

# PRELIMINARY PAPER ON THE LAW OF PERSONAL EXEMPTIONS FROM SEIZURE

Thomas G. W. Telfer, University of Western Ontario.

## **Introduction**\*

[1] Across the country, there is a “wide disparity” among the various provincial and territorial statutes that exempt a debtor’s property from seizure.<sup>1</sup> Changing economic and social conditions, rates of inflation, and the shift of population from rural to urban areas have “stripped the specific exemptions of much of their significance” and reform is “long overdue.”<sup>2</sup> The proposal to include exemptions in Part 12 of the Uniform Civil Enforcement Act provides an opportunity to review the principles that inform exemption law.

[2] Part I of the paper examines the principles that inform provincial exemption law and how courts have interpreted exemption statutes. Part II considers the various models of exemption statutes that need to be considered when designing an appropriate exemption regime. Part III offers a brief overview of the law of personal exemptions from seizure and highlights the lack of uniformity and some of the idiosyncratic features of provincial and territorial legislation. Part IV examines the relationship between secured credit and exemptions. The paper concludes with Part V which addresses the implications of the reform proposal to adopt a federal exemption list in the *Bankruptcy and Insolvency Act*. This would represent a fundamental change as current bankruptcy law defers to provincial legislation to set appropriate exemptions in the debtor’s bankruptcy.<sup>3</sup> Given space limitations, the paper does not provide a detailed analysis of each aspect of Part 12 of the proposed Uniform Civil Enforcement Act. Rather, the goal of the paper is to highlight some of the key policy choices that are at stake in the design of a uniform exemption statute.

## **I Principles of Interpretation and the Purposes of Exemption Statutes**

[3] Exemption from seizure is an exception created by law that restricts the rights of creditors.<sup>4</sup> Provincial and territorial exemption statutes modify the harsh results of the common law that permitted the sheriff to seize and sell all the personal goods and chattels of the debtor that could be found and sold, with the exception of wearing apparel in actual use.<sup>5</sup> As exemption statutes are a derogation of the common law rights of creditors there is a line of case law that has adopted the principle that such exemption statutes should be construed strictly.<sup>6</sup> However, there is a competing line of cases which concludes that exemption statutes are remedial and are to be given a liberal interpretation to protect the debtor.<sup>7</sup> This latter principle derives support from a large number of cases that refer to the general purpose of exemption law.<sup>8</sup> However, courts will not always correct legislative oversight or update an exemption statute by relying upon the broad underlying principles of exemption law.<sup>9</sup> In some instances the plain reading of a statute

has taken precedence over a purposive interpretation even where the plain reading deprives a debtor of an exemption.

[4] Although early western exemption statutes were designed in part to attract settlers, more recent exemption statutes focus on the more general purpose of protecting the debtor and the debtor's family by preserving some minimum level of subsistence and dignity.<sup>10</sup> Professor Dunlop argues that "[i]t is not acceptable that creditors, no matter how just the debt, should have the power to take from debtors the basic necessities of life."<sup>11</sup> Exemption statutes permit the debtor to retain some essentials or what has been called the "basics of life while making the bulk of his or her assets available to satisfy judgment creditors."<sup>12</sup> In a 2001 report, *Modernization of Saskatchewan Money Judgment Enforcement Law*, Professors Buckwold and Cuming recognized that beyond maintaining "a subsistence standard of living" exemption law should also permit a debtor and a debtor's family "to function as healthy, productive and contributing members of society." This broader rationale might justify a wider scope of necessities that are related to the reasonable educational, health and recreational needs of the debtor and the debtor's dependents. Under the Saskatchewan proposal a motor vehicle exemption might be sought where it would accommodate "children's participation in sports, musical and other artistic or cultural programs."<sup>13</sup>

[5] Under the general category of necessities many exemption statutes include such items as household furniture, wearing apparel, food and fuel with some jurisdictions recognizing a motor vehicle as a basic necessity up to a fixed dollar amount. Separate legislation in some jurisdictions also includes burial plots and monies paid into a pre-paid funeral plan.<sup>14</sup> A debtor's basic necessity may also include shelter and some jurisdictions provide some form of exemption for residential property. The basis for a personal residence exemption is discussed below in Part V. Provincial legislation also extends to matters of life insurance, pensions, and wage garnishment. This report focuses on the various ways provincial legislation exempts tangible personal property and real property from seizure.

[6] Exemptions also preserve the means for debtors to "survive and to earn a living, thus contributing to their rehabilitation as citizens and to their capacity to repay their debts."<sup>15</sup> The Ontario Law Reform Commission concluded that it was of great importance to leave the debtor "with the wherewithal to work in the community and earn a decent living."<sup>16</sup> Under this second goal, exemption statutes protect items of personal property, such as tools of trade or agricultural implements, which are important to the debtor's livelihood. In some provinces farm land is also protected.

## PRELIMINARY PAPER ON THE LAW OF PERSONAL EXEMPTIONS FROM SEIZURE

[7] In addition, preserving the economic vitality of the debtor has been justified from the broader perspective of the public interest. If creditors were permitted to “destroy debtors’ economic viability, their continued maintenance would fall to society.”<sup>17</sup> Debtors should not be “cast upon the community with nothing, penniless with the likelihood of becoming a public charge.”<sup>18</sup> Finally, exemption statutes minimize the judgment debtor’s loss that may occur through forced execution sales. Such a sale would offer little return to the creditors, yet it may impose considerable hardship on the debtor.<sup>19</sup> Some provincial statutes protect items of sentimental value.

[8] The above policies of exemption law relate to a debtor as an individual and not to corporate entities.<sup>20</sup> Many provincial exemption statutes expressly indicate that the exemptions are only available to a natural person.<sup>21</sup> However, proposals contained in the 2001 Saskatchewan *Money Judgments Report* and the Draft Uniform Civil Enforcement Act recognize that a small closely held corporation “may in reality be nothing more than an individual using an incorporated form of business organization.”<sup>22</sup> The Draft Uniform Civil Enforcement Act, subject to specific limitations, would enable an individual holding a controlling interest in a corporation to exempt property owned by the corporate debtor.<sup>23</sup> This would represent a fundamental change in the law. Balanced against the need to ignore formal legal structures are concerns whether appropriate and clear limitations can be included which will guard against abuse and avoid the problem of a thinly capitalized corporation. Furthermore, incorporation affords the benefit of limited liability to the principals of the company and it is relevant to ask whether those principals should also obtain the benefits of exemptions.<sup>24</sup>

[9] Although there appears to be a general consensus about the general aims of exemption law, there is also recognition that any regime must balance the interests of both debtors and creditors.<sup>25</sup> The Ontario Law Reform Commission in its 1981 Report recognized that while “exemptions must be fair, we must not lose sight of the fact that the debtor has a legal obligation to repay his debts within a reasonable period of time.”<sup>26</sup> Creditors may find themselves in financial difficulty as a result of having to forego their rights.<sup>27</sup> The Manitoba Law Reform Commission pointed out that “it must be remembered that, by definition, a judgment creditor has been found by a court to be owed a sum by the judgment debtor” and it is the creditor that must be regarded as the “aggrieved party” until the debt has been paid.<sup>28</sup> The challenge lies in achieving the proper balance between debtor and creditor interests by defining the modest and dignified lifestyle in the form of specific legislation.

## II Models of Exemption Statutes

[10] In designing exemption statutes, legislators have traditionally adopted a paternalistic view by wanting to define “what values are important to their society and to impose those

values on debtors who are apparently seen as incapable of choosing well for themselves.”<sup>29</sup> Thus most exemption statutes seek to define categories of exempt property as opposed to granting a debtor a lump sum amount from which any property might be selected. These two competing models are discussed below.

#### A) Specific Lists

[11] Traditional exemption statutes provided very detailed and lengthy lists of exempt property. For example, the 1887 Ontario *Execution Act* enabled a debtor to retain a long list of items including one coal scuttle, one washboard, three smoothing irons, all spinning wheels, one gun and six traps. The list also specified how many plates, tea pots and specific items of cutlery were exempt from seizure.<sup>30</sup> Most jurisdictions have abandoned these specific lists in favour of more general or selective categories. However, as demonstrated below in Part III, not all idiosyncratic lists have been eliminated. Remnants of a province’s agricultural past still affect current law.

[12] Specific exemption lists, while providing certainty, are at risk of becoming obsolete when the listed articles are no longer a necessity in the debtor’s life.<sup>31</sup> It would be an endless task to anticipate all forms of personal property that might be listed as exempt in provincial legislation.<sup>32</sup> However, not all specific exemptions are anachronistic or out of date. A specific exemption may also reflect a general consensus that a particular item is a basic necessity. Several provinces have listed a motor vehicle up to a monetary amount as exempt property.

#### B) Selective Lists

[13] A more modern method used in provincial exemption statutes is to provide a selective list or general category of exempt property. Provincial exemption statutes provide an exemption for unspecified necessary tools used in the debtor’s trade or the general category of household furnishings. A more general category is unlikely to become obsolete, as the broad nature of the exemption will incorporate new types of chattels as they become either a basic necessity or necessary to the debtor’s livelihood.<sup>33</sup>

#### C) Limitations on Specific or Selective Lists

[14] Given the wide range of values of property that might fall within a specific or selective list, statutes seek to qualify these exemptions either with a dollar amount and/or a limitation focusing on the necessity of the item. In Ontario, “*necessary and ordinary wearing apparel*” of the debtor is exempt up to \$5000. If no monetary cap is set an exemption is typically limited by some defined notion of necessity. The Saskatchewan Money Judgment Report described this more open ended standard as a test of functional adequacy. For example, the Saskatchewan Report recommended that the debtor be able to retain “household furnishings *necessary* to allow the judgment debtor and the judgment debtor’s family and dependents to *maintain a functional household*.”<sup>34</sup>

**PRELIMINARY PAPER ON THE LAW OF PERSONAL EXEMPTIONS FROM SEIZURE**

[15] There are inherent problems with the specific lists, monetary caps, and more open ended tests of necessity or function. These are typical problems associated with fixed rules and open ended standards.<sup>35</sup> The choice is how best to balance the certainty of fixed rules with appropriate open ended standards. While a fixed rule will have the advantage of providing certainty and reduced litigation, it is unable to accommodate individual circumstances in a flexible way. Specific lists and monetary caps may become obsolete as the debtors' needs or economic conditions change over time. Many jurisdictions do not have any mechanism which provides for an automatic updating of the monetary amounts.<sup>36</sup>

