

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

CIVIL ENFORCEMENT OF JUDGMENTS PROJECT

THIRD PROGRESS REPORT OF THE WORKING GROUP

**Fredericton, N.B
August 10 –14, 2003**

INTRODUCTION TO REPORT

[1] The Civil Law Section implemented a project to develop a Uniform Civil Enforcement Act to modernize and make uniform the law governing the enforcement of money judgments. Since the last Progress Report, a draft Uniform Act has been developed and the core elements of the draft have been reviewed and discussed by the members of the Working Group. The Parts, which have not been discussed by the Working Group, are Part 7 (Disclosure), Part 12 (Receivers, Injunctions and Special Orders), Part 14 (Third Party Proceedings) and Part 15 (Transition, Regulations and Miscellaneous). Discussion of these Parts is part of the ongoing work of the Working Group. These discussions may lead to consequential changes to other Parts that have already been considered by the Working Group.

[2] Parts 1 – 10 and Part 14 have been reviewed by the legislative drafter assigned to this project. Consultations with the legislative drafter are continuing with regard to changes that have been made since those Parts were last reviewed by the legislative drafter. Further work will also be required to deal with some internal inconsistencies and to incorporate other improvements in the Act as they are identified.

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

Lyman Robinson, Q.C., Project Leader

Arthur L. Close, Q.C.

Geoff Ho, Q.C.

Darcy McGovern

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

Prof. Tamara Buckwold

Marie José Longtin

Tim Rattenbury

Prof. John Williamson

Christopher P. Curran

Manon Dostie

Mireille Blanchard

Sandy Robinson

Caroline Carter is the Reporter to the Working Group.

[4] The Working Group wishes to acknowledge the benefits it has derived from the work that has been done with respect to the enforcement of civil judgments in Alberta, Newfoundland and Labrador, New Brunswick, Nova Scotia and Saskatchewan.

INTRODUCTION TO DRAFT ACT

[5] One of the major features of the draft Uniform Act is to provide for the registration of a notice of judgment in a prescribed registry. In most provinces and territories, the prescribed registry will likely be the Personal Property Registry established under the Personal Property Security Act. Upon registration of a notice of judgment, an enforcement charge is created against all the present and after acquired personal property of the judgment debtor. In some provinces and territories, the registration of a notice of judgment in the prescribed registry will, in specified circumstances, also have the effect of creating an enforcement charge against all present and after acquired land of the judgment debtor. In other provinces and territories, an additional step of registering a judgment against a specific title to land under the land titles system of the province or territory will be required. Except as otherwise provided in the Act, an enforcement charge will have the same priority in relation to both prior and subsequent interests in personal property charged as a perfected non-purchase money security interest has pursuant to the Personal Property Security Act. However, after payment of an enforcement officer's fees and expenses, specified for costs by judgment creditors whose actions have preserved property, and specified preferred claimants, the principle of pro rata sharing will apply to the distribution of the remaining balance of the proceeds of an enforcement proceeding among those judgment creditors who have given a subsisting enforcement instruction to the enforcement officer.

SUMMARY OF THE DRAFT UNIFORM ACT

[6] The following summary of the draft Uniform Act consists of a brief introduction to each Part of the draft Act followed by table of contents consisting of the section numbers and the corresponding marginal note for each section or, in some cases, an expanded version of the marginal note. Where further comment or explanation is warranted, it is provided in the text found underneath the section number.

PART 1 INTERPRETATION

s. 1 Definitions and interpretation

The following definitions warrant further comment.

“enforcement officer”: The definition of this term may be unique to each province and territory. In those provinces and territories that will continue to use the office of the sheriff or similarly named official, the term “enforcement officer”, it is expected that this term will be defined as meaning the sheriff, deputy sheriffs or others who are given the authority of the sheriff will under the Sheriff’s Act or similar statute. In those provinces such as Alberta and British Columbia where the civil enforcement has been privatized, the term “enforcement officer” will need to be defined in a manner that includes those individuals or agencies who are authorized to carry out civil enforcement proceedings under whatever Act regulates civil enforcement agencies.

“registry” means the registry prescribed by regulation under this Act. In most provinces and territories, it is expected that the prescribed registry will be the Personal Property Registry established under the Personal Property Security Act. However, in a province or territory such as Newfoundland and Labrador, where a judgment registry already exists, that registry may become the prescribed registry under this Act.

PART 2 GENERAL

Introduction

General provisions, which are applicable to all Parts of the Act, have been situated in Part 2. Persons who are reading this Act for the first time may find it easier to apply some of the following Parts if they are familiar with the content of this Part. Alternatively, this Part could be situated toward the end of the Act.

s. 2 General principles

Two principles in this section warrant additional comment. The first principle states that all enforcement proceedings with regard to a money judgment must be taken in accordance with this Act. The enforcement provisions of family maintenance legislation remain outside this Act. Nevertheless, when proceeds of an

enforcement proceeding are distributed under this Act, the “super priorities” conferred by family maintenance legislation and other statutes are given preference over ordinary judgment creditors.

s. 3 Supplementary law

s. 4 Other statutory references to execution

When the Uniform Act is enacted by a province or territory, consequential amendments should be made to other statutes that currently contain references to enforcement measures that will no longer be utilized. This section contains several default rules that will apply in the absence of appropriate consequential amendments.

s. 5 Giving and receiving notices and records

s. 6 Knowledge – What constitutes

s. 7 Applications to court for orders and directions

s. 8 Appeal from an order of the court made under s. 7.

s. 9 Crown is bound by this Act

s. 10 Standard of conduct

The standard of commercial reasonableness is the same standard that applies to the exercise of rights and duties under Personal Property Security Act legislation.

s. 11 Failure to comply with Act – cause of action for loss or damage

s. 12 Interference with an enforcement proceeding - liabilities

s. 13 Application of sections of Personal Property Security Act

PART 3 ENFORCEMENT OFFICERS

Introduction

The term “enforcement officer” is defined in section 1 in a manner that will permit each enacting province/territory to choose whether it will continue to use the office of the sheriff or whether it will use civil enforcement agencies that have been “privatized”.

s. 14 Duties and functions

s. 15 Seizure powers

This section lists the powers that an enforcement officer may exercise for the purpose of carrying out enforcement proceedings this Act. The list includes the common powers including the power to enter a location or premises, and to seize and remove property; however, an enforcement officer may not enter a residence without the permission of the occupant or an order of the court.

