

APPENDIX B

[See page 44]

**UNIFORM BILL AND COMMENTARY -
CREDITOR ACCESS TO FUTURE
INCOME SECURITY PLANS
Working Group Report**

Background:

[1] As a result of the August, 1998 meeting of the Uniform Law Conference of Canada (ULCC), the Working Group on Creditor Access to Future Income Security Plans was directed to proceed with the preparation of a Draft Uniform Bill with commentaries based on the recommendations contained in the consultation report and to continue consultations with those organizations that had responded to the previous reports.

[2] The recommendations in the report provided as follows:

“IV. RECOMMENDATIONS

Based on the strong overall support for the proposal as set out in the responses to question 12 in particular, it is recommended that the Uniform Law Conference direct that draft legislation be prepared to extend the existing exemption for life insurance and pension funds to DPSPs and RRSPs.

The consultation would, however, support that the “coming into force” provision apply to all debt, all RRSPs with sufficient lead time being provided for creditors to make appropriate decisions prior to proclamation.

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With respect to amendments to the *BIA*, it is recommended that the proposed amendments be identified but not considered as a condition precedent to proceeding with the proposed exemption. There is an established and perhaps unavoidable process for amendments to the *BIA* and it may be that the consideration of this issue should simply be introduced to that process for further study.

Finally, with respect to exceptions to the exemption itself, the Working Group on the Exigibility of Future Income Security Plans looks forwards to the direction of the full quorum of the ULC with respect to this important issue.

Accordingly, the Working Group recommends that:

The ULC direct that uniform legislation be prepared to implement a proposed exemption from exigibility for future income security plans that would have the following constituent elements:

- (a) The extension of the exemption from exigibility of RPPs to RRSPs and DPSPs;
- (b) That funds held in RRSPs and DPSPs would enjoy the protection of this exemption only so long as they retain their status as RRSPs and DPSPs under the *ITA*;
- (c) That the exemption from exigibility be extended to an RRIF based on these exempt funds;
- (d) That any payments out of an exempt RRIF would be subject to exigibility;
- (e) That the exemption would apply to “all debt and to all RRSPs and DPSPs” with the proclamation date for the legislation publicized well in advance; and,

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- (f) That the option of complementary amendments to the *BIA* be considered through the Bankruptcy and Insolvency Advisory Committee (BIAC) consultation process to provide that continued RRSP/DPSP status under the *ITA* is a statutory condition of discharge for any bankrupt who utilizes this exemption and that failure to comply with this condition would annul the order of discharge and re-establish the debt.

The Working Group further recommends that an ongoing dialogue be maintained with the respondents to the questionnaire to ensure that the views expressed by these organizations on various issues may be more clearly defined in the drafting process.”

[3] The draft bill seeks to implement the recommendations in the Report. For illustration purposes this draft refers to legislation in a particular jurisdiction (Saskatchewan) and will undoubtedly require specific amendments for application in each provincial or territorial jurisdiction. Nevertheless, it is intended that this draft address the major points contained in the recommendations as adopted by the ULCC.

[4] The draft does not address the issue of transition, exceptions to the exemption or *Bankruptcy and Insolvency Act* (BIA) amendments. This is for the following reasons:

[5] “Transition.” The transition provision recommendation that the exemption apply to all debt and all RRSPs with ample lead time being provided to the public prior to proclamation, results in no special transition provision being required;

[6] “Exceptions to the exemption”. The discussion at the meeting recognized, to a degree, that the provinces needed to address the issue of uniform exemptions more directly in the context of the proposed Uniform Civil Enforcement project. Accordingly we will defer on this point to the broader consideration of the issue of exemptions required in the context of that project.

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[7] “BIAC process”. As noted above, the recommendation regarding complementary amendments to the *BIA* was limited to the referral of the issue of a statutory condition of discharge to the BIAC consultation process for their review. Industry Canada has since advised that they intend to change their consultation process but that, in the event that the ULCC adopts the proposed Uniform bill, Industry Canada would certainly include the draft Uniform Bill and the recommendations regarding the *Bankruptcy and Insolvency Act* in their revised consultation process.