[16] In contrast, a more open ended standard that requires interpretation on a case by case basis is capable of adapting to the individual circumstances and needs of the parties. Given that it is unlikely that all jurisdictions will agree to the same fixed values for each category of property, it might seem that the best hope for a uniform statute lies with selective lists tied to some general standard or functional test of necessity without monetary limits. An important question is whether such a uniform statute containing broad standards is capable of being applied in a uniform way. Standards are likely to involve increased litigation costs and are at risk of being inconsistently interpreted over time and in different regions. Ambiguous or vague provisions may lead to "inequality of treatment of debtors and their creditors where sheriffs take differing views of the law."<sup>37</sup> Indeed, there has been a great deal of case law on what is a necessary or required tool of trade with differing views on whether the provision should be interpreted in a broad or narrow manner.<sup>38</sup> Even when a court intervenes to interpret an open ended standard the guidance itself may not offer any more certainty.<sup>39</sup>

**D) Lump Sums**

[17] An alternative model abandons any attempt to generally or specifically describe categories of exempt property that will form the debtor's basic necessities or the property required to earn an income. Debtors, rather than the state, may be in a better position to know and understand what specific items of property will be essential to their own rehabilitation.<sup>40</sup> This approach favours a more individualized discretionary regime by granting debtors a lump sum exemption.<sup>41</sup>

[18] A lump sum approach provides a debtor with the right to select any description of goods and chattels up to a specified monetary sum.<sup>42</sup> There are several advantages to such an approach that go beyond the inherent flexibility of the regime. As long as the dollar amount is kept current there is no danger that the exemption will become obsolete. A lump sum approach avoids interpretive questions of necessity that are common with tool of trade or agricultural implements.<sup>43</sup>

[19] Although a lump sum approach offers the possibility of giving the debtor freedom to select items, it has not found acceptance in Canadian law.<sup>44</sup> Legislators may mistrust debtors' ability to choose wisely and prefer a paternalistic approach of identifying the types of property that a debtor should preserve.<sup>45</sup> A lump sum approach may not actually fulfill the policy of exemption law. In some instances a debtor may fail to choose the very basic necessities or items required to earn a livelihood.<sup>46</sup>

[20] The benefits of the "complete individualization of exemptions" may be outweighed by the costs of such a regime.<sup>47</sup> This model "requires an appraisal of all of the individual's property whenever a creditor makes a levy on any of the debtor's individual property" and was rejected by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in its Uniform Exemption Act.<sup>48</sup> Further, a lump sum approach, while appearing flexible, might be too generous "for a labourer owning no tools of his own but too limited for a self employed plumber or farmer who has to have expensive equipment."<sup>49</sup> Finally, a lump sum approach offers little prospects for uniformity. It is unlikely that all jurisdictions would agree to a uniform sum.

#### E) Wild Cards and Spillovers

[21] If lump sums are not acceptable is there an alternative mechanism to address the concern that selective or specific lists discriminate against debtors that have failed to acquire the types of assets listed in an exemption statute?<sup>50</sup> A variation of a lump sum approach is to adopt, what has become known in the United States as a "wild card exemption"<sup>51</sup> which is an exemption not tied to "a particular form of property."<sup>52</sup> Several states permit a debtor an additional wild card exemption for any property up to a fixed amount beyond the listed categories. The US Bankruptcy Code enumerates various types of exemptions and then additionally allows a debtor to retain his or her "aggregate interest in any property" not to exceed in value \$925.<sup>53</sup> To address the potential for discrimination against non-home owners some US exemption statutes go further and provide to the non-home owner an additional wildcard exemption.<sup>54</sup> The US Bankruptcy Code, in addition to the \$925 wildcard exemption noted above, enables a debtor to retain up to \$9250 "of any unused amount" of the debtor's residential property exemption.<sup>55</sup>

[22] A wild card exemption might be used to increase the total value of exempt assets in an enumerated category. This "corrects the imbalance by allowing the debtor to use the unused portion of his home exemption to raise the ceilings on the car, [or] household exemptions."<sup>56</sup> This is known as a "spill over" exemption. For example, if a statute limited a debtor to a \$10,000 tool of trade exemption, he or she may be able to claim additional tools of trade beyond that limit by relying on an available wild card exemption.<sup>57</sup> However, "any property" has been interpreted liberally leaving the debtor free to select additional property from existing categories of exempt property as well as property that does not fall within the scope of an enumerated list.<sup>58</sup>

F) An Alternative Discretionary Approach

[23] Rather than granting a debtor a wild card exemption, a statute might include some additional discretionary powers to take into account the debtor's individual circumstances. In New Brunswick, Nova Scotia and PEI a secured party is prohibited from seizing consumer goods, if the court determines that the "loss of the consumer goods would cause serious hardship to the debtor or dependent or the costs of seizing and selling the goods would be disproportionate to the value seized."<sup>59</sup> A more specific form of discretion, which might allow a debtor to seek protection for an exemption beyond the maximum prescribed limit, is contemplated in the Draft Uniform Civil Enforcement Act submitted by the Working Group. Where a jurisdiction sets a maximum amount for a personal residential exemption, section 163/206(2) of the Draft Act permits the debtor or debtor's dependents to make an application to the court to declare a principal residence exempt until a further order of the court. A court must be satisfied that the prescribed amount "will not enable a judgment debtor and his or her dependents to have a minimally reasonable standard of residential accommodation" or "disposition of the property in an enforcement proceeding will cause serious hardship to a judgment debtor or his or her dependents."<sup>60</sup>

### **III Overview of Provincial and Territorial Exemptions**

A) Property Required for Basic Necessities

[24] Although there may be a general consensus that the law must protect the debtor's basic necessities, there is considerable variation in the ways in which legislation limits this category.<sup>61</sup> The few reported cases on subsistence assets suggest that it will be relatively rare that parties will litigate over low cost items.<sup>62</sup> While these items may be of little monetary value to creditors, they obviously have great value and importance to the debtor and his or her family.

*i) Food and Fuel*<sup>63</sup>

[25] All provinces and territories, but for British Columbia, provide an express provision for some amount of food for the debtor and dependents. "Required" or "necessary" food for the debtor and the debtor's family are limited by a specified time period in Alberta (12 months), Manitoba (6 months), New Brunswick (3 months), Newfoundland and Labrador (12 months), Northwest Territories (12 months) and Yukon (12 months).

[26] Other provinces limit the exemption not by time period but by what is functionally equivalent to necessary food. In Nova Scotia, "all fuel and food reasonably necessary for the ordinary use of the family" is exempt. A number of provinces combine the food exemption with other categories of essential items such as fuel which is limited either by a time period or the more general limitation of what is reasonably necessary.<sup>64</sup> There is no express protection of fuel in British Columbia and Alberta.

[27] The Saskatchewan *Exemptions Act* reflects its agricultural roots and offers a unique rural approach to the protection of food and fuel. In Saskatchewan the following is declared free from seizure:

grain, flour, vegetables and meat, whether prepared for use or on foot, or any of them, sufficient when converted into cash to provide food and fuel for heating purposes for the execution debtor and his family until the next ensuing harvest.<sup>65</sup>

[28] Both Ontario and PEI combine food and fuel in the same provision with other essential items such as household furniture, utensils and equipment and impose a monetary cap for the listed items (Ontario \$10,000; PEI \$2000).<sup>66</sup> The inclusion of fuel as exempt property perhaps reflects a time when many debtors purchased their own supply of coal. If fuel is to remain a more realistic exemption would cover the “cost of fuel” for a specified period.<sup>67</sup>

*ii) Clothing*<sup>68</sup>

[29] Every jurisdiction in Canada recognizes a form of exemption for clothing or wearing apparel of the debtor and the debtor’s dependents. Most jurisdictions simply qualify or limit this category by what is necessary or ordinary and do not impose any monetary limit. In contrast, three provinces impose a monetary cap on necessary clothing: Alberta (\$4000), Ontario (\$5000) and Newfoundland and Labrador (\$4000).

*iii) Household Furnishings*<sup>69</sup>

[30] All provinces and territories have abandoned itemized lists of household property in favour of a more general category of household furnishings and appliances. However, there is no uniform approach to limiting this category. Nova Scotia and New Brunswick enable the debtor to retain “furniture, household furnishings and appliances *reasonably necessary* for the debtor and his family” of no particular fixed value.<sup>70</sup> Manitoba (\$4500) and Quebec (\$6000) combine a dollar amount with a form of a reasonably necessary standard.<sup>71</sup>

[31] In contrast a number of provinces simply fix a dollar amount without imposing any requirement of proof of necessity. British Columbia, Alberta, and Newfoundland and Labrador enable a debtor to retain household furnishings and appliances to a value totaling \$4000 whereas Saskatchewan has set the limit at \$4500.<sup>72</sup> Ontario (\$10,000), PEI (\$2000), Northwest Territories (\$200) and Yukon (\$200) also impose a dollar cap but additionally require that the household furniture be “contained in and form part of the permanent home.”

*iv) Sentimental value items*<sup>73</sup>

[32] Items of sentimental value pose a particular problem in balancing the interests of debtors and creditors if one fixes a monetary cap. Wedding rings or family heirlooms may be irreplaceable and at the same time be of high market value. A debtor may seek to shelter an asset behind a sentimental claim which may deprive a creditor of a valuable asset.<sup>74</sup> However, in those jurisdictions that protect sentimental property the emphasis has



#### PRELIMINARY PAPER ON THE LAW OF PERSONAL EXEMPTIONS FROM SEIZURE

been to protect items of high sentimental value that will not necessarily be of high market value. Such provisions acknowledge that “the removal of such property in enforcement proceedings would be heartless when its intrinsic value to the debtor is far greater than the amount that will be realized by the creditors.”<sup>75</sup> Although it might be rare for a creditor to seize items that are of high religious or sentimental value to the debtor, such provisions protect against the possibility of the threats of seizure and resulting hardship that would be imposed on the debtor and his or her family.<sup>76</sup>

[33] In Manitoba “articles and furniture necessary to the performance of religious services” are exempt from seizure. Similarly in Quebec, “consecrated vessels and things used for religious worship” are exempt as well as “family papers and portraits, medals and other decorations.” Newfoundland and Labrador offer a more general exemption for “items of sentimental value” but cap the value at \$500. New Brunswick and Newfoundland and Labrador also provide a separate exemption for pets.