- s. 16 Appointment of bailee by enforcement officer to hold seized property
- s. 17 Obligations of bailee appointed by enforcement officer
- s. 18 Failure of bailee to deliver property to enforcement officer - liabilities
- s. 19 Bailee entitled to costs incurred in preserving and protecting property
- s. 20 Enforcement officer's powers to deal with seized property

An enforcement officer may exercise any power or right with respect to the property or its disposition that the judgment debtor had at the date of seizure or acquires after that date including the specific powers listed in this section.

- s. 21 Enforcement officer's powers to execute or endorse documents
- s. 22 Delegation of delivery functions by enforcement officer to judgment creditor
- s. 23 Circumstances where an enforcement officer is relieved of liability
- s. 24 Offences and penalties for impersonating an enforcement officer

PART 4 PRESERVATION ORDERS

Introduction

Currently, garnishment orders before judgment and Mareva injunctions are the most common types prejudgment measures. Garnishment before judgment is usually limited to where the plaintiff's claim is for debt or a liquidated demand. Both of these measure may have a serious impact on the ability of a defendant to pay business or living expenses or expenses associated with the defending against the plaintiff's claim.

The purpose of this Part is to replace 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.

s. 25 Definitions

s. 26 Who may apply for a preservation order may be made

s. 27 Preservation orders

This section describes:

- (1) the prerequisites for obtaining a preservation order,
- (2) the circumstances where a preservation order must not be made,
- (3) the types of preservation orders that may be made including payment into court of money owing to a defendant by an account debtor, and
- (4) The conditions that will apply to an ex parte preservation order.

s. 28 Effect of a preservation order

Subject to s. 30, a preservation order operates as an “in personam” order against the defendant and other persons named in it.

s. 29 Registration of preservation order

A notice of a preservation order may be registered in the prescribed registry in accordance with Part 6.

s.30 Priorities of a registered preservation order

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

s. 31 Security required from plaintiff

s. 32 Modification of a preservation order

s. 33 Enforcement proceedings against property that is subject to a preservation order

s. 34 Termination of preservation order

s. 35 Sale of property which is subject to a preservation order may be permitted in limited circumstances

- s. 36 Compensation if dealings with property are inconsistent with preservation order

PART 5 CREATION AND PRIORITY OF AN ENFORCEMENT CHARGE

Introduction

Part 5 provides for the creation of an enforcement charge by the registration of a notice of judgment and it describes the priority of the enforcement charge in relation to other interests. The details with regard to the registration process are found in Part 6.

- s. 37 Registration of notice of judgment

This section provides for the registration of a notice of judgment in the registry. “Registry” is a defined term in s. 1.

- s. 38 Creation of an enforcement charge

Registration of a notice of judgment creates an enforcement charge that charges all of the judgment debtor’s present and after acquired property unless the judgment creditor specifies in the notice of judgment that only specified items of the judgment debtor’s property are subject to the enforcement charge.

- s. 39 Priority of enforcement charge

An enforcement charge is given the same priority in relation to personal property as a perfected non-purchase money security interest under the Personal Property Security Act. Subject to the exceptions specified in this Act, the priority rules of the Personal Property Security Act will apply to an enforcement charge. Several special forms of property that may be charged by an enforcement charge require special priority rules including inventory and proceeds of inventory [subsection (3)], serial numbered goods [subsections (4) and (5)], advances made under a security agreement [subsections (6) and (7)], and fixtures and growing crops [subsections (8) and (9)].

- s. 40 Protection of buyers and lessees of good in the ordinary course of business

- s. 41 Subordinate interests

A person who acquires property in the enforcement proceeding takes the property free of any subordinate interests. In the case of bankruptcy, this section also seeks

to give the trustee in bankruptcy the power to enforce the priority of an enforcement charge created under this Act over subordinate interests of secured creditors. The objective of this provision is to prevent “priority flips” that otherwise occur upon bankruptcy.

- s. 42 Subsequently acquired interests are subordinate to an enforcement charge
- s. 43 Termination of an enforcement charge
- s. 44 Filing an appeal of a judgment does not effect registration of notice of judgment or the related enforcement charge unless a court otherwise orders

PART 6 REGISTRATION OF NOTICE OF JUDGMENT

Introduction

Part 6 contains the details with regard to the registration of a notice of judgment.

- s. 45 Duration of registration of notice of judgment

The registration of a notice of judgment under s. 37 is effective for the period chosen by the judgment creditor and shown on the notice of judgment unless the registration is discharged at an earlier date by an order of the court or by the registration of a discharge.

- s. 46 Amendment and renewal of a notice of judgment
- s. 47 Giving notice of a registration, amendment or renewal of notice of judgment to the judgment debtor
- s. 48 Defect in registration does not affect validity unless it is seriously misleading
- s. 49 Discharge or amendment of notice of judgment

This section sets out a process for the compulsory amendment or discharge of a notice of judgment that is comparable to provisions found in Personal Property Security Acts with regard to the amendment or discharge of a financing statement.

- s. 50 Registration does not constitute notice or knowledge of notice of judgment
- s. 51 Circumstances where a person is deemed to have knowledge of notice
- s. 52 Removal of expired data from the registry
- s. 53 Obtaining legal name of judgment debtor from Department of Vital Statistics

This section is recommended on a “local option” basis.

PART 7 OBTAINING DISCLOSURE

Introduction

The ability of a judgment debtor to create an effective enforcement charge and to utilize the enforcement measures contained in this Act will depend in large measure on the ability of the judgment debtor to obtain information about the existence, location and description of the judgment debtor's property.

s. 54 Compelling disclosure of information

This section includes several different types of proceedings that may be used alternatively or cumulatively. The final alternative is recommended on a "local option" basis.

s. 55 Time within which to respond to a demand for information

s. 56 Consequences of failing to disclose demanded information

s. 57 Enforcement officer must disclose information to other judgment creditors who request information

PART 8 ENFORCEMENT INSTRUCTIONS

Introduction

One of the principles underlying the development of the Uniform Act is that enforcement is a "judgment creditor driven" process. It is the responsibility of a judgment creditor to initiate enforcement proceedings by giving enforcement instructions to an enforcement officer with regard to types of enforcement proceedings that the judgment creditor wants the enforcement officer to undertake.

