INSTITUTE OF LAW RESEARCH AND REFORM
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THE OPERATION OF THE UNSECURED CREDITORS' REMEDIES SYSTEM IN ALBERTA

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INSTITUTE OF LAW RESEARCH AND REFORM

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Preface

The present study was designed and the final report written by Professor Dunlop. The collection and analysis of data was carried out by Professor Dunlop and by several students who worked for the Institute from 1982 to 1984, and whose names are listed on the cover to this report.

It is important to register our thanks to the Department of the Attorney General and to the many employees of that department who welcomed our researchers into their offices, opened their files and explained them, and answered freely and frankly our many questions. Without their ungrudging assistance, the project would have been impossible. Their motivation, like ours, was to ensure that reform proposals were based on a solid understanding of the system as it now operates.

Thanks are also due to the staff of the Institute who patiently typed and retyped drafts of this report. Their cheerful cooperation is appreciated.

Finally we want to thank Professor Chris Janssen of the Faculty of Business, University of Alberta, who reviewed the study and made very useful comments and suggestions. From his knowledge of statistics, Professor Janssen concluded that the statistical issues in the study were properly handled.

The Institute will review carefully the findings in the present study. It is however important to note that the views expressed here are those of the researchers and not those of the Institute or the Department of the Attorney General.

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Scot. Memo 47	Memorandum No. 47: First Memorandum on Diligence; General Issues and Introduction (1980).
Scot. Memo 48	Memorandum No. 48: Second Memorandum on Diligence: Poindings and Warrant Sales (1980).
Scot. Memo 49	Memorandum No. 49: Third Memorandum on Diligence: Arrestment and Judicial Transfer of Earnings (1980).
Scot. Memo 50	Memorandum No. 50: Fourth Memorandum on Diligence: Debt Arrangement Schemes (1980).
Scot. Memo 51	Memorandum No. 51: Fifth Memorandum on Diligence: Administration of Diligence (1980).

2. Research Reports Written for Law Reform Agencies

a. Alberta Institute of Law Research and Reform

Ramsay Proposals	Ramsay, Debt Recovery in Alberta: Proposals for Reform (1982).

Ramsay Report	Ramsay, The Use, Effectiveness and Social Impact of Wage Garnishment: An Empirical Study (1980).

b. Scottish Law Commission

Scot. R.R. #1	Doig, The Nature and Scale of Diligence: Research Report No. 1 (1980).
Scot. R.R. #2	Connor, The Characteristics of Warrant Sales: Research Report No. 2 (1980).
Scot. R.R. #3	Doig, Debt Recovery Through the Scottish Sheriff Courts: Research Paper No. 3 (1980).
Scot. R.R. #4	Connor, Arrestments of Wages and Salaries - A Review of Employers' Involvement: Research Report #4 (1980).
Scot. R.R. #5	Adler and Wozniak, The Origins and Consequences of Default - An Examination of the Impact of Diligence (Summary) (1981).
Scot. R.R. #6	Gregory and Monk, Survey of Defenders in Debt Actions in Scotland: Research Report #6 (1981).
Scot. R.R. #7	Millar, Debt Counselling: An Assessment of the Services and Facilities Available to Consumer Debtors in Scotland (1980).
Scot. R.R. #8	Doig and Millar, Debt Recovery - A Review of Creditors' Practices and Policies (1981).

Part I. Summary of Study

a. Purposes

In this study, we wanted to answer four questions about the Alberta system of remedies for unsecured judgment creditors. By "judgment creditor", we mean any plaintiff who obtained a judgment or order for the payment of a sum of money, excluding money judgments arising out of matrimonial disputes.

The four questions we wished to answer were as follows:

(1) Do plaintiffs who sue and obtain money judgments use any enforcement process?

(2) What remedies are commonly used and what remedies are rarely initiated?

(3) How do these remedies operate? In the case of execution, how far is the remedy pursued?

