

UNIFORM LAW CONFERENCE OF CANADA

CIVIL LAW SECTION

COMMERCIAL LAW STRATEGY

Housekeeping Amendments to
Uniform Enforcement of Canadian Judgments Act
and
Uniform Enforcement of Canadian Judgments and
Decrees Act

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**Housekeeping Amendments to *Uniform Enforcement of Canadian Judgments Act* and
*Uniform Enforcement of Canadian Judgments and Decrees Act***

[1] Research being carried out for the Working Group on a *Uniform Civil Enforcement of Money Judgments Act* has identified an anomaly in connection with the two Uniform Acts on interprovincial enforcement that requires attention.

[2] When the *Uniform Enforcement of Canadian Judgments Act* was promulgated in 1992 the Civil Law Section made a decision that the definition of “judgment” should expressly include a reference to restitution orders made under the *Criminal Code*. These orders were authorized by the (then) sections 725 and 726 of the *Code*. The text of these provisions is set out in the Appendix.

[3] As a result of this decision, the definition of “Canadian judgment” in the *Uniform Enforcement of Canadian Judgments Act* expressly referred to *Code* section numbers 725 and 726. It currently reads:

“Canadian judgment” means

- (a) a final judgment or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory],
- (b) a final order that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction of the province or territory where the order was made, and
- (c) an order that is made under section 725 or 726 of the *Criminal Code* (Canada) by a court or a province or territory of Canada other than [enacting province or territory] and that is entered as a judgment in the superior court of unlimited trial jurisdiction of the province or territory where the order was made;

[4] An attempt was made to carry this forward into the *Uniform Enforcement of Canadian Judgments and Decrees Act* with imperfect results. The corresponding portion of the (somewhat more elaborate) version of the definition referred only to section 725 with the reference to section 726 being inadvertently omitted. The relevant portion of the definition reads:

“Canadian judgment” means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than [enacting province or territory]

- (a) that requires a person to pay money, including
 - (i) an order for the payment of money that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than [enacting province or territory] and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction in that province or territory, and
 - (ii) an order made and entered under section 725 of the *Criminal Code* (Canada) in a court province or territory of Canada other than [enacting province or territory]

...

[5] In 1995, amendments were introduced to the *Criminal Code* which not only changed the section number references but altered the substance of the provisions.¹ Details may be found in a memorandum prepared by British Columbia Law Institute staff lawyer Kevin Zakreski, which accompanies this Report as background information. The provisions of the *Code* that currently correspond to the older section numbers are sections 738 and 739. The current text of those provisions is set out in the Appendix.

[6] The 1995 amendments also affected the drafting of the uniform provisions in another way. The restitution provisions as they stood in 1992 were self-contained in the sense that they provided both for the making of a restitution order and its enforcement through its entry and enforcement as a local civil judgment. The 1995 amendments placed the substantive power to make the order in sections 738 and 739 but the enforcement machinery was set out in a new section 741 (see Appendix for the current version). Thus it is no longer accurate for the Uniform Acts to say “an order made and entered under” a specific section number or numbers.²

[7] Concerns relating to this issue are compounded by the fact that further amendments to the restitution provisions of the *Code* were made earlier this year.³ These amendments allow orders for the payment of money to be made as a condition of probation or as part of a conditional sentence. The text of the relevant portion of the amendments is also set out in the Appendix.⁴

[8] The current situation is obviously unsatisfactory and amendments to the definition of “Canadian judgment” in these two Uniform Acts are called for. The goal is to ensure that, so far as money judgments are concerned, they are similar in scope and their content is and remains current.

[9] There are three options that might be considered.

- Change the references in the definition of “Canadian Judgment” in both acts so they refer to “a judgment entered under section 741 of the *Criminal Code*.”

1. S.C. 1995, c. 22, s. 6.

2. This concern is illustrated by the adoption in British Columbia of the *Uniform Enforcement of Canadian Judgments and Decrees Act*. Legislative Counsel was obviously alive to the fact that the section number reference in the Uniform Act was outdated but its drafting suggested that only one section number should be named. The reference chosen was *Code* s. 741(enforcement machinery).

3. *An Act to amend the Criminal Code and other Acts*, S.C. 2004, c. 12 Bill C-14. The amendments came into force on April 22, 2004.

4. Section 741 (enforcement) refers expressly to amounts ordered to be paid under ss. 732.1 and 742.3 but the substantive power to make such orders is a bit less clear. The only direct reference to restitution is in s. 732.1(3.1)(a) which refers to probation conditions in the sentencing of an organization. The power arises only inferentially in the references to an order that the offender “provide for the support or care of dependants” in ss. 732.1(3)(e) and 743.3(2)(c).

- Replace the section number references with a more general reference to “restitution orders made under part 23 of the *Criminal Code*.”
- Delete the reference to restitution orders entirely.

[10] The first option is probably the least satisfactory. The section number references have proven to be something of a mine-field, not only in keeping the Uniform Acts current, but for jurisdictions what wish to adopt the legislation. The *Code* would have to be continually monitored for further changes in section numbering or structure that would call for further amendments to the Uniform Acts.⁵

[11] The second option would also call for a degree of monitoring although part numbering is probably more stable than section numbering. However, Part 23 of the *Code* addresses sentencing generally and casting the net this widely may raise unforeseen problems. An additional concern is that not all the kinds of orders for the payment of money will necessarily be caught by the language of restitution.⁶

[12] Both of these options raise a further issue. The 2004 amendments appear to contemplate the enforcement of an order that the offender “provide for the support or care of dependants.”⁷ If these orders take the form of orders for periodic maintenance they would appear to run afoul of the fact that the definition of “Canadian judgments” excludes most orders of this kind from the scheme.