One of the documents that must accompany an enforcement instruction is a copy of a search result issued by the registry indicating that a notice of judgment has been registered by the judgment creditor and the period for which the registration is effective.

s. 58 Enforcement instructions given by judgment creditor to enforcement officer

Enforcement instructions are directed to the enforcement officer; however, the enforcement officer may decline to carry out the instructions if, for example, the instructions request the enforcement officer to seize property that is clearly exempt from seizure under Part 13, or to otherwise act in a manner that is contrary to law.

s. 59 Enforcement officer's authority

Upon receiving enforcement instructions, an enforcement officer's authority to implement enforcement proceedings flows from the judgment and the judgment creditor's instructions. There will no longer be any need for the court to issue a writ of execution or similar document.

s. 60 Supplementary enforcement instructions

s. 61 Effect of withdrawal of enforcement instructions by judgment creditor

s. 62 Termination and expiration of a subsisting enforcement instruction

An enforcement instruction lapses on the later of the date that is 6 months after its delivery to the enforcement officer; however, an enforcement officer may terminate an enforcement instruction earlier by giving a notice of termination to the judgment creditor. The most common reason for termination will likely be the inability to find any property of the judgment debtor that comes within the scope of the enforcement instruction. This will be similar to the current "nulla bona" return of a writ of execution.

s. 63 If 2 or more enforcement instructions are delivered to an enforcement officer

This section provides the rule that will determine which judgment creditor is the "instructing judgment creditor".

PART 9 ENFORCEMENT PROCEEDINGS AGAINST PERSONAL PROPERTY

Introduction

This Part is divided into ten divisions.

Division 1 provides a code of procedure for enforcement proceedings against personal property generally except where otherwise provided.

Division 2 sets out the rules that will apply where a judgment debtor owns property with others as joint tenants or tenants-in-common. This Division applies to the whole of Part 9.

Division 3 (Mobile Homes), Division 4 (Products of Nature), Division 5 (Fixtures) and Division 6 (Licenses and Intellectual Property) each contain additional enforcement provisions that supplement those found in Divisions 1 and 2 and that are needed to deal with the unique characteristics of these types of property.

Division 7 (Interest under a Lease, Contract of Sale or Security Agreement), Division 8 (Accounts Owing to the Judgment Debtor), Division 9 (Market Securities), and Division 10 (Non-Market Securities) each contain a relatively complete code of enforcement procedures to deal with the unique characteristics of these kinds of intangible personal property. Nevertheless, the provisions of Division 1 and 2 may be used to supplement Divisions 7 – 10 if the latter are silent on a matter.

Division 1: PERSONAL PROPERTY GENERALLY

- s. 64 Application of this Division
- s. 65 Methods of seizure that may be used by enforcement officer
- s. 66 Seizure of property in possession of third parties
- s. 67 Seizure of personal property subject to statutory right of distress

Landlord and tenant legislation in several provinces and territories provides that a judgment creditor may seize property of a judgment debtor located on rented premises, only if the judgment creditor pays the landlord any arrears rent that may be due by the judgment debtor up to a specified maximum number of months. This acts as a significant deterrent to the seizure of a tenant/judgment debtor's goods. This section seeks to overcome this deterrent by providing that an enforcement officer must neither maintain the seizure nor sell property seized from rented premises unless the enforcement officer has reasonable grounds to believe that the proceeds of a sale will be likely be more than sufficient to pay the arrears of rent up to any maximum provided by the tenancy legislation plus the enforcement officer's fees and expenses with regard to the seizure and sale. If the enforcement officer maintains the seizure and sells the seized property, the landlord is entitled to a higher preference than ordinary judgment creditors in the distribution of the proceeds of the enforcement proceeding to the extent of the proceeds recovered from the sale of the property seized from the landlord's premises.

If the landlord and tenant legislation of a province or territory currently provides for payment of arrears of rent before seizure of a tenant's goods, a consequential amendment of that legislation will likely be necessary.

- s. 68 Seizure of personal property subject to an exclusive possession order under family property legislation

Most provinces and territories do not have legislation dealing with priorities between exclusive possession orders and interests in personal property. If a province/territory does not have such legislation, this section provides a default rule for determining priorities. Provinces and territories should review their family property legislation and consider a legislative amendment that will permit exclusive possession orders to be registered against personal property in the registry prescribed under this Act.

s. 69 Quantity of property to be seized

An enforcement officer to whom an enforcement instruction has been given must seek to seize enough of the judgment debtor's personal property to satisfy the instructing judgment creditor's judgment, the judgments of all judgment creditors who have delivered a subsisting enforcement instruction to the enforcement officer, and the enforcement officer's fees and expenses.

s. 70 When notice of seizure must be given to the judgment debtor and others

s. 71 Irregularities in procedures by which seizure and sale carried out

s. 72 Method of disposition to realize upon value of seized property

s. 73 Notice of sale requirement - redemption of seized property

Before disposing of seized property, the enforcement officer must give a notice of sale to the judgment debtor and the persons listed in this section who have interest in the property. The Working Group recommends that number of days of notice be the same as the number of days that as appears in the notice of sale requirement found in the comparable section of the enacting jurisdiction's Personal Property Security Act.

If payment of the amount stated in the notice is made before the date specified in the notice of sale, the enforcement officer must release the property from seizure.

s. 74 Circumstances where notice of sale not required

s. 75 Private sales – notice requirement

Before an enforcement officer disposes of seized property by means of a sale, transfer or other form of disposition, other than by public tender or auction, to person who is a judgment creditor of the judgment debtor, at least 15 days notice of the proposed disposition must be given to the persons listed in the section who may

have an interest in the sale. The notice must describe the method and terms of the proposed disposition.

s. 76 Disposition of property or proceeds not required to satisfy judgments, costs and fees

s. 77 Judgments of the Federal Court of Canada

If a notice of judgment is registered in accordance with Parts 5 and 6 in relation to a judgment of the Federal Court of Canada, enforcement proceedings with regard to the enforcement charge created by the registration of the notice of judgment are subject to this Act.

If a judgment creditor with a judgment granted by the Federal Court of Canada proceeds with enforcement proceedings under the Federal Court Act (Canada) and the Federal Court Rules, the judgment creditor is precluded from enforcing its judgment under this Act.

s. 78 Application for a stay of enforcement proceedings

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

s. 79 Application of this Division

s. 80 Seizure of personal property held in joint tenancy or tenancy in common

An enforcement officer may seize a judgment debtor's interest in personal property held in joint tenancy or in tenancy in common. Neither the creation of an enforcement charge charging judgment debtor's interest in personal property held in joint tenancy nor the seizure of the judgment debtor's interest sever the joint tenancy.

