

## INTRODUCTION TO REPORT

[1] In the year 2000, the Civil Law Section constituted a Working Group to develop a Uniform *Civil Enforcement Act* to modernize and make uniform the law governing the enforcement of money judgments. The Working Group began its work in 2001. The Working Group presented progress reports at the 2001, 2002 and 2003 Annual Meetings. This Report is accompanied by a draft Uniform Civil Enforcement of Money Judgments Act [hereinafter referred to as the “draft Act”].

[2] The current members of the Working Group are:

Lyman Robinson, Q.C., Project Leader,

Arthur L. Close, Q.C.,

Prof. Ronald C.C. Cuming, Q.C.,

Mounia Allouch,

Mireille Blanchard,

Prof. Tamara Buckwold,

Christopher P. Curran,

Marie José Longtin,

Darcy McGovern,

Tim Rattenbury, and

Prof. John Williamson

Kevin Zakreski is the current Reporter to the Working Group.

Former members of the Working Group include:

Geoff Ho, Q.C.,

Manon Dostie,

Sandy Robinson, and

John Twohig.

Caroline Carter served as the first Reporter to the Working Group.

[3] During the past year, the Working Group had two in-person meetings and numerous conference calls. The last conference call occurred on Friday, June 4, 2004 and revisions to the draft Act continued until the date of this Report. Due to the inter-relationship among various Parts, it was not possible to finalize one Part of the draft Act before completing the whole of the draft Act.

[4] Time did not permit the Working Group to engage in formal or comprehensive consultations with users of judgment enforcement legislation with regard to content of the draft Act. Nevertheless, the Working Group has received comments from several sources. Joan Collins, who is a sheriff in the Province of New Brunswick, has participated regularly in the conference calls of the Working Group. Her comments from the perspective of a person who will be engaged in the day-to-day administration of the draft Act have been very useful to the Working Group. Similarly, Christopher Curran, who is a member of the Working Group, has given the Working Group the benefit of his experience when he served as the High Sheriff of Newfoundland. Sandy Robinson, who joined the Working Group for a brief period, provided the Working Group with his perspective as an experienced civil litigator in Ontario. Several members of the Working Group were previously involved or are currently involved in the development and implementation of legislation with regard to enforcement of money judgments. These members were in a unique position to provide the Working Group with comments they had received from users or potential users of judgment enforcement legislation. Prior to his appointment as a judge to the Provincial Court of Alberta, His Honour Judge Geoff Ho was a member of the Working Group. He had extensive experience with the development and implementation of the Alberta *Civil Enforcement Act*. Both Professor John Williamson and Christopher Curran were extensively involved in the development and implementation of the *Judgment Enforcement Act* in Newfoundland. Professor Ronald Cuming, Q.C. and Professor Tamara Buckwold are currently preparing similar legislation for the Province of Saskatchewan. As part of their work, they have received comments from users of judgment enforcement legislation in Saskatchewan. Both Arthur Close, Q.C. and Lyman Robinson, Q.C. had access to responses to a questionnaire circulated by the British Columbia Law Institute in 2002 among user groups in British Columbia seeking comments with regard to various aspects of judgment enforcement legislation. The Project Leader has had extensive communications with Eric Spink regarding the relationship between the draft Act and the draft Uniform Securities Transfer Act. The Chair of the Corporate Law Section of Ontario Branch of the Canadian Bar Association expressed an interest and willingness to review the Part of the draft Act dealing with the seizure and disposition of shares and other securities of corporations with particular reference to transfer restrictions on shares of closely-held corporations. Unfortunately, as of the date of this Report, a response has not yet been received. The Project Leader has had conversations with various members of the

British Columbia bar in relation to specific issues concerning judgment enforcement legislation. Finally, at its meeting in March, 2004, the Working Group met with Thomas Telfer on the subject of exemptions from enforcement proceedings

[5] Ken Downing of the Legislative Counsel Office in British Columbia was assigned as the legislative drafter regarding this project. During the course of the past 18 months, Ken Downing reviewed and made comments on most of the individual Parts of the draft Act at various stages of their development. Unfortunately, the time between the completion of the Working Group's deliberations in early June, 2004 and the submission of the draft Act as part of this Report did not provide an opportunity to submit the final version of any of the Parts to him for his review. For the same reason, he has not had an opportunity to review the Act as a whole.

[6] Diane McInnis of the Legislative Counsel Office in New Brunswick is preparing a French version of the draft Act.

## **OVERVIEW OF THE DRAFT ACT**

[7] One of the major features of the draft Act is that it provides for the registration of a notice of judgment in a registry prescribed under the draft Act. In most provinces and territories, the prescribed registry will likely be the Personal Property Registry established under the *Personal Property Security Act* of the province or territory. Registration of a notice of judgment in the prescribed registry creates an enforcement charge on present and after acquired personal property of the judgment debtor that is referred to in the notice of judgment. If Option #1 in the Part of the draft Act dealing with Land is selected, registration of a notice of judgment in the prescribed registry also creates an enforcement charge on present and after acquired land of the judgment debtor. If Option #2 is selected, an additional step of registering a notice of judgment under the land titles system of the province or territory is required to create an enforcement charge against the land of a judgment debtor.

[8] Except as otherwise provided in the Act, an enforcement charge has the same priority in relation to both prior and subsequent interests in personal property charged by it as a perfected non-purchase money security interest in that property would have under the Personal Property Security Act. With regard to land, there is a different priority rule depending on whether Option #1 or Option #2 is selected.

[9] An enforcement proceeding against a judgment debtor's property may only be taken by an enforcement officer who has received an enforcement instruction from a judgment creditor. The term enforcement officer is a generic term and each province and territory will be able to adopt its current terminology and administrative structure for the appointment and supervision of enforcement officers. A judgment creditor may not give an enforcement instruction to an enforcement officer unless a notice of judgment has been registered in accordance with the draft Act.