##### v) Medical Aids<sup>77</sup>

[34] Seven provinces (British Columbia, Alberta, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador) have included a form of a “required” or “reasonably necessary” medical aid of no fixed amount as part of their basic exemption statute.<sup>78</sup> Such exemptions sustain the debtor’s health but some jurisdictions acknowledge that the medical aid may assist the debtor in employment or trade.<sup>79</sup> Most jurisdictions opt for a more general phrase of “medical and dental aids” while Manitoba provides an illustrative list of health aids such as “a wheelchair, an air-conditioner, an elevator, a hearing aid, eye glasses and prosthetic or orthopedic equipment”.<sup>80</sup>

[35] In the absence of a specific medical aid exemption in the Saskatchewan *Exemptions Act*, a quadriplegic in *Re Guest*<sup>81</sup> claimed a specially equipped motor vehicle under the general motor vehicle provision. In Saskatchewan a motor vehicle will be exempt if it is “necessary for the proper and efficient conduct of the execution debtor’s business, trade, calling or profession.” The bankrupt survived on disability benefits and volunteered for the local health authority. He used the van to provide rides to shut-ins with disabilities and to deliver groceries and toiletries to individuals with disabilities.

[36] As the bankrupt was not employed and did not have an occupation, profession, trade or business for which he received payment the court denied the claim. The court recognized that the provincial legislation had not kept pace with medical advances designed to enable quadriplegics to “become independent and valued members of society.”<sup>82</sup> The court acknowledged that in the absence of a specific exemption for a medical aid the decision deprived the bankrupt of an asset which ensured his independence.<sup>83</sup>

vi) *Motor Vehicles*

[37] Traditionally, if a debtor wanted to claim a motor vehicle as exempt property many statutes required the motor vehicle to be linked to the debtor's livelihood. More recently several provinces have amended their exemption statutes to acknowledge that a motor vehicle is a basic necessity.<sup>84</sup> Under this approach any debtor owning a motor vehicle has the ability to claim an exemption whether or not the vehicle is used in the debtor's trade, business or occupation.<sup>85</sup> Several provinces have motor vehicle exemptions with a set monetary amount: British Columbia (\$5000), Alberta (\$5000),<sup>86</sup> Ontario (\$5000), Nova Scotia (\$3000), PEI (\$3000), Newfoundland and Labrador (\$2000).<sup>87</sup>

[38] The fact that three jurisdictions have selected \$5000 as the upper limit suggests a degree of uniformity. However, there are two distinct views on whether a debtor is entitled to claim the dollar value up to the monetary limit as exempt where the value of the motor vehicle exceeds the limit. Under current case law, where a car is valued at more than \$5000, a debtor in Alberta will be entitled to keep \$5000 as exempt property while a debtor in Ontario will not be entitled to an exemption for any of the proceeds from the sale of the motor vehicle.<sup>88</sup>

[39] The Alberta approach recognizes that a monetary limit ensures that a debtor does not shelter a more expensive car than is reasonably necessary. However, allowing the debtor to claim an exemption for the value up to the monetary limit is still justifiable. If a debtor is denied an exemption where the car is worth more than the monetary limit, there will not be "any opportunity to buy a more modest vehicle after a seizure has occurred."<sup>89</sup> The Alberta Law Reform Institute in 1991 recommended that a debtor be entitled to claim an exemption for the prescribed monetary amount even where the value of the vehicle exceeded the set amount. This recommendation was adopted in the *Alberta Civil Enforcement Act* and endorsed by *Re Pearson*.<sup>90</sup> This approach also avoids valuation disputes which will become crucial in the all or nothing approach currently in place in Ontario.

[40] The Ontario *Execution Act* includes an exemption for "a motor vehicle not exceeding...\$5000."<sup>91</sup> Although the excess value issue had been debated and resolved in Alberta it appears that this matter was not considered when the Ontario *Execution Act* was amended in 2001. Earlier this year, in *Re Fields*<sup>92</sup> the Ontario Court of Appeal examined this provision in light of a motor vehicle valued at \$11,000. The Court held that the entire value of the vehicle was not exempt.

[41] The Court of Appeal accepted that the purpose of exemptions was to "allow a debtor to retain the basics of life." From a public policy perspective, the Court acknowledged that the interpretation of the statute that would have provided the debtor with a \$5000 exemption was "compelling".<sup>93</sup> To allow a debtor \$5000 would "give the section the

#### PRELIMINARY PAPER ON THE LAW OF PERSONAL EXEMPTIONS FROM SEIZURE

interpretation that makes most common sense, would be most helpful to debtors and would fit with the intent and purpose of the philosophy of exemptions.” The Court noted that whereas s. 4 of the Ontario *Execution Act* contemplated that the debtor was entitled to receive up to the monetary limit for other categories of personal property exceeding those limits, motor vehicles were not listed in that provision. In the end Feldman J.A. concluded that the failure to amend s. 4 when the motor vehicle provision was added was likely an “oversight.” If it was such an oversight, “it is only the legislature and not the court that can make the correction.”<sup>94</sup>

[42] Not all exemption statutes recognize a motor vehicle as a basic necessity. Manitoba, New Brunswick and Saskatchewan have retained the traditional approach by requiring that the vehicle be required for earning a livelihood.<sup>95</sup> While New Brunswick and Manitoba cap this exemption at \$3000, in Saskatchewan a non farmer debtor may claim a motor vehicle of no set value “necessary for the proper and efficient conduct of the execution debtor’s business, trade calling or profession.”<sup>96</sup> Although Quebec, Yukon, and Northwest Territories do not include any express motor vehicle exemption, a debtor might succeed in making a claim under the more general category of tools of trade.<sup>97</sup>

[43] In those jurisdictions where a debtor must establish a link between a motor vehicle and a livelihood, the debtor may find that alleging a need for transportation to work is not enough. The test of a necessary vehicle for a debtor’s livelihood does not automatically entitle the debtor to travel in his or her own motor vehicle to work. It has been held that alternatives such as renting, using public transit and taxis achieve the same result without prejudicing creditors.<sup>98</sup>

#### B) Property Required for the Debtor’s Livelihood

[44] Apart from preserving basic necessities, exemption statutes also focus on assets that enable the debtor to earn a livelihood.<sup>99</sup> In some instances the tools of trade exemption may reflect the province’s economic history. Thus one finds “one cross plough...one horse rake...and one seed drill” in early Alberta legislation<sup>100</sup> and “fishing nets” in early Nova Scotia legislation.<sup>101</sup> Earlier efforts to restrict tools of trade to items required for manual work have in many instances been overcome by case law and amendments to legislation which now contemplate a broader range of occupations, trade, business, calling or profession as well as recognizing a motor vehicle as a possible tool of trade.<sup>102</sup> However, as discussed below not all evidence of a province’s earlier economic history has been removed from the statutes.

##### *i) Tools of Trade Non Farmer*

[45] The infinite variety of occupations and associated tools makes it impossible to precisely list specific types of exempt property<sup>103</sup> and many jurisdictions have opted to use more general language.<sup>104</sup> Ontario for example, exempts “tools and instruments and

other chattels ordinarily used by the debtor in the debtor's business, profession or calling.” In some instances, the antiquated term “tools” or “tools of trade” has been dropped in favour of an even more general approach. For example, in Alberta a non-farming debtor may retain “personal property” used to earn income from the debtor’s occupation up to the value of \$10,000.<sup>105</sup>

[46] Five jurisdictions have chosen \$10,000 for the upper limit of this category (Alberta, British Columbia, Newfoundland and Labrador, Ontario). Beyond these jurisdictions, there is little agreement on what is an appropriate cap (\$7,500 Manitoba; \$6,500 New Brunswick; \$4,500 Saskatchewan; \$2,000 PEI; \$ 1,000 Nova Scotia; \$600 combined with agricultural exemption: Yukon and Northwest Territories). Quebec exempts “the instruments of work needed for the personal exercise of his professional activity” with no specific monetary limit.

*ii) Agricultural and fishing exemptions*

[47] Many regions have adopted separate occupational exemptions specific to agriculture or fishing. A relevant question is whether the current provisions continue to reflect the importance of the agricultural and fishing industry to a geographic region or whether they are more “closely related to the cultural and economic history of a province/territory.”<sup>106</sup> The cyclical nature of farming operations and the higher costs of agricultural equipment are typical justifications given for these unique exemptions. However, a non farming debtor engaged in business operations may also incur cyclical periods of success and decline and utilize high cost equipment.<sup>107</sup> The National Conference of Commissioners on Uniform State Law in its *Model Uniform Exemption Act* chose not to single out farmers for special treatment.<sup>108</sup>

[48] There is little uniformity on the need for or scope of agricultural exemptions. At one end of the spectrum British Columbia and Quebec offer no separate or unique agricultural exemption in their main statute. In contrast many jurisdictions have incorporated various agricultural exemptions. In Saskatchewan, for example, specific legislation exempts several general categories of agricultural items including livestock, farm machinery and equipment, books, tools, seed grain and crops.<sup>109</sup>

[49] There are several instances where provinces have retained very specific lists rather than more general categories of agricultural items. For example, in New Brunswick a debtor may claim an exemption of “two horses and sets of harness, two cows, ten sheep, two hogs and twenty fowl” without any need to show that the items are necessary or are reasonably required.<sup>110</sup> The New Brunswick statute also exempts “seed grain and potatoes required for seeding and planting purposes to the following quantities: forty bushels of oats, ten bushels of barley, ten bushels of buckwheat, ten bushels of wheat and thirty-five barrels of potatoes.”

[50] The Ontario *Execution Act* continues to exempt livestock, fowl, bees, seed for 100 acres, and 14 bushels of potatoes as well as the more general categories of books, tools and implements associated with the “tillage of the soil” or farming. In addition, where seizure is made between October 1 and April 30, the *Execution Act* also exempts “such food and bedding as are necessary to feed and bed the livestock and fowl” until the 30th day of April next following.