An enforcement charge against a judgment debtor's interest in personal property held in joint tenancy with a person who is not a judgment debtor continues in effect despite the death of the judgment debtor whether or not the joint tenancy is with survivorship; however, the enforcement charge charges interest of the surviving joint tenants only to the extent of an amount equal to the lesser of

(a) the amount owing on all enforcement charges charging the property; and

(b) the value, as of the date of the judgment debtor's death, of the deceased judgment debtor's interest if it had been severed by partition and sold by the enforcement officer as the interest of a tenant-in-common.

- s. 81 When notice of seizure must be given to joint tenants and tenants-in-common
- s. 82 Right of other joint tenants or tenants in common to purchase judgment debtor's interest
- s. 83 Joint tenancy severed by sale or court order for sale
- s. 84 Purchaser from enforcement officer may apply for partition or an order for sale and division of proceeds

Division 3: MOBILE HOMES

Introduction

A mobile home is personal property with the unique characteristic that it may be occupied as either a permanent, temporary or vacation residence. If it is occupied, forcible eviction prior to a court order raises many of the same concerns as eviction from an ordinary residence. Therefore, if a mobile home is occupied, and the occupant refuses to voluntarily deliver up possession to the enforcement officer, a court order for delivery up of possession is required.

- s. 85 Definition of mobile home applicable to this Division
- s. 86 Circumstances where court order required for delivering up possession
- s. 87 Court order requiring delivery up must be served on occupant

Division 4: PRODUCTS OF NATURE

s. 88 Definitions

Several of the definitions warrant further comment.

"crops": This definition is an exact replica of the definition found in PPSA statutes.

"fish" and "fishing": These definitions are exact replicas of the definitions in the Newfoundland and Labrador Judgment Enforcement Act.

“products of nature”: This definition includes crops, agricultural products, products of aquaculture and products of the sea, lakes and rivers. All of these terms are defined in the definition section.

- s. 89 After seizure, no removal of a growing crop or agricultural products before giving notice of seizure to persons with an interest in the land
- s. 90 Content of Notice of seizure to be given to persons with an interest in the land
- s. 91 No sale before harvest except by court order
- s. 92 Judgment creditor may be required to provide security for harvesting expenses
- s. 93 Release of seizure where security for harvesting expenses not provided
- s. 94 Release of seizure on payment of amount specified in notice of seizure
- s. 95 Harvesting expenses of enforcement officer are a first charge on proceeds of sale with priority over all security interests and other charges
- s. 96 Marketing legislation – rights and duties thereunder

Division 5: FIXTURES

Introduction

The intricacies of the law pertaining to fixtures warrant a Division of this Part that will provide guidance to enforcement officers, lawyers and others who are required to deal with fixtures in the context of an enforcement proceeding.

At common law, an item of personal property became part of the land when it was affixed to the land. As such, the item was no longer subject to execution as personal property. An exception existed at common law with regard to trade fixtures. The enactment of Personal Property Security legislation recognized that a personal property security interest could be given in relation to personal property that is affixed to land and established a priority regime to govern the priorities of security interests in fixtures. This section of the Uniform Act seeks to make the enforcement of judgments against fixtures similar to the enforcement of security interests against fixtures.

- s. 97 Circumstances in which a fixture must be seized and sold as personal property
- s. 98 Seizure and removal of fixtures
- s. 99 Notice of seizure to be given to persons with an interest in the land

- s. 100 Application to court for order postponing removal of fixture or determining of an issue
- s. 101 Retention of fixture by person with a subordinate interest in the land
- s. 102 Fixture ceases to be bound by enforcement charge on payment of amount specified in notice of seizure
- s. 103 Reimbursement for damage caused by removal of fixture

Division 6: LICENCES AND INTELLECTUAL PROPERTY

Introduction

The objective of this Division is to make the value of licenses and intellectual property subject to enforcement proceedings under this Act to the greatest extent possible.

- s. 104 Licenses – seizure and disposition

A right or interest in a licence may be disposed of only in accordance with the terms and conditions under which the licence was granted.

- s. 105 Definition of “intellectual property”
- s. 106 Seizure of intellectual property
- s. 107 Effect of Seizure of intellectual property

Upon seizure of intellectual property, the judgment debtor loses all rights and power to dispose or otherwise deal with the intellectual property, and the enforcement officer acquires all the rights and powers of the judgment debtor and may take any action that could have been taken by the judgment debtor in relation to the property. If legislation governing intellectual property requires the registration of an assignment or other document before a transfer of intellectual property recognized, the disposition of intellectual property by an enforcement officer is not complete until the requirements for a valid registerable assignment or transfer have been satisfied.

- s. 108 Rights of transferees from the judgment debtor

A transferee of intellectual property from the judgment debtor, that is subject to an enforcement charge, has priority over the enforcement charge if the transferee gave

value and did not have knowledge of the enforcement charge or the seizure at the time of the transfer.

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

s. 109 Application of Divisions 1 and 2 to this Division

s. 110 Definition

In this Division, "contract of sale" means a contract under which the seller retains ownership of or title to the subject matter of the contract until a condition is met, but does not include a security agreement to which the Personal Property Security Act applies.

s. 111 Seizure of lessor's, seller's or secured party's interest

An enforcement officer may:

- (a) if the judgment debtor is a lessor, seize the lessor's interest, arising under a lease, in property in the possession of the lessee,
- (b) if the judgment debtor is a seller, seize the seller's interest, arising under a contract of sale, in property in the possession of the buyer;
- (c) if the judgment debtor is a secured party, seize the secured party's interest, arising under a security agreement, in property in the possession of the debtor.

s. 112 Seizure includes payment obligations

s. 113 Giving of notice of seizure

s. 114 Obligation of lessee, buyer, or debtor to make payments to enforcement officer where an interest under section 111 is seized

s. 115 Enforcement officer may exercise same rights as lessor, seller or secured party where an interest under section 111 is seized

s. 116 Seizure of lessee's, buyer's or debtor's interest

An enforcement officer may

- (a) if the judgment debtor is a lessee, seize the lessee's interest, arising under a lease, in property in the possession of the lessee,

- (b) if the judgment debtor is a buyer under a contract of sale, seize the buyer's interest, under the contract of sale, in property in the possession of the buyer;
- (c) if the judgment debtor is a debtor under a security agreement, seize the debtor's interest, under the security agreement, in property in the possession of the debtor.