[10] After an enforcement proceeding has been taken in relation to a judgment debtor's property and an enforcement officer receives proceeds from the disposition of the property, the proceeds of disposition constitute a distributable fund. A distributable fund must be distributed in accordance with the order of distribution set out in Part 14 of the draft Act. After payment of an enforcement officer's fees, taxable costs and expenses, specified claims for taxable court costs, and other specified claims such as those that are given priority by another enactment, the principle of pro rata sharing applies to the distribution of the remaining balance of the distributable fund among those judgment creditors with eligible claims.

## **SUMMARY OF THE DRAFT ACT**

[11] The draft Act is divided in 16 Parts. The following summary gives a brief introduction to each Part of the draft Act.

**PART 1 INTERPRETATION:** This Part contains definitions that are applicable to all Parts of the Act.

**PART 2 GENERAL:** This Part contains general provisions that are applicable to all Parts of the Act.

**PART 3 ENFORCEMENT OFFICERS:** This Part describes the authority and powers of an enforcement officer.

**PART 4 PRESERVATION ORDERS:** This Part replaces pre-judgment garnishment and Mareva injunctions with broader range of remedies that will enable the court to balance the legitimate concerns of a plaintiff about the possible disposal, dissipation or concealment of a defendant's assets with the potential hardship that may be caused to a defendant by a preservation order.

**PART 5 REGISTRATION OF A NOTICE OF JUDGMENT AND CREATION OF AN ENFORCEMENT CHARGE:** This Part provides for the creation of an enforcement

charge on the personal property of a judgment debtor by the registration of a notice of judgment in a registry prescribed under the draft Act.

**PART 6 PRIORITY OF AN ENFORCEMENT CHARGE:** This Part contains priority rules that determine the priority between an enforcement charge and other interests in a judgment debtor's property that is charged by the enforcement charge. Nothing in this Part creates a priority among enforcement charges.

**PART 7 ENFORCEMENT INSTRUCTIONS:** Prior to taking an enforcement proceeding, an enforcement officer must receive an enforcement instruction from a judgment creditor. This Part describes the content of an enforcement instruction and circumstances when an enforcement instruction may be withdrawn, terminated or modified.

**PART 7 OBTAINING DISCLOSURE:** This Part contains various measures that may be used to compel disclosure of information about the existence, location and description of a judgment debtor's property.

**PART 9 ENFORCEMENT PROCEEDINGS AGAINST PERSONAL PROPERTY:** This Part is divided into 6 Divisions.

Division 1 applies to enforcement proceedings against personal property generally.

Division 2 applies to fixtures and crops.

Division 3 applies to an interest under a lease, contract of sale or security agreement.

Division 4 applies to account debts. This Division replaces the procedure commonly known as garnishment.

Division 5 applies to securities and security entitlements as those terms are defined in the Uniform Securities Transfer Act.

Division 6 applies to intellectual Property.

**PART 10 LAND:** The current practices regarding enforcement of a judgment against a judgment debtor's interest in land vary significantly across Canada. For example, in British Columbia, judgments do not become a charge on a judgment debtor's interest in land until a judgment is registered against a specific title to land identified by a lot and plan number. If a judgment is not registered in this manner, a person dealing with the judgment debtor takes the judgment debtor's interest free of any judgment against the judgment debtor. In some provinces, judgments may be registered in a general registry

of judgments and this registration binds any interest in land of a judgment debtor in that registry. These variations and the strong adherence to the current practices led the Working Group to conclude that a single uniform method of creating an enforcement charge against an interest in land is not viable. Consequently, two options are provided in this Part. Option #1 reflects the current practice in Newfoundland and Labrador and the recommendations contained in the Saskatchewan Interim Report on the Enforcement of Money Judgments by Professors Buckwold and Cuming. Option #2 reflects the current practice in Alberta and British Columbia.

**PART 11 CO-OWNED AND PARTNERSHIP PROPERTY:** This Part deals co-owned and partnership property and it applies to both personal property that is subject to an enforcement proceeding under Part 9 and land that is subject to an enforcement proceeding under Part 10.

**PART 12 EXEMPTIONS:** This Part is divided into 3 Divisions. Division 1 describes the process for claiming an exemption and, where necessary, adjudicating upon the validity of an exemption claim. Division 2 deals with property that is exempt from enforcement proceedings. Division 3 deals with income that is exempt from an enforcement proceedings.

**PART 13 RECEIVERS:** This Part deals with applications for the appointment of a receiver, and the powers and supervision of receivers appointed under this Act.

**PART 14 DISTRIBUTION:** This Part defines when a distributable fund is created, the funds that make up a distributable fund and the claims that qualify as eligible claims. If there are not enough money in a distributable fund to satisfy all eligible claims, this Part determines the order in which eligible claims must be satisfied in a distribution scheme. After payment of specified claims that are given priority in a distribution scheme, the balance of a distributable fund is distributed among those judgment creditors who have eligible claims on a pro rata basis.

**PART 15 THIRD PARTY PROCEEDINGS:** This Part deals with third party claims to property of a judgment debtor that has been seized by an enforcement officer or the proceeds of disposition from such property.

**PART 16 TRANSITION, REGULATIONS, FORMS, AND FEES:** This Part contains transition provisions that will be necessary when a jurisdiction enacts the draft Act. It also contains the power to make regulations, prescribe the forms that will be used under the

draft Act and prescribe the fees that may be charged by enforcement officers and others for performing functions under the draft Act.

A list of section numbers is contained in the attached Appendix

[12] All of which is respectfully submitted this 15<sup>th</sup> day of June, 2004.

Lyman R. Robinson, Q.C.

Project Leader