[51] Whereas Alberta, Saskatchewan and Manitoba limit agricultural equipment to those items necessary for a particular fixed time period, other jurisdictions cap this category with a dollar amount (\$25,000 Ontario; Newfoundland and Labrador \$10,000; Prince Edward Island \$5000; Nova Scotia \$1000, Northwest Territories and Yukon \$600 combined with more general tool of trade).

[52] Quebec, Nova Scotia and Newfoundland and Labrador have enacted exemptions specific to fishing. In Quebec a debtor’s “fishing boats and equipment cannot be seized or sold between May 1 and November 1.” In Nova Scotia “fishing nets” are specifically included in the more general list of “farm equipment and tools and implements” used in the debtor’s chief occupation. This entire list is exempt to the value of \$1000. In Newfoundland and Labrador, where a debtor’s primary occupation is fishing or aquaculture, a debtor may claim personal property used by and necessary for the debtor to earn an income in that occupation to the value of \$10,000. The absence of a specific fishing equipment exemption in other jurisdictions does not preclude a debtor from claiming an exemption under the more general tools of trade provisions.<sup>111</sup>

### C) Homestead and Personal Residence Exemptions

[53] Beyond items of personal property, some provinces allow debtors to claim an exemption for land and residential dwelling and these provisions can be traced back to the efforts of the western provinces to encourage settlement<sup>112</sup> and to ensure that “as much land should be brought and kept under cultivation as possible.”<sup>113</sup> The homestead exemption, as it became known, preserved the farmer’s personal residence and land up to a specified maximum. In the 1910 case of *Re Hetherington*, Lamont J. identified the underlying policy behind the homestead exemption:

The leading and fundamental idea connected with a homestead is, unquestionably, associated with that of a place of residence for a family, where the independence and security of a home may be enjoyed without the danger of loss, harassment or disturbance by reason of the improvidence of the head or other member of the family. It is a secure asylum, of which the family cannot be deprived by creditors....The purpose of the Exemptions Ordinance being to preserve to the debtor and his family a home in which they can dwell without risk of disturbance from creditors....<sup>114</sup>

[54] The inclusion of land in early Western homestead exemption legislation was designed to ensure that farmers had some means of livelihood to support themselves and their families.<sup>115</sup> For the urban dweller, some provinces have enacted a separate residential property exemption. However, there are two distinct attitudes on this issue. While some western provinces offer, by Canadian standards, generous exemptions for a homestead or a personal residence, Ontario and some Atlantic provinces offer no exemption for residential property.

*i) Manitoba, Saskatchewan and Alberta*

[55] Manitoba, Saskatchewan and Alberta all offer separate exemptions for farm land and residential property.<sup>116</sup> In Alberta, where the debtor's primary occupation is farming up to 160 acres of land is exempt if the enforcement debtor's principal residence is located on that land and the land is part of the debtor's farm.<sup>117</sup> In Alberta, a debtor may claim a principal residence exemption up to \$40,000. In Manitoba, farm land of not more than 160 acres is exempt provided that it is "farm land upon which the judgment debtor or his family actually resides or which he cultivates, either wholly or in part, or which he actually uses for grazing or other purposes." Manitoba legislation also protects the house, stables, barns, and fences, on the judgment debtor's farm. Non farmers in Manitoba debtors are entitled to a \$2500 personal residence exemption. In Saskatchewan, the debtor's house and buildings occupied by the debtor and the lots on which they are located are exempt to the extent of \$32,000.<sup>118</sup> The Saskatchewan *Exemptions Act* also exempts the homestead provided it is not more than 160 acres.<sup>119</sup>

*ii) Other Jurisdictions*

[56] Ontario and Nova Scotia do not provide any form of exemption for a personal residence or land. In New Brunswick and Prince Edward Island, there is no specific exemption for a personal residence, and while land may be seized, it cannot be sold until after the seizure and sale of all of a debtor's personal estate.

[57] In addition to the three western provinces discussed above, British Columbia (\$12,000 or \$9000), Quebec (\$10,000), Newfoundland and Labrador (\$10,000), Yukon (\$3000) and Northwest Territories (\$3000) all provide some limited protection for the debtor's residential home. Apart from British Columbia, no province has attempted to make a distinction between different housing markets within a province. Thus, debtors in the Capital Regional District of Victoria and the Vancouver region are granted a \$12,000 principal residence exemption whereas all other debtors in British Columbia only receive a \$9000 exemption.

*iii) Farm Land and Shelter: Current Rationale?*

[58] If the encouragement of settlement no longer justifies a homestead and residential property exemption what current policy rationale supports the retention or addition of such exemptions?<sup>120</sup> First, to the extent that farm land is protected, a debtor's ability to

earn an income is preserved. Modern case law recognizes the importance of protecting the livelihood of the farmer.<sup>121</sup> If that is the case it remains relevant to ask whether the 160 acres in Manitoba, Saskatchewan or Alberta is sufficient or indeed excessive to that larger goal.<sup>122</sup> The limit on the 160 acres provision is by size rather than by monetary amount. This raises the question of whether an excessively valuable asset is being protected from the claims of creditors.<sup>123</sup>

[59] The scope of the residential exemption depends upon how broadly one justifies the rationale for exempting the debtor's home. The residential property exemption at a bare minimum can be justified as a preservation of the basic necessity of shelter.<sup>124</sup> A debtor should not be "left destitute, without a home"<sup>125</sup> and such provisions protect the debtor from "undue economic hardship, or perhaps more accurately, economic disaster, given that the debtor's home is at stake."<sup>126</sup> In order to preserve this basic necessity, the Ontario Law Reform Commission recommended that debtors owning their own residences be permitted to retain sufficient funds from the execution sale to secure rental accommodation and to cover moving expenses.<sup>127</sup> Anything beyond this minimum level of subsistence "may unduly prejudice the rights of creditors and go well beyond what is necessary to protect debtors and their families against the deprivation of shelter."<sup>128</sup>

[60] However a broader policy rationale has been offered which would expand the residential exemption beyond mere shelter. The Alberta Law Reform Institute in its 1991 Report rejected the more limited justification of shelter in favour of a broader exemption which protects home ownership. The home ownership interest, which was said to reflect an Alberta attitude, was to be protected "even at the expense of the creditor's interest." Most Albertans, the report concluded, would consider that to deprive a debtor of a home would be "unreasonably harsh in a manner that depriving him or her of other economic assets would not be."<sup>129</sup>

[61] If one accepts the contention that home ownership justifies a higher level of exemption beyond a mere shelter provision, there are different views on what level is required to protect home ownership.<sup>130</sup> Furthermore, one must ask whether the relatively low monetary limits in some jurisdictions truly act as a means of encouraging home ownership or even preserving shelter for the family at all.<sup>131</sup>

#### **IV Secured creditors**

##### A) Exemptions and Secured Creditors

[62] Although there is a strong justification that the policy of exemption law should equally apply to secured creditors, traditionally it has not. In many jurisdictions secured parties are able to exercise their right to seize pursuant to the terms of their security agreement notwithstanding the existence of the provincial exemption statute.<sup>132</sup> Ontario's

*Execution Act*, for example, reflects this traditional approach. The *Execution Act* only applies to exempt chattels “from seizure under writ issued out of any court.” Thus in *Re Vanhove*<sup>133</sup> a perfected secured party was not precluded by the *Execution Act* from seizing household or consumer goods.

[63] In contrast to this traditional approach, several jurisdictions take the view that a secured party should not be able to jeopardize a debtor’s ability to maintain household furnishings or other basic necessities particularly when the secured party did not provide the financing to enable the debtor to acquire those goods.<sup>134</sup> For example, Saskatchewan, New Brunswick, PEI, and Nova Scotia all restrict the rights of secured creditors to seize exempt property but create an exception in favour of purchase money security interests.<sup>135</sup> Although this might be more properly seen as an issue for Personal Property Security law reform, exemption reform is inherently tied to secured transactions and there is merit to including provisions which enable the debtor to rely on exemptions as against non-purchase money secured parties. Given the lack of uniformity on this issue the Personal Insolvency Task Force has recommended that the *Bankruptcy and Insolvency Act* be amended to avoid non-purchase money security interests in personal property that would otherwise be exempt from seizure.<sup>136</sup>

[64] Even where a province has adopted specific exemptions that will shelter assets from a secured creditor, such exemptions do not necessarily match the exemptions that apply to execution creditors and anomalies exist. Provinces have not necessarily revisited the original exemptions that apply to execution creditors to ensure that the two regimes have been harmonized. For example, a debtor in PEI and Nova Scotia will have a \$3000 motor vehicle exemption against execution creditors and a \$6500 motor vehicle exemption against a non-purchase money secured creditor if the motor vehicle is required by the debtor for employment.<sup>137</sup>

#### B) Unperfected Security Interests in Exempt Property and Bankruptcy.

[65] The different approaches to exempt property and security interests across the country have created a flow on effect when the debtor declares bankruptcy and the secured party’s security interest is unperfected. The problem of unperfected security interests may commonly arise when the debtor moves a motor vehicle into a new jurisdiction.

