of the amount referred to in subsection (2)(b) and that portion of the costs referred to in subsection (2)(c) that have been incurred to the date of the payment, the enforcement officer must release the property from seizure.**

Notice of sale not required

74 The enforcement officer may sell personal property seized under this Part without giving the notices mentioned in section 76 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 is disproportionately large in relation to its value;
- (e) the seized property is unique or designed for a special purpose, and
 - (i) the enforcement officer has received 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.

Private sales – notice requirement

- 75**
- (1) Before an enforcement officer disposes of seized property by means of a sale, transfer or other form of disposition, other than by public tender or auction, to person who is a judgment creditor of the judgment debtor, at least 15 days notice of the proposed disposition must be given by the enforcement officer to
 - (a) the judgment debtor,
 - (b) the instructing judgment creditor,
 - (c) any other judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer,
 - (d) persons with a security interest, registered in the registry, that is subordinate to the earliest notice of judgment registered against the judgment debtor, and
 - (e) third persons who are known to the enforcement officer as having claimed an interest in the property.
 - (2) The notice of the proposed disposition required under subsection (1) must describe the method and terms of the proposed disposition.

Disposition of property or proceeds not required to satisfy judgments, costs, fees

- 76** If, after a seizure, the enforcement officer conducted the seizure has any personal property of the judgment debtor that is not required to satisfy a subsisting enforcement instruction in the hands of the enforcement officer and if, before returning that property to the judgment debtor, the enforcement officer receives a new enforcement instruction requesting seizure of exigible property of the judgment debtor, the enforcement officer may retain the excess property that is not exempt to satisfy the new enforcement instruction.

Judgments of the Federal Court of Canada

- 77** (1) If a notice of judgment is registered in accordance with Parts 5 and 6 in relation to a judgment of the Federal Court of Canada, enforcement proceedings with regard to the enforcement charge created by the registration of the notice of judgment are subject to this Act.
- (2) A judgment creditor who has a judgment granted by the Federal Court of Canada and who proceeds with enforcement proceedings under the *Federal Court Act (Canada)* and the Federal Court Rules is, as a result, precluded from enforcing the judgment under this Act.

Application for a stay of enforcement proceedings

- 78** (1) A judgment debtor or a judgment creditor may apply to the court for a stay of enforcement with respect to the property of the judgment debtor or a portion of it, and the court may stay enforcement, if the court considers that it would be just and equitable to do so, on any terms and conditions that the court considers appropriate.
- (2) In determining whether it is just or equitable to grant a stay of enforcement, the court must consider the interests of the creditors as a whole and the interest of the judgment debtor including,
- (a) whether the stay would clearly be in the best interests of the creditors as a whole, and
 - (b) whether the property is an income source or a potential income source of the judgment debtor that is or may produce income equivalent to the income that would be exempt under Part 13 if the income were salary or wages.
- (3) A judgment creditor or judgment debtor may apply to the court for the repeal or variance of a stay of enforcement based on new information or a change in circumstances including an increase in the total amount of enforcement debts on related notices of judgment.

Purchaser's entitlement to discharge of the registration of notices of judgment upon a purchase from the enforcement officer

- 78A (1) A person who purchases seized personal property from an enforcement officer and who pays to the enforcement officer an amount equal to the lesser of**
- (a) the amount recoverable on all judgments in relation to which the enforcement officer has received a subsisting enforcement instruction, and**
 - (b) a price that could reasonably be expected to be obtained on a sale conducted as part of an enforcement proceeding**
- is entitled to have all the notices of judgment removed from the registry that charge the seized property notwithstanding that a judgment creditor does not receive full satisfaction of the judgment.**

Comment

Professors Buckwold and Cuming explain the need for the last language following the word “notwithstanding” in their Explanatory Note following this section, as follows:

*This provision would address the situation in which a person pays the full amount owing to a judgment creditor but the creditor refuses to discharge an enforcement charge because he or she will get only a portion of the money paid as a result of the operation of this Part. It codifies the position taken by the Saskatchewan Supreme Court in *Trust and Loan Company v. Cook* (1910), 3 Sask L. Rep. 210. This could occur in the following circumstances. A person buys property from the judgment debtor that, at the time of the purchase, is subject to an enforcement charge in favour of a judgment creditor. After title to the property has passed to the buyer, other judgments are registered against the seller. The buyer pays the amount secured by the enforcement charge on the property he or she bought and demands that it be removed. Under section 78 {s. 78A of the Uniform Act}, the judgment creditor could not refuse to discharge his or her enforcement charge on the basis that, under this Part, he or she would have to share the amount paid by the buyer with other judgment creditors and would thus not receive full payment of the amount owing under his or her judgment.*

“A price that could reasonably be expected to be obtained on a sale conducted as part of an enforcement proceeding ...” will likely be less than “fair market value”.

Division 2: PERSONAL PROPERTY OWNED BY A JUDGMENT DEBTOR AS A JOINT TENANT OR TENANT-IN-COMMON

Application of this Division

79 Unless otherwise provided, this Division 2 applies to enforcement proceedings under this Part.

Seizure of personal property held in joint tenancy or tenancy in common

- 80**
- (1)** An enforcement officer may seize a judgment debtor's interest in personal property held in joint tenancy or in tenancy in common with one or more persons by giving a notice of seizure to
 - (a)** the judgment debtor, and
 - (b)** to each of the other persons who are known to the enforcement officer to have an interest in the property as a joint tenant or tenant in common.
 - (2)** Despite section 65(1)(a), subsection (1) of this section applies to an interest in personal property of judgment debtor as a joint tenant or tenant in common even though the property is in the possession of, or is subject to the right of possession of, a joint tenant or tenant in common.
 - (3)** Despite subsection (1), personal property of a partnership must not be seized unless that seizure is effected under a subsisting enforcement instruction applicable to a judgment granted against the partnership.
 - (4)** The creation of an enforcement charge charging a judgment debtor's interest in personal property held in joint tenancy does not, of itself, suspend or sever the joint tenancy in the personal property affected.
 - (5)** Seizure of a judgment debtor's interest in personal property held in joint tenancy does not, of itself, suspend or sever the joint tenancy in the personal property affected.
 - (6)** An enforcement charge against a judgment debtor's interest in personal property held in joint tenancy with a person who is not a judgment debtor continues in effect despite the death of the judgment debtor whether or not the joint tenancy is with survivorship.
 - (7)** The enforcement charge referred to in subsection (6) charges the interest of the surviving joint tenants in the personal property only to the extent of an amount equal to the lesser of
 - (a)** the amount owing on all enforcement charges affecting the property; and
 - (b)** the value, as of the date of the judgment debtor's death, of the deceased judgment debtor's interest if it had been severed by partition and sold by the enforcement officer as an interest as a tenant in common.

- (8) There is a rebuttable presumption that, for property charged by an enforcement charge referred to in subsection (6), each person who holds an interest in the personal property as joint tenant or as tenant in common has an equal interest in the property.**
- (9) On application by the enforcement officer or an interested person in respect of personal property charged by the enforcement charge referred to in subsection (6), the court may determine that**
 - (a) the judgment debtor's interest in the property is greater or less than that specified in subsection (8), or**
 - (b) a person does or does not hold an interest as joint tenant or as a tenant in common with the judgment debtor in the property.**
- (10) If a person alleges that he or she holds an interest as joint tenant or as a tenant in common with the judgment debtor in personal property charged by an enforcement charge, other than as provided in subsection (8), must prove the existence and the extent of that interest.**

When notice of seizure must be given to joint tenants and tenants-in-common

- 81 If a judgment debtor's interest in personal property as a joint tenant or tenant-in-common is seized, the enforcement officer who conducted the seizure must, within 5 days after the seizure, give to each person known by the enforcement officer to be a joint tenant or tenant in common a copy of the notice of seizure and a statement that informs the joint tenant or tenant in common of the right under section 82 to purchase the judgment debtor's interest.**

Right of other joint tenants or tenants in common to purchase judgment debtor's interest

- 82 (1) Any person, other than the judgment debtor, who has an interest as a joint tenant or a tenant in common in personal property seized under this Act may purchase the judgment debtor's interest in the property, at its fair market value, at any time before the enforcement officer enters into a contract to sell the property.**
- (2) An enforcement officer who has seized personal property in which one or more persons, other than the judgment debtor, have interests as joint tenants or tenants in common must refrain from selling that property for at least 10 days after the date that the last notice referred to in section 81 was given, and, after that, may sell the judgment debtor's interest in the seized property unless, before a contract for sale of the property is entered into, a person referred to in section 81 delivers to the enforcement officer a written notice of intention to exercise the right referred to in subsection (1) of this section along with**

- (a) **payment of the fair market value of the judgment debtor's interest in the property, or**
 - (b) **security, in form and content satisfactory to the enforcement officer, to secure the payment of the fair market value of the judgment debtor's interest in the property.**
- (3) **On application by the enforcement officer or an interested person, the court may**
- (a) **determine the market value of the judgment debtor's interest, or**
 - (b) **extend the period of time referred to in subsection (2).**

Joint tenancy severed by sale or court order for sale

- 83 If a judgment debtor owns an interest in personal property together with one or more other persons as joint tenants, the joint tenancy is severed when**
- (a) **an enforcement officer enters into an agreement to sell the judgment debtor's interest in the property charged by the enforcement charge, or**
 - (b) **a court orders the judgment debtor's interest be sold.**

Purchaser from enforcement officer may apply for partition or an order for sale and division of proceeds

- 84 (1) A person who has purchased from an enforcement officer under this Act the judgment debtor's interest as joint tenant or tenant in common in personal property, may apply to the court for an order that**
- (a) **the property be partitioned, or**
 - (b) **the property be sold and the proceeds of sale be divided in accordance with the respective interests of the owners.**
- (2) **The applicant for an order under subsection (1) must serve notice of the application on all persons who are known to the applicant or the enforcement officer to have an interest in the property as a joint tenant or tenant in common.**
- (3) **At the request of an applicant under subsection (2), the enforcement officer must provide the applicant with the name and address of any person who has given a notice to the enforcement officer claiming an interest as a joint tenant or tenant-in-common in the property purchased by the applicant.**
- (4) **In an application under subsection (1), the court, in determining whether or not to grant the order, may consider**
- (a) **the nature of the property involved,**
 - (b) **the number of persons who have an interest in property as a tenant in common,**

- (c) the absence or disability of any of the persons who have an interest in property as a tenant in common, or
- (d) any other circumstances that are relevant to determining whether or not a sale of the property and a distribution of the proceeds would be more beneficial for the interested parties than a partition of the property.

Division 3: MOBILE HOMES

Definition applicable to this Division

85 In this Division, “mobile home” means a vacation trailer, house trailer or portable dwelling unit manufactured wholly or partially for use as living accommodations for one or more persons and capable of being attached to, towed, propelled or transported by a motor vehicle or transported by any means on its chassis or on the chassis of a vehicle, but does not include a vacation trailer, house trailer, or portable dwelling unit that is permanently attached to land.

Circumstances where court order required for delivery up

- 86** (1) If a judgment debtor has personal property that is a mobile home and
- (a) the mobile home is occupied by a judgment debtor or some other person, and
 - (b) the judgment debtor or the occupant fails, on demand, to deliver up possession of the mobile home,

an instructing judgment creditor, on notice to the judgment debtor and any occupant of a mobile home who failed to deliver up possession of the mobile home, may apply to the court for an order directing the judgment debtor or both the judgment debtor and the occupant to deliver up possession of the mobile home to the enforcement officer.

- (2) Unless an order requiring an occupant to deliver up possession of the mobile home to the enforcement officer will interfere with the possession, or a right to possession of the occupant that was lawfully acquired before the seizure, the court may order the judgment debtor and the occupant to deliver up possession of the mobile home to the enforcement officer.

Service of court order

87 If, under section 85, the court orders the occupant of a mobile home to deliver up possession of the mobile home and the occupant has been served with a copy of the entered order in accordance with the [insert name of Rules of Court of the province/territory], the enforcement officer to whom the instructing judgment creditor provide the enforcement

instructions may seize and obtain possession of the mobile home as authorized by the court order.

Division 4: PRODUCTS OF NATURE

Definitions applicable to this Division

88 In this Division:

“agricultural products” includes

- (i) crops,**
- (ii) livestock, and**
- (iii) products of crops or livestock, if those products are in their unmanufactured states and are in the possession of a person engaged in agricultural operations, including raising, fattening or grazing livestock;**

"aquaculture" means the cultivation of plants and animals that, at most stages of their development or life cycles, live in an aquatic environment;

"crops" means crops, whether matured or otherwise and whether naturally grown or planted, attached to land by roots or forming part of trees or plants attached to land, and includes trees only if they are

- (a) being grown as nursery stock,**
- (b) being grown for uses other than for the production of lumber and wood products, or**
- (c) intended to be replanted in another location for the purpose of reforestation;**

"fish" means fish, including shellfish and crustaceans and marine mammals;

"fishing" means fishing for or catching fish by a method other than from an aquaculture facility;

“growing crop” means a crop that has not been harvested by severing it from the land on which it is growing;

“products of nature” includes crops, agricultural products, products of aquaculture and products of the sea, lakes and rivers;

“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;**

“products of the sea, lakes and rivers” includes fish, marine and fresh water life that are

- (a) in their unmanufactured state, and**

- (b) in the possession of a person whose business or occupation is fishing,**
- but does not include products of aquaculture.**

After seizure, no removal of a growing crop or agricultural products before notice of seizure to persons with an interest in the land

- 89 An enforcement officer who seizes an agricultural product or growing crop must do so in accordance with section 65 and**
- (a) must not remove the seized agricultural product or growing crop before complying with section 90, and**
 - (b) must remove the seized agricultural product or growing crop in a manner that**
 - (i) causes no greater damage to the land and to other property situated on the land, and**
 - (ii) subjects the occupier of the land to no greater inconvenience than is necessarily incidental to the seizure and sale of the agricultural product or growing crop.**

Notice of intended removal and application to postpone removal

- 90 (1) If an enforcement officer seizes an agricultural product or a growing crop and the land on which it is located is not owned by the judgment debtor, the enforcement officer must give to each person who appears on the records of [insert the name of the land title or land registry office of the enacting province/territory] as having an interest in the land at the time the seizure, a notice of intended removal containing**
- (a) a description of the seized agricultural product or growing crop and of the land to which it is affixed,**
 - (b) the aggregate amount recoverable under all of the judgments for which the enforcement officer has a subsisting enforcement instruction, and**
 - (c) a statement that the agricultural product or growing crop may be removed and sold unless the amount recoverable referred to in paragraph (b) is paid before a specified date that is at least 15 days after the day that the notice of removal is given.**
- (2) If the notice of intended removal referred to in subsection (1) is given by registered mail, registered mail addressed to the recipient using the name and address that appears on the records of the [insert the name of the land title or land registry office of the enacting province/territory] satisfies the requirement of giving the intended notice of intended removal.**
- (3) A person who is entitled to receive a notice of intended removal under section 90 may apply to the court for an order postponing**

removal of the agricultural product or growing crop from the land or for the determination of an issue relating to the seizure.

No Sale before harvest except by court order

- 91** (1) **Unless the court orders otherwise, growing crops and products of aquaculture must not be sold by an enforcement officer until they have been harvested.**
- (2) **The court may, on application, authorize the sale of growing crops and products of aquaculture that have not been harvested if the court is satisfied that the sale will be commercially reasonable.**

Judgment Creditor may be required to provide security for harvesting expenses

- 92** **Unless a judgment debtor who has an interest in a seized product of nature undertakes to harvest that product, the enforcement officer who seized that product may require the instructing judgment creditor to provide security for the payment of harvesting expenses that may be incurred by the enforcement officer.**

Release of seizure where security for harvesting expenses not provided

- 93** **If security is requested under section 92 and the instructing judgment creditor does not provide the requested security, the enforcement officer may release the seized product of nature from seizure.**

Release of seizure on payment of amount specified in notice of seizure

- 94** **If payment is made to the enforcement officer under section 90, the agricultural product or growing crop ceases to be bound by the enforcement charges relating to the judgments that have been satisfied by payment of the amount referred to in section 90(1)(b).**

Harvesting expenses of enforcement officer are a first charge on proceeds of sale

- 95** (1) **If a product of nature that has been seized under this Part is harvested, marketed or disposed of by an enforcement officer, the expenses incurred by the enforcement officer in connection with the harvesting, marketing and disposing of the seized product of nature constitute a first charge on, and are payable out of, the proceeds realized from the disposition of that product in priority to any other claim to or right in that product or those proceeds, including, without limitation, a security interest, lien, charge, encumbrance, mortgage or assignment, whether or not arising under a statute.**
- (2) **If any of the harvesting expenses incurred by the enforcement officer were paid for 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 creditor and that charge has the same priority as it would have under subsection (1) were it held by the enforcement officer.**

Marketing legislation – rights and duties under

- 96** After seizing products of nature, an enforcement officer has the same rights and duties as the judgment debtor regarding the sale of the seized products of nature under any applicable marketing legislation that is applicable to the sale of seized products of nature.

