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**Elements of a Workplan for the Development of a Uniform  
Enforcement of Civil Judgments Act**

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Uniform legislation could encompass the subjects that are typically found in statutes that deal with court order enforcement and execution of judgments. These subjects together with some of the issues that would benefit from a review are listed below under the headings of:

**Pre-judgment Measures to “Secure” Property Pending Trial**

and

**Post-judgment Enforcement Measures.**

These headings are followed by a further heading entitled **Registration of Judgments in a Registry of Charges Against Property**. The text under this heading reviews of some of the issues that should be considered with regard to proposed legislation of this nature.

**Pre-judgment measures to “secure” property pending trial**

Issues to be considered:

- Scope of pre-judgment measures: In what circumstances, if any, should pre-judgment measures be permitted?
- Garnishment before judgment is currently permitted in some provinces. Should this type of pre-judgment measure be abolished, limited or extended to other forms of property.
- Protections for defendants: If pre-judgment measures are permitted, what protections should be provided to defendants to ensure that defendants are not deprived of the resources to maintain their economic well-being pending a trial, including the ability to finance the defence of the litigation?

**Post-judgment enforcement measures.**

## **Scope of Post-judgment Enforcement Measures to be considered:**

### **1. Garnishment and Attachment**

#### *Issues to be considered:*

- Funds that are subject to attachment
- Exemptions from attachment
- Wage and salary exemptions
- Exemptions for pensions and other retirement income vehicles
- Use of Continuing garnishing orders
- Priorities in relation to funds that are attached in relation to:
  - other garnishing order including garnishing orders for maintenance or alimony
  - other forms of execution
  - statutory liens

### **2 Execution Against Interests in Personal Property**

#### *Issues to be considered:*

- Special Forms of Personal Property
- Securities
- Intellectual Property
- Growing Crops
- Exemptions from execution
- Sale of property seized by way of execution
- Priorities with regard to the distribution of proceeds of sale

### **3 Execution Against Interests in Land**

#### *Issues to be considered*

- Registration of judgments
- Interests attached by registration
- Joint tenancies
- Exemptions from execution
- Sale of interest attached by judgment

- Priorities with regard to the distribution of proceeds of sale

#### **4. Charging Orders**

##### *Issues to be considered*

- Legal and equitable charging orders
- Funds and property that may be charged
- Priority with regard to other forms of execution

#### **5. Court-appointed Receivers**

##### *Issues to be considered*

- Prerequisites for appointment
- Powers of receivers
- Priorities with regard to funds received by a receiver

#### **6. Equitable Execution**

- Should the law with regard equitable remedies be codified?

#### **7. Reviewable Transactions**

##### *Issues to be considered*

- fraudulent conveyances
- fraudulent preferences

#### **Registration of Judgments in a Registry of Charges Against Property**

Several provinces have enacted legislation that permits the registration of monetary judgments in public registries that provide for registration of charges against personal property.

Registration of judgments in land titles systems against interests in land has been a common practice for many years. In land title registration systems, registration of a judgment against an interest in land normally gives the judgment creditor some degree of priority over most charges that are registered subsequent to the registration of the judgment.

With the development of personal property security legislation during the past two decades, personal property registries are in place that could permit, perhaps with some modification, registration of judgments in such registries.

**Issues:**

- 1) What are the advantages and disadvantages of registering judgments?
- 2) If registration of judgments is advantageous, should there be a separate registry for the registration of non-consensual charges or should the registration be integrated with the existing registries for consensual charges?
- 3) Should there be any limitation on the types of judgments that may be registered?
- 4) Should registration be a prerequisite to taking enforcement proceedings?
- 5) What priority should be accorded to the holder of a registered judgment?
- 6) Should legislation permit direct registration of judgments from other provinces without the prerequisite of registration in the court of the “host” province or without bringing an action on the judgment in the host province?
- 7) Other issues.

**Consideration of the Issues:**

**1. Advantages and Disadvantages of Registration in a Registry of Judgments**

**Advantages:**

The advantages of registering judgments in a registry of judgments will depend on the attributes of the legislation. Some of the advantages may include:

- Registered judgment creditors could be granted of priority over some other types of creditors. For example, priority could be granted over
- Creditors with unperfected security interests;
- Creditors whose security interest are perfected after the registration of the judgment (other than specified purchase money security interests);
- Other judgment creditors in order of their registration. If it is determined to be desirable, pro rata distribution among all registered judgment creditors could be provided; however this will likely added to the complexity of a priority system.
- Creditors who have not had an opportunity to obtain a consensual security interest (judgments arising from personal injury and other tort actions) will have an opportunity to be placed on a more level playing field in relation to consensual creditors.
- Persons who are contemplating entering into personal property transactions will be able to quickly and accurately determine whether the property is subject to any perfected consensual charges or any registered judgments that may adversely affect a contemplated security interest or property interest.

### **Disadvantages:**

Some of the disadvantages of registering judgments in a personal property registry are:

- If registration of a judgment is made a prerequisite to invoking court assisted enforcement measures, registration fees and associated costs will increase the initial enforcement costs incurred by a judgment creditor; however, the registration fee and associated costs could be added to the costs that are recoverable by the judgment creditor.
- If registration of a judgment is made a prerequisite to invoking court assisted enforcement measures, the prerequisite of registration could result in some delay in the initiation of execution proceedings. Delay may be attributable to difficulties that will be experienced by

judgment creditors obtaining the required information about the characteristics of the personal property that will permit registration.