[66] Provincial Personal Property Security legislation provides a straightforward resolution of the conflict between an unperfected security interest and the trustee in bankruptcy. Until perfected the security interest will not be effective against a trustee in bankruptcy.<sup>138</sup> A number of more complex questions arise when the debtor is bankrupt and the secured party has an unperfected security interest in what would otherwise be exempt from seizure and beyond the reach of the trustee in bankruptcy. At present there is no uniform answer to this issue. Courts in Alberta, Ontario and Nova Scotia have



analyzed this issue in three different ways owing to the lack of provincial uniformity on exemptions.<sup>139</sup>

[67] To determine whether or not property is exempt in a bankruptcy one must consult the relevant underlying provincial statute which gives rise to the exemption.<sup>140</sup> Section 67(1)(b) of the *Bankruptcy and Insolvency Act* “incorporates by reference”<sup>141</sup> provincial exemption legislation. When there is a bankruptcy and an unperfected security interest it is crucial to the outcome in each of these cases whether or not the property is exempt. If there is no underlying exemption the trustee will be able to challenge the unperfected security interest and prevent the creditor from seizing the asset as a secured creditor. Even where a court finds that an asset falls within an exempt category it must still consider whether the exemption is a right (i.e. something that exists automatically) or a privilege which may only be asserted by a debtor, or lost altogether. There are divergent views whether a secured party might assert the existence of such an exemption when a debtor has waived or not claimed an exemption.<sup>142</sup>

[68] The Alberta Court of Appeal in *A.C. Waring Associates Inc. v. Direct Rental Centre (West) Ltd.*<sup>143</sup> held that the lessor was able to enforce its security interest in the exempt property notwithstanding that its security interest was unperfected. It held that the household furniture, namely a sofa and television, was exempt as a matter of right under the *Civil Enforcement Act* and existed without a particular claim by the debtors. This enabled the secured party to assert the existence of the exemption and prevail over the trustee in bankruptcy. The Alberta approach has been followed in British Columbia.<sup>144</sup>

[69] In Nova Scotia and Ontario the courts reached the opposite result in that the unperfected secured parties were unable to seize the property. Under the terms of the Nova Scotia *PPSA*, a motor vehicle subject to a purchase money security interest is not exempt. Thus in *VW Credit Canada v. Roberts*<sup>145</sup> the Nova Scotia Court of Appeal held that by virtue of s. 21(2) of the Nova Scotia *PPSA* the trustee had priority over the unperfected secured creditor. The Court held that the trustee was entitled to the value of the motor vehicle for distribution to all unsecured creditors.

[70] Finally, in Ontario the outcome in *Re Fields*<sup>146</sup> turned on the Court of Appeal’s conclusion that the \$5000 motor vehicle exemption in the *Execution Act* did not exempt any amount of an \$11,000 motor vehicle. As the entire value of motor vehicle was not exempt DaimlerChrysler, as an unperfected secured party, was not able to pursue its secured claim against the motor vehicle.

[71] As the *Bankruptcy and Insolvency Act* currently defers to provincial exemption legislation, the specific terms of the underlying provincial exemption statute will remain

relevant to resolving this issue. More specifically the provincial determination of what is exempt property and whether an exemption is a right or a privilege affects whether the secured party will prevail. At present the diverse state of provincial law produces diverse results.

## **V Bankruptcy Reform: An Optional Federal List.**

[72] In November 2003, the Senate Standing Committee on Banking, Trade and Commerce broadly endorsed the principle of an optional federal exemption regime for the *BIA*.<sup>147</sup> If implemented, this recommendation would represent a fundamental shift in Canadian bankruptcy policy from the current position of s.67(1)(b) of the *Bankruptcy and Insolvency Act* which incorporates provincial exemption law.

[73] The Senate Committee recommendation was largely based upon the earlier report of the Personal Insolvency Task Force (PITF) that provided a broad outline of a proposed federal exemption list. The optional list, according to the Report, “will ensure that all bankrupts will have access to what is regarded as a reasonable set of exemptions regardless of the bankrupt’s place of residence or weaknesses and gaps in the provincial or territorial legislation.”<sup>148</sup> A debtor would have the option of selecting either the federal list or the relevant applicable provincial or territorial law.

[74] The list, which is set out at Appendix 12 to this report, resembles many of the traditional categories of exempt property found in provincial law. The proposal includes specific monetary caps for many items that are to be adjusted to the CPI. The PITF proposal aims for more uniformity but there are aspects of the proposal that defers to provincial law. For example, the regime seeks to establish a uniform \$5000 personal residence exemption. However, a debtor whose livelihood is derived from farming, fishing, forestry and other activities related to the natural resource sector may be entitled to enhanced exemptions for real and personal property. The amount of the exemption is to be governed by the applicable provincial or territorial law but is not to be less than \$10,000 and not more than \$20,000.

[75] Although the broad policy justifications for exemptions would appear to equally apply in a bankruptcy<sup>149</sup> there are some fundamental differences between bankruptcy and provincial enforcement proceedings which might justify a separate federal regime.<sup>150</sup> Traditionally, provincial law has been geared to the resolution of an individual judgment creditor’s claim against the debtor. Judgment enforcement proceedings do not contemplate a discharge of the debtor’s liabilities. Bankruptcy contemplates a collective proceeding whereby the claims of all of the creditors are considered in a single forum. Exemptions have an impact on the level of distribution to creditors as a class in bankruptcy. Further, the end result of bankruptcy proceedings is some form of absolute

or conditional discharge. The discharge and exempt property are inherently linked to the larger goal of rehabilitation. Tied to the bankrupt's fresh start after bankruptcy is whether the debtor has been able to retain sufficient exempt assets to further the goal of rehabilitation.<sup>151</sup>

[76] To the extent that provincial exemption law varies across the country there will be different outcomes on the nature of the fresh start available to the debtor and the level of distribution to creditors. Section 68 of the BIA already provides for national surplus income guidelines which supplant provincial wage exemption laws in a bankruptcy. Justice Iacobucci in *Marzetti v. Marzetti*<sup>152</sup> confirmed that s. 68 of the BIA was designed to "remedy province-to-province disparities in the application of the Bankruptcy Act".<sup>153</sup> On the issue of wages and income Iacobucci J. concluded that "Parliament no doubt considered it unreasonable for the treatment of bankrupt persons to depend upon the happenstance of provincial residence."<sup>154</sup>

[77] Critics note that a federal bankruptcy exemption regime may have the effect of triggering unwarranted bankruptcies where there is a substantial difference between federal and provincial exemptions.<sup>155</sup> Debtors and creditors may forum shop or elect to be governed by the most favourable exemption regime. Where the federal limit is lower than the local exemption law, creditors are said to have an incentive to force debtors into bankruptcy. Conversely, where provincial exemptions are more modest than the federal exemption standard, debtors have an incentive to make a voluntary assignment in bankruptcy. It is argued, uniform bankruptcy exemptions would have a "disruptive effect"<sup>156</sup> on local collection procedures.

[78] However, such claims need to be substantiated with empirical evidence linking bankruptcy filing rates with exemption levels.<sup>157</sup> A multitude of factors will affect a debtor's decision to make an assignment in bankruptcy. Factors such as the stay of proceedings and the discharge may well outweigh the level of exemptions.<sup>158</sup> Current Canadian law attempts to channel debtors away from straight bankruptcy and encourages debtors to make proposals.

## Conclusion

[79] The proposal for a Uniform Civil Enforcement Act provides an opportunity to debate the underlying principles of exemption law. A debate that focuses only on specific categories of property ignores larger questions of whether the traditional justifications for exemption law that have been canvassed in this paper remain as significant today. It is relevant to ask whether the increasing availability of consumer credit and current levels of social welfare legislation strengthen, or weaken the case for changes to exemption levels.

[80] Further, provinces and territories must also consider the larger question of whether a uniform exemption regime is possible or even desirable. The US experience illustrates the difficulties of implementing a uniform exemption law at the state level. In 1976 the NCCUSL approved the *Uniform Exemption Act*. Currently only Alaska has adopted the Model Law as the basis for its exemption regime. Uniformity may be difficult given that the cost of living, the stability of incomes, the level of social support, and the types of economic activity vary across the country.<sup>159</sup> However, the assumption that local legislatures are more readily able to recognize local needs and interests ignores the significant cost of living variances that exist within each province. It also ignores the rather obvious fact that provincial law has not been kept current.<sup>160</sup>

[81] The need to accommodate local needs need not preclude the adoption of a more uniform exemption regime. In part, the Working Group's proposals acknowledge the difficulty of achieving absolute uniformity as the Draft Act contemplates that jurisdictions will differ on appropriate caps for various types of property. At the very least, the Working Group's proposals should persuade each province and territory to review exemption legislation with a view to locating exemption law in a single and more up to date exemption statute. Further, if the federal government proceeds to implement an optional federal exemption regime it would do well to consider the more detailed proposals found in the ULCC Draft Act. The ULCC would also benefit by examining some of the alternative ways of achieving uniformity proposed by the PITF.

---

\* Portions of this paper were based on an earlier presentation "The Proposed Federal Exemption Regime for the Bankruptcy and Insolvency Act" at the 33<sup>rd</sup> Annual Workshop on Commercial and Consumer Law, University of Toronto. I have benefited from comments from workshop participants as well as from discussions with the ULCC Working Group on Civil Enforcement of Judgments at a meeting earlier this year. The NCCUSL kindly provided me with transcripts of the debates on the Uniform Exemption Act. I would like to acknowledge the research assistance provided by law students Katharine Ho and Lee Cassey.

<sup>1</sup> Canada, Office of the Superintendent of Bankruptcy, *Personal Insolvency Task Force: Final Report* (Ottawa: The Office, 2002) at 24 [*PITF Report*]. See Appendix 12.

<sup>2</sup> C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 449.

<sup>3</sup> Senate Standing Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (November 2003) at 23.

<sup>4</sup> *Bank of Nova Scotia v. Thibault* 2004 SCC 29 at para. 9.

<sup>5</sup> C. R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 85. *Burrows v. Johnston*, [1928] 4 D.L.R. 865 (Sask. C.A.) at 867; *Hardistey v. Barney* (1696), 90 E.R. 525 (K.B.) Holt L.C.J.; *Sunbolf v. Alford* (1838), 3 M & W 247, 150 E.R. 1135 (Ex.); *Stott v. Raby*, [1934] 3 W.W.R. 625 (Alta. S.C.).

<sup>6</sup> See case law references cited by C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at note 34 on page 455, as well as the more recent cases of *Mooney v. Prince Albert Credit Union* (1994), 121 Sask. R. 318 at 320 (Q.B.); *Dietz v. Bank of Montreal* (1994), 122 Sask. R. 144 at 149 (Q.B.); *McVicar v. Royal Bank of Canada* (1993), 114 Sask. R. 69 at 71 (Q.B.); *McLachlan v. Trans Canada Credit Corp.* (1992), 104 Sask. R. 28 at 31 (Q.B.); *Con-Agra Ltd. v. Shivak* (2001), 202 Sask. R. 164 at 167 (Q.B.).