[8] Appendix “A” to this report sets out the consultation process which was undertaken by the Working Group. While the majority of the comments received were with respect to specific elements of the proposed Uniform Bill, it should be noted that support for the direction taken in the Bill is not unanimous. Revenue Canada, in particular, continues to voice particular concern about the overall policy choice to grant an exemption to future income security plans in preference to satisfying the legitimate immediate needs of creditors. The Working Group will be providing a summary report on the comments that have been received at the August meeting of the ULCC in Winnipeg.

[9] An additional background paper for information purposes regarding the current state of eligibility of pension plans under existing provincial legislation will also be made available at the August Conference. This background paper is not intended to re-examine the policy basis for the proposed exemption.

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**The Uniform Registered Plan
(Retirement Income) Exemption Act**

Short title

- 1. This Act may be cited as *The Uniform Registered Plan (Retirement Income) Exemption Act*.**

Interpretation

- 2. In this Act:**

“DPSP” means a deferred profit sharing plan as defined in section 147 of the federal Act;

“enforcement process” means attachment, garnishment, execution, seizure or other legal process for the enforcement of a debt;

“federal Act” means the *Income Tax Act (Canada)*;

“planholder” means:

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

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

“RRIF” means a registered retirement income fund as defined in section 146.3 of the federal Act;

“RRSP” means a registered retirement savings plan as defined in section 146 of the federal Act.

Commentary: Section 2 contains the definitions for the Act. The *Income Tax Act* (Canada) is used as the key for the various definitions to ensure ongoing consistency with that legislation. Some jurisdictions may need to add “as amended from time to time” to the definition “federal Act” if this is not covered by their *Interpretation Act*.

Exemption from enforcement processes

- 3. Notwithstanding any other Act or regulation, all rights, property and interest of a planholder in a registered plan are exempt from any enforcement process.**

Commentary: Section 3 provides the central legal statement of this Act setting out that the contents of a “planholder’s” “registered plan” are exempt from any legal process. This wording is absolute in its scope and subject only to the express exceptions set out within the Act itself. To the extent that individual jurisdictions wish to create further exceptions to this exemption, such as allowing exigibility to enforce maintenance orders, such exceptions would need to be added to this draft.

Payments out of registered plans

- 4(1) Subject to section 5 but notwithstanding any other Act or regulation, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process.**

- (2) For the purposes of subsection (1), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.**

Commentary: Subsection 4(1) sets out that while the contents of the registered plan are exempt, individual withdrawals or payments out of such a plan are not exempt subject to the provisions in section 5. Subsection 4(2) is intended to clarify that a simple transfer from one registered plan to another does not constitute a “payment out” which would expose such transferred funds to enforcement proceedings. It should be noted that the extension of protection in subsection (2) is limited only to other “registered plans” and does not include other tax deferral instruments such as education or home purchase plans. This is intended to reflect the overall policy direction that this exemption from exigibility be targeted solely for retirement funds and not for other tax deferral or lifestyle choices.

Enforcement against payments out

- 5. For the purposes of enforcing a creditor’s rights against payments out of a registered plan to a debtor planholder:**

- (a) the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person’s wages or salary within the meaning of [*The Attachment of Debts Act*]; and**
- (b) the exemptions set out in [section 22 of that Act] apply, with any necessary modification.****

Commentary: Section 5 is intended to provide a link to existing enforcement procedures in the implementing jurisdiction. Clause (a) deems a payment out of a registered plan to be subject to garnishment proceedings under the appropriate provincial legislation (in Saskatchewan for example, the appropriate reference is to *The Attachment of Debts Act*).

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Clause (b) creates limits on such proceedings by expressly providing that the provincial limits on the amount which can be garnisheed in a given situation should also apply in this situation (again for example, see section 22 of *The Attachment of Debts Act*). Thus while section 4 provides that these payments are individually exigible, and clause 5(a) allows the payments to be accessed by garnishment proceedings, clause 5(b) is intended to ensure that subsistence levels are maintained for the planholder and that only the amount in excess of such provincial limits are exigible. This is viewed as consistent with the overall policy goal of ensuring adequate retirement funds for a plan holder but not protecting funds from legitimate creditors with respect to the portion of those funds that are in excess of this policy goal.

Coming into force

6. This Act comes into force on proclamation.

Commentary: Section 6 provides that the Act comes into force on proclamation. It could also provide for [or on a specified future date]. The preference would of course be to have a uniform proclamation date across Canada in order to best reflect a new national approach to this issue. Consultations reflect that a period of approximately one year prior between passage of the Bill and proclamation would be sufficient time to allow affected parties to adjust to the proposed new regime.