(4) How successful is the creditors' remedies process in collecting money for judgment creditors?

b. The Sample

We examined a randomly selected group of 2316 non-matrimonial money judgments filed in 1980 and 1981 in the Court of Queen's Bench in three Alberta judicial districts. We believe that our findings provide a representative picture of the functioning of the creditors' remedies system in Alberta because (1) our file selection process was random, (2) our sample was fairly large, (3) it was collected for three different judicial districts, and (4) it was collected for two different years (which exhibited great similarity of results).

Since the data was collected in 1982 and 1983, there has been a serious downturn in the Alberta economy. There may be some relationship between economic conditions in the province and the number of judgments filed, the kinds of remedies used and the vigor with which they are pursued. However we do not know the nature of this relationship. In difficult economic times, creditors may tend to pursue their claims further out of necessity, or they may decide that further enforcement is futile, recognizing that debtors may have no assets. Also we do not know whether the effects of the recession show up with a delay in the court system. For example, if the recession began in a certain year, the effects on the conduct of creditors may not have appeared in the remedial system until, say, two years later. Subject to these caveats, we nevertheless believe that our findings provide a representative picture of creditors' remedies in Alberta.

c. Characteristics of the Judgments

(1) 1093 judgments (47.2% of our sample) were for amounts of $1004 or less, 605 judgments (26.1%) were for amounts from $1005 to $3000, and 618 judgments (26.6%) were for amounts over $3000. However 103 judgments (4.4%) were for amounts over $20,000.

(2) 1517 judgments (65.5% of our sample) resulted from actions commenced in the Court of Queen's Bench. Another 547 judgments (23.6%) were certificates of judgments obtained in the Provincial Court. The remaining 252 judgments (10.8%) were made up largely of orders or certificates of various administrative bodies.

(3) During 1980 and 1981, a litigant with a claim under $1000 could sue either in the Court of Queen's Bench or in Provincial Court. We found that 385 (or 35.1%) of the plaintiffs who obtained judgments under $1004 ($1000 claim and $4 costs) had sued in Queen's Bench rather than in Provincial Court. This

result was initially surprising but, on reflection, we can see two reasons why a litigant, especially if represented by a lawyer, might choose Queen's Bench over the Provincial Court.

(a) If the plaintiff's claim is for a debt or a liquidated demand and if the defendant does not file a statement of defence or a demand of notice, the plaintiff can enter judgment under rule 148 of the Alberta Rules of Court without being required to appear before a judge. In Provincial Court, all actions are set down for hearing and the plaintiff in effect must attend if he wants to get judgment.

(b) While costs can be granted in both courts, they are likely to be more substantial in Queen's Bench than in Provincial Court.

Given these two reasons, one is tempted to speculate that lawyers representing plaintiff-clients are likely to choose the Court of Queen's Bench, even for small claims. Provincial Court would likely be more attractive to plaintiffs who have a substantial number of claims and who tend not to use lawyers. Our investigation was not sufficiently extensive to prove or disprove these ideas.

d. Enforcement of Judgments

(4) 352 judgments (over 15% of our sample) were not followed by any attempt at enforcement, not even the issue of a garnishee summons or a writ of execution.

(5) Judgments for higher dollar amounts were more often enforced than judgments for lower dollar amounts.

(6) More Queen's Bench judgments were enforced than Provincial Court judgments.

e. The Remedies Used

(7) The two common remedies used by judgment creditors are execution and garnishment. Table 12 (drawn from chapter 4 of the study) and Figure 1 show the number of judgments enforced by writ of execution, garnishee summons or both.

(8) No judgments were enforced only by a method other than execution or garnishment.