<sup>7</sup> See case law references cited by C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at note 35 on page 455, as well as *Strasbourg Credit Union v. Kelln* (1989), 73 Sask. R. 135 (Q.B.); *Re Ottaway* (1980), 110 D.L.R. (3d) 231 at 234 (B.C.C.A.); *Impey v. Porcupine Credit Union Ltd.* (1993), 115 Sask. R. 73 at 77 (Q.B.); *Gleave (W.W.) Construction Ltd. v. Hampton* (1986), 53 Sask. R. 163 (C.A.); *Re Théberge*, [2000] R.J.Q. 2713; *Re Juce* (2002), 169 Man. R. (2d) 237 (Q.B.); *Re Petry*, 2004 MBQB 114.

<sup>8</sup> C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 455.

<sup>9</sup> See e.g. *Re Fields*, [2004] O.J. No. 1924 (C.A.) (QL); *Re Guest*, [2003] 3 W.W.R. 372 (Sask. Q.B.).

<sup>10</sup> Ontario Law Reform Commission (OLRC), *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 82.

<sup>11</sup> C. R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 454. OLRC, *The Execution Act: Exemption of Goods From Seizure* (Toronto, Ont.: Department of the Attorney General, 1966) at 2.

<sup>12</sup> *Re Fields*, [2004] O.J. No. 1924 (C.A.) (QL) at para. 12. See also *Re Ottaway* (1980), 110 D.L.R. (3d) 231 at 234 (B.C.C.A.); *A.C. Waring & Associates Inc. v. Direct Rental Centre (West) Ltd.* (2001), 205 D.L.R. (4th) 651 at para. 89 (Alta. C.A.); *Re Pearson* (1997) 46 C.B.R. (3rd) 257 at 264 (Alta. Q.B.).

<sup>13</sup> Tamara Buckwold & Ronald C.C. Cumming, *Interim Report on the Modernization of Saskatchewan Money Judgment Enforcement Law* (2001) at 123.

<sup>14</sup> See e.g. *Funeral Services Act*, R.S.A. 2000, c. F-29, s. 7; *Cemeteries Act*, R.S.A. 2000, c. C-3, s. 14; *Cemetery and Funeral Services Act*, R.S.B.C. 1996, c. 45, ss. 44, 109; *Cemeteries Act*, C.C.S.M. c. C30, s. 14; *Prearranged Funeral Services Act*, C.C.S.M. c. F200, s. 13; *Cemetery Companies Act*, R.S.N.B. 1973, c. C-1, s.17; *Cemetery and Funeral Services Act*, R.S.N.S. 1989, c. 62, ss. 15-17, 24; *Prearranged Funeral Services Act*, R.S.P.E.I. 1988, c. P-17, s. 9; *An Act Respecting Prearranged Funeral Services and Sepultures*, R.S.Q., c. A-23.001, s. 34; *Cemeteries Act*, 1999 S.S. 1999, c. C-4.01, s. 49.

<sup>15</sup> C.R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 454. *Burrows v. Johnston*, [1928] 4 D.L.R. 865 at 867 (Sask. C.A.); *Armbruster Lumber Ltd. v. Fishburne* (1966), 55 W.W.R. 223 at 226 (Alta. Dist. Ct.); *Impey v. Porcupine Credit Union Ltd.* (1993), 115 Sask. R. 73 at 77; *Re Hill* (1998), 6 C.B.R. (4th) 38 (Alta. Q.B.).

<sup>16</sup> OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 83.

<sup>17</sup> Alberta Law Reform Institute (ALRI), *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 254-55; Michael Trebilcock & Arthur Shulman, "The Pathology of Credit Breakdown" (1976) 22 McGill L.J. 415 at 458-459; *Re Pearson* (1997), 46 C.B.R. (3rd) 257 at para. 24 (Alta. Q.B.); *Re Mughal*, [2002] 10 W.W.R. 108 (Man. Q.B.); *Re Firestone* (2003), 42 C.B.R. (4th) 34 (Alta. Q.B.); *Alberta Treasury Branches v. Samco Ltd.* (2004), 48 C.B.R. (4th) 1 (Alta. Q.B.).

<sup>18</sup> *Roy v. Fortin*, [1915] 25 D.L.R. 18 (B.C.C.A.) at para 26; *Yorkshire Guarantee & Securities Corp v. Cooper* (1903), 10 B.C.R. 65.

<sup>19</sup> See C. R.B. Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 454-55 and Manitoba Law Reform Commission (MLRC), *Report on Enforcement of Judgments, Part III: Exemptions*

and Procedure under “The Executions Act” (Winnipeg, Man.: MLRC, 1979) at 3; Institute of Law Research and Reform (ILRR), *Exemptions from Execution and Wage Garnishment* (1978) at 14.

<sup>20</sup> *Kitchen v. Chatham Branch Railway Co.* (1877), 17 N.B.R. 215 (N.S.S.C.); *Western Foundation Borings (Alta.) Ltd. v Walters Construction Ltd.* (1966), 57 W.W.R. 178 (Alta. Dist. Ct.); *Bank of Montreal v. Caton Cattle Co. Inc.* (1990), 88 Sask. R. 143 (Q.B.).

<sup>21</sup> *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, ss. 71(4), 71.1(2); *Civil Enforcement Act*, R.S.A. 2000, c. C-15, s. 93(b); *Executions Act*, R.S.O. 1990, c. E.24, s. 7(4); *Memorials and Executions Act*, R.S.N.B. 1973, c. M-9, ss 2, 33; *Judgment and Execution Act*, R.S.P.E.I. 1988, c. J-2, s. 25(4); *Judgment Enforcement Act*, S.N.L. 1996, c. J-1.1, s. 130(1)(a). However, in some provinces it appears that corporations may claim an exemption. See e.g. *Executions Act*, R.S.M. 1987, c. E160, s. 28 (farming corporation); ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 307.

<sup>22</sup> Tamara Buckwold & Ronald C.C. Cuming, *Interim Report on the Modernization of Saskatchewan Money Judgment Enforcement Law* (2001) at 114.

<sup>23</sup> Uniform Law Conference of Canada, Draft Uniform Civil Enforcement Act, Commentary on Part 12.

<sup>24</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 308. I am indebted to my colleague Bruce Welling for discussion on these points.

<sup>25</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 254; OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 80; Manitoba Law Reform Commission (MLRC), *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under “The Executions Act”* (Winnipeg, Man.: MLRC, 1979) at 2-3.

<sup>26</sup> OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 82.

<sup>27</sup> *Ibid* at 84.

<sup>28</sup> MLRC, *Residential Exemptions from Judgment Executions* (Winnipeg: MLRC, 1995) at 3.

<sup>29</sup> C. Dunlop, “Colloquy on Modernization of Money Judgment Law: Should Creditors Have Access to Future Income Savings Plans” (2003) 66 Sask. L. Rev. 279 at 288.

<sup>30</sup> *Execution Act*, R.S.O. 1887, c. 64, s. 2. Examples of specific lists can still be found in the Australian *Bankruptcy Act*. *Bankruptcy Act 1966*, s. 116(1) (Cth.); *Bankruptcy Regulations 1996* (Cth.), r. 6.03.

<sup>31</sup> G. Stanley Joslin, “Debtors’ Exemption Laws: Time for Modernization” (1959) 34 Ind. L.J. 355 at 356-57. See also ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 17-18.

<sup>32</sup> J.M. Ferron, “‘Rehabilitation’ and ‘Fresh Start’: Concepts that Never Were” (1996) 13 Nat’l Insolv. Rev. 39 at 43-44.

<sup>33</sup> G. Stanley Joslin, “Debtors’ Exemption Laws: Time for Modernization” (1959) 34 Ind. L.J. 355 at 359; ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 17-18.

<sup>34</sup> Tamara Buckwold & Ronald C.C. Cuming, *Interim Report on the Modernization of Saskatchewan Money Judgment Enforcement Law* (2001) at 118. [emphasis added]

<sup>35</sup> For citations to the literature on rules and standards see: T. Telfer, “Voidable Preference Reform: A New Zealand Perspective on Shifting Standards and Goalposts” (2003) 12 *Int’l Insolv. Rev.* 55.

<sup>36</sup> For an example of such a mechanism see the *Executions Act*, R.S.O. 1990, c. E.24, s. 35(3).

<sup>37</sup> ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 19.

<sup>38</sup> *Landgon v. Traders Finance Corp. Ltd.*, [1966] 1 O.R. 655 (C.A.); *Re Kreutzweiser*, [1967] 2 O.R. 108 (C.A.) at para. 6. The Ontario *Execution Act* has been amended and has removed the “necessity” language in favour of “ordinarily used”. *Zelenisky v. Isfield*, [1935] 2 W.W.R. 45 (Man. C.A.) at 46.

<sup>39</sup> See e.g. *Belliard v. Quebec* (1997) 146 F.T.R. 157 (F.C.A.) at para 16.

<sup>40</sup> U.S., National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years, Final Report* (1997) at 133-34.

<sup>41</sup> Third Report on the Consumer Protection Project, vol. II, *Legal Remedies of the Unsecured Creditor After Judgment* (1976) at 262

<sup>42</sup> ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 20.

<sup>43</sup> MLRC, *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under “The Executions Act”* (Winnipeg, Man.: MLRC, 1979) at 31.

<sup>44</sup> However, prior to 1998 British Columbia provided that the “goods and chattels of any debtor, at the option of the debtor....are exempt from forced seizure...to the value of \$2000.” See *Court Order Enforcement Act*, R.S.B.C. 1996, s. 71 prior to being repealed by *Miscellaneous Statutes Amendment Act* 1997, S.B.C. c. 27, s. 2. See also *Execution Act* R.S.B.C. 1960, c. 35, s. 25.

<sup>45</sup> C. Dunlop, “Colloquy on Modernization of Money Judgment Law: Should Creditors Have Access to Future Income Savings Plans” (2003) 66 Sask. L. Rev. 279 at 288.

<sup>46</sup> Manitoba Law Reform Commission (MLRC), *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under “The Executions Act”* (Winnipeg, Man.: MLRC, 1979) at 32.

<sup>47</sup> OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 82; MLRC, *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under “The Executions Act”* (Winnipeg, Man.: MLRC, 1979) at 32.

<sup>48</sup> Comment to s.8, Uniform Exemptions Act. See Proceedings of NCCUSL, Uniform Exemptions Act, (August 5, 1975) at 32 (noting that categories obviate need to value all of property).

<sup>49</sup> ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 21.

<sup>50</sup> John P. Sullivan, “More than the Shirt on Your Back: New Exemptions for Debtors under the Court Order Enforcement Act” (1998) 56 The Advocate 389 at 392.