s. 117 Enforcement officer may exercise same rights as lessee, buyer or debtor where an interest under s. 116 is seized

s. 118 Effect of contractual provisions on seizure

An enforcement officer may effect and maintain seizure of the interest of a lessee, buyer or debtor referred to in section 116 even though it is a term of the lease, contract of sale or security agreement under which the lessee's, buyer's or debtor's interest in, or right to possession of, the property arose that the property may not be seized or that the lease, contract of sale or security agreement may be terminated by reason of the property's seizure.

s. 119 Alternatives where lessor, seller or secured party seeks to exercise a contractual or statutory right to terminate interest

s. 120 No order for sale under s. 119(c) unless proceeds of sale will exceed present value of amount owing to seller or secured party

s. 121 If enforcement charge has priority over lessor's, seller's or secured party's interest, it may be enforced without regard to such interest

s. 122 Enforcement officer may register a previously unregistered interest

Division 8: ACCOUNTS OWING TO THE DEBTOR

Introduction

In most Canadian jurisdictions, debts or accounts that are due or accruing due to a judgment debtor are attached by a process known as garnishment. The details of this process vary from province to province. In most jurisdictions, the judgment creditor applies for a garnishing order or garnishee summons that is issued by the court after a cursory examination by court officials to ensure that the basic requirements of the process have been satisfied. The judgment creditor is responsible for arranging service on the garnishee and the judgment debtor. If, at the time of service of the garnishing order or

summons, there is a debt that is due or accruing due from the garnishee to the judgment debtor, the garnishee is obliged to pay the debt, up to the amount stated in the garnishee order or summons, into court. The garnishment process is subject to many technicalities and uncertainties with regard to when debts are due or accruing due. In some provinces, an account may also be seized under a writ of execution.

In this Act debts, accounts and monetary obligations owing to a judgment debtor will be treated to the extent possible in the same manner as other forms of personal property. Seizure of an account will be effected by giving a notice of seizure and a demand for payment to the account debtor. Subsequently, a notice of seizure must be given to the judgment debtor. Subject to an exception with regard to deposit accounts with financial institutions, a notice of seizure will be effective with regard to any amount that becomes due from the account debtor to the judgment debtor within the 12 months following delivery of the notice of seizure. Special provisions apply to the seizure of wages.

Attaching debts by garnishment will no longer be available under the Uniform Act.

s. 123 Application of Divisions 1 and 2 to this Division

s. 124 Definitions

The term "account debtor" replaces the concept of a garnishee and the term is defined as meaning a person, partnership trustee or governmental entity that

- (a) is obligated under an account to a judgment debtor, or
- (b) will become so obligated on performance or the happening of an event or after the passage of time.

s. 125 Account is deemed to be located where it is recoverable

s. 126 Seizure of an account

A seizure of an account or a future account is effected by

- (a) giving a notice of seizure and a demand for payment to an account debtor or any person who may become an account debtor, and
- (b) giving a copy of the notice of seizure to the judgment debtor within a reasonable time after the notice of seizure has been given to the account debtor.

s. 127 Prescribed form of notice of seizure and demand for payment

s. 128 Effect of giving notice of seizure

A notice of seizure applies to

- (a) any account that is owing by the account debtor to the judgment debtor at the time notice of seizure is given to the account debtor, and
- (b) any future account that becomes due by the account debtor to the judgment debtor at any time within 12 months after the date on which notice of seizure is given to the account debtor.
- (c) If, at the time notice of seizure to the account debtor, the account debtor is obligated to make a series of periodic recurring payments to the judgment debtor, the notice of seizure and an accompanying demand for payment apply to each recurring payment obligation until the judgments to which the notice of seizure relates are satisfied.

s. 129 Seizure of a deposit accounts

s. 130 Obligations of account debtor upon receiving a notice of seizure

s. 131 Dispute by account debtor that obligation to judgment debtor exists

s. 132 Seizure of employment remuneration

A notice of seizure affecting employment remuneration must be given to the account debtor not later than 14 days before the end of a pay period of the judgment debtor. A notice of seizure that is given outside this time period is effective for all subsequent pay periods of the judgment debtor ending within 12 months after the date the notice of seizure is given to the account debtor unless judgments to which the notice of seizure relates are satisfied earlier.

s. 133 Trust obligations that are deemed to be an account owing on happening of specified events

s. 134 Circumstances where set-off by account debtor permitted

s. 135 Circumstances where set-off by account debtor not permitted

s. 136 Payment to enforcement officer discharges account debtor

s. 137 Assigned accounts

Priority between an enforcement charge and an either an assignment of accounts or a security interest in accounts is determined by Part 5 based on the date and time of

registration of the notice of judgment. When an account debtor has received both a notice of seizure and a notice of an assignment with regard to the same account, the account debtor cannot be expected to determine which has priority. Therefore, this section provides that the account debtor may pay the account debt to the enforcement officer. If the assignment of accounts or security interest in accounts has priority over the notice of seizure, the enforcement officer is required by Part 13 to pay the funds received from the account debtor to the holder of the assignment of accounts or the holder of the security interest in the accounts.

s. 138 Compensation for account debtor

This section will permit provinces/territories to prescribe an amount that an account debtor may retain, from the amount that would otherwise be payable to the enforcement officer, as compensation for its expense of complying with the notice of seizure.

s. 139 Seizure of money payable to a judgment debtor that in possession of enforcement officer

s. 140 Seizure of money in court that is payable to a judgment debtor

s. 141 Application to court to determine validity of seizure of an account

s. 142 Application by judgment debtor to release a seized account in limited circumstances

s. 143 Judgment against an account debtor who fails to honour seizure of an account

s. 144 Account debtor may be required to provide information to enforcement officer

s. 145 Application of third party procedure

Division 9: MARKET SECURITIES

Introduction

The relationship between the seizure provisions of this Act and the Uniform Securities Transfer Act (USTA) has been the subject of several conference calls and exchanges of draft provisions that have taken place between representatives of the USTA Task Force and our Working Group.

s. 146 Application this Division

This Division applies only to a security or security entitlement as those terms are defined in the USTA and incorporated into this Division.

s. 147 Application of Divisions 1 and 2 to this Division

s. 148 Definitions

In order to avoid any conflict in the meaning of terms, the USTA definitions of the terms listed in this section are incorporated by reference into this Act.

s. 149 Seizure of securities and securities entitlements

The seizure of the interest of a judgment debtor in a security or a security entitlement must be made in accordance with Part 2, Division 8 of the USTA; however, the effect of a seizure is governed by this Act. The seizure provisions of the USTA provide

Certificated Security: Except as otherwise provided in Part 2, s. 55 of the USTA, a certificated security may only be seized by seizure of the security certificate

Uncertificated Security: Except as otherwise provide in Part 2, s. 56 of the USTA, an uncertificated security may be seized only by an enforcement officer giving a notice of seizure to the issuer of the security at the issuer's chief executive office.