Division 5: FIXTURES

Circumstances in which a fixture must be seized and sold as personal property

- 97** The interest of a judgment debtor in a fixture must not be seized and sold as personal property in accordance with this Act or as authorized by the court unless
- (a) the land to which the fixture is affixed is not beneficially owned by the judgment debtor, and
 - (b) any interest held in the fixture by a person who has an interest in the land is subordinate to the notice of judgment.

Seizure and removal of fixtures

- 98** An enforcement officer who seizes a fixture must do so in accordance with section 65 in removing the fixture must do so in a manner that
- (a) causes no greater damage to the land and to other property situated on the land than is necessarily incidental to the removal of the fixture, and
 - (b) subjects the occupier of the land to no greater inconvenience than is necessarily incidental to the seizure and sale of the fixture.

Notice of seizure to be given to persons with an interest in the land

- 99** (1) If a fixture is seized, the enforcement officer must give to each person who appears on the records of [insert the name of the land title or land registry office of the enacting province/territory] as having an interest in the land to which the fixture is affixed, at the time of seizure, a notice of removal containing
- (a) a description of the seized fixture and of the land to which it is affixed,
 - (b) the aggregate amount recoverable under all of the judgments for which the enforcement officer has a subsisting enforcement instruction that are alleged to have priority over the person's interest in the fixture, and
 - (c) a statement that the fixture may be removed and sold unless the amount referred to in paragraph (b) is paid before a specified date that is at least 15 days after the day that the notice of removal is given.
- (2) If the notice of intended removal referred to in subsection (1) is given by registered mail, that registered mail may be addressed to the

recipient using the name and address that appears on the records of the [insert the name of the land title or land registry office of the enacting province or territory].

Application for order postponing removal of fixture

100 A person who is entitled to receive a notice of removal under section 97 may apply to the court for an order postponing removal of the fixture from the land or for the determination of an issue relating to the seizure.

Retention of fixture by person with a subordinate interest in the land

101 A person with an interest in the land that is subordinate to an enforcement charge under which the fixture has been seized may, before the fixture is severed from the land, retain the fixture by paying to the enforcement officer the lesser of

- (a) the aggregate amount recoverable under all of the judgments for which the enforcement officer has a subsisting enforcement instruction in relation to those enforcement charges to which the person's interest in the fixture is subordinate, and**
- (b) the market value of the fixture if it were removed from the land.**

Fixture ceases to be bound by enforcement charge on payment of required amount

102 If payment is made to the enforcement officer under section 100, the fixture ceases to be bound by the enforcement charges relating to the judgments that have been satisfied by payment of the amount referred to in section 101(a).

Reimbursement for damage caused by removal of fixture

103 If a fixture is seized and removed, a person, other than the judgment debtor, who had an interest in the land at the time that the fixture was affixed to the land,

- (a) is entitled to reimbursement by the enforcement officer for damage to that person's interest caused during the removal of the fixture, but**
- (b) is not entitled to reimbursement for diminution in the value of the land caused by the absence of the fixture or the need to replace it.**

Division 6: LICENSES AND INTELLECTUAL PROPERTY

Licenses

- 104 (1) A judgment debtor's rights or interest in a license are personal property that may be seized under Division 1 of this Part**
- (2) If a license is seized under a notice of seizure, the license may be disposed of only in accordance with the terms and conditions under which the license was granted or that otherwise pertain to it.**

Definition of intellectual property

105 In this Division,

“intellectual property” includes but is not restricted to any property right or interest, or other right or interest in

- (a) a copyright,**
- (b) a patent,**
- (c) a trade-mark,**
- (d) an industrial design,**
- (e) plant breeders’ rights,**
- (f) a trade secret,**
- (g) an integrated circuit topography.**

Seizure of intellectual property

106 (1) The right or interest of a judgment debtor in intellectual property may be seized in accordance with Division 1 of this Part.

(2) Upon the seizure of intellectual property

- (a) the judgment debtor loses all rights and power dispose or otherwise deal with the intellectual property,**
- (b) the enforcement officer acquires all the rights and powers of the judgment debtor and may take any action that could have been take by the judgment debtor.**

Comment:

Upon seizure, the enforcement officer is entitled to collect any royalties that would otherwise have been payable to the judgment debtor, and the enforcement officer may realize upon the value of the value of the intellectual property by assigning the intellectual property rights to another person for value.

With regard to copyright, the Copyright Act makes a distinction is made the right to assign the copyright and “moral rights”. Moral rights are dealt with in s. 14.1 and 14.2 of the Copyright Act. Moral rights relate to artistic control over the integrity of the work. Under s. 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 107(1)(b) of this Act purports to give the enforcement officer acquires all of the rights and power of the judgment debtor and the enforcement officer may take any action that could have been take by the judgment debtor. If the judgment debtor has the moral rights with regard to a copyright, the enforcement officer has the power under s. 175(1)(b) to waive the judgment debtor’s moral rights. If the exercise of this power by the enforcement officer is not recognized under the Copyright

Act, the enforcement officer may apply under s. 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.

Disposition of intellectual property

107 If property seized is intellectual property, and if the statutory requirements for a transfer of any right or interest require the registration of an assignment or other record, the enforcement officer must satisfy the statutory requirements before the disposition by the enforcement officer to a person who is acquiring the intellectual property is complete.

Comment:

Section 51 of the Patent Act, R.S.C. 1985, c. P-4, provides that an “assignment affecting a patent for invention ... is void against a subsequent assignee” unless it is registered before a competing assignment is registered.

Section 13(1) of the Industrial Design Act, R.S.C, 1985, c. I-9, provides that every design, registered or unregistered, is assignable by an instrument that must be recorded in the Office of the Commissioner of Patents.

Section 31(3) of the Plant Breeders’ Rights Act, S.C. 1990, c. C-20, provides:

(3) An assignment of plant breeder's rights is void against a subsequent assignee thereof for valuable consideration without notice who is registered as the holder of the rights unless, before the subsequent assignee is so registered, the person to whom that assignment is made is registered as holder of the rights.

Rights of transferee from the judgment debtor

108 A transferee of intellectual property that is subject to an enforcement charge under section 38, has priority over the enforcement charge if the transferee is a transferee from the judgment debtor, and the transferee

- (a) gave value for the transfer, and**
- (b) did not, at the time of the transfer have knowledge of**
 - (i) the enforcement charge, or**
 - (ii) the seizure of the intellectual property**

Division 7: INTEREST UNDER A LEASE, CONTRACT OF SALE OR SECURITY AGREEMENT

Application of Divisions 1 and 2 to this Division

109 Divisions 1 and 2 applies to enforcement proceedings governed by this Division, but in the event of a conflict between a provision of Division 1

or 2 and a provision of this Division the provision of this Division prevails.

Definition

110 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.

Seizure of lessor's, seller's or secured party's interest

- 111** (1) If an enforcement officer receives an enforcement instruction relating to a judgment debtor, the enforcement officer may, in addition to any other enforcement proceedings the enforcement officer may take under this Act, do the following:
- (a) if the judgment debtor is a lessor, seize the lessor's interest, arising under a lease, in property in the possession of the lessee,
 - (b) if the 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 the 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.
- (2) A seizure under subsection (1) is effected by giving a notice of seizure to the lessee, buyer or debtor respectively.

Seizure includes payment obligations

112 If a seizure of an interest referred to in section 111 is effected in accordance with that section, 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 or to the order of the enforcement officer for so long as the seizure remains in effect.

Giving notice of seizure

- 113** If an enforcement officer assigns the payment obligation referred to in section 112, the assignee
- (a) if notice of seizure has not been given to the lessee, buyer or debtor under section 111(2), must give the notice of seizure to the lessee, buyer or debtor in accordance with section 111(2), and
 - (b) given a notice of the assignment from the enforcement officer to the assignee, to the lessee, buyer or debtor.

Obligation of lessee, buyer, or debtor to make payments to enforcement officer

- 114** (1) After an interest referred to in section 111 is seized in accordance with that section, the lessee, buyer or debtor to whom the notice of seizure was given must, for so long as the seizure remains in effect, pay to the order of the enforcement officer, 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 respectively.
- (2) If an enforcement officer assigns the payment obligation referred to in section 111(1), the lessee, buyer or debtor to whom notice of the assignment was 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 respectively.

Enforcement officer may exercise same rights as lessor, seller or secured party

- 115** 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, debtor or a 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.

Seizure of lessee's, buyer's or debtor's interest

- 116** (1) If an enforcement officer receives an enforcement instruction relating to a judgment debtor, the enforcement officer may, in addition to any other enforcement proceedings the enforcement officer may take under this Act, do the following:
- (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 the lessor, seller under the contract of sale or secured party under the security agreement respectively.

Enforcement officer may exercise same rights as lessee, buyer or debtor

117 While the interests of a lessee, buyer under a contract of sale or debtor under a security agreement 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 lessor, seller, secured party or a third party claiming an interest in the property, the same rights and powers that the lessee, buyer or debtor had at the date of seizure or acquires prior to discharge of the seizure.

Effect of contractual provisions on seizure

118 An enforcement officer may effect and maintain seizure of the interest of a lessee, buyer or debtor referred to in section 116 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 the property's seizure.

Alternatives where lessor, seller or secured party seeks to exercise a contractual or statutory right to terminate interest

119 When the interest in property of a lessee, buyer or debtor referred to in section 116 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.

Prerequisite of an order for sale

120 An order for sale must not be made under section 119(c) 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 costs of sale of the property.

If enforcement charge has priority over lessor or secured party's interest

121 If an enforcement charge which is being enforced against property by an enforcement proceeding under section 116, 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 119 and 120 do not apply.

Registration of interest

122 If an the judgment debtor's interest referred to in section 111or 116 has not been previously registered in the [insert the name of the appropriate registry in the enacting province/territory – in most cases this will be the Personal Property Registry and, where the collateral for the secured obligation includes land, it may include the land title office] the enforcement officer may register the judgment debtor's interest in the registry appropriate for the property that is the security for the payment obligation.

Division 8: ACCOUNTS OWING TO THE JUDGMENT DEBTOR

Application of Divisions 1 and 2

123 Divisions 1 and 2 applies to enforcement proceedings governed by this Division, but in the event of a conflict between a provision of Division 1 or 2 and a provision of this Division the provision of this Division prevails.

Definitions

124 In this Division:
"account debtor" means a person, corporation, partnership trustee or government or government agency that
(a) is obligated under an account to a judgment debtor, or
(b) will become so obligated on performance or the happening of an event or after the passage of time,
and includes an obligation of an insurer, issuer, guarantor or indemnitor to make a payment to the judgment debtor in discharge of any liability of the insurer, issuer, guarantor or indemnitor to the judgment debtor;

Location of an account

125 For the purposes of this Division, an account is deemed to be located where it is recoverable.

Seizure of an account

**126 (1) An enforcement officer may seize an account and a future account.
(2) A seizure under subsection (1) is effected by giving a notice of seizure and a demand for payment to an account debtor.
(3) A copy of the notice of seizure must be given to the judgment debtor as soon as practicable after the notice of seizure has been given to the account debtor.**

- (4) If an enforcement officer has not given a notice of seizure to the account debtor under subsection (2) and the enforcement officer intends to dispose of accounts or future accounts by assigning them to a third party, enforcement officer may seize the accounts or future accounts by giving the judgment debtor a notice of seizure and thereafter the judgment debtor is no longer entitled to receive or accept payment of the accounts, the enforcement officer may realize on the seized accounts by assigning them to a third party.**

Form of notice of seizure and demand for payment

- 127 (1) A notice of seizure must be in the prescribed form.**
(2) A demand for payment must be in the prescribed form.

Effect of giving notice of seizure

- 128 (1) Subject to subsection (2) and section 129, a notice of seizure applies to**
(a) any account that is owing to the judgment debtor at the time of giving the notice of seizure, the account debtor, and
(b) any future account that becomes due from the account debtor to the judgment debtor at any time within 12 months after the date on which the notice is given the account debtor.
- (2) If, at the time of giving the notice of seizure to the account debtor, the account debtor is obligated to make a series of periodic recurring payments to the judgment debtor, the notice of seizure and an accompanying demand for payment apply to each recurring payment obligation without any limitation with regard to the period of time over which the periodic recurring payment obligations will become due.**

Seizure of a deposit accounts

- 129 (1) In this section:**
"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;
"central" has the same meaning as in the *Canadian Payments Association Act* (Canada);
"deposit taking financial institution" means an institution that
(a) is, or is eligible to become, a member of the Canadian Payments Association, or

- (b) is a credit union that is a shareholder or member of a central.
- (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 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 128, 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.

Obligations of an account debtor

- 130** An account debtor who has received a notice of seizure in respect of an account or future account must, subject to section 123,
- (a) pay to the enforcement officer within the time prescribed by regulation the lesser of the amount that the account debtor is obligated to pay at the date when the account debtor received the notice of seizure and the amount recoverable as stated in the notice of seizure or otherwise stated in writing by the enforcement officer less any amounts that deducted under
 - (i) Part 11 as being exempt from seizure,
 - (ii) section 134, and
 - (iii) section 138,
 - (b) notify the enforcement officer of any interest another person holds jointly with the judgment debtor in the account or future account, and
 - (c) provide the enforcement officer in writing the information referred to in section 144.

Dispute by account debtor that obligation to judgment debtor exists

- 131** Within 15 days after receiving a notice of seizure from an enforcement officer, a person who is not obligated to make payment to the enforcement officer under section 130 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 person is an account debtor but that the account was not payable at the date of the person's receipt of the notice of seizure and is not payable at the date that this statement is given by the account debtor;

- (c) in a case falling within paragraph (b), indicating any future accounts that will or may become payable to the judgment debtor at specified future times or on the happening of specified events and stating the amounts that will become payable and the date when, or event on which, they will become payable;
- (d) states that the account has been assigned, charged or has been paid into court;
- (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.

Seizure of employment remuneration

- 132**
- (1) Subject to this section, a notice of seizure affecting employment remuneration must be given to the account debtor not less than 14 days before the end of pay period of the judgment debtor.
 - (2) A notice of seizure that is given outside the time periods referred to in section 124 is effective applies to all subsequent pay periods of the judgment debtor ending within 12 months after the date the notice of seizure is given to the account debtor unless, before the expiration of 12 months, the enforcement officer notifies the account debtor that the notice of seizure has been withdrawn.
 - (3) An account debtor who has received a notice of seizure in relation to employment remuneration is required to pay to the enforcement officer the amount of employment remuneration payable to the judgment debtor for each pay period of the judgment debtor during the period referred to in subsection (2) after deducting
 - (a) the amount of the judgment debtor's employment remuneration that is exempt income under Part 11, and
 - (b) any compensation to which the account debtor is entitled under section 138.
 - (4) When determining the amount of employment remuneration payable to the judgment debtor in relation to a pay period, the account debtor must include all goods, securities and services that the judgment debtor has received or is entitled to receive in relation to that pay period as employment remuneration in lieu of money.
 - (5) If goods, securities or services are provided by the account debtor to the judgment debtor in full or partial satisfaction of the employment remuneration payable to the judgment debtor in relation to a pay period, the enforcement officer, the account debtor or the judgment debtor may apply to the court, on giving notice to the instructing judgment creditor, for one or both of the following:
 - (a) a determination, for the purposes of subsection (4), of the employment remuneration that is payable to the judgment debtor by the account debtor in relation to that pay period;

- (b) **an order that specifies the amount that the account debtor must pay to the enforcement officer in relation to that pay period.**
- (6) **At the end of the first pay 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 period in question,**
 - (a) **the judgment debtor's total employment remuneration,**
 - (b) **all amounts deducted by the account debtor, and**
 - (c) **the amount paid to the judgment debtor;**

Trust obligations deemed to be an account

- 133** Any payment by a trustee under a trust that involves the payment of money to a judgment debtor as beneficiary is deemed to be in satisfaction of an account owing to the beneficiary payable when and to the extent that, under the law of trusts or otherwise, the judgment debtor is entitled to payment of money to discharge the trust obligation in whole or in part.