<sup>51</sup> 31 Am. Jur. 2d Exemptions s. 31 (eC)

<sup>52</sup> See e.g. *In re Patterson* 825 F. 2d 1140 (C.A. 7 1987); *In re Miller* 198 BR 500 (Bkrtcy. N.D. Ohio 1996); *In re Andres* 212 B.R. 306 (Bkrtcy. N.D. Ill. 1997).

<sup>53</sup> 11 U.S.C. s. 522(d)(5) with dollar amounts adjusted by 11 U.S.C.A. s. 104 as of 1 April 2004. See also Uniform Exemptions Act, s. 8 (wildcard of \$1500 for non-homeowners).

<sup>54</sup> *In re Smith*, 640 F. 2d 888 (7th Cir. 1981) (noting the problem of discrimination between homeowners and non-homeowners).

<sup>55</sup> 11 U.S.C. s. 522(d)(5) with dollar amounts adjusted by 11 U.S.C.A. s. 104 as of 1 April 2004.

<sup>56</sup> *In Re Patterson* 825 F. 2d 1140 (C.A. 7 1987); See also *In re Harrison*, 13 B.R. 293 (Bkrcty. N.D. Ga. 1981).

<sup>57</sup> William Houston Brown et al., *Bankruptcy Exemptions Manual* at para. 5.06. See e.g. *In re McNutt* 87 B.R. 84 (9th Cir. BAP 1988); *In re Walkington* 42 B.R. 67 (Bkrcty. W.D. Mich. 1984).

<sup>58</sup> 31 Am. Jur. 2d Exemptions s. 31 (eC); William Houston Brown et al., *Bankruptcy Exemption Manual* at para. 5.06; *In re Smith*, 640 F. 2d 888 (7th Cir. 1981).

<sup>59</sup> *Personal Property Security Act*, S.N.B. 1993, c. P-7.1, s. 58(3)(d); *Personal Property Security Act*, S.N.S. 1995-1996, c.13, s. 59(3)(d); *Personal Property Security Act*, S.P.E.I. 1997, c. 33, s. 58(3)(d).

<sup>60</sup> Draft Uniform Civil Enforcement Act, s. 163/206(2).

<sup>61</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 263.

<sup>62</sup> See e.g. *Holtam v. Bright*, [1923] 3 W.W.R. 94 (Sask. K.B.) (piano); *Canadian National Railways v. Norwegian*, [1971] 17 D.L.R. (3d) 635 (N.W.T. Terr. Ct.) (refrigerator); *Re Torrie* (1993), 112 Sask. R. 215 (Q.B.) (decorative plates).

<sup>63</sup> See Appendix 2: Food/Fuel for reference to specific statute, section numbers and or specific regulation.

<sup>64</sup> New Brunswick, Nova Scotia, Northwest Territories, and Yukon all combine a food and fuel exemption. Newfoundland and Labrador provide for a separate fuel exemption: Appendix 2.

<sup>65</sup> *Exemptions Act* R.S.S. 1978, c. E-14, s. 2(1)3. See also *Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1, s. 66(c).

<sup>66</sup> *Execution Act*, R.S.O. 1990, c. E.24, s. 2(2); *Judgment and Execution Act*, R.S.P.E.I. 1988, c. J-2, s. 24(b).

<sup>67</sup> MLRC, *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under "The Executions Act"* (Winnipeg: MLRC, 1979) at 12.

<sup>68</sup> See Appendix 3: Clothing for reference to specific statute, section numbers and or specific regulation.

<sup>69</sup> See Appendix 4: Household Furnishings and Appliances for reference to specific statute, section numbers and or specific regulation.

<sup>70</sup> However, the PPS legislation in NS, NB and PEI all contain monetary limits on household furniture. See Appendix 4.

<sup>71</sup> See *Minister of National Revenue v. Bergeron* (1996), 119 F.T.R. 215.

<sup>72</sup> Section 66 of the *Saskatchewan Farm Security Act* provides a \$10,000 limit.

<sup>73</sup> See Appendix 10: Sentimental Items for reference to specific statute, section numbers and or specific regulation.

<sup>74</sup> *Belliard v. Quebec* (1997) 146 F.T.R. 157 (F.C.A.).

<sup>75</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 278.

<sup>76</sup> MLRC, *Report on Enforcement of Judgments, Part III: Exemptions and Procedure under "The Executions Act"* (Winnipeg, Man.: MLRC, 1979) at 10.

<sup>77</sup> See Appendix 6: Medical and Dental Aids for reference to specific statute, section numbers and or specific regulation.



<sup>78</sup> The *Judgment and Execution Act* of Prince Edward Island does not contain a medical aid provision. However, *Personal Property Security Act*, S.P.E.I. 1997, c. 33, s 58(3)(c) does prohibit a secured party from seizing a medical aid.

<sup>79</sup> New Brunswick, for example, exempts medical aids “reasonably necessary to enable the debtor or any member of his family to work or to sustain health”. *Memorials and Executions Act*, R.S.N.B. 1973, c. M-9, s. 33(1)(h). See also *Personal Property Security Act*, S.N.B. 1993, c. P-7.1, s. 58(3)(c); *Personal Property Security Act*, S.N.S. 1995-1996, c.13, s. 59(3)(c); *Personal Property Security Act*, S.P.E.I. 1997, c. 33, s. 58(3)(c).

<sup>80</sup> See Appendix 6: Medical and Dental Aids.

<sup>81</sup> [2003] 3 W.W.R. 372 (Sask. Q.B.).

<sup>82</sup> *Ibid.* at para. 13.

<sup>83</sup> *Ibid.*

<sup>84</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 275.

<sup>85</sup> See *Re Fields*, [2004] O.J. No. 1924 (C.A.) (QL) at para. 15.

<sup>86</sup> In *Mecweld Maintenance Ltd. v MacNutt* (1997), 47 Alta. L.R. (3d) 266 (Q.B.) the court held that a debtor was entitled to claim a motor vehicle of set value and a separate motor vehicle used to earn a living.

<sup>87</sup> Within some provinces there is a different treatment of motor vehicles depending on whether the seizing creditor is an execution creditor or a secured creditor. See discussion in this report at para [64].

<sup>88</sup> Compare *Re Pearson* (1997), 203 A.R. 109 (Q.B.); *Re Fields* [2004] O.J. No. 1924 (C.A.) (QL).

<sup>89</sup> ALRI, *Enforcement of Money Judgments*, vol. 1 (Edmonton, Alta.: ALRI, 1991) at 276.

<sup>90</sup> *Re Pearson* (1997), 203 A.R. 109 (Q.B.). at para. 25.

<sup>91</sup> The *Execution Act* was amended by the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26, Sch. A, s.8. The amendments came into force on April 15, 2001.

<sup>92</sup> [2004] O.J. No. 1924 (C.A.) (QL) aff’g in part (2002), 59 O.R. (3d) 611 (S.C.J.).

<sup>93</sup> *Ibid.* at para. 12.

<sup>94</sup> *Ibid.* at para. 29.

<sup>95</sup> See Schedule A.

<sup>96</sup> See e.g. *Re McLeod* (1990), 85 Sask. R. 180 (Q.B.).

<sup>97</sup> In Quebec see e.g. *Belliard v. Quebec* (1997) 146 F.T.R. 157 (F.C.A.).

<sup>98</sup> *Belliard v. Quebec* (1997) 146 F.T.R. 157 (F.C.A.). See also *Pead’s Ltd. v. Yeo* (1980), 31 N.B.R. (2d) 581 (Q.B.); *McLachlan v Trans Canada Credit Corp.* (1992), 104 Sask. R. 28 (Q.B.); *Stewart –Schnurr v. Royal Bank*, [1993] 2 W.W.R. 605 (Sask. Q.B.); *Re Kurty* (1998), 173 Sask. R. 260 (Q.B.); *Canadian Acceptance Corp. v Laviolette* (1981), 11 Sask. R. 121 (Q.B.).

<sup>99</sup> See e.g. *Burrows v Johnson*, [1928] 3 W.W.R. 337 (Sask. C.A.).

<sup>100</sup> *Exemptions Act*, R.S.A. 1922, c. 95, s. 2(e). See also *Exemptions Act 1919*, S.S. 1918-1919, c. 24, s.2(5).

<sup>101</sup> *Judicature Act*, S.N.S. 1919, c. 32, Schedule: Rules of the Supreme Court, Order XL-Execution, s.40(b).

<sup>102</sup> On the early restrictive cases see C.R.B Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 459-460. On the modern approach see e.g. *Re Kreutzweiser*, [1967] 2 O.R. 108 (C.A.); *Gleave (W.W.) Construction v Hampton*, [1986] 31 D.L.R. (4th) 478 (Sask. C.A.); *Impey v. Porcupine Credit Union Ltd.* (1993), 115 Sask. R. 73 (Q.B.); *Petrisor v. Rae* (1997), 159 Sask. R. 56 (Q.B.); *Cook v. Avco Financial Services Canada Ltd.*, [1976] 6 W.W.R. 756 (Sask. Dist. Ct.); *Gray Beverage (Alta.) v. Wong* (1981), 29 A.R. 385; *Bank of Nova Scotia v. Jordison*, [1963] 40 D.L.R. (2d) 790 (Alta. Dist. Ct.).

<sup>103</sup> See e.g. *Goldsmith v. Harris*, [1928] 3 D.L.R. 478 (Man. C.A.) at para 8; *Glute v. Agricultural Credit Corp. of Saskatchewan*, [1994] 7 W.W.R. 212 (Sask. Q.B.) at para. 23.

<sup>104</sup> See Appendix 7: Tools of Trade General.

<sup>105</sup> See a similar approach in Newfoundland: Appendix 7: Tools of Trade General: NL.

<sup>106</sup> “Third Progress Report of the Working Group on the Civil Enforcement of Judgments Project Civil Section” (Proceedings of Annual Meeting of the ULCC, 2003 Fredericton) at 30.

<sup>107</sup> ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: ILRR, 1978) at 34; But see OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 2 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 85.

<sup>108</sup> Proceedings of NCCUSL, Uniform Exemptions Act, (August 5, 1975) at 72.