Securities Entitlement: Except as otherwise provide in Part 2, s. 57 of the USTA, a securities entitlement may be seized only by giving a notice of seizure to the securities intermediary with whom the judgment debtor's securities account is maintained..

Where the interest of the judgment debtor is subject to a security agreement, s. 59 of the USTA provides that the interest of the judgment debtor may be seized by giving a notice of seizure to the secured party.

s. 150 Effect of seizure of a certificated security

Upon seizure of a certificated security in bearer form, the enforcement officer may dispose of the security or otherwise realize upon its value.

Upon seizure of a certificated security in registered form, the enforcement officer is an appropriate person to endorse the security for the purposes of the USTA, and the

enforcement officer may present the certificated security to the issuer with a request to register a transfer. The enforcement officer acquires all of the rights and powers of the judgment debtor and the judgment debtor loses all rights and powers to request a transfer or otherwise deal with the certificated security.

s. 151 Effect of seizure of an uncertificated security

Upon seizure of an uncertificated security, the enforcement officer is entitled to present an instruction to the issuer and request to register a transfer of the uncertificated security. The enforcement officer is entitled to give and the issuer must comply with any instructions, directions, or consent as if it was given by the judgment debtor and the issuer must not act upon or comply with any instruction, direction, request or consent given by the judgment debtor for the duration of the period that the seizure is effective. The prohibition against an issuer acting on a consent given by judgment debtor after the seizure of an uncertificated security means that the consent of the enforcement officer will be required on any control agreement made after the notice of seizure is given to the issuer.

s. 152 Effect of seizure of a security entitlement

The effect of seizing a security entitlement is very similar to the effect of a seizing an uncertificated security except the terminology is different. “Security entitlement” is substituted in the place of uncertificated security, “securities intermediary” is substituted in place of issuer, and “entitlement order” is substituted in place of a request to register a transfer.

s. 153 Effect of seizure if the security or security entitlement is subject to a prior security interest

If the judgment debtor’s interest in a security or security entitlement is subject to a prior security interest

(a) enforcement officer acquires all of the rights and powers of the judgment debtor and may take any action that could have been taken by the judgment debtor, and

(b) the judgment debtor loses all rights and powers to deal with the security or security entitlement for the duration of the period that the seizure is effective.

s. 154 Seizure of security entitlement does not prejudice a lien or security interest of securities intermediary

s. 155 When a securities intermediary may complete a sale

s. 156 Missing Security Certificate

Division 10: NON-MARKET SECURITIES

Introduction:

The primary objective of this Division is to make securities of closely-held corporations subject to seizure and sale at their real value notwithstanding restrictions on their transfer while requiring the enforcement officer to follow, as closely as possible, the method of sale that the judgment debtor would be required to follow in disposing her or his securities.

s. 157 Application of this Division

s. 158 Application of Divisions 1 and 2

s. 159 Definitions

s. 160 Seizure of a security

Certificated Security: Except as otherwise provided, a certificated security may be seized only by actual seizure of the security certificate by an enforcement officer.

Uncertificated Security: Except as otherwise provided, an uncertificated security may be seized only by an enforcement officer giving a notice of seizure in the prescribed form to the issuer at the issuer's chief executive office.

Where the interest of the judgment debtor is subject to a security agreement, the interest of the judgment debtor may be seized by giving a notice of seizure to the secured party.

s. 161 Effect of seizure of a certificated security

This section is similar to the comparable section that applies to market securities. The judgment debtor loses all rights and powers to request a transfer or otherwise deal with the certificated security and the enforcement officer acquires all of the rights and powers of the judgment debtor.

s. 162 Effect of seizure of an uncertificated security

This section is similar to the comparable section that applies to market securities. The judgment debtor loses all rights and powers to request a transfer or otherwise deal with the uncertificated security, the enforcement officer acquires all of the rights and powers of the judgment debtor, and the issuer must not act upon or comply with any instruction, direction, request or consent given by the judgment debtor.

s. 163 Obligation of issuer to provide names and addresses of all registered holders to enforcement officer

s. 164 Obligation of issuer to inform others of the seizure when responding to inquiries from persons otherwise entitled to receive information from issuer

s. 165 Transfer restrictions

Except as otherwise provided, an enforcement officer is not bound by transfer restrictions; however, the enforcement officer must, subject to some exceptions, use a method of sale that

(a) follows as closely as possible the procedure that the judgment debtor would be required to follow in order to sell a seized security, and

(b) provides the issuer and the other persons who own a security of that issuer with a reasonable opportunity to redeem or buy a seized security before it is offered for sale to any other person.

s. 166 Notice of intended sale – to whom it must be given

s. 167 Notice of intended sale must set out proposed method of sale

s. 168 Addresses that may be used for giving of notice of intended sale

s. 169 No further steps until 15 days after notice of intended sale is given

s. 170 A person who would otherwise be entitled to purchase the security at a predetermined price is entitled to purchase subject to review by the court

s. 171 Right of issuer or other person who owns the security to acquire the seized security by paying amount specified in this section

s. 172 Right of other owners to tender to their securities for sale by the enforcement officer

s. 173 Enforcement officer may decline to sell securities tendered for sale

s. 174 When enforcement officer may proceed with disposition of security

- s. 175 Application to Court regarding proposed method of selling security
- s. 176 When method of sale is deemed to have satisfied requirements of the Act
- s. 177 Purchaser at enforcement officer's sale acquires all rights of judgment debtor
- s.178 Purchase deemed to be party to a shareholders' agreement to which judgment debtor was a party
- s. 179 Issuer must amend its records to indicate purchaser from enforcement officer
- s. 180 Completion of sale where missing Security Certificate

PART 10 LAND

Introduction

Land holding systems vary significantly across Canada. For example, in British Columbia, judgments do not become a charge on an interest in land until a judgment is registered against a specific title to land identified by a lot and plan number. In Saskatchewan, judgments are registered in a general registry of judgments. The variations in land holding systems and the manner in which judgments become a charge on an interest in land will likely make it impossible to develop a single uniform set of provisions that will operate satisfactorily in all provinces/territories.

In this Part, two options are provided with regard to the registration requirement that must be satisfied in order for a judgment to become an enforcement charge on land. 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.