Set-off permitted

- 134** Subject to section 135, 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.

Set-off not permitted

- 135** An account debtor must not set off against an account seized by the enforcement officer a claim or obligation that arose after the notice of seizure had been delivered to the account debtor unless the claim or obligation could have been set off against an assignee of the account.

Payment discharges account debtor

- 136** Payment to an enforcement officer in accordance with a notice of seizure discharges the account debtor's obligation to the judgment debtor to the extent of the amount paid to the enforcement officer.

Assigned accounts

- 137** (1) Even though an account has been assigned or is subject to a security interest, an account debtor referred to in section 130, who has received a notice of assignment with regard to the account debt,
- (a) may pay to the enforcement officer the lesser of
 - (i) the amount of the account, and
 - (ii) the amount recoverable as stated in the notice of seizure or otherwise stated in writing by the enforcement officer, and

- (b) if payment has been made to the enforcement officer under paragraph (a), must notify the assignee or secured party of the payment.
- (2) Payment to the enforcement officer as provided for in subsection (1) is a complete defence to any action brought for failure to honour the assignment or security interest.

Compensation for account debtor

- 138** An account debtor referred to in section 130 or 137 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.

Seizure of money in possession of enforcement officer that is payable to the judgment debtor

- 139** If an enforcement officer has, in the enforcement officer's possession or control, money that is payable under this Act to a person who is a judgment creditor in a legal proceeding, the enforcement officer may, if in a different legal proceeding that person is a judgment debtor in respect of whom an enforcement instruction has been received by the enforcement officer, seize and apply those funds as money that constitutes a distributable fund under Part 13 of this Act.

Seizure of money in court that is payable to the judgment debtor

- 140** (1) If a judgment debtor is or may become entitled to money that is being held in court as a consequence of legal proceedings between the judgment debtor and another person, an enforcement officer may seize that money in court by delivering a notice of seizure to the [insert the name of the court official that is appropriate for the enacting jurisdiction].
- (2) On receiving a notice of seizure, the [insert the name of the court official referred to in subsection (1)]
- (a) if the judgment debtor is entitled to receive payment of the funds in court, must immediately pay to the enforcement officer, or
 - (b) if the judgment debtor may become entitled receive payment of all or part of the funds in court if a judgment is issued in favour of the judgment debtor, must, when the judgment debtor becomes entitled to receive payment, pay to the enforcement officer
- the lesser of
- (c) the amount of the funds in court , and
 - (d) the amount recoverable as stated in the notice of seizure or otherwise stated in writing by the enforcement officer.

- (3) An enforcement officer who receives money paid under subsection (2) must deal with that money in accordance with Part 13.**
- (4) Except for sections 133 and 134, none of the other sections of this Part apply to the seizure of money in court.**

Determining validity of seizure of an account

- 141** If a person who has received notice of seizure of an account claims that that person is not under a legal obligation to honour the seizure notice or is entitled to set off a claim or obligation against the account seized, the court may, on application, determine the validity of that claim.

Application to Release seized account

- 142** 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.

Judgment against an account debtor who fails to honour seizure of an account

- 143** (1) Subject to subsection (2), if an account debtor, without legal excuse, fails to meet the requirements of this Act with regard to seizure of an account, the court may order that judgment be entered against the account debtor in favour of the judgment creditor
- (a) in the amount that the account debtor is obligated to pay to the enforcement officer under the notice of seizure, and**
 - (b) for the costs of the proceedings and the enforcement officer's costs of seizure.**
- (2) The court may make an order under subsection (1)**
- (a) on application by a judgment creditor who has delivered a subsisting enforcement instruction to the enforcement officer, and**
 - (b) on being satisfied that the account debtor received the notice of seizure and demand for payment or had actual notice of their contents.**
- (3) If a judgment creditor makes an application under subsection (1), the judgment creditor may give notice to all judgment creditors with related notices of judgment requesting proportional contribution to the cost of the application.**
- (4) On an application made under subsection (3), the court may make any other order it considers appropriate.**

Requirement to provide information

- 144** (1) A person who has been given a notice of seizure under this Division must
- (a) notify the enforcement officer of any interest, known to the person, held jointly with the judgment debtor in the account or future account, and
 - (b) disclose to the enforcement officer the identify of any other account debtor in relation to the same account who is known to the person, including an account debtor that is
 - (i) an insurer, guarantor or indemnitor with respect to the account,
 - (ii) the issuer of a letter of credit relating to the account;
 - (iii) a corporation that is a subsidiary of or controlled by the person who has been given the notice of seizure,
 - (iv) a person who is related by blood or marriage to the person who has been given the notice of seizure,
 - (v) a partnership to which the person who has been give the notice of seizure belongs, or
 - (vi) a partner if the notice of seizure has been given to a partnership.
- (2) A person who has been given a notice of seizure under section 126 and who pays the amount of the account debt to the enforcement officer does not incur any liability for damages under this Act for a failure to notify the enforcement officer as required by subsection (1) (a) of the identity of any other person who may have an interest in the account or future account either jointly with the judgment debtor or otherwise.

Application of third party procedure

- 145** Part 14 does not apply to an application under sections 141, 142 or 143 of this Division.

Division 3: MARKET SECURITIES

Application of this Division

- 146** This Division applies only in respect of a security or security entitlement_as that term is defined in this Division.

Application of Divisions 1 and 2

- 147** (1) Except as provided in this Division, Division 1 of this Part does not apply to enforcement proceedings governed by this Division.
- (2) Division 2 of this Part applies to enforcement proceedings governed by this Division, but in the event of a conflict between a provision of

Division 2 and a provision of this Division the provision of this Division prevails.

Definitions

148 (1) Except as otherwise provided, the following terms, have the same meaning as in the [insert name given to the Uniform Securities Transfer Act in the province/territory] apply to this Division:

**“adverse claim”,
“appropriate person”,
“bearer form”,
“broker”,
“certificated security,
“clearing agency”
“commodity contract”,
“corporation”,
“endorsement”,
“entitlement holder”,
“entitlement order”,
“financial asset”,
“good faith”,
“holder”,
“instruction”,
“investment fund”,
“investment fund security”,
“issuer”,
“person”,
“protected purchaser”,
“purchase”.
“purchaser”,
“registered form”
“representative”,
“securities account”,
“securities intermediary”,
“security”,
“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.

Seizure of securities and securities entitlements

149 The interest of a judgment debtor in a security or a security entitlement may be seized in accordance with Part 2, Division 8 of the [insert name given to the Uniform Securities Transfer Act in the province/ territory].

Effect of seizure of a certificated security

- 150**
- (1) Upon seizure of a certificated security in bearer form, the enforcement officer may**
 - (a) dispose of the security, or**
 - (b) otherwise realize upon its value.**
 - (2) Upon seizure of a certificated security in registered form**
 - (a) the enforcement officer is an appropriate person to endorse the security for the purposes of the Securities Transfer Act [or insert the name assigned to the Uniform Securities Transfer Act by the province/territory],**
 - (b) the enforcement officer may present the certificated security to the issuer with a request to register a transfer,**
 - (c) the enforcement officer acquires all of the rights and powers of the judgment debtor and may take any action that could have been taken by the judgment debtor,**
 - (d) the judgment debtor loses all rights and powers to request a transfer or otherwise deal with the certificated security for the duration of the period that the seizure is effective.**

Effect of seizure of an uncertificated security

- 151**
- (1) Upon seizure of an uncertificated security,**
 - (a) the enforcement officer for the purposes of the enforcement proceeding,**
 - (i) is entitled to receive any information that the judgment debtor would otherwise be entitled to receive,**
 - (ii) is entitled to present an instruction to the issuer that the judgment debtor would otherwise be entitled to present or give with a request to register a transfer of an uncertificated security,**
 - (iii) is entitled to give any instructions, directions, or consent to the issuer that the judgment debtor would otherwise be entitled to give,**

the securities intermediary would otherwise have been obligated 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.**

Effect of seizure of the interest of a judgment debtor that is subject to a prior security interest

- 153 Upon the seizure of the interest of a judgment debtor where judgment debtor's interest is subject to a prior security interest**
- (a) enforcement officer acquires all of the rights and powers of the judgment debtor and may take any action that could have been taken by the judgment debtor, and**
- (b) the judgment debtor loses all rights and powers to deal with the security or security entitlement for the duration of the period that the seizure is effective.**

No prejudice to lien or security interest of securities intermediary

- 154 Notwithstanding sections 149 and 153, the seizure of a security entitlement does not affect the security interest of the securities intermediary in the security entitlement for the amount owed by the judgment debtor to the securities intermediary at the time of seizure.**

When a securities intermediary may complete a sale

- 155 (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 the 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) Where, 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 shall, upon receipt, pay the proceeds to the enforcement officer.**

Missing Security Certificate

- 156 Where**

- (a) realization of the judgment debtor’s interest in a certificated security would ordinarily require presentation of a security certificate to the issuer,
 - (b) the security certificate appears to have been lost, destroyed or wrongfully taken, and
 - (c) the instructing judgment creditor has made satisfactory provision for indemnification of the issuer against any liability the issuer may incur in respect of the certificated security,
- the court on application by the enforcement officer may require the issuer to acknowledge a transfer or other disposition of the security without presentation of the security certificate.

Division 10: NON-MARKET SECURITIES

Application of this Division

157 This Division applies in respect of a security other than a security to which Division 9 of this Part applies.

Application of Divisions 1 and 2

- 158** (1) Except as provided in this Division, Division 1 of this Part does not apply to enforcement proceedings governed by this Division.
- (2) Division 2 of this Part applies to enforcement proceedings governed by this Division, but in the event of a conflict between a provision of Division 2 and a provision of this Division the provision of this Division prevails.

Definitions applicable to this Division

- 159** In this Division
- “certificated security” means a security that is represented by a certificate;
 - “issuer” has the same meaning as in Division 9 of this Part;
 - “security” means 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, and
 - (b) that is one of a class or series or by its terms is divisible into a class or series of shares, participations, interest or obligations;

Comment:

This definition of security parallels the definition of “security” in the Uniform Securities Transfer Act (USTA) except that the reference in the USTA definition to the security being “of a type, dealt or trade on securities exchanges or securities markets” has been omitted. Similarly, that part of the USTA

definition that refers to a security that, by their terms expressly provides that it is security governed by the USTA, has also been omitted.

The USTA definition will also be incorporated by reference by the proposed amendments to the Personal Property Security Acts.

“uncertificated security” means a security that is not represented by a certificate.

Seizure of a security

160 (1) Except as otherwise provided for in this Act, the interest of a judgment debtor in a certificated security may be seized only by actual seizure of the security certificate by an enforcement officer.

Comment

The opening phrase “Except as otherwise provided...” refers to subsections (2) and (4).

- (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.**
- (3) Except as otherwise provided for in this Act, the interest of a judgment debtor in 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.**

Comment:

The opening phrase “Except as otherwise provided...” refers to seizure under subsection (4) where a judgment debtor’s interest is subject to a security interest.

- (4) 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 a secured party**
- (a) a certificated security for which the security certificate is in the possession of a secured party; or**
 - (b) an uncertificated security registered in the name of a secured party.**
- (5) Section 149 of Division 9 of this Part does not apply to the seizure of security as that term is defined in this Division.**

Effect of seizure of a certificated security

- 161** (1) Upon seizure of a certificated security in bearer form, the enforcement officer may
- (a) dispose of the security, or
 - (b) otherwise realize upon its value.
- (2) Upon seizure of a certificated security in registered form
- (a) the enforcement officer is an appropriate person to endorse the security,
 - (b) the enforcement officer may present the certificated security to the issuer with a request to register a transfer accompanied by a certificate of the enforcement officer stating that the document has been endorsed by the enforcement officer under this Act,
 - (c) the enforcement officer acquires all of the rights and powers of the judgment debtor and may take any action that could have been taken by the judgment debtor,
 - (d) the judgment debtor loses all rights and powers to request a transfer or otherwise deal with the certificated security for the duration of the period that the seizure is effective.
 - (e) the issuer must comply with any instruction, direction, request or consent given by the enforcement officer where the issuer would be required to comply with the instruction, direction, request, or consent if it was given by the judgment debtor when the interest of the judgment debtor was not under seizure;
 - (f) 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;
 - (g) if the issuer is or becomes obliged to make any payment or distribution with regard to a certificated 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.

Effect of seizure of an uncertificated security

- 162** (1) Upon seizure of an uncertificated security,
- (a) the enforcement officer for the purposes of the enforcement proceeding,
 - (i) is entitled to receive any information that the judgment debtor would otherwise be entitled to receive,
 - (ii) is entitled to present an instruction to the issuer that the judgment debtor would otherwise be entitled to present or give with a request to register a transfer of an uncertificated security accompanied by a certificate of the enforcement

- officer stating that the document has been endorsed by the enforcement officer under this Act,**
- (iii) is entitled to give any instructions, directions, or consent to the issuer that the judgment debtor would otherwise be entitled to give,**
 - (b) the issuer must comply with any instruction, direction, request or consent given by the enforcement officer where the issuer would be required to comply with the instruction, direction, request, or consent if it was given by the judgment debtor when the interest of the judgment debtor was not under seizure;**
 - (c) 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;**
 - (d) 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 obligated to make to the judgment debtor, the issuer is obliged to make the payment or distribution to the enforcement officer.**
- (2) 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.**

Obligation of issuer to provide information to enforcement officer

163 After a notice of seizure is given to an issuer, if the issuer receives a request from the enforcement officer, the issuer must provide to the enforcement officer with the names and addresses of all registered holders of the securities of the issuer.

Obligation of issuer to inform others of the seizure

164 After a notice of seizure is given to an issuer, if the issuer receives a request from a person who is otherwise entitled to receive information from the issuer regarding the ownership of a security, the issuer must inform such person of the seizure of the interest of the judgment debtor in the security.

Transfer restrictions

- 165** (1) Except as otherwise provide in this Division of this Act, an enforcement officer is not bound by restrictions on or a prohibition of the sale or other disposition of or dealing with a seized security that is contained in the by-laws, articles or internal rules of the issuer of that security or a shareholders' agreement relating to the seized security.
- (2) Despite subsection (1) and subject to subsection (3), the enforcement officer must in selling a seized security use a method of sale that

- (a) follows as closely as possible the procedure that the judgment debtor would be required to follow in order to sell a seized security, and
 - (b) provides the issuer and the other persons who own a security of that issuer a reasonable opportunity to redeem or buy a seized security before it is offered for sale to any other person.
- (3) The enforcement officer is not required to comply with subsection (2) to the extent that the method of sale referred to in subsection (2) would prevent the security from being sold at all or prevent them from being sold within a reasonable time or for a reasonable price.

Notice of intended sale

166 On being instructed to sell a seized security, the enforcement officer must give a notice of intended sale to

- (a) the issuer,
- (b) any person who, to the knowledge of the enforcement officer, would have a preferential right to acquire the seized security on a voluntary sale by the judgment debtor, and
- (c) every registered holder of a security of the issuer as disclosed by the issuer pursuant to section 163, by delivering the notice to the address of the holders set out in the record provided by the issuer pursuant to section 163.

Notice of intended sale must set out method of sale

167 The notice of intended sale must set out the method of sale or the method through which the value of the security is to be obtained.

Addresses that may be used for giving of notice of intended sale

168 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 section 163.
- (b) shall be deemed to have been given to all holders of securities of the issuer when it has been given to all registered holders of securities disclosed by the issuer pursuant to section 163.

No further steps until 15 days after notice of intended sale is given

169 After complying with section 166, the enforcement officer must not take any further steps to sell the security until 15 days have elapsed from the day that the notices were given under section 166.

Rights of persons who would otherwise be entitled to purchase or redeem seized security

170 (1) Subject to subsection (2), a person who would otherwise be entitled to buy or redeem the seized security for a predetermined price or at a price fixed by reference to a predetermined formula is entitled to buy

or redeem the seized security from the enforcement officer for that price.