** The “square-bracketed” provisions refer to *The Attachment of Debts Act* in the Province of Saskatchewan for illustration purposes. Each jurisdiction will, of course, refer to the appropriate equivalent legislation in their jurisdiction.

Section 22 of that Act provides as follows:

ATTACHMENT OF WAGES OR SALARY

Exemption from attachment

22(1) Subject to the other provisions of this section, no debt due or accruing due to an employee, for or in respect of wages or salary, is liable to attachment unless the debt exceeds the sum mentioned in subsection (2), and then only to the extent of the excess.

(2) The amount of an employee's wages or salary exempt from attachment in any month is \$500 plus \$100 for each of his dependants that he supports.

(3) For the purpose of subsection (2), “**dependant**” means:

(a) a wife, husband, brother, sister, parent or grandparent; or

(b) a person under the age of sixteen years; or

(c) a person being sixteen years of age or more who:

(i) is in regular attendance at a school; or

(ii) by reason of mental or physical disability is unable to earn a livelihood.

(4) An employer who has been served with a garnishee summons to attach wages due or accruing due to his employee may retain the amount of the wages of the employee that is exempt from attachment and pay that amount to the employee.

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- (5) If the plaintiff or judgment creditor claims that an employee, in addition to a fixed money wage or salary is given board or lodging or the use of a house, or any other thing of value, in part payment or compensation for his services, the plaintiff or judgment creditor may apply, on not less than five days' notice, to the judge for an order appraising the money value of the board or lodging, use of house or other thing, and the value thus ascertained shall be deducted from the amount of the exemption to which the defendant or judgment debtor would otherwise be entitled.
- (6) In case of an attachment of wages or salary, the defendant or judgment debtor or plaintiff or judgment creditor may without awaiting the regular sittings of the court, apply to a judge, upon at least five days' notice in writing to the other party or his solicitor, for an order fixing the amount of exemption and finally disposing of the matter, and the judge may order accordingly.
- (7) Where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment is that sum that bears the same proportion to the amount of the exemption allowed by subsections (2) and (5) as the period for which the wages or salary is due or accruing due bears to one month of four weeks.
- (8) Nothing in this section applies to a garnishee summons issued under:
- (a) Repealed. 1984-85-86, c.77, s.2.
 - (b) a judgment or order respecting:
 - (i) an action founded upon a separation agreement;
 - (ii) a debt contracted for board or lodging; or
 - (iii) hospital expenses payable to a hospital or recoverable by a municipality or by the Minister of Municipal Affairs under

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The Local Improvement Districts Act or The Local Improvement Districts Relief Act.

- (9) If the amount of the exemption to which the defendant or judgment debtor is entitled, or a portion thereof, is paid into court, it is not necessary for him to claim the amount or the portion, but he is entitled, in the absence of notice of an application under subsection (5) or subsection (6), to have it paid out to him at any time on application to the local registrar accompanied by an affidavit showing such facts as so entitle him.
- (10) Where a defendant or a judgment debtor does not make an application under subsection (9) for payment out to him of the amount to which he is entitled and that has been paid into court, prior to the expiration of two months after the date:
- (a) the amount is paid into court;
 - (b) judgment is recovered against the debtor;

whichever date is the later, the judgment creditor may, either *ex parte* or on such notice as the court or judge directs, apply to the court or a judge to have the amount, or so much of the amount as is sufficient to satisfy his judgment, paid out to him, and where an application is made the court or judge may make such order as is deemed advisable in the circumstances.

Historical Note: R.S.S. 1965, c.101, s.22; 1966, c.93, s.4; 1973, c.5, s.1; 1979, c.4, s.3; 1979-80, c.2, s.4; 1984-85-86, c.77, s.2.

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Appendix “A”

Consultations

Pursuant to the direction of the Uniform Law Conference of Canada (ULCC), the Working Group continued the consultation process with those organizations that had responded to the previous rounds of consultation (List One). Copies of the Draft Bill were again sent to certain other groups that had not previously responded but that were viewed as likely to have an interest in the issue (List Two).

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Copies of all responses received, including those received after the provision of this report, will be available for consideration at the August, 1999 meeting of the Uniform Law Conference in Winnipeg. Copies are also available at the request of any ULCC members in advance of this meeting.