- s. 181 Definitions

OPTION #1 (The Newfoundland/ Saskatchewan Option)

- s. 182 Registration in the Registry

Registration of a notice of judgment in the registry under section 37 creates an enforcement charge on all interests in land held by the judgment debtor at the time of registration and any interest in land acquired by the judgment debtor after the registration and before its discharge.

s. 183 Priority of enforcement charge

Except as otherwise provided in this or any other Act, an enforcement charge created under section 182 has priority over

- (a) an interest in land that, at the date the enforcement charge came into existence, could have been registered but was not registered under the Land Titles Act [or similar statute in the enacting jurisdiction]; and

Comment:

This clause has the effect of reversing the “nemo dat” rule.

- (b) a registered or unregistered interest in the land acquired from the judgment debtor after the charge came into existence;

but , unless the judgment to which the enforcement charge relates is registered under section 184, the enforcement charge does not have priority over a registered interest in the land if, at the time that that registered interest was acquired, a search of the name of the grantor of that interest, as that name appears in the records of the land titles office [or land registry], would not disclose the enforcement charge.

Comment:

In their Interim Report with regard to a proposed new Act in Saskatchewan, Professors Buckwold and Cuming comment on the effect of this section, as follows:

Under the system contemplated by the provisions set out above, a person who is acquiring an interest in land from the debtor would obtain a search result from the Registry in order to determine whether the land is subject to an enforcement charge. This person should not be put in the position of having to search several variations of the prospective transferor’s name in order to determine whether or not an enforcement charge has been registered against the property involved in the prospective transfer. The person should be required to do no more than obtain a search result using the name of the prospective transferor as it appears in the registration indication the transferor’s interest in the land titles registry. If no enforcement charges are

revealed in this way, the person should be able to assume that no such charges exist.

Subsection (2) describes the circumstances where an enforcement charge created under section 182, whether or not registered under section 184, will not have priority over certain types of mortgages.

s. 184 Registration of an enforcement charge against title or interest

- (1) After a notice of judgment has been registered as provided in section 37, an application may be made by the judgment creditor, in accordance with the Land Titles Act [or similar statute on the enacting jurisdiction], to register the notice of judgment against the title or interest in land described in the registration.
- (2) The registration as provided in subsection (1) creates an enforcement charge on the title or interest in land described in the registration that is effective for the purposes of this Part from the time of registration.

OPTION #2 (The Alberta/British Columbia Option)

s. 182 Registration and creation of a charge against judgment debtor's title or interest in land

- (1) If a notice of judgment has been registered in the Registry in accordance with Parts 5 and 6 of this Act, a judgment creditor may,
 - (a) in the case of land under the Land Titles Act [or similar Act in the enacting Province or Territory] make an application in accordance with the Land Titles Act [or similar Act in the enacting Province or Territory] to register the notice of the judgment against the title to, or an interest in, land of the judgment debtor described in the application.
 - (b) in the case of land that is not under the [insert the title of the Land Titles Act or similar Act in the enacting Province or Territory], make an application to register, file or otherwise record the notice of judgment against the land of the judgment debtor described in the application.
- (2) The registration of a notice of judgment in accordance with subsection (1) creates an enforcement charge on the title or interest in land of the judgment debtor from the time of registration.

s. 183 Priority of enforcement charge

(1) Except as otherwise provided in this or any other Act, an enforcement charge created under section 182 has priority over

(a) an interest in land that, at the date the enforcement charge came into existence, could have been registered but was not registered as provided by the Land Titles Act [or similar Act of the enacting Province or Territory];

(b) a registered or unregistered interest in the land acquired from the judgment debtor after the enforcement charge came into existence under s. 182.

(2) Subsection (2) describes the circumstances where an enforcement charge created under section 182 does not have priority over certain types of mortgages.

s. 184 When an enforcement charge against land terminates

THE REMAINDER OF THE SECTIONS IN THIS PART ARE APPLICABLE TO BOTH OPTIONS

s. 185 Effect of enforcement charge on joint tenancy

The creation of an enforcement charge against a judgment debtor's land held in joint tenancy does not sever a joint tenancy.

An enforcement charge on land held by a judgment debtor as a joint tenant continues to charge the land despite the death of the judgment debtor land to the extent of an amount equal to the lesser of the amounts specified in this section.

s. 186 Determination of shares in a joint tenancy

s. 187 Severance of a joint tenancy upon sale or court or for sale

s. 188 Effect of bankruptcy of judgment debtor

s. 189 Notice of intention to sell – to whom it must be given

s. 190 Growing crops may be sold as part of land if included in notice of sale

s. 191 Waiting period between notice of intention to sell and offering land for sale

In specified circumstances there will be a waiting period between giving the notice of intention to sell and offering the land for sale. The length of the waiting period will be prescribed by regulation.

- s. 192 Right of joint tenant or tenant-in-common to purchase judgment debtor's interest
- s. 193 Sale of judgment debtor's interest or title
- s. 194 Method of sale
- s. 195 Transfer of land following a sale
- s. 196 Discharge of registration of a judgment or notice of judgment

PART 11 EXEMPTIONS

Introduction

Division 1 deals with property that is exempt from seizure including the capital of Registered Retirement Savings Funds, and similar funds. Division 2 deals with exemptions related to income streams that may include pay-outs under annuities and Registered Retirement Savings funds and some pensions

Division 1: PROPERTY EXEMPTIONS

- s. 191 Natural is person entitled to claim property as exempt from seizure
- s. 192 Natural person's claim for exemption of property owned by closely-held corporation

This section recognizes that many small closely-held corporations are nothing more than an individual who is using a corporation to carry on her or his business.

- s. 193 Dependent of judgment debtor may claim judgment debtor's exemption
- s. 194 Onus of establishing eligibility to claim an exemption under s. 192 or 193 is on person asserting the exemption
- s. 195 Date for determining application of exemption
- s. 196 Waiver of exemptions
- s. 197 Exemptions of specific types of property

The types of tangible property that have traditionally been exempt from seizure and descriptions of those classes of property are often closely related to the cultural and economic history of a province/territory. Consequently, a good deal of latitude is needed to permit individual provinces/territories to adopt classifications of exempt property that will meet with local approval. Two basic approaches are available. One approach is to describe a class of property and declare that property falling

within the described class that is reasonably required by the judgment debtor and her or his dependents is exempt from seizure without any reference to a maximum prescribed value of property that may be claimed as exempt. Another approach is to describe a class of property and prescribe a maximum value of property of this class that may be claimed as exempt from seizure. The approach taken in this Act, is to describe various classes property that may be claimed as exempt from seizure. Where a province/territory wishes to prescribe a maximum value of property that may be claimed as exempt property with that class, it can enact the language contained in the square brackets following the description of the class.