(2) If

- (a) the corporate by-law, shareholders agreement or other record under which the person referred to in subsection (1) would be entitled to buy or redeem the seized 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 date of the registration of a notice of judgment against the judgment debtor by any of the judgment creditors who have given a subsisting enforcement instruction to the enforcement officer, and**

Comment:

The 5 year period was selected because that is the maximum “reach-back” period found in the Bankruptcy and Insolvency Act, namely s. 91(2)

- (b) a judgment creditor who has given a subsisting enforcement instruction to the enforcement officer believes that the price at which the seized security may be bought or redeemed under subsection (1) 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 seized security may be bought or redeemed.**

Comment:

The phrase “conspicuously less” has been drawn from s. 100 of the Bankruptcy and Insolvency Act that enables the court permits the court, on application of the trustee, to undertake a review of transactions entered into by a bankrupt in the year preceding the bankruptcy. If the court finds that the consideration in the reviewable transaction is “conspicuously greater or less than the fair market value of the property” the court may give judgment for the difference.

(3) If an application is made under subsection (2), and if the court determines

- (a) that the price at which the seized security may be bought or redeemed under subsection (1) is conspicuously less than the value of the security, and**

Comment:

The applicant would have the burden of proving that the price is conspicuously less than the value of the security. This would

likely require the applicant to adduce evidence from qualified appraisers with regard to the value the company.

(b) permitting a person to buy or redeem the seized security at the predetermined price or the price fixed by reference to a predetermined formula under subsection (1) will have the effect of preventing the applicant and other judgment creditors who have given a subsisting enforcement instruction to the enforcement officer from satisfying their judgments because the judgment debtor does not have enough exigible property from which the judgments may be satisfied,

the court may fix the price that a person who would otherwise be entitled to buy or redeem the seized security must pay to acquire or redeem the seized security and that price shall bear a reasonable relationship to the value of the seized security.

Comment:

The effect of paragraph will mean that the applicant must demonstrate that the applicant has sought to satisfy its judgment and those of other subsisting judgment creditors from other property of the judgment debtor before a court will override the predetermined price.

Right of issuer or other owners to acquire seized security

- 171 (1) At any time before the sale or other disposition of a security, the issuer or any person who owns 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 judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer,**
 - (ii) pay the outstanding fees or charges of the enforcement officer, and**
 - (iii) pay the taxable costs of the instructing judgment creditor, or**
 - (b) an amount equal to the value of the security.**
- (2) Upon payment of the amount referred to in subsection (1),**
- (a) the enforcement officer must release the seized security from seizure and notify the issuer of the release,]**
 - (b) a person who paid an amount equal to the value of the seized 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 seized security is deemed to have 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 was made to the enforcement officer.

Right of other owners to tender to their securities for sale by the enforcement officer

172 If no person exercises the right under section 136 within 15 days referred to in section 134, an owner of a security of the issuer, including the judgment debtor where the seizure did not include all of the securities of the issuer owned by the judgment debtor, may:

- (a) upon tender to the enforcement officer of executed transfer documents relating to all of securities of this issuer owned by that person,**
- (b) upon proof satisfactory to the enforcement officer of compliance with the articles, by-laws or internal rules of the issuer or the terms of a shareholder's agreement affecting the disposal of the security,**

require the enforcement officer to offer for sale, along with the security seized, all the securities of the issuer owned by that person on terms identical to those applicable to the security seized.

Enforcement officer may decline to sell securities tendered for sale

173 Nothing in section 172,

- (a) precludes the enforcement officer from selling only the seized security if, in the opinion of the enforcement officer, all of the securities tendered for sale under section 172 cannot be sold,**
- (b) permits the 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 section 172.**

Right to Proceed with Disposition of Security

174 The enforcement officer may proceed to dispose of the seized security if:

- (a) a written notice of intention to exercise the right referred to in section 170 or 171 is not given to the enforcement officer within 15 days referred to in section 169; or**
- (b) the enforcement officer is not satisfied that the person, who has given a notice of intention to exercise the right referred to in section 170 or 171, has the ability to pay the required amount within the time specified by the enforcement officer.**

Comment:

If the time for payment specified by the enforcement officer is unreasonable, an application may be made to the Court under the following subsection.

Application to Court regarding proposed method of selling seized security

175 (1) On application by the enforcement officer or any interested person, the court may make any order that the court considers appropriate

regarding the method of liquidating seized security, including an order doing one or more of the following:

- (a) approving, with or without modification, or rejecting**
 - (i) the method of sale proposed by the enforcement officer or by any other person,**
 - (ii) any proposed term of the sale, or**
 - (iii) any proposed method of realizing the value of the seized security other than through sale;**
- (b) suspending sale proceedings;**
- (c) directing that the issuer be liquidated and its proceeds disposed of according to law.**

(2) Where

- (a) a security of an issuer that is not incorporated or otherwise constituted under the laws of the province is seized under this Act, and**
- (b) the court is satisfied that the issuer or some other person is likely to suffer actual prejudice as a result of a conflict between anything in this Act and the laws under which the issuer is incorporated or otherwise constituted,**

the court may, upon the application of an interested person, make any order it considers necessary to prevent the issuer or person from being prejudiced.

When method of sale is deemed to have met requirements of the Act

176 If the enforcement officer has sent a notice of an intended sale to the persons mentioned in section 166 and no person has exercised their entitlement under sections 170 or 171 before the seized security is sold, the method of sale set out in the notice of intended sale is deemed to have met the requirements of this Act.

Purchaser at enforcement officer's sale acquires all rights of judgment debtor

177 A person who purchases a security in an enforcement officer's sale or otherwise acquires a security interest in a security as provided in this Division acquires:

- (a) all of the rights and obligations of the judgment debtor in the security or associated with it, including the right to be treated as a party to a shareholders' agreement relating to the management of the affairs of the issuer; and**
- (b) to be registered as owner of the security in the records of the issuer in place of the judgment debtor.**

Effect of Transfer on Shareholders' Agreements

178 (1) In addition to any agreement to which a person who purchases a security under section 177 is considered by [insert name of the province's or territory's statute governing corporations] to be a party,

the person shall be deemed to be a party to a shareholders' agreement regarding

(a) the management of the affairs of the issuer, or

(b) the exercise of voting rights attached to the seized shares, to which the judgment debtor was a party at the time of the seizure and of which the person who purchases a security under section 177 had knowledge at the time of the purchase if the shareholders' agreement contains provisions intended to have the effect of precluding the judgment debtor from transferring the security, except to a person who agrees to be a party to that shareholders' agreement.

- (2) Notwithstanding subsection (1) and [insert name of the enacting province's or territory's statute governing corporations], the court may declare that person who purchases a security under section 177 is not bound by a term or provision of an agreement, by-law or article that discriminates against a transferee of a security by reason of the transferee acquiring the securities through enforcement proceedings.

Issuer must amend its records to indicate purchaser from enforcement officer

179 The issuer of a security shall amend its records so as to indicate the rights of a person referred to in section 177.

Missing Security Certificate

180 Where

- (a) realization of the judgment debtor's interest in a certificated security would ordinarily require presentation of a security certificate to the issuer,
- (b) the security certificate appears to have been lost, destroyed or wrongfully taken, and
- (c) the instructing judgment creditor has made satisfactory provision for indemnification of the issuer against any liability the issuer may incur in respect of the certificated security,
- the court on application by the enforcement officer may require the issuer to acknowledge a transfer or other disposition of the security without presentation of the security certificate.

PART 10: LAND

Comment

Some provinces/territories may decide to enact this Part as an amendment to the Land Title Act or similar statute.

Definitions

181 In this Part:

“interest in land” includes full ownership and an interest less than full ownership;

“registry” means the registry referred to in Parts 5 and 6 of the Act.

Comment

The term “registry” is defined in s. 1. Consequently, this term will not need to be defined in this Part unless a province/territory decides to enact Part 10 as an amendment to the Land Title Act or a similar statute.

In the following sections 182 – 184, two options are provided. These options reflect different approaches to the manner in which a judgment may become an enforcement charge on a judgment debtor’s interest in land.

OPTION #1 (The Saskatchewan/Newfoundland Option)

Registration in the registry

- 182** (1) **The registration of a notice of judgment in the registry under section 37 creates an enforcement charge on all interests in land held by the judgment debtor at the time of registration and any interest in land acquired by the judgment debtor after the registration and before its discharge.**
- (2) **An enforcement charge created under subsection (1) charges any interest in land of the judgment debtor despite provision in this or any other Act that declares an interest in land to be free from seizure and sale to enforce a judgment.**
- (3) **Unless otherwise ordered by the court, an enforcement charge created under subsection (1) remains in effect even though an appeal has been taken against the judgment or an order has been made staying enforcement of the judgment.**

Priority of enforcement charge

- 183** (1) **Except as otherwise provided in this or any other Act, an enforcement charge created under section 182 has priority over**
- (a) **an interest in land, which is subject to the enforcement charge, that, at the date the enforcement charge came into existence, could have been registered but was not registered as provided by [insert the name of the Land Titles Act or similar statute in the enacting jurisdiction];**
- (b) **a registered or unregistered interest in land, which is subject to the enforcement charge, acquired from the judgment debtor after the charge came into existence;**
- but, unless registered under section 184, the enforcement charge created by the registration of notice of judgment under section 37**

does not have priority over a registered interest in land if, at the time that that registered interest was acquired, the name of the grantor of that interest, as that name appears in the records of the [insert the name of the land titles office or land registry] when used to search the registry, would not disclose the enforcement charge.

- (2) An enforcement charge created under section 182, whether or not registered under section 184, does not have priority over**
- (a) a mortgage, registered before the enforcement charge came into existence, that secures:**
 - (i) a specific principal sum, even though advances and obligations under the mortgage are made or incurred after the enforcement charge came into existence or was registered under section 182 or 184, 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 came into existence or was registered under section 184 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 came into existence,**
 - (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.**

Registration and creation of an enforcement charge against title or interest in land

- 184**
- (1) After a notice of judgment has been registered as provided in section 182, an application may be made by the judgment creditor, in accordance with [insert the name and applicable section number of the Land Titles Act or similar statute on the enacting jurisdiction], to register the notice of judgment against the title or registered interest identified in the application.**
 - (2) The registration of a notice of judgment as provided in subsection (1) creates an enforcement charge on the title or interest in land described in the registration.**
 - (3) An enforcement charge referred to in subsection (2) is effective for the purposes of this Part from the time of the registration.**

OPTION #2 (The Alberta/British Columbia Option)

Registration and creation of a charge against judgment debtor's title or interest in land

- 182** (1) **If a notice of judgment has been registered in the Registry in accordance with Parts 5 and 6 of this Act, a judgment creditor may,**
- (a) **in the case of land under the [insert the title of the Land Titles Act or similar Act in the enacting province/territory] make an application in accordance with [insert the title of the Land Titles Act or similar Act in the enacting province/territory] to register the notice of the judgment against the title to, or an interest in, 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], make an application to register, file or otherwise record the notice of judgment against an interest in land of the judgment debtor described in the application that is filed in accordance with the regulations.**
- (2) **The registration of a notice of judgment in accordance with subsection (1) creates an enforcement charge that charges the title or interest in land of the judgment debtor against which the notice of judgment is registered.**
- (3) **An enforcement charge created by subsection (2) charges the title or interest in land of the judgment debtor despite any provision in this or any other Act that declares the title or interest to be free from seizure and sale to enforce a judgment.**
- (4) **Unless otherwise ordered by the court an enforcement charge created under subsection (2) remains in effect even though an appeal has been taken against the judgment or an order has been made staying enforcement of the judgment.**

Priority of enforcement charge

- 183** (1) **Except as otherwise provided in this or any other Act, an enforcement charge created under section 182 has priority over**
- (a) **an interest in land, which is subject to the enforcement charge, that, at the date the enforcement charge came into existence, 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];**
 - (b) **a registered or unregistered interest in land acquired from the judgment debtor after the enforcement charge came into existence.**

- (2) An enforcement charge created section 182 does not have priority over**
- (a) a mortgage, registered before the enforcement charge came into existence, that secures:**
 - (i) a specific principal sum, even though advances and obligations under the mortgage are made or incurred after the enforcement charge came into existence under section 182(2); 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 came into existence under section 182(2) 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 came into existence,**
 - (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.**

When an enforcement charge terminates

- 184** Except as otherwise prescribed, an enforcement charge that charges the title to or an interest in land terminates on the earlier of
- (a) the discharge of the registration, and**
 - (b) the expiry of the limitation period for the enforcement of the judgment.**

THE REMAINING SECTIONS APPLY TO BOTH OPTIONS

Effect of enforcement charge on joint tenancy

- 185** (1) An enforcement charge created under section 182 that charges an interest in land of a judgment debtor held in joint tenancy
- (a) does not, of itself, suspend or sever the joint tenancy, and**
 - (b) is effective until removed in accordance with this Part.**
- (2) If an interest in land of a judgment debtor is held in joint tenancy with a person who is not a judgment debtor, any enforcement charge that charges that interest continues to charge the interest of the surviving joint tenants despite the death of the judgment debtor, whether or not the joint tenancy is with survivorship.

- (3) The enforcement charge referred to in subsection (2) charges the interest in land only to the extent of an amount equal to the lesser of**
 - (a) the amount owing on the enforcement charge, and**
 - (b) the value, as of the date of the judgment debtor's death, of the deceased judgment debtor's interest if it had been severed by partition and sold by the enforcement officer as an interest as a tenant in common.**
- (4) For the purpose of subsection (3)(b), "value" means the amount that could reasonably be expected to be realized as a result of an enforcement proceeding.**

Determination of shares in a joint tenancy

- 186**
- (1) If an interest in land of a judgment debtor that is charged by an enforcement charge is held in joint tenancy, there is a rebuttable presumption that each joint tenant has an equal share in the interest in land.**
 - (2) On application by the enforcement officer or an interested person, the court may determine that**
 - (a) the share of the judgment debtor is greater or less than that specified in subsection (1), or**
 - (b) a person does or does not hold a joint interest with the judgment debtor in an interest in land affected by the enforcement charge created under section 182.**
 - (3) If an interest in land is charged by an enforcement charge created under section 182, the onus of proving that the judgment debtor holds that interest jointly with another person, and of proving the extent of the interest held by that other person, is on that other person.**

Severance of a joint tenancy upon sale or court order for sale

196A joint tenancy is severed when

- 196 an enforcement officer enters into an agreement to sell the judgment debtor's interest in the land, or**
- 196 a court orders the judgment debtor's interest be sold.**

Effect of bankruptcy of judgment debtor

- 196 A trustee in bankruptcy of a judgment debtor succeeds to the interest of a judgment creditor under an enforcement charge created under section 182 before date of the initial bankruptcy event and the trustee in bankruptcy may, on behalf of all unsecured creditors, assert any priority of the enforcement charge that the judgment creditor would have been entitled to assert.**

Notice of intention to sell

- 189 (1) After receiving enforcement instructions from an instructing judgment creditor to sell an interest in land of a judgment debtor, the enforcement officer must give a notice of intention to sell to**
- 196 the judgment debtor, and**
- 196 if the judgment debtor holds the interest in land in joint tenancy or tenancy in common, the other persons whose interest as a joint tenant or tenant in common 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].**
- 196 After a notice of intention to sell has been 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.**

Growing crops may be sold as part of land if included in notice of sale

- 196 Unharvested crops may be sold as part of a sale of land under this Part if the notice of intention to sell states that the crops are to be sold along with the land.**

Waiting period between notice of intention to sell and offering land for sale

- 191 (1) If an enforcement officer has given a notice of intention to sell an interest in land and**
- 196 the judgment debtor is a natural person and the judgment debtor or a dependent of the judgment debtor resides on the land,**
- 196 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 resides on the land, or**
- 196 the court otherwise orders**
- the enforcement officer must not, unless otherwise permitted by the court, offer or advertise the land for sale until a waiting period of [insert period of time chosen by the enacting jurisdiction] has elapsed from the day on which the notice of intention to sell was delivered to the judgment debtor.**
- 196 The court may, subject to subsection (3), extend or shorten the waiting period provided by subsection (1).**
- 196 The court may shorten the waiting period provided by subsection (1) only if the court is satisfied that the interest in land is not exempt from sale under Part 11.**

Right of joint tenant or tenant-in-common to purchase judgment debtor's interest

- 192 (1) After a notice of intention to sell has been given under section 189, a person who is a joint tenant or a tenant-in-common with respect to the interest in land charged by an enforcement charge, has a right, exercisable at any time before the enforcement officer has entered into an agreement to sell the property, to purchase the judgment debtor's interest in the property at its fair market value.**
- 196 At least 10 days after giving the last of the notices the enforcement officer is required to give under section 189, the enforcement officer may proceed to sell the judgment debtor's interest unless a person referred to in subsection (1) delivers to the enforcement officer a written notice of intention to exercise the right referred to in subsection (1) and**
- 196 payment of the fair market value of the judgment debtor's interest in land, or**
- 196 security, in a form satisfactory to the enforcement officer, to secure the payment of the fair market value of the judgment debtor's interest in land.**
- 196 On application by the enforcement officer or an interested person, the court may**
- 196 determine the market value of the judgment debtor's interest, or**
- 196 extend the period of time referred to in subsection (2).**

Sale of judgment debtor's interest

- 193 (1) Subject to section 192, and unless a court otherwise orders, any interest in land of the judgment debtor that is subject to an enforcement charge created under section 182 is subject to sale or to be otherwise dealt with in accordance with this Act, the regulations under this Act, and [insert a reference to the local practice in the enacting jurisdiction with regard to sales of land where there has been a default under a mortgage].**
- 196 Unless the court orders otherwise, any judgment creditor may bid at a sale conducted by the enforcement officer and purchase the interest in land of the judgment debtor charged by the enforcement charge.**

Method of sale

Comment

A province/territory may adopt procedures that already exist in the province/territory with regard to the method of sale of land. In the absence of the adoption of other procedures, section 194 will apply.