<sup>109</sup> *Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1. Manitoba, Alberta and Newfoundland also exempt agricultural equipment but on much less specific terms. See Appendix 8

<sup>110</sup> See *Omista Credit Union Ltd. v. Phillips and LeBlance* (1983), 56 N.B.R. (2d) 415 (Q.B.) exempting two horses even though they had not been put to any particular use.

<sup>111</sup> *Zelenisky v. Isfield*, [1935] 2 W.W.R. 45 (Man. C.A.).

<sup>112</sup> ILRR, *Exemptions from Execution and Wage Garnishment* (1978) at 24; MLRC, *Report on The Enforcement of Judgments: Part II: Exemptions under the Judgments Act* (1980) at 2; C.R.B Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 453.

<sup>113</sup> *Brimstone v. Smith* (1884), 1 Man. L.R. 302 at 305; C.R.B Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 470. This early objective has been largely surpassed. See *Dunwoody Ltd. v. Gertz* (1985), 56 C.B.R. (N.S.) 32 (Man. Q.B.) at 36.

<sup>114</sup> (1910) 3 Sask. R. 232 at 235. See also *Re Cherniak*, [1930] 3 D.L.R. 200 (Alta. S.C.) at 201; *McDougall v. McDougall* [1919] 2 W.R. 637 at para 9 (Sask. K.B.); *Eastern Townships Bank v. Drysdale* (1905) 2 W.L.R. 423 (N.W.T. Trial) at para. 5.

<sup>115</sup> See e.g. *John Abell Engine & Machine Works Co. v. Scott* (1907) 6 W.L.R. 272 at 274.

<sup>116</sup> Each of these provinces contemplates a debtor residing in a mobile home.

<sup>117</sup> *Civil Enforcement Act*, R.S.A. 2000, c. C-15, s. 88(f). On the requirement of proving a bona fide farming occupation see *Re Fuller* (2003), 45 C.B.R. (4th) 253 (Alta. Q.B.); *Re Sonnenberg* (2002), 36 C.B.R. (4th) 275 (Alta. Q.B.).

<sup>118</sup> *Exemptions Act*, R.S.S. 1978, c. E-14, s. 2(1)(11).

<sup>119</sup> *Exemptions Act*, R.S.S. 1978, c. E-14, s. 2(1)(10). The *Saskatchewan Farm Security Act*, S.S. 1988-89, c. S-17.1, s. 66(h) also provides separate exemptions for farmers. This legislation protects the house and buildings occupied by the farmer as his bona fide residence and the lot on which it is situated to the extent of \$32,000. The *Saskatchewan Farm Security Act* also exempts the farmer’s homestead. See s. 66(k).

- <sup>120</sup> MLRC, *Residential Exemptions from Judgment Executions* (Winnipeg, MLRC, 1995) at 4.
- <sup>121</sup> *Bank of Montreal v. MacCalla*, [1987] 2 W.W.R. 187 (Sask. Q.B.) at 191; *Royal Bank of Canada v. Gusaas*, [1991] 1 W.W.R. 498 (Sask. Q.B.) at 501.; *Agricultural Credit Corp. of Saskatchewan v. Novak* [1995] 8 W.W.R. 385 (Sask. C.A.).
- <sup>122</sup> ALRI, *Enforcement of Money Judgments*, vol. 1, (Edmonton, Alta.: ALRI, 1991) at 280.
- <sup>123</sup> C.R.B Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 474.
- <sup>124</sup> ILRR, *Exemptions From Execution and Wage Garnishment: Working Paper* (Edmonton, Alta.: University of Alberta ILRR, 1978) at 28. See e.g. *Agricultural Credit Corp. of Saskatchewan v. Novak*, [1995] 8 W.W.R. 385 (Sask. C.A.).
- <sup>125</sup> *Agricultural Credit Corp. of Saskatchewan v. Novak*, [1995] 8 W.W.R. 385 (Sask. C.A.) at para. 44.
- <sup>126</sup> *Re Davis*, [1991] 80 D.L.R. (4th) 123 (Alta. C.A.) at 133.
- <sup>127</sup> OLRC, *Report on the Enforcement of Judgment Debts and Related Matters*, Part 3 (Toronto, Ont.: Ministry of the Attorney General, 1981) at 39 (\$2000 recommendation).
- <sup>128</sup> *Ibid.* at 35.
- <sup>129</sup> Alberta Law Reform Institute, *Enforcement of Money Judgments*, vol. 1 (Edmonton, Alta.: Alberta Law Reform Institute, 1991) at 268-269.
- <sup>130</sup> Manitoba Law Reform Commission in its 1995 report it recommended that a debtor should be entitled to a residential equity exemption of \$9000. MLRC, *Residential Exemptions from Judgment Executions* (Winnipeg, MLRC, 1995) at 7.
- <sup>131</sup> See e.g. *Hodder v. Avco Financial Services Ltd.* (1999), 186 Nfld. & P.E.I.R. 80 (Nfld. S.C.)
- <sup>132</sup> Roderick J. Wood, “Enforcement Remedies of Creditors” (1996) 34 Alta. L. Rev. 783 at 815; C Walsh, *An Introduction to the New Brunswick Personal Property Security Act* (Fredericton: NB Geographic Information Corporation, 1995) at 268-269.
- <sup>133</sup> (1994) 20 O.R. (3d) 653 (Gen. Div.). See also *Re Plantt* (1999) 13 C.B.R. (4th) 235.
- <sup>134</sup> J. Ziegel, “Amendments to the Personal Property Security Act: Submission of the CBAO Personal Property Security Committee” (1999-2000) 12 B.F.L.R. 279. The CBAO PPSA committee recommended that the Ontario PPSA be amended to deal with exemptions and secured parties.
- <sup>135</sup> See also Law Reform Commission of Saskatchewan, *Proposals for a New Personal Property Security Act* (1992) at 82.
- <sup>136</sup> *PITF Report* (2002) at 28.
- <sup>137</sup> *Judicature Act*, R.S.N.S. 1989, c. 240, s. 45(1)(f); *Personal Property Security Act*, S.N.S. 1995-96, c. 13, s 59(3)(b); *Judgment and Execution Act*, R.S.P.E.I. 1988, c. J-2, s. 24(a.1); *Personal Property Security Act*, S.P.E.I. 1997, c. 33, s. 58(3)(b). There are other anomalies. The Newfoundland PPSA regulations do not set any prescribed amounts. In PEI a medical aid is only exempt under the PPSA but not listed in the *Judgment and Execution Act*. See above note 80.
- <sup>138</sup> See e.g. *Ontario Personal Property Security Act*, R.S.O. 1990, c. P.10, s. 20(b).
- <sup>139</sup> For a fuller discussion of this issue see T. Telfer, “Unperfected Security Interests, Exempt Property and Bankruptcy: Reconciling the Claims” [2004] *Ann. Rev. Insol. L.* 5-28
- <sup>140</sup> See BIA, s. 67(1)(b). *Poulin v. Serge Morency et Associés Inc.*, [1999] 3 S.C.R. 351 at para. 18.

- <sup>141</sup> *Perron-Malenfant v. Malenfant (Trustee of)*, [1999] 3 S.C.R. 375 at para. 7.
- <sup>142</sup> Whether an exemption is a right that exists automatically or is a privilege that must be claimed by the debtor or lost has long been the subject of dispute in the case law. See C.R.B Dunlop, *Creditor-Debtor Law in Canada*, 2nd ed. (Toronto: Carswell, 1995) at 468-469.
- <sup>143</sup> *A.C. Waring & Associates Inc. v. Direct Rental Centre (West) Ltd.* (2001), 205 D.L.R. (4th) 651 (Alta. C.A.).
- <sup>144</sup> *Re Tunney* (2000), 18 C.B.R. (4th) 311 (B.C.S.C.); *Re Major* (2001), 30 C.B.R. (4th) 219 (B.C.S.C.).
- <sup>145</sup> *VW Credit Canada Inc. v. Roberts* (2001), 197 D.L.R. (4th) 274 (N.S.C.A.).
- <sup>146</sup> [2004] O.J. No. 1924 (C.A.) (QL).
- <sup>147</sup> Senate Standing Committee on Banking, Trade and Commerce, *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (November 2003) at 23.
- <sup>148</sup> *PITF Report* at 25.
- <sup>149</sup> *Industrial Acceptance Corp. Ltd. v. Lalonde*, [1952] 2 S.C.R. 109 at 120; *Husky Oil Operations Ltd. v. Canada (M.N.R.)*, [1995] 3 S.C.R. 453 at 457-458; *Vachon v. Canada Employment and Immigration Commission*, [1985] 2 S.C.R. 417
- <sup>150</sup> J. Koffler, "The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity" (1983) 58 N.Y.U.L. Rev. 22 at 31.
- <sup>151</sup> *Ibid* at 31; *Royal Bank of Canada v. North American Life Assurance Company*, [1996] 1 S.C.R. 325.
- <sup>152</sup> [1994] 2 S.C.R. 765 at 792.
- <sup>153</sup> *Ibid.* at para. 58.
- <sup>154</sup> *Ibid.* at paras. 55-56.
- <sup>155</sup> G. Marcus Cole "The Federalist Cost of Bankruptcy Exemption Reform" (2000) 74 Am. Bankr. L.J. 227 at 240.
- <sup>156</sup> William T. Vukowich, "Debtors' Exemption Rights" (1973) 62 Geo. L.J. 779 at 878.
- <sup>157</sup> Jacob S. Ziegel, "The Philosophy and Design of Contemporary Consumer Bankruptcy Systems: A Canada-United States Comparison" (1999) 37 Osgoode Hall L.J. 205 at 219.
- <sup>158</sup> See William J. Woodward, Jr., "Exemptions, Opting Out, and Bankruptcy Reform" (1982) 43 Ohio St. L.J. 335 at 362; See Proceedings of NCCUSL, Uniform Exemptions Act, (August 5, 1975) at 5-6.
- <sup>159</sup> R.C.C. Cuming, "Bill C-60 (Bankruptcy Act, 1975) A Nineteenth Century Approach to Non-Business Bankruptcy" (1976) 1 C.B.L.J. 459 at 462.
- <sup>160</sup> U.S., National Bankruptcy Review Commission, *Bankruptcy: The Next Twenty Years, Final Report* (1997) at 133.