[13] I personally favour the third option. It is my recollection of the deliberations in 1992 that the inclusion of express references to the *Code* provisions was not a matter of high policy. There seemed to be general agreement that the general definition of “Canadian judgment” (so far as it concerns the payment of money) was probably sufficient to sweep them in. The flavour of the debate was, as I recall, that the references might be included “for greater certainty” and because “they would do no harm.” The fact that we have to revisit this issue suggests that this step may have been misguided.

5. This part of the *Code* seems to be particularly fluid. In addition to the amendments described in this report there was also an amendment to s. 738 by S.C. 2000, c. 12, s. 95(e).

6. See note 4 *supra* and the discussion that follows.

7. See note 4 *supra*.

Appendix.

**Part One - The Provisions of the Criminal Code Concerning
Restitution Orders as they were in 1992**

Compensation for loss of property

- 725.** (1) A court that convicts or discharges under section 736 an accused of an offence may, on the application of a person aggrieved, at the time sentence is imposed, order the accused to pay to that person an amount by way of satisfaction or compensation for loss of or damage to property suffered by that person as a result of the commission of the offence.
- (2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.
- (3) All or any part of an amount that is ordered to be paid under subsection (1) may, if the court making the order is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the accused and the court so directs, be taken out of moneys found in the possession of the accused at the time of his arrest.

Compensation to bona fide purchasers

- 726.** (1) Where an accused is convicted or discharged under section 736 of an offence and any property obtained as a result of the commission of the offence has been sold to an innocent purchaser, the court may, on the application of the purchaser after restitution of the property to its owner, order the accused to pay to the purchaser an amount not exceeding the amount paid by the purchaser for the property.
- (2) Where an amount that is ordered to be paid under subsection (1) is not paid forthwith, the applicant may, by filing the order, enter as a judgment, in the superior court of the province in which the trial was held, the amount ordered to be paid, and that judgment is enforceable against the accused in the same manner as if it were a judgment rendered against the accused in that court in civil proceedings.
- (3) All or any part of an amount that is ordered to be paid under subsection (1) may, if the court making the order is satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the accused and the court so directs, be taken out of moneys found in the possession of the accused at the time of his arrest.

Part Two - The Current Provisions of the Criminal Code Concerning Restitution Orders

Restitution to victims of offences

- 738.** (1) Where an offender is convicted or discharged under section 730 of an offence, the court imposing sentence on or discharging the offender may, on application of the Attorney General or on its own motion, in addition to any other measure imposed on the offender, order that the offender make restitution to another person as follows:
- (a) in the case of damage to, or the loss or destruction of, the property of any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding the replacement value of the property as of the date the order is imposed, less the value of any part of the property that is returned to that person as of the date it is returned, where the amount is readily ascertainable;
 - (b) in the case of bodily harm to any person as a result of the commission of the offence or the arrest or attempted arrest of the offender, by paying to the person an amount not exceeding all pecuniary damages, including loss of income or support, incurred as a result of the bodily harm, where the amount is readily ascertainable; and
 - (c) in the case of bodily harm or threat of bodily harm to the offender's spouse or common-law partner or child, or any other person, as a result of the commission of the offence or the arrest or attempted arrest of the offender, where the spouse or common-law partner, child or other person was a member of the offender's household at the relevant time, by paying to the person in question, independently of any amount ordered to be paid under paragraphs (a) and (b), an amount not exceeding actual and reasonable expenses incurred by that person, as a result of moving out of the offender's household, for temporary housing, food, child care and transportation, where the amount is readily ascertainable.
- (2) The lieutenant governor in council of a province may make regulations precluding the inclusion of provisions on enforcement of restitution orders as an optional condition of a probation order or of a conditional sentence order.

Restitution to persons acting in good faith

- 739.** Where an offender is convicted or discharged under section 730 of an offence and
- (a) any property obtained as a result of the commission of the offence has been conveyed or transferred for valuable consideration to a person acting in good faith and without notice, or
 - (b) the offender has borrowed money on the security of that property from a person acting in good faith and without notice,
- the court may, where that property has been returned to the lawful owner or the person who had lawful possession of that property at the time the offence was committed, order the offender to pay as restitution to the person referred to in paragraph (a) or (b) an amount not

exceeding the amount of consideration for that property or the total amount outstanding in respect of the loan, as the case may be.

Enforcing restitution order

741. (1) Where an amount that is ordered to be paid under section 732.1, 738, 739 or 742.3, is not paid without delay, the person to whom the amount was ordered to be paid may, by filing the order, enter as a judgment the amount ordered to be paid in any civil court in Canada that has jurisdiction to enter a judgment for that amount, and that judgment is enforceable against the offender in the same manner as if it were a judgment rendered against the offender in that court in civil proceedings.

(2) All or any part of an amount that is ordered to be paid under section 738 or 739 may be taken out of moneys found in the possession of the offender at the time of the arrest of the offender if the court making the order, on being satisfied that ownership of or right to possession of those moneys is not disputed by claimants other than the offender, so directs.

Terms of Probation and Conditional Sentences

Optional conditions of probation order

732.1 (3) The court may prescribe, as additional conditions of a probation order, that the offender do one or more of the following:

....

(e) provide for the support or care of dependants;

...

(3.1) The court may prescribe, as additional conditions of a probation order made in respect of an organization, that the offender do one or more of the following:

(a) make restitution to a person for any loss or damage that they suffered as a result of the offence;

.....

Optional conditions of conditional sentence order

742.3 (2) The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:

(c) provide for the support or care of dependants;