- 194 (1) At least 30 days before offering an interest in land for sale, the enforcement officer must deliver a notice of the method of sale in the prescribed form to**

- 196 the judgment debtor,**
- 196 the instructing judgment creditor,**
- 196 judgment creditors who have given a subsisting enforcement instruction to the enforcement officer,**
- 196 any person who has an interest in land that is recorded against the title to the land and whose interest may be adversely affected by the sale, and**
- 196 any other person specified by the regulations.**
- 196 The notice of the method of sale must set out**
 - 196 the method of sale,**
 - 196 the terms of the sale, and**
 - 196 any additional information prescribed by regulation.**
- 196 The notice of the method of sale may set out the minimum price for which the judgment debtor's interest in land will be sold.**
- 196 The notice of the method of sale must state that a person who objects to the proposed method of sale, terms of sale or any minimum price that may be stated in the notice must deliver a notice of objection to the enforcement officer within 30 days after receiving delivery of the notice of the method of sale.**
- 196 If the notice of the method of sale sets out the minimum price for which the interest in land will be sold, the following applies:**
 - 196 the notice must state that any person who objects to the interest in land being sold for the proposed minimum price must deliver a notice of objection to the enforcement officer within 30 days after receiving delivery of the notice of the method of sale;**
 - 196 if any person delivers a notice of objection to the enforcement officer within the time referred to in paragraph (a), the enforcement officer must not sell the interest in land except on terms that are approved by the court;**
 - 196 if a notice of objection is not delivered to the enforcement officer within the time referred to in paragraph (a), the enforcement officer may, without an order of the court, complete the sale of the interest in land for a price that equals or exceeds any minimum price set out in the notice of method of sale.**
- 196 If the notice of the method of sale does not set out the minimum price for which the interest in land will be sold, the following applies:**
 - 196 on entering into an agreement to sell the interest in land, the enforcement officer must deliver a notice of the terms of the sale to**
 - 196 every person to whom a notice of the method of sale was delivered, and**

196 if the instructing creditor is the buyer, every other judgment creditor who has given a subsisting enforcement instruction to the enforcement officer at the time that the notice is given;

196 the notice of the terms of sale must state that any person who objects to the terms of the proposed sale must deliver a notice of objection to the enforcement officer within 15 days after receiving the notice of the terms of sale;

196 if a notice of objection is delivered to the enforcement officer within the time referred to in paragraph (b), the enforcement officer must not complete the sale unless authorized to do so by the Court;

196 if a notice of objection is not delivered to the enforcement officer within the time referred to in paragraph (b), the enforcement officer may, without an order of the court, complete the sale.

Transfer of land following a sale

Comment

A province/territory may adopt procedures that already exist in the province/territory with regard to the transfer of land following a sale by a sheriff, court bailiff or enforcement officer. In the absence of the adoption of other procedures, section 195 will apply.

195 (1) After completion of the sale of an interest in land under this Part, the enforcement officer must execute a [insert the term used in the enacting jurisdiction such as “deed”, “conveyance”, etc.] transferring the interest in land, to the purchaser.

196 A [insert term used in subsection (1) to describe transfer, deed, or conveyance] purporting to be executed by an enforcement officer is proof of the enforcement officer’s authority.

196 If an enforcement officer enters into a contract under this Part to sell a judgment debtor’s interest in land, the [insert the name of the appropriate official in the Land Titles Office of the enacting Province or Territory such as the Registrar of Titles] must, unless otherwise ordered by the court and subject to subsection (5), transfer the interest in land to the purchaser and issue a new title accordingly after

196 there is filed with the registrar

196 an application for the registration,

196 a [insert the term used in subsection (1) to describe the transfer, deed, or conveyance] relating to the sale that is executed by the enforcement officer in accordance with subsection (1),

196 a certificate of the enforcement officer certifying that the enforcement officer has complied with the requirements of this Part and that

196 a notice of objection to the sale was not delivered to the enforcement officer within the period of time prescribed under section 194, or

196 a notice of objection to the sale was delivered to enforcement officer within the period of time prescribed under section 194 and the Court has authorized the sale of the land, and

196 there is filed with the registrar such other records as may be prescribed.

196 After an interest in land is registered in the name of the purchaser under subsection (3), all interests, which charged the interest of the judgment debtor and that were subordinate to the enforcement charge under which the enforcement proceeding was conducted, are cancelled.

196 If an interest in land is sold under a court order referred to in subsection (3)(b)(ii) or made under section 194(5)(b) or (6)(c), the [insert name of appropriate official named in subsection (2)] **must not transfer the interest until the [insert name of official from above] **has been satisfied by the enforcement officer****

196 that all persons who have a right to appeal that order have given written undertakings not to appeal the order or, if the order has been appealed, not to take a further appeal, or

196 in the case of the appropriate undertakings not being given under paragraph (a),

196 that the order is no longer subject to an appeal, or

196 if the order has been appealed, that the appeal has been concluded and the order is no longer subject to a further appeal.

(6) If the enforcement officer has sold an interest in land for which a title has not been granted or that has not been registered, a transfer executed by the enforcement officer in the form prescribed conveys the interest in land to the purchaser from the enforcement officer.

Discharge of registration of a notice of judgment

196 (1) A person who purchases an interest in land from an enforcement officer and who pays to the enforcement officer an amount equal to the lesser of

- (a) the amount recoverable on all judgments in relation to which the enforcement officer has received a subsisting enforcement instruction, and**
 - (b) a price that could reasonably be expected to be obtained on a sale conducted as part of an enforcement proceeding**
- is entitled to have all the notices of judgment that charge the interest in land discharged from the registry and the [insert the name of the Land Titles Office or Registry] notwithstanding that a judgment creditor does not receive full satisfaction of the judgment.**

Comment

Professors Buckwold and Cuming explain the need for the last language following the word “notwithstanding” in their Explanatory Note following this section, as follows:

This provision would address the situation in which a person pays the full amount owing to a judgment creditor but the creditor refuses to discharge an enforcement charge because he or she will get only a portion of the money paid as a result of the operation of this Part. It codifies the position taken by the Saskatchewan Supreme Court in *Trust and Loan Company v. Cook* (1910), 3 Sask L. Rep. 210. This could occur in the following circumstances. A person buys property from the judgment debtor that, at the time of the purchase, is subject to an enforcement charge in favour of a judgment creditor. After title to the property has passed to the buyer, other judgments are registered against the seller. The buyer pays the amount secured by the enforcement charge on the property he or she bought and demands that it be removed. Under section 78 {s. 196 of the Uniform Act}, the judgment creditor could not refuse to discharge his or her enforcement charge on the basis that, under this Part, he or she would have to share the amount paid by the buyer with other judgment creditors and would thus not receive full payment of the amount owing under his or her judgment.

- (2) An enforcement charge that charges an interest in land must be removed in the manner prescribed**
 - (a) when registration of the notice of judgment in the [insert the name of the Land Titles Office or Registry] expires,**
 - (b) when the judgment to which the enforcement charge relates is satisfied, withdrawn or otherwise not enforceable, or**
 - (c) on application to [insert the name of the appropriate official in the Land Titles Office of the enacting Province or Territory such as the Registrar of Titles] in the manner prescribed, by the judgment**

creditor named in the registration creating the enforcement charge.

PART 11: EXEMPTIONS

Comment

This Part has been restructured since the date that the Summary of this Act was prepared for distribution to the delegates at the Annual Meeting. Division 1 now deals with general provisions that apply to both property exemptions and income exemptions. This is followed by “Division 2: Property Exemptions” and “Division 3: Income Exemptions”.

The following Table of Concordance relates the Summary of the Act to the current section numbers. In the text of this Part of the Act, the new section number appears first in bold face type/ followed by a slash and the section number which appears in the Summary of the Act, in regular type.

Summary of the Act section number	Current section number
191 Natural Person’s claim for exemption	192
192 Claiming exemption re: Closely-held company	192
193 Dependent’s eligibility to claim exemption	192
194 Onus of establishing eligibility to exemption under 192	192
195 Date for determining application of exemption	196(3); 197(2)
196 Waiver of exemption	193
197 Exemptions of specific types of property	200
198 Property that may not be claimed as exempt	201
199 Property shall not be seized if likely exempt	202
200 Co-ownership – effect on exemption	203
201 Requirement to provide information	194
202 Time for delivery exemption claim form	195
203 Failure of judgment debtor to specify property	196(2)
204 Determination of exemption claim by officer	196
205 Review of determination by court	197
206 Onus of proof	198
207 Procedure where value exceeds maximum permitted	204
208 Proceeds of exempt property remain exempt	205
209 Definition of income	206
210 Exemption formula	207
211 Where income attributable to only part of period	208
212A Where income attributable to longer period	209
212B Exemption where income not attributable to period	210
213 Variation of exemption by court order	211
214 Requirement to provide information	212
215 Deposit accounts	213

Division 1: GENERAL

Application of this Division

191 Unless otherwise provided, Division 1 applies to the whole of this Part.

Who may claim an exemption under this Part

192/191 (1) Save as provided in this Part, only a natural person should be entitled to claim property as exempt property or income as exempt income.

Comment:

The terms “exempt property” and “exempt income” are defined in s. 1.

Division 2 contains exceptions to the rule that exempt property may only be claimed by a natural person.

Division 3 contains an exception to the rule that exempt income may only be claimed by a natural person.

- (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.**

Comment

In the words of Professors Cumming and Buckwold, in the Saskatchewan Interim Report, this proposal is a

“... recognition of the fact that a small, closely-held corporate debtor may in reality be nothing more than an individual using an incorporated form of business organization. Consequently it would allow the individual to claim exemption rights with respect to property of a such a corporation that is a judgment debtor. However, the exemption right would be limited in this context to tangible personal property that the individual personally uses in carrying out functions that earn income for the corporation.”

- (3) Subsection (2) applies only with respect to tangible personal property that the 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 as dividends or as salary; and**
 - (b) the amount paid as dividends or as salary is the primary source of income for the natural person claiming the exemption.**

- (4) **Subsection (2) does not apply to an item of property where the natural person claiming the exemption owns or has the use of an equivalent item of property not owned by the judgment debtor.**
- (5) **A person for whose financial support the judgment debtor is totally or in substantial part responsible or, in the case of a deceased judgment debtor, was totally or in substantial part responsible at the date of death, is entitled to claim property of the judgment debtor as exempt property that may be, or in the case of a deceased judgment debtor could have been, claimed as exempt property by the judgment debtor.**

Comment:

An example of where a dependent should be allowed to claim the exemption is where the spouse of the judgment debtor is living in a residence or agricultural property that is owned by the judgment debtor and the judgment debtor's whereabouts are unknown or the judgment debtor fails to claim the exemption.

- (6) **The total quantity and value of property of the judgment debtor that may be claimed as exempt by a person mentioned in subsection (5) and by the judgment debtor shall not exceed the quantity and value of exempt property available to the judgment debtor alone.**
- (7) **If a judgment debtor does not claim the exemption with respect to exempt income that a judgment debtor 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.**
- (8) **The onus of proof that the requirements of this section have been met is on the person claiming the exemption.**

Comment

The term "exemption" is defined in s. 1.

Waiver of Exemptions

193/196 If made before a judgment has been obtained by the judgment creditor in whose favour a waiver of an exemption by a judgment debtor operates, the waiver of an exemption provided by this Act, whether contained in a contract or otherwise, is void

Requirement of providing judgment debtor with written information on exemptions

194/201 Upon seizure of property or income, the enforcement officer shall give to the judgment debtor, at the time of seizure or as soon thereafter as practicable a written notice, in the prescribed form, that

- (a) describes the types and values of property and income that may be claimed as exempt from seizure;
- (b) describes the procedure for claiming an exemption and the procedure for determining the validity of a claim to an exemption;
- (b) a copy of the notice of exemption claim that may be used by a judgment debtor to claim an exemption provided by this Act; and
- (d) the effect of co-ownership on a claim to an exemption.

Time for delivering an exemption claim

- 195/202 (1)** Where personal property of a judgment debtor has been seized, a judgment debtor who claims that the seized property or the proceeds of any such property are exempt, must deliver a notice of exemption claim to the enforcement officer who effected the seizure within the number of days prescribed by regulation from the day when the seizure occurred.
- (2) Where a notice of intention to sell land has been delivered to the judgment debtor under Part 10 and the judgment debtor claims that the land specified in the notice of intention to sell is exempt, the judgment debtor must deliver a notice of exemption claim to the enforcement officer before the expiration of the waiting period referred to in s. 191.
- (3) Where income of a judgment debtor has been seized, and the exemption to which the judgment debtor is entitled under Division 3 of this Part has not been applied before seized income is paid to the enforcement officer, a judgment debtor, who claims that the seized income is exempt income, must deliver a notice of exemption claim to the enforcement officer within the number of days prescribed by regulation from the day when the seized income would have otherwise been paid to the judgment debtor.

Determination of validity of exemption claim by the enforcement officer

- 196/204 (1)** Within 10 days of receiving a notice of exemption claim, the 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.
- (2) If a judgment debtor gives a notice of exemption claim to an enforcement officer and
- (a) the judgment debtor owns more than one item of a type of property that may qualify as exempt property, or
 - (b) the total value of the items exceeds the maximum prescribed value of the exemption for that type of property, and
 - (c) the judgment debtor neglects or fails to make a selection in a timely manner,

the enforcement officer may select the items, up to the maximum any prescribed value of the exemption, and determine that the selected items are exempt.

- (3) Except as otherwise provided in this Act, a determination of whether to accept or reject a judgment debtor's exemption claim may be made on the circumstances that existed at the date of seizure of the property or income, the date that another enforcement measure affecting the property or income was initiated or the date of the determination by the enforcement officer.

Review by the court of enforcement officer's determination of validity of exemption claim

197/205 (1) Within 10 days after receiving notification of the enforcement officer's decision to accept or reject an exemption claim, an application may be made to the court by the judgment debtor, the instructing judgment creditor, the enforcement officer, or other interested party requesting the court to determine whether to accept or reject the claim to an exemption either in whole or in part.

- (2) The court must determine validity of the exemption claim on the basis of the circumstances that existed at the date of seizure of the property or income, the date that another enforcement measure affecting the property or income was initiated or at the time of the application to the court.

Onus of proving that seized property or income is exempt

198/206 Under section 196 and 197, the onus of proving that seized property or income is exempt from seizure is on the judgment debtor.

Failure by judgment debtor to give notice of exemption claim to the enforcement officer within the time provided

199/203 (1) Subject to subsection (2) and to an order of the court made upon the application of the judgment debtor, if a judgment debtor does not give a notice of exemption claim to the enforcement officer within the applicable period of time specified in section 195, the enforcement officer may proceed with the enforcement proceeding in relation to the seized property or income on the basis that the judgment debtor has waived any exemption that the judgment debtor may have under this Act.