- Registration of judgments will place some additional burden on the personal property registries.
- Priorities between perfected security interests and registered judgments will need to be determined.
- The prospect of gaining priority over subsequent consensual security interests may prompt some unsecured creditors to initiate litigation in order to acquire what is in effect a security interest.

### **Preferred option:**

Pursue the development of draft legislative model that provides for the registration of monetary judgments in a registry of judgments.

## **2. Should Registration of Judgments be Integrated with existing Personal Property Registries?**

If the registration of judgments is determined to be advantageous, the alternatives appear to be:

- (a) Developing a separate registry for judgments that are sought to be enforced against personal property; or
- (b) Integrating the registration of judgments with the registration of security interest in existing personal property registries; and
- (c) Maintaining the current system for the registration of judgments against land.

### **Advantages of Integration:**

- The marginal cost of providing for the registration of judgments in existing personal property registries will likely be less than establishing a new registry for judgments.
- A single registry will be more convenient for persons who are registering charges and who are searching for registered security interests and registered judgments.

- The determination of priorities based on time of registration should be easier with an integrated registration system.

### **Disadvantages of Integration:**

- If a high degree of parallel treatment of security interests and registered judgments is preferred, the information requirements that currently exist for the registration of a security interest against a specific item or personal property will, in many instances, be more difficult to ascertain by a judgment holder. A separate registry for the registration of judgments could have a lower threshold of information with regard to the identification of personal property.

### **Preferred Option:**

Pursue the development of a draft legislative model that integrates the registration of judgments with security interests in existing personal property registries.

### **3. Should there be any limitation on the types of judgments that may be registered?**

#### **Issues:**

Arguments could be advanced with regard to the registration of:

- Default judgments with damages or other amounts to be assessed.
- Mareva injunctions

### **Preferred Option:**

Pursue the development of a draft legislative model that limits the registration of judgments in an integrated personal property registry to monetary judgments where the amount of the judgment has been ascertained.

#### **Other Issues:**

How should stays of execution be handled?

#### **4. Should registration be a prerequisite to taking enforcement proceedings?**

A requirement to register would mean that proof of registration would be required before writs of execution could be issued, garnishment orders could be made, or other court-assisted enforcement measures could be taken.

A registration requirement would not preclude a judgment creditor from seeking and receiving satisfaction of a judgment without resorting to court-assisted measures of enforcement.

##### **Advantages of making registration a prerequisite:**

A registration prerequisite would provide notice to all persons who may be contemplate acquiring an interest in personal property that:

- a) registered judgment creditors have acquired whatever priorities are accorded by the legislation; and
- b) enforcement proceedings may be imminent.

##### **Disadvantage of making registration a prerequisite:**

The requirement of registration may cause some delay in initiating execution proceedings. This will be the case if the same identifying characteristics, such as serial numbers, are required for the registration of judgments as are required for the registration of security interests.

##### **Preferred Option:**

Pursue the development of a legislative model that makes registration of a judgment a prerequisite to taking post-judgment enforcement measures.

#### **5. What priority should be accorded to the holder of a registered judgment?**

##### **Recommended Principle:**

As between registered judgments and consensual security interests, registered judgments should, in principle, be accorded the same priority as a consensual security interest. Purchase-money security interests



should have the same priority over registered judgments that they traditionally have had over other consensual security interests.

**Issues:**

The legislation in many provinces provides for pro rata sharing among judgment creditors of the proceeds of execution. This principle could be maintained; however, it would introduce greater complexity into the priority system.

**Preferred Option:**

Pursue the development of a legislative model that includes a system of priorities.

**6. Should legislation permit direct registration of judgments from other provinces without the prerequisite of registration in a court of the “host” province or without bringing an action on the judgment in the host province?**

**Comment:**

Some forms of personal property can be quickly transferred from one province to another. The development of uniform legislation on the enforcement of judgments may provide an opportunity to provide greater full faith and credit to the monetary judgments of other provinces by permitting the registration of such judgments in integrated personal property registries. This would be consistent with registration of security interests in a province where property is located notwithstanding that the security interest has been obtained in another province.

Permitting direct registration of judgments from other provinces is predicated on having faith in the procedural protections afforded to defendants in other provinces. Direct registration could be permitted subject to the registration being cancelled if it is

subsequently determined that there is some defect in the underlying judgment. If direct registration is permitted, there should be a requirement of notice of the registration being given to the owner of the property within a relative short period after the registration accompanied

by provision of some opportunity to challenge and set aside the registration.

**The Preferred Option:**

Pursue the development of a legislative model that permits the direct registration of all Canadian monetary judgments.

**7. Other Issues**

The issues that are discussed above are some of the issues of principle that need to be determined. If a decision is made to proceed with the development of a legislative model that integrates the registration of judgment with the registration of security interests, there are many other issues that will need to be addressed. For example, some of these issues include, the period of registration, the relationship to legislation with regard to exemptions from execution and “seize or sue” legislation, and discharge of a registration upon satisfaction of a judgment.