- s. 198 Property that may not be claimed as exempt
- s. 199 Property shall not be seized where it is likely exempt
- s. 200 Co-ownership - effect on an exemption
- s. 201 Requirement of providing judgment debtor with written information on exemptions that may be claimed and a copy of an exemption claim form
- s. 202 Time for delivering exemption claim form to the enforcement officer
- s. 203 Failure of judgment debtor to specify property after claiming exemption
- s. 204 Determination of validity of exemption claim by the enforcement officer
- s. 205 Review by the Court of enforcement officer's determination of validity of exemption claim
- s. 206 Onus of proving that seized property is exempt is on the judgment debtor
- s. 207 Procedure where value of seized property exceeds maximum value of permitted exemption
- s. 208 Proceeds of exempt property remain exempt as long as they remain segregated

Division 2: INCOME EXEMPTION

- s. 209 Definitions

The term "income" is given a definition that is broader than salary and wages and includes income received from annuities, RRSP, RRIF and DPSP pay-outs, and pension income to the extent that pension income is not exempt under other laws.

- s. 210 Exemption Formula

A judgment debtor is entitled to a net income exemption:

- (a) to the extent of the minimum amount prescribed during a prescribed period;
and
 - (b) fifty percent of the amount by which the judgment debtor's net income during the prescribed period exceeds the minimum amount;
- but the total amount exempt shall not exceed the maximum amount prescribed.
- s. 211 Where income is attributable to only part of prescribed period, the minimum and maximum exemption prescribed exemption amounts are reduced proportionately
 - s. 212 Where income is attributable to period longer than prescribed period, the minimum and maximum prescribed exemption amounts are increased proportionately
 - s. 212 Exemption where income is not attributable to a specified period
 - s. 213 Variation of exemption by Court order
 - s. 214 Requirement that judgment debtor provide information on sources of income
 - s. 215 Circumstances in which deposit accounts into which exempt income is deposited remain exempt

Comment on legislation directing reinstatement to employment

This Act does not include a section providing for reinstatement or another remedy for an employee who is disciplined by her or his employer following a seizure of employment income. The Working Group recommends that provisions of this nature be included in labour or employment standards legislation.

PART 12 RECEIVERS, INJUNCTION & SPECIAL ORDERS

Introduction

This Part has been circulated among the members of the Working Group; however it has not yet been discussed by the Working Group.

Division 1: RECEIVERS

Introduction

The appointment of a receiver to aid with the enforcement of a judgment has traditionally been regarded as a form of equitable execution; however, there is legislation in most provinces and territories as well as rules of court that pertain to the appointment of receivers. This Division brings the appointment of receivers within this Act.

- s. 216 Application to Court for appointment of receiver
- s. 217 Circumstances where a receiver will not be appointed
- s. 218 Circumstances Court must consider on application to appoint a receiver
- s. 219 Content of order appointing a receiver
- s. 220 Powers of a receiver
- s. 221 Property subject to receivership order
- s. 222 Duration of receiver's appointment
- s. 223 Court supervision of receivers
- s. 224 Relationship of receiver and enforcement officer
- s. 225 Disposition of judgment debtor's property on termination of a receivership

Division 2: INJUNCTIONS AND SPECIAL ORDERS

- s. 226 Types of injunctions and orders Court may make upon application

PART 13 DISTRIBUTION

Introduction

This Part governs the distribution of the proceeds of enforcement proceedings.

This Part has not yet been the subject to a review by a legislative drafter.

- s. 225 Definition of "eligible claim"

This definition defines those judgment creditors who are eligible to participate in the distribution of proceeds of an enforcement proceeding.

- s. 226 The Distributable Fund

The term "distributable fund" is used to describe the various sources of funds that must be distributed in accordance with this Part.

- s. 227 Time for determining entitlement to distribution
- s. 228 Enforcement officer's request to judgment creditors for information about details of claim
- s. 229 Order in which Distributions are made

There are circumstances under this Act where an enforcement officer is permitted to sell seized property and give title to the property free of a prior security or other

interest. However, the prior security interest continues to charge the proceeds of sale and the holder of the security is entitled to have its claim discharged prior to a distribution of the distributable fund under this section.

Subject to discharging any entitlements described in the preceding paragraph, this section sets out a ladder approach to the distribution of the distributable fund. The claims of all claimants on one rung of the ladder must be satisfied in full before proceeding down to the next rung of the distribution ladder. If there are not enough funds to satisfy all claims on one rung of the ladder in full, the remaining balance of the distributable fund is distributed among all claimants on that rung of the ladder on a pro rata basis.

- s. 231 Delay of distribution where property seized in an enforcement proceeding is monetary currency
- s. 232 Circumstances where enforcement officer may delay in distribution
- s. 233 Preparation and distribution of distribution scheme by enforcement officer
- s. 234 Objection to distribution scheme

Any objection must be given, in writing, to the enforcement officer within 10 days.

If no objections are received, the distribution may proceed.

- s. 235 Reporting and correcting errors in the distribution
- s. 236 Priorities in relation to other interests are not affected by this Part

PART 14 THIRD PARTY PROCEEDINGS

Introduction

This Part has been circulated among the members of the Working Group; however it has not yet been discussed by the Working Group.

- s. 276 Third party notice of a claim to property that is subject to an enforcement charge
- s. 277 Stay of a sale or stay of distribution of proceeds from sale of property that is subject to a third party notice of claim
- s. 278 Procedure relating to third party claims
- s. 279 Release of property from seizure
- s. 280 Notice by enforcement officer of intention to interplead

- s. 281 Application by enforcement officer for interpleader order
- s. 282 Request by judgment creditor for proportional contribution from other judgment creditor to costs of interpleader proceeding
- s. 283 Possession of disputed property during interpleader proceedings
- s. 284 Sale of perishable property with permission of court
- s. 285 Onus of proof in interpleader proceedings

PART 15 TRANSITION, REGULATIONS, FORMS, AND FEES

Introduction

This Part has not been circulated among or considered by the members of the Working Group.

- s. 286 Transition Provisions
- s. 287 Regulation making powers
- s. 288 Prescribed forms
- s. 289 Prescribed Fees

[7] All of which is respectfully submitted this 21 day of June, 2003

Lyman R. Robinson, Q.C.
Project Leader