Comment

Under s. 202, an enforcement officer is directed not to seize property that is likely exempt. Therefore, in most cases, property that is likely exempt will not be seized. Where an enforcement officer concludes that a particular item of property

is not exempt and the enforcement officer seizes the item, and the judgment debtor wishes to assert an exemption, the judgment debtor must deliver a notice in the prescribed form claiming the exemption. Failure to deliver the prescribed notice to the enforcement officer within the period specified in this section will preclude the judgment debtor from subsequently asserting the exemption unless, upon an application to the court, the court permits the judgment debtor to assert the exemption and the court determines that the item in question is, in fact, exempt.

- (2) If income of the judgment debtor has been seized and the exempt income that the judgment debtor is entitled to receive under Division 3 has been paid to the judgment debtor, the judgment debtor is deemed to have claimed the exemption with respect to income provided by Division 3.**
- (3) An application to the court under subsection (1) must be made before the distribution of the distributable fund with respect to the enforcement proceeding.**
- (4) As a condition of obtaining the release of any property or income from seizure or the release of any proceeds of sale of seized property, the judgment debtor must pay the costs of an application to the court under this section and all costs relating to the seizure of the property, and any costs related to either preparing for the sale of the property or the actual sale of the property .**
- (5) If, at the time of the court order, the property has been sold, the court may order that a portion of the proceeds of the sale representing the value of the judgment debtor's property that would otherwise have been exempt from seizure, subject to any maximum value prescribed by regulation under this Act, less the costs specified in subsection (4), and less the fees and costs of the enforcement officer, be paid to the judgment debtor.**

Division 2: PROPERTY EXEMPTIONS

Exemptions of specific types of property

200/197 The interest of the judgment debtor in the following property is exempt from seizure in an enforcement proceeding:

Comment

There are at least two alternative approaches that may adopted with regard to specific exemptions.

An approach that is currently in use in most provinces and territories is to describe a class of property and prescribe a maximum value of property of this class that is exempt from seizure. The value may be prescribed either by regulation or by the legislation.

An alternative approach is to describe a class of property and declare that property falling within the described class that is reasonably required by the judgment debtor and her or his dependents is exempt from seizure without any reference to a maximum prescribed value of property that may be claimed as exempt in any one category or combination of categories.

Another alternative would be to use a combination of these two approaches.

In the following text of the Uniform Act, each clause contains a description of a class of exempt property. Where a Province or Territory wishes to prescribe a maximum value of property that is exempt in this class, it can enact the language contained in square brackets following the description of the class.

The Working Group recognizes that the classes of property that have traditionally been exempt and descriptions of those classes of property is often closely related to the cultural and economic history of a province or territory. Consequently, there is a need for a good deal of latitude with regard to the approach that individual provinces and territories may wish to adopt and the manner in which they may describe the various classes of exempt property.

- (a) Food required by the judgment debtor and her or his dependents during the 12 month period following the enforcement proceeding;**
- (b) Medical and dental aids required by the judgment debtor and her or his dependents;**
- (c) Ordinary clothing, not including jewelry, needed by the judgment debtor and her or his dependents [that is of a value not exceeding the amount prescribed by regulation];**

Comment

The inclusion of the adjective “ordinary” is intended to preclude the inclusion of mink coats and similar luxury items of apparel.

- (d) Household furnishings, utensils, equipment and appliances that are needed by the judgment debtor or his or her dependents to maintain a functional household [that are of a value not exceeding the amount prescribed by regulation];**
- (e) An interest in a house, condominium, mobile home, or equivalent residence, and the land on which it is permanently situated of the judgment debtor, that will enable the judgment debtor and her or his dependents to have a reasonable standard of residential accommodation [and that is of a value not exceeding the amount prescribed by regulation];**
- (f) One motor vehicle, as defined in the [insert the title of the Motor Vehicle Act or similar Act of the enacting province/territory] that is**
 - (i) ordinarily used by the judgment debtor or her or his dependents,**
 - (ii) necessary to enable the judgment debtor to earn an income for the support of the judgment debtor and her or his dependents or to meet their reasonable educational, health or recreational needs, [and]**
 - [(iii) that is of a value not exceeding the amount prescribed by regulation];**
- (g) If the judgment debtor is engaged in an occupation or is actively engaged in earning income from carrying on a trade, business or calling,**
 - (i) tools and other personal property that are ordinarily used by the judgment debtor that are necessary for earning income from the judgment debtor's occupation, trade, business or calling [that are of a value not exceeding the amount prescribed by regulation];**
 - (ii) if the judgment debtor's primary occupation or business is farming,**
 - (A) 160 acres of land ordinarily used by the judgment debtor for farming,**

Comment

If clause (A) is enacted in this form, it will not be necessary for the judgment debtor to have her or his principal residence on the exempt farm land as is currently the case in some Provinces that currently have a similar exemption.

- (B) personal property, including agricultural products, 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 [that is of a value not exceeding an amount prescribed by regulation], and

Comment

Personal property under subclause (B) would include items such as seed and fertilizer.

(iii) if the 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 [that is of a value not exceeding the amount prescribed by regulation];

Comment

This exemption will likely be a significant exemption in those provinces and territories where fishing is an important component of the economy and where fishing forms part of the cultural heritage of the province or territory. In these circumstances, the enacting jurisdiction may wish to prescribe a higher exemption value for personal property ordinarily used in a fishing operation than is assigned to personal property that is used in other businesses.

(h) Domesticated animals that are kept as pets and not used for business purposes or for the purpose of earning income_[that are of a value not exceeding the amount prescribed by regulation];

Comment

Without such a provision, a threat to seize such property could be used as leverage to persuade a judgment debtor to not assert an exemption or to abandon other property, which would otherwise be exempt such as a motor vehicle, in order that the motor vehicle could be seized.

(i) Pension funds to the extent that they are exempt under [insert the title of the Pension Benefit Standards Act or similar Act of an enacting Province or Territory];

Comment

Most provincial legislatures and the federal Parliament have enacted specific pension legislation that exempts most pension funds and pension income from seizure or attachment.

In some provinces, British Columbia for example, the exemption contained in the Pension Benefits Standards Act draws a

distinction between required contributions, which are exempt from execution, and, additional voluntary contributions, which are not exempt. The exclusion of additional contributions is intended to prevent prospective judgment debtors from using pension funds as a haven from execution proceedings.

(j) All rights property and interests of the judgment debtor as the planholder in a Registered Retirement Savings Plan (RRSP), Registered Retirement Income Fund (RRIF) and Deferred Profit Sharing Plan (DPSP);

Comment

This paragraph adopts the language of s. 3 of the Uniform Registered Plan (Retirement Income) Exemption Act. It provides:

3. Notwithstanding any other Act or regulation, all rights, property and interests of a plan holder 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.

(k) 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 including property acquired through the investment of such money received by the judgment debtor but not including money received by the judgment debtor or property acquired by the judgment debtor as compensation for

- (iii) pain and suffering and loss of amenities, or**
- (iv) damage or injury to property;**

Comment

Where money or property is exempt under clause (i), the income received from the property or the investment of the funds is subject to seizure to the extent provided by Division 2 of this Part.

This paragraph will apply to compensation awards made both before and after the enactment of this Act.

- (l) A burial plot or burial plots intended for the interment of the judgment debtor, a dependent of the judgment debtor or a member of the judgment debtor's family;**

Comment

Prior to enacting this clause, a Province or Territory should review its legislation relating to cementaries to determine whether a similar exemption is contained in such legislation.

- (m) Property of the judgment debtor that is of such low value or property in which the judgment debtor's interest is of such low value that the costs of seizure and sale are, in the opinion of the enforcement officer, likely to be approximately equal to or greater than the amount realized from disposition of the property or the debtor's interest, as the case may be;**

Comment

The objective of this clause is to prevent the threat of the seizure of property such as family heirlooms, which may have a marginal market value but a high sentimental value to the judgment debtor. Without such a provision, a threat to seize such property could be used as leverage to persuade a judgment debtor to not claim an exemption or to abandon other property, which would otherwise be exempt, in order that such property could be seized.

- (n) Life insurance policies and proceeds thereof to the extent that they are exempt under [insert the title of the Insurance Act or similar Act of an enacting Province or Territory]; and**

Comment

The Insurance Act in most provinces and territories provides that where there is a designated beneficiary of a life insurance policy, the insurance money and the rights and interests of the insured in the policy (including any cash surrender value of the policy) are exempt from seizure.

- (o) Any personal property prescribed by regulation that is of a value that does not exceed the amount prescribed by regulation.**

Property that may not be claimed as exempt

201/198 (1) Where a judgment debtor carries on a business, the inventory of the business may not be claimed as property as exempt from enforcement proceedings.

(2) Notwithstanding any other provision of this Act, unless the court orders otherwise, exempt property shall not include:

(a) property that has been abandoned and not reclaimed prior to the date of seizure;

Comment

Based on a judgment debtor's repudiation of ownership or a judgment debtor's inattention to or neglect of property, it may be determined that a judgment debtor has abandoned the property.

(b) property the possession or control of which has been voluntarily surrendered, other than for repair or short term storage or use, by the judgment debtor to a person who is not a dependent of the judgment debtor;

Comment

This paragraph is intended to address the situation where the 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 because the judgment debtor has made the decision that he or she does not need the property.

(c) property of the judgment debtor seized to enforce a judgment for damages resulting from physical injury intentionally caused to the person of the judgment creditor by the judgment debtor; and

Comment

The Working Group has not completed its discussions with regard to whether or not this paragraph should be included in the Uniform Act. A similar provision is included in the Saskatchewan Interim Report on the Modernization of Money Judgment Enforcement Law.

(d) property of the judgment debtor seized to enforce an order or judgment of a court against the judgment debtor made under section 738(1)(b) of the Criminal Code (Canada).

Comment

The Working Group has not completed its discussions with regard to whether or not this paragraph should be included in the Uniform Act. A similar provision is included in the Saskatchewan Interim Report on the Modernization of Money Judgment Enforcement Law.

Comment

Several provinces currently have legislation whereby property may not be claimed as exempt where the enforcement proceeding is based on a judgment to satisfy a debt incurred for the purpose of acquiring the property. Where enforcement proceeds are distributed on the basis of pro rata sharing, it is difficult to justify continuing such a provision. If such a provision is included, its application is uneven. Consider, for example, a situation where judgment creditor "A" has a judgment for a debt incurred for the purpose of acquiring a car. Judgment creditor "B" has a judgment for damages for defamation. If judgment creditor "B" is the instructing judgment creditor, and the enforcement officer proposes to seize the car, the judgment debtor may claim the exemption for a car. However, if judgment creditor "A" is the instructing judgment creditor and the enforcement officer seizes the car, no exemption can be claimed if such a provision exists in the legislation; however, the proceeds of the seizure and sale are distributed on a pro rata basis between judgment creditors "A" and "B".

Property shall not be seized where it is likely exempt

202/199 (1) The enforcement officer shall not seize property of the judgment debtor that, based on information available to the enforcement officer at the time of seizure, the enforcement officer concludes is or is likely to be exempt.

- (2) Where the enforcement officer has seized property of the judgment debtor that falls within one of the classifications of exempt property and the realizable value of the judgment debtor's interest in property will likely be less than the permitted exemption, the enforcement officer shall not sell the judgment debtor's interest in the property and shall return the property to the judgment debtor.**

Co-ownership - effect on an exemption

203/200 (1) Where the judgment debtor is the co-owner of property described in section 200, and the property is exempt to a value prescribed by regulation, the value of the exemption shall be reduced in proportion to the judgment debtor's ownership interest in the property.

- (2) For the purpose of this Part where the beneficial interest in property is co-owned by the judgment debtor and others, it shall be considered that each co-owner has an equal share in the property unless the contrary is proven.**

Procedure where value of seized property exceeds maximum permitted exemption

204/207 (1) Where

- (a) a judgment debtor owns an item of property of a classification for which there is an exemption; and**
 - (b) the judgment debtor's interest in that property exceeds the value of the exemption prescribed by regulation for property in that classification,**
- the judgment debtor's interest in the property may be sold by enforcement proceedings.**

- (2) Where a judgment debtor claims an item of property as exempt property, and the judgment debtor's equity in that property exceeds the prescribed value exempt property allowed for that classification of property, the property may be sold by the enforcement officer and if any proceeds of sale up to the prescribed value of exempt property for that classification of property an amount equal to the prescribed value of exempt property for that classification must be paid over to the judgment debtor.**

Proceeds of exempt property remain exempt as long as they remain segregated

205/208 Where a judgment debtor receives proceeds from the sale of exempt property under this Division, such proceeds remain exempt as long as they remain segregated from and traceable in relation to other funds of the judgment debtor.

Division 3: INCOME EXEMPTION

Definitions applicable to this Division

206/209 For the purpose of this Division,

- “income” means property of the judgment debtor which he or she has received or has the right to receive which is in the nature of income and includes money or other forms of personal property receivable**
- (a) as wages or salary pursuant to an employment contract;**
 - (b) pursuant to a contract for personal services providing for not less than three periodic payments;**
 - (c) as a retirement pension to the extent that it is not exempt under the laws of Canada or the [province/territory];**
 - (d) from an annuity;**
 - (e) from a Registered Retirement Investment Fund; and**
 - (f) from a Registered Retirement Savings Plan or Deferred Profit Sharing Plan.**

Comment

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 creditor's right. Sections 4 and 5 of the Uniform 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.

“net income” is determined by deducting from the judgment debtor's total income amounts for income tax, employment insurance, Canada Pension, compulsory union or professional fees, registered pension plan contributions, health insurance or disability insurance premiums, the amount prescribed as compensation to the account debtor and such other amounts as are prescribed.

Comment

Under s. 138 in Division 8 of Part 9, an account debtor is entitled to deduct such an amount as may be prescribed by regulation to compensate the account debtor for the cost of complying with the notice of seizure.

“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.

Comment

It is recommended that the length of the prescribed period should be a common length of a pay period for employees such as 14 days or a calendar month.

Exemption Formula

207/210 Except as otherwise provided in this Act, a judgment debtor is entitled to a net income exemption:

- (a) to the extent of the minimum amount prescribed during a prescribed period; and**
- (b) fifty percent of the amount by which the judgment debtor's net income during the prescribed period exceeds the minimum amount;**

but the total amount exempt shall not exceed the maximum amount prescribed.

Comment

Each Province and Territory may, by regulation, prescribe minimum and maximum amounts that are considered appropriate for the enacting jurisdiction.

The minimum amount prescribed by regulation may take into account the number of persons who are dependent on the judgment debtor.

Exemption where income attributable to only part of prescribed period

208/211 If income which a judgment debtor is entitled to receive is attributable to only part of the prescribed period, the minimum and maximum amounts prescribed in section 210 must be reduced proportionately.

Exemption where income are attributable to period longer than prescribed period

209/212 If income which a judgment debtor is entitled to receive is attributable to a period that is longer than the prescribed period, the minimum and maximum amounts prescribed by section 210 must be increased proportionately.

Exemption where income is not attributable to a specified period

210/213 If a judgment debtor is entitled to receive income that is not attributable to a specified period,

- (a) in the case of the first payment to the judgment debtor from an income source, the period to which the payment is attributable shall, unless the court orders otherwise in an application made under section 210, be deemed to be 6 months and the minimum and maximum amounts prescribed by section 220 shall be adjusted accordingly.**
- (b) in the case of subsequent payments from the same income source, the minimum and maximum amounts prescribed by section 210 must be varied in accordance with the length of the period since the last payment to the judgment debtor from that income source.**

Comment

If, for example, a judgment debtor elects to receive a payment out from a RRSP, the minimum and maximum amounts prescribed by section 210 should be increased or decreased in relation to the length of period since the last payout. If the default calculation is inappropriate, an application may be made to the court for a variation of the exemption.

Variation of Exemption by Court Order

211/213 On application of a judgment debtor, a judgment creditor who has issued a subsisting enforcement instruction, an enforcement officer or a receiver, the court may:

- (a) increase the minimum or maximum amounts prescribed by section 210 or the percentage of exempt income specified in section 210 to account for special circumstances of the judgment debtor or dependents of the judgment debtor;
- (b) reduce the minimum or maximum amount of exempt income to account for income received by the judgment debtor that is not employment remuneration;
- (c) determine the amount of exempt income where:
 - (i) income is received by the judgment debtor at irregular intervals;
 - (ii) the amount of income received by the judgment debtor varies from month to month; or
 - (iii) the circumstances of the judgment debtor are such that application of a minimum or maximum exempt amount is inappropriate;
- (d) declare income which the judgment debtor is entitled to receive from a particular income source to be exempt from seizure when
 - (i) the costs to the payor of complying with the notice of seizure and the fees and costs to which the enforcement officer will be entitled will likely exceed the amount payable to the enforcement officer under the notice of seizure,
 - (ii) income, which is not employment income, if it were added to the judgment debtor's exempt employment income, is approximately equivalent to the amount of the exemption the judgment debtor would receive if the income were part of the judgment debtor's employment remuneration;
- (e) confirm or vary an order made under this section.

Requirement that judgment debtor provide information on sources of income

212/214 (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) the judgment debtor's entitlement to receive income from these sources including information with regard to when the payment of income to the judgment debtor is likely to be made,**
 - (c) where the entitlement to receive income is dependent an election by the judgment debtor, the effective date of the election.**
- (2) Where the 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 time period specified by the enforcement officer or as required by subsection (2), the court, upon the application of the enforcement officer or the instructing judgment creditor, may cancel the judgment debtor's exemption with regard to income.**

Circumstances where deposit accounts for exempt income is deposited remain exempt

213/215 (1) Subject to subsection (2), if income of a judgment debtor is deposited directly to a deposit account at a financial institution by or under the instructions of the judgment debtor including an amount deposited by the judgment debtor's employer, an amount equal to the amount that the judgment debtor would have been entitled claim as exempt income if the income had been seized before it was paid into the account is exempt from seizure.

- (2) For the purpose of subsection (1), the judgment debtor**
 - (a) may claim the exemption with respect to only one deposit account which shall be referred to as the "income account;**
 - (b) must inform the enforcement officer of the particulars of the deposit account that is the judgment debtor's income account including the name of the financial institution, the branch of the financial institution and the deposit account number; and**
 - (c) must provide the enforcement officer with any information with regard to the income account that the enforcement officer reasonably requires.**
- (3) The exemption provided by subsection (1) does not apply if the net income of the judgment debtor is intermingled with other funds of the judgment debtor or another person.**
- (4) If the income account has been seized, the enforcement officer shall, upon request by the judgment debtor, release the funds specified in subsection (1) from seizure.**

Comment

Current legislation with regard to the garnishment of salary and wages often contains a provision that if a judgment debtor is dismissed, suspended, laid off or disciplined by his or her employer as a consequence of garnishment, the court may make an order directing reinstatement (in the case of dismissal) or providing another remedy. The Working Group recommends that provisions of this nature be included in labour or employment standards legislation rather than in judgment enforcement legislation and recommends that enacting Province / Territory review its labour and employment standards legislation and, if necessary, amend such legislation to provide for reinstatement and other suitable remedies if an employee is dismissed or disciplined by an employer because of the seizure of employment income.

PART 12: RECEIVERS, INJUNCTIONS AND SPECIAL REMEDIES

Comment

The appointment of a receiver has traditionally been regarded as a form of equitable execution; however, there is legislation in most provinces and territories as well as rules of court that pertain to the appointment of receivers.

In equity, the traditional position was that a receiver would not be appointed unless there was some impediment to execution at law. In recent years, the courts in most provinces and territories have been prepared to appoint a receiver by way of equitable execution where circumstances warrant without being satisfied that there is some impediment to execution at law.

Division 1: RECEIVERS

Appointment of receiver

216 (1) An application for the appointment of a receiver may be made without notice or by notice of motion by a judgment creditor who has given a subsisting enforcement instruction to an enforcement officer.

(2) Subject to section 217, the court may on an application made in accordance with subsection (1) appoint a receiver, with or without security, with respect to the exigible property of the judgment debtor including without limitation:

- (a) all of the exigible property of the judgment debtor,**
- (b) specified exigible property of the judgment debtor,**

at the date of the appointment of the receiver or that is acquired by the judgment debtor during the period of the appointment of the receiver.

- (3) A person may not be appointed as a receiver unless that person has agreed in writing to act as a receiver in respect of the matter for which the appointment is to be made, and the court is satisfied the person has the requisite qualifications or experience to fulfil the duties of a receiver.**
- (4) A judgment creditor who makes an application under this section shall be considered to be a judgment creditor for the purposes of section 229(1)(d) to the extent of any funds contributed to the distributable fund by the receiver.**

Circumstances where a receiver must not be appointed

- 217**
- (1) A receiver must not be appointed under this Act unless the amount of the judgment or judgments being enforced is greater than \$5000 or such other amount as is prescribed by regulation.**
 - (2) A receiver must not be appointed under this Act:**
 - (a) if the application is to appoint a receiver to receive and realize on exigible property of the judgment debtor unless the court is satisfied that**
 - (i) the money that a receiver may reasonably be expected to realize from the exigible property of the judgment debtor are likely to be sufficient to**
 - (A) satisfy the costs and remuneration of the receiver, the costs relating to the appointment, supervision and discharge of the receiver, the fees and expenses of the enforcement officer with regard to distribution of money realized by the receiver, and**
 - (B) provide money for distribution among those judgment creditors who have an eligible claim under Part 13; and**
 - (iii) the appointment of a receiver will not**
 - (A) derogate from an interest in property that was acquired by of 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;**
 - (b) if the application is to appoint a receiver to receive a judgment debtor's income from employment unless the court is satisfied that the appointment of a receiver will not cause undue**

hardship or deprivation to the judgment debtor or dependents of the judgment debtor.

Circumstances court must consider on an application to appoint a receiver

- 218 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 the appointment of a receiver would be an effective means of realizing on the property;**
 - (b) the practicability of enforcing the judgment through other proceedings under this Act;**

Comment

The availability of other methods of enforcing a judgment should not preclude the appointment of a receiver if the court is satisfied that the appointment of a receiver is a more effective means of enforcing the judgment.

- (c) any conduct of the judgment debtor of other person making enforcement of the judgment difficult or costly; and**
- (e) the extent to which the appointment of a receiver would result in undue hardship or prejudice to the judgment debtor, the judgment debtor's family or to a person in possession or control of exigible property of the judgment debtor.**

Content of order appointing a receiver

- 219 An order appointing a receiver may**
- (a) empower the receiver to collect in and take control of property of the judgment debtor, or to take such other action 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) when it becomes payable, a future account that would otherwise be 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 an order made under this section except in accordance with the order of the court;**

Comment:

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.

- (e) enjoin a person other than the judgment debtor who is in control or possession of property subject to an order pursuant to clause (a), or who may acquire control or possession of the such property, from disposing of or dealing with the property other than in a manner 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 such other order as may be required to enable the receiver to take possession and facilitate the realization of property of the judgment;**
- (g) make an order with respect to payment of the costs of the receiver;**
- (h) make any other or additional order that the court considers necessary or appropriate to facilitate the realization of the property that is subject to the order.**

Powers of a receiver

- 220**
- (1) Unless otherwise ordered by the court, a receiver shall take custody and control of the property over which the receiver is appointed.**
 - (2) A receiver has the power to take conservatory measures, including sale, to protect the property identified in the order or its value.**
 - (3) The court may give a receiver any powers that it considers necessary for the realization of the property, including the power to manage or sell the property or bring proceedings in relation to the property.**
 - (4) A receiver may exercise the powers given to a receiver by an order under this Part or set out in section [insert the name and section number(s) of applicable provincial or territorial statute or rules of court that sets out the powers of receivers] 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.**
 - (5) A receiver has, in addition to the powers provided by this Act, the powers of a receiver in equity that are not inconsistent with this Act.**

221 [The content of this section has been moved to s. 216(2).]

Execution of documents, etc.

- 222** For the purposes of dealing with or disposing of property pursuant to this Act, a receiver may
- (a) do any act or thing that would otherwise have to be done by the judgment debtor, and**

- (b) execute or endorse any document that would otherwise have to be executed or endorsed by the judgment debtor.

Court supervision of receivers

- 223** (1) On the application of an enforcement officer, a receiver, a judgment creditor who has given a subsisting enforcement instruction to an enforcement officer, a judgment debtor or a person with an interest in property affected by an order appointing a receiver, the court may:
- (a) remove, replace or discharge a receiver;
 - (b) give directions on any matter relating to the duties of a receiver;
 - (c) approve a receiver's accounts;
 - (d) fix the remuneration of a receiver and, when security is ordered, determine the form of the security;
 - (e) direct a receiver to remit to the enforcement officer any sum deducted by the receiver for costs and remuneration of the receiver that is determined by the Court to be in excess of the sum properly due to the receiver; and
 - (f) discharge the security and terminate the appointment of a receiver.
- (2) 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].

Relationship of receiver and enforcement officer

- 224** (1) If an enforcement officer has a subsisting enforcement instruction with regard to a judgment debtor, a receiver appointed under this Act may be ordered to:
- (a) promptly remit to the enforcement officer money realized through the receivership that is not necessary to meet the anticipated receiver's fees and expenses;
 - (b) at least every 6 months, deliver to the enforcement officer financial statements in the required form with respect to the administration of the receivership;
 - (c) upon completion of the receiver's duties, deliver to the enforcement officer, a final report and accounting of the administration of the receivership and remit the net amount realized through the receivership, after deducting the receiver's fees and expenses.
 - (d) upon demand of the enforcement officer, provide to the enforcement officer with copies of all records relating to the procurement and administration of property of the judgment debtor that have come into the possession or control of the receiver.

Disposition of judgment debtor's property on termination of a receivership

225 Upon termination of a receivership, any property of the judgment debtor that remains in the possession or under the control of the receiver must be delivered to the judgment debtor unless the receiver has received a notice of seizure and demand for delivery of the property from an enforcement officer who has a subsisting enforcement instruction with regard to the judgment debtor.

Division 2: INJUNCTIONS AND SPECIAL ORDERS

Types of injunctions and orders that a court may make on application

226 (1) Upon the application of a judgment creditor, a court may:

- (a) when it is impossible or impracticable to seize or dispose of any type of property in a manner otherwise provided in this Act, order a judgment debtor or other person to do or refrain from doing such things as may be necessary to facilitate enforcement of a judgment against property of a judgment debtor, including, where appropriate, an order directing:
 - (i) a judgment debtor or other person to deliver a share certificate or other document to the enforcement officer or person named by the enforcement officer;
 - (ii) a judgment debtor or other person to endorse a security or negotiable instrument;
 - (iii) a judgment debtor or other person to execute a share transfer form;
 - (iv) an issuer of a security to deliver a share certificate to the enforcement officer;
 - (v) an issuer of a security to change its share registry to indicate the enforcement officer or a person named by the enforcement officer as registered owner of a security or to instruct its transfer agent to do so;
 - (vi) a broker or depository to change its records to indicate the enforcement officer or a person named by the enforcement officer as registered owner of a security or security entitlement; or
 - (vii) a judgment debtor or other person to execute an assignment or transfer of an interest in
 - (A) a patent, trade mark, industrial design, copyright or other form of intellectual property; and
 - (B) any right, whether or not exclusive, to manufacture, produce, sell or otherwise deal with property or to provide services, which right is transferrable by the judgment debtor with or without the consent of the grantor; and

- (b) provide directions to the enforcement officer as to the method and terms of sale or disposition of the property that is the subject of an order under subsection (a).**
- (2) Upon the application of a judgment creditor, a court may:**
 - (a) order the judgment debtor or any person in possession or control of the property of the judgment debtor to deliver up the property to an enforcement officer or to another person named in the order;**
 - (b) enjoin the judgment debtor or any other person from disposing or otherwise dealing with any property of the judgment debtor;**
 - (c) enjoin the judgment debtor or any other person from transferring or moving property of the judgment beyond the jurisdiction of the court.**

PART 13: DISTRIBUTION

Comment

Section renumbering that has taken place since the preparation of the Summary of the Act. In accordance with the Summary of the Act, this Part begins with s. 225 notwithstanding that Part 12 above concludes with sections 225 and 226.

Definitions applicable to this Part

225 In this Part

“eligible claim” means the amount outstanding on the judgment of a judgment creditor at the time when a distributable fund is constituted with regard to a judgment debtor, where the judgment creditor has

- (a) an effective enforcement charge registered in the registry against the judgment debtor, and**
- (b) has delivered a subsisting enforcement instruction to the enforcement officer;**

“distributable fund” means the fund constituted in accordance with section 226.

The Distributable Fund

- 226**
- (1) A distributable fund is constituted when an enforcement officer receives money with regard to a judgment debtor in respect of whom a subsisting enforcement instruction has been delivered to the enforcement officer.**
 - (2) A distributable fund constituted under this section is comprised of:**
 - (a) money received by the enforcement officer after the delivery of an enforcement instruction regardless of the source of the money or a designation or allocation of the money by the person paying it**

- whether or not the money is received as a result of seizure or seizure and sale of the judgment debtor's property,**
(b) money that is otherwise identified in this Act or any other Act as distributable or allocated to an enforcement charge on property of a the judgment debtor, and

Comment

Money otherwise identified in this Act includes money paid over to an enforcement officer by a receiver under Part 12.

Money otherwise identified in another Act may include:

- (a) proceeds from enforcement proceedings against land where an enacting jurisdiction includes the enforcement proceedings against land in a separate Act. (In this Act, enforcement proceedings against land are contained in Part 12.)
- (b) any balance remaining where 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 to ensure that it contains a provision similar to s. 61(2) of the N.& L. 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.

(c) money paid to the enforcement officer with respect to fees, expenses and costs incurred in connection with an enforcement instruction relating to the judgment debtor.

(3) Nothing in this Part shall be construed so as to prejudice any right to money that is based on an interest, including a security interest or a lien,

(a) in the money, or

(b) in the property from which the money is derived,

where that interest has priority over the relevant enforcement charges.

Comment

Where property, which is subject to a prior security interest or lien, is sold by the enforcement officer in circumstances where the purchaser from the enforcement officer takes the property clear of the prior security interest, the proceeds of sale become part of the distributable fund; however, the enforcement officer is obligated to satisfy the prior security interest, to the extent of the proceeds realized from the sale of the property, prior to distributing the distributable fund.

(4) The distributable fund shall be distributed by the enforcement officer as provided in this Part.

Comment

Where money is received by an enforcement officer in satisfaction of a judgment and provided an enforcement instruction has been received, the application of this Part is not affected by the source of the money (whether it is paid by the judgment debtor or another person on behalf of the judgment debtor) or the designation or allocation of the money. The judgment debtor cannot specify that the money will be allocated in whole or in part to one judgment but not another.

(5) The application of this Part is not affected by priority of any enforcement charge relative to any other interest in property of the judgment debtor, including a mortgage, security interest, lien or charge.

Comment

The purposes of this subsection are twofold:

- 1) To make it clear that the priorities established by Part 5 do not govern distributions among judgment creditors; and
- 2) To reverse judicial decisions such as *Edmonton Mortgage v. Gross* (1911), 18 W.L.R. 385 (Alta S.C.), which held that the pro rata distribution provisions of creditors' relief legislation do not apply when a security interest has an intervening priority status with respect to the writs in the sheriff's hands."

Time for determining entitlement to distribution

227 When a distributable fund is constituted under section 226, the enforcement officer shall determine those judgment creditors who have an eligible claim at the time that the distributable fund constituted.

Enforcement officer's request to judgment creditors for information about claim

- 228** (1) An enforcement officer may deliver a demand in writing to each judgment creditor or other person with a claim on the distributable fund to provide:
- (a) information as to:
 - (i) the unsatisfied amount recoverable under his or her judgment or claim; and
 - (ii) any amount paid towards a judgment after an enforcement instruction relating to the judgment has been delivered;
 - (b) a claim to a priority to the distribution of money in the distributable fund.
- (2) A person who fails to respond to a demand under subsection (1) within 10 days from the date the demand is received shall be presumed to waive a right to share in the distribution or to a priority in the distribution, as the case may be.
- (3) If information provided to the enforcement officer in response to a demand made under subsection (1) is incorrect
- (a) a distribution made by the enforcement officer under this Part in the 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.
- unless the enforcement officer had knowledge at the time of the distribution that the information was not correct.

Order in which Distributions are made

229 (1) Except as hereinafter provided, and subject to any entitlement of persons other than judgment creditors to money in the distributable fund, the distributable fund shall 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 shall 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;**
- (b) **second, to the taxable court costs of a judgment creditor not falling within subsection (1)(a) that were incurred in proceedings to obtain a preservation order under Part 4 with respect to the judgment debtor's property to the extent that the money in the distributable fund can be attributed to property that was subject to such a preservation order, which amount shall be paid to the judgment creditor or other person who incurred or paid such costs;**
- (c) **third, to the taxable court costs, not falling within subsection (1)(a) or (1)(b), incurred in applications to the court, including third party or interpleader proceedings, to the extent that money in the distributable fund can be attributed to those proceedings, which amount shall be paid to the judgment creditors or other persons (other than the judgment debtor) who incurred or paid such costs;**
- (d) **fourth, to the eligible claim of the instructing judgment creditor whose enforcement instruction led directly to the contribution of money to the distributable fund up to an amount not exceeding**
 - (i) **the sum of \$2000 or such other sum that is prescribed by regulation, or such other amount as a court may order, plus**
 - (ii) **after the payments referred to in clauses (a) to (c) are made, 15% of the amount by which the balance of the distributable fund remaining exceeds \$15 000 or such other sum that is prescribed by regulation;**

Comment

Enacting jurisdictions may prescribe different amounts or place a cap or ceiling on the amount that an instructing judgment creditor may receive by way of a preference under this clause.

- (e) **fifth, to those judgment creditors eligible claim arose from an action for damages resulting from physical injury intentionally caused to the person of the judgment creditor by the judgment debtor or an order made under s. 738(1)(b) of the Criminal Code (Canada) for the payment of an amount by way of restitution to a victim of crime**

who suffered bodily harm as the result of a commission of an offence or the attempted arrest of the offender;

Comment

This clause must be read in conjunction with s. 201(2)(c) and (d) of this Act. The latter paragraphs provide that a judgment debtor may not claim an exemption where a seizure is made to satisfy a judgment for damages for intentional physical injury or an order made under s. 738(1)(b) of the Criminal Code. In the comment under s. 201(2)(c) and (d), it was observed that the Working Group has not completed its discussion of these paragraphs.

- (f) sixth, to eligible claims that by virtue of any other enactment or law in force in the [Province/Territory] are entitled to priority over the claims of judgment creditors generally;**
- (g) seventh, to judgment creditors who were parties to interpleader proceedings to the extent that money in the distributable fund can be attributed to those proceedings, which amount shall be paid on a pro rata basis to the judgment creditors in those proceedings;**
- (h) eighth, if the distributable fund is comprised of the proceeds of sale of property which has been seized from premises where a landlord has a right of distress with respect to arrears of rent that were owing by the judgment debtor as a tenant of the landlord at the time of the seizure of the property, to the payment to the landlord of amount equal to the lesser of**
 - (i) arrears of rent owing by the tenant at the time of the seizure of the property to a maximum provided by [insert the name of the enacting jurisdiction's landlord and tenant legislation], and**
 - (ii) the proceeds of sale of the property seized from the landlord's premises;**

Comment

Under landlord and tenant legislation in some provinces and territories, where there are arrears of rent payable by a tenant on the premises (this is usually limited to commercial premises), a landlord is provided with the remedy of exercising a right to distress by seizing the tenant's property located on the premises to satisfy the landlord's claim for arrears of rent. Prior to exercising its right of distress in these circumstances, the landlord does not have any proprietary interest in the tenant's property.

If a landlord has not exercised its right of distress prior to seizure by an enforcement officer under this Act, there is no reason why the landlord should be given a preference on the distribution ladder that is higher than, for example, claims for costs by judgment creditors who have preserved goods for seizure and sale and thereby augmented the distributable fund.

In Part 9, s. 67, an enforcement officer is directed to maintain a seizure of a judgment debtor's property located on the premises where the judgment debtor's landlord has a right of distress only if the enforcement officer has reasonable grounds to believe that the price 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.

- (i) ninth, to all judgment creditors with eligible claims to the extent of their eligible claim; and**
 - (j) tenth, any amount remaining, shall 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 shall not be paid to the judgment debtor;**
 - (ii) the money shall be considered to be an amount received by the enforcement officer at that time as a result of an enforcement proceeding under s. 226(1); and****a new distributable fund is constituted under s. 226.**
- (2) If the remaining balance in the distributable fund is inadequate to discharge the full amount of the eligible claim payable to persons referred to in a paragraph of subsection (1), the remaining balance must be allocated to each eligible claim referred to in the paragraph in the proportion that that the amount of each eligible claim is to the total amount to be distributed under the clause.**

Comment

This subsection implements the principle of pro rata distribution on each rung of the preference ladder.

- (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 delivered to the enforcement officer with respect to the judgment debtor led to receipt of the money, then for the purposes of determining**

entitlements under subsection (1)(d), the money is presumed to be money received as a result of enforcement instructions in the order in which the enforcement instructions were received by the enforcement officer.

Comment

This subsection is essentially a default provision that, in all likelihood, will seldom be needed for the following reasons:

- (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 under Part 13.**

230 [This section number was omitted from the Summary of the Act.]

Delay in distribution where property seized is monetary currency

- 231 Where an Enforcement Officer seizes currency, it may not be distributed as enforcement proceeds until at least 15 days after the date of seizure.**

Comment

The objective of this section is to provide a reasonable opportunity to other persons, who may have a legal claim to seized cash, to make an application to the court to object to the seizure and/or, claim the funds before the funds are distributed by the enforcement officer.

Circumstances where enforcement officer may delay of distribution

- 232 If the distributable fund does not exceed \$2000 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 \$2000 or such other amount that is prescribed by regulation, or**
 - (b) in the opinion of the enforcement officer, it is desirable to delay the distribution because a new distributable fund has been constituted or the enforcement officer expects a new distributable fund will be constituted with the same eligible claimants provided that a distribution will not be postponed**
 - (c) where the amount of the distributable fund is sufficient to fully satisfy all eligible claimants, or**
 - (d) for a period longer than 90 days.**

Comment

The power to the enforcement officer to postpone a distribution is a discretionary power. Notwithstanding the described

circumstance in this section, the enforcement officer may proceed to make the distribution at the earliest possible time.

The purpose of subsection (2) is to provide a mechanism that will avoid the costs associated with making several distributions of relatively small amounts among the same eligible claimants. For example, where there is a continuing seizure of bi-weekly or monthly payments of wages, rents, and similar forms of income, the payments to the eligible claimants by the enforcement officer could be accumulated for 90 days before the enforcement officer paid out the distribution.

Preparation and distribution of enforcement officer's distribution scheme

- 233 (1) Where the cumulative amount of the eligible claims of judgment creditors and claim of other persons referred to in section 229 exceed the amount of the distributable fund, the enforcement officer shall prepare a distribution scheme in accordance with section 229 with respect to the distribution of the money in the distributable fund and deliver it to**
- (a) the judgment debtor,**
 - (b) judgment creditors with eligible claims,**
 - (c) any 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 and the distributable fund being distributed under the distribution scheme is comprised in whole or in part of the proceeds of such sale,**
 - (d) any person with a registered interest on the land of the judgment debtor that was extinguished by a sale of the land in an enforcement proceeding and the distributable fund being distributed under the distribution scheme is comprised in whole or in part of the proceeds of such sale.**

Objection to enforcement officer's distribution scheme

- 234 (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 or aspects of it by delivering 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 (2) does not state the reasons for the objection, the enforcement officer may disregard the objection and proceed with the distribution.**
 - (3) The enforcement officer may amend the distribution scheme prepared under section 233 in response to a notice of objection**

delivered under subsection (1) if the basis for the objection is an error in calculation or a clerical error.

Distribution [The content of this section number, as it appears on the Summary of the Act, is found in s. 229(4).]

- 236**
- (1) If the enforcement officer has not received a notice of objection within 10 days from the date the distribution scheme is given to the persons named in it or such further time as the court may order, the enforcement officer must proceed to distribute the distributable fund in accordance with the distribution scheme or the distribution scheme amended under section 234(3).**
 - (2) Notwithstanding subsection (1), an enforcement officer who receives a notice of objection as provided in section 234 may, upon expiry of 10 days from the date the distribution scheme is given to the persons named in it 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 delivered a notice of objection.**
 - (3) For purposes of subsection (1), an enforcement officer must disregard a notice of objection unless, within 10 days of giving the notice of objection to the enforcement officer,**
 - (a) the person applies to the court, with notice to the enforcement officer, for an order determining the validity of the objection, and**
 - (b) the enforcement receives notice of the application.**
 - (4) If**
 - (a) on expiry of the time specified in subsection (1), the enforcement officer has not received a notice of objection, or**
 - (b) on expiry of the time specified in subsection (1), the enforcement officer has received a notice of objection but on expiry of the time specified in subsection (3), the enforcement officer has not received an application to determine the validity of the objection**
the enforcement officer must proceed with the distribution in accordance with the distribution scheme or the distribution scheme amended under section 234(3).
 - (5) In an application referred to in subsection (3) or in an application by the enforcement officer, the court may:**
 - (a) confirm the contents of a distribution scheme; or**
 - (b) order the enforcement officer to amend a distribution scheme.**
 - (6) On making an order under subsection (5), the court may:**

- (a) if the application is successful, order that the costs of the application be paid out of the distributable fund to the applicant; or
 - (b) 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.
- (7) Unless the court orders otherwise, notice of the application referred to in subsection (3) and (5) must be given to persons named in the distribution scheme.

Reporting and correcting errors in the distribution

- 237 (1) If a judgment creditor or another person receives a payment by way of a distribution and the distribution was calculated based on an eligible claim in an amount greater than the amount to which the judgment creditor or other person is entitled, the judgment creditor or other person must
- (i) immediately notify the enforcement officer, and
 - (ii) 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 in an amount 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 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) Where an enforcement officer receives an amount under either subsection (1) or (2), the enforcement officer shall recalculate the distribution and distribute the additional money as if the payment were part of the original distribution.

PART 14: THIRD PARTY PROCEEDINGS

Comment

The section numbering in this Part and Part 15 follows the section numbering in the Summary of the Act. The “jump” from s. 237 above to s. 276 below will be corrected in the next version of the Act.

Third party notice of claim to property

- 276** (1) A person who claims property that is or is intended to be the subject of enforcement proceedings may give a notice of third party claim in the prescribed form to the enforcement officer.
- (2) A notice of third party claim is a nullity and may be disregarded by the enforcement officer if the notice of third party claim is not received by the enforcement officer before the property is sold by the enforcement officer.
- (3) If a notice of third party claim is a nullity
- (a) the enforcement officer must give notice in writing to the person who gave the notice of third party claim and to the judgment debtor,
 - (b) the person who gave the third party notice may apply to the court, within 15 days after the date on which the notification referred to in paragraph (a) was given to the person by the enforcement officer, for a determination of the issue, and
 - (c) notice of the application under paragraph (b) must be given by the third party to all judgment creditors who have an enforcement charge against the property at the time when the notice of third party claim is given to the enforcement officer.

Stay of sale or stay of distribution of proceeds from sale of property that is subject to a third party claim

- 277** Property that is the subject of a notice of third party claim must not be sold, and proceeds received by the enforcement officer from a sale of the property must not be distributed, until
- (a) if the enforcement officer has notified the third party that the notice of third party claim is a nullity, the period for an application to the court under section 276(3)(b) has elapsed and no application has been made,
 - (b) if the third party has made an application under section 276(3)(b), the application has been discontinued or dismissed, or
 - (c) the court otherwise orders.

Procedure relating to third party claims

- 278** (1) After receipt of a notice of third party claim under section 276(1), an enforcement officer must notify all judgment creditors, who have given subsisting enforcement instructions to the enforcement officer at the date when the enforcement officer received the notice of third party claim, by giving them a copy of the third party notice of claim.
- (2) A judgment creditor who has received a copy of the notice of third party claim under subsection (1) may dispute the claim by giving the third party and the enforcement officer a notice of dispute not later than 10 days after receipt of the notice of third party claim under subsection (1).
- (3) A judgment creditor who does not give a notice of dispute to the third party and the enforcement officer as provided by subsection (2) is deemed to have accepted the third party claim.
- (4) Nothing in subsection (3) affects the rights of a judgment creditor in any proceedings other than as referred to in this Part.

Release of seized property

- 279** (1) If a notice of dispute is not given under section 278(2) to the enforcement officer who delivered the section 278(1) notice, the enforcement officer must release from seizure the property claimed in the notice of third party claim.
- (2) An enforcement officer who releases property as provided in subsection (1) is relieved from liability for releasing the property to the third party.

Notice by enforcement officer of intention to interplead

- 280** If a notice of dispute is delivered under section 278(2) to the enforcement officer who delivered the section 278(1) notice, the enforcement officer must deliver to the disputing judgment creditor a notice of intention to interplead, indicating that the validity of the notice of third party claim is to be determined through interpleader proceedings as provided by the Rules of Court unless the notice of dispute is withdrawn within 5 days after delivery of the notice of intention to interplead.

Application by enforcement officer for interpleader order

- 281** (1) If, after expiry of the 5 days mentioned in section 280, the notice of dispute is not withdrawn, the enforcement officer must apply for an interpleader order.
- (2) If the person asserting a third party 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 or judgment creditor to pay the costs of the other party and the enforcement officer's costs.

- (3) An application for an interpleader order brought by the enforcement officer must be given to each judgment creditor who has given notice of dispute of the third party claim and who has not withdrawn the notice of dispute.**

Request for proportional contribution to costs

- 282 If a judgment creditor makes an application to court, including interpleader proceedings, to preserve the judgment debtor's property, or if the application may have the effect of contributing money to a distributable fund or increasing the amount of a distributable fund, the judgment creditor may within 15 days after filing the application with the court, deliver a notice of the application to all creditors who have given subsisting enforcement instructions to the enforcement officer requesting proportional contribution to the cost of the application.**

Possession of disputed property during interpleader proceedings

- 283 (1) Pending the outcome of interpleader proceedings brought under section 281, the enforcement officer who is a party to those proceedings may, on such security or bond as the enforcement officer may require, permit the person asserting a third party claim or another person to have possession or control of the property seized.**
- (2) When a bond or security is taken under subsection (1), the enforcement officer is deemed to remain in possession or control 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.**

Sale of perishable property

- 284 If the property specified in a notice of third party 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.**

Onus of proof in interpleader proceedings

- 285 (1) Unless the court orders otherwise, the following apply to interpleader proceedings brought under section 281:**
- (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 party claim is valid is on the person asserting the third party 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 party claim is not valid is on the judgment creditor;
- (c) the onus of proof of the validity of a third party claim to ownership of an account is on the person asserting the claim.
- (2) The court may place on the person asserting a third party claim the onus of proof that a third party claim to property in the possession or control of the third party at the date of seizure is valid when the court is satisfied that the third party and the judgment debtor have colluded to delay or prevent enforcement proceedings against the property.

PART 15: TRANSITION, REGULATIONS, FORMS AND FEES

Transition Provisions

286 A registration of a judgment against an interest in land under [insert the name of the Land Title Act or similar Act] continues until the expiration of the registration and for this period of time is deemed to be a registration of a notice of judgment under Part 10 of this Act.

Regulation making powers

287 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 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 debtors and their representatives;
- (j) respecting the determination of persons who qualify as dependents for the purpose of this Act;
- (k) respecting reports made under this Act;

- (l) respecting the seizure of property, including the removal, handling, storage and release of seized property;**
- (m) respecting the qualifications for and appointment of receivers;**
- (n) respecting compensation for account debtors;**
- (o) respecting the transition from the law existing immediately before the commencement of this Act to this Act;**
- (p) defining a word for the purpose of the Act or the regulations which is not defined in the Act; and**
- (q) generally to give effect to the purpose of this Act.**

Prescribed Forms

- 288** (1) Where this Act states that a notice or document shall be in the required form, the sheriff shall establish that form and the contents or information required on that form or document.
- (2) Where this Act states that a document is to contain certain information or statements, the regulations may require the documents to contain information or statements that are additional to those required by this Act.

Prescribed Fees

- 289** The minister responsible for this Act may establish fees that shall be paid for registrations, filing of documents, searches, commissions, enforcement instructions, examinations under oath, questionnaires, services, documents, copies, orders issued, enforcement proceedings and other things necessary for the purpose of this Act.