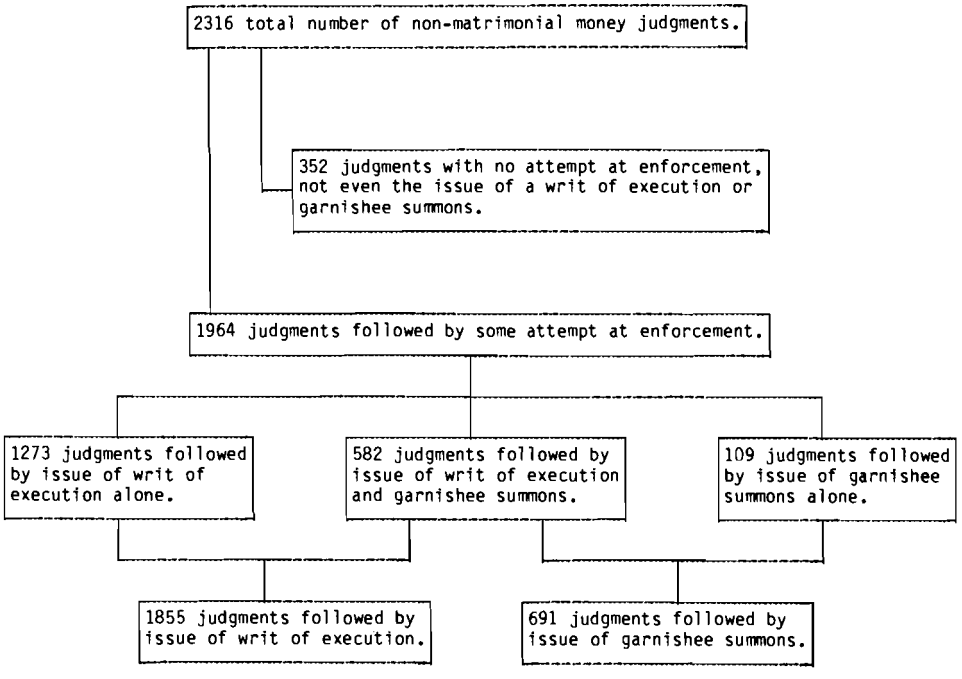
(9) Of the 2316 judgments examined in our study, we found only seven in which there was an application for the appointment of a receiver pursuant to Rule 466 and none under Rule 465. Of these, four were granted.

(10) We found no examples of charging orders, stop orders or Mareva injunctions.

Table 12 - Types of Enforcement in 1980 and 1981

		Enforced by Writ of Execution		
		Yes	No	Total
Enforced by garnishee Summons	Yes	582 (29.6)	109 (5.6)	691 (35.2)
	No	1273 (64.8)	0.0	1273 (64.8)
	Total	1855 (94.4)	109 (5.6)	1964 (100.0)

FIGURE 1. TYPES OF ENFORCEMENT IN 1980 AND 1981.



f. Writs of Execution

(11) 221 judgment creditors, or 12% of those who used the execution remedy, issued more than one writ of execution, usually for the purpose of filing an alias writ in a second judicial district.

(12) The examination in aid of execution is not commonly used. Appointments to examine were issued for only 137 (or 7.4%) of the judgments where writs of execution had been issued. The court files did not reveal the outcome of these appointments. There were 13 applications (10 of which were successful) for an order to the debtor to appear or be committed for contempt. We found only one case where the debtor actually was committed.

(13) The creditors' remedies process may be likened to a funnel or, more accurately, to a series of filters. A large number of statements of claim are filed, fewer judgments are obtained, still fewer writs of execution are issued and so on down to the comparative handful of creditors who actually press on to seizure and sale. Table 28 (drawn from chapter 6 of the study) and Figure 2 illustrate the dwindling number of judgment creditors pursuing and completing the execution process.

(14) It appears that a judgment creditor may have difficulty executing on his judgment because of some circumstances in the sheriffs' offices which are discussed in chapter 6. This is so despite the fact that the creditor has acted bona fide and has received a valid judgment and writ of execution from a court with jurisdiction to grant the relief.

(15) In nearly two-thirds of the successful seizures (120 cases), the asset seized was a motor vehicle.

(16) In 53% of seizures (91 cases), the goods seized were left with the debtor or a member of his family on a bailee's

undertaking. In another 12% (21 cases), the goods were left with a third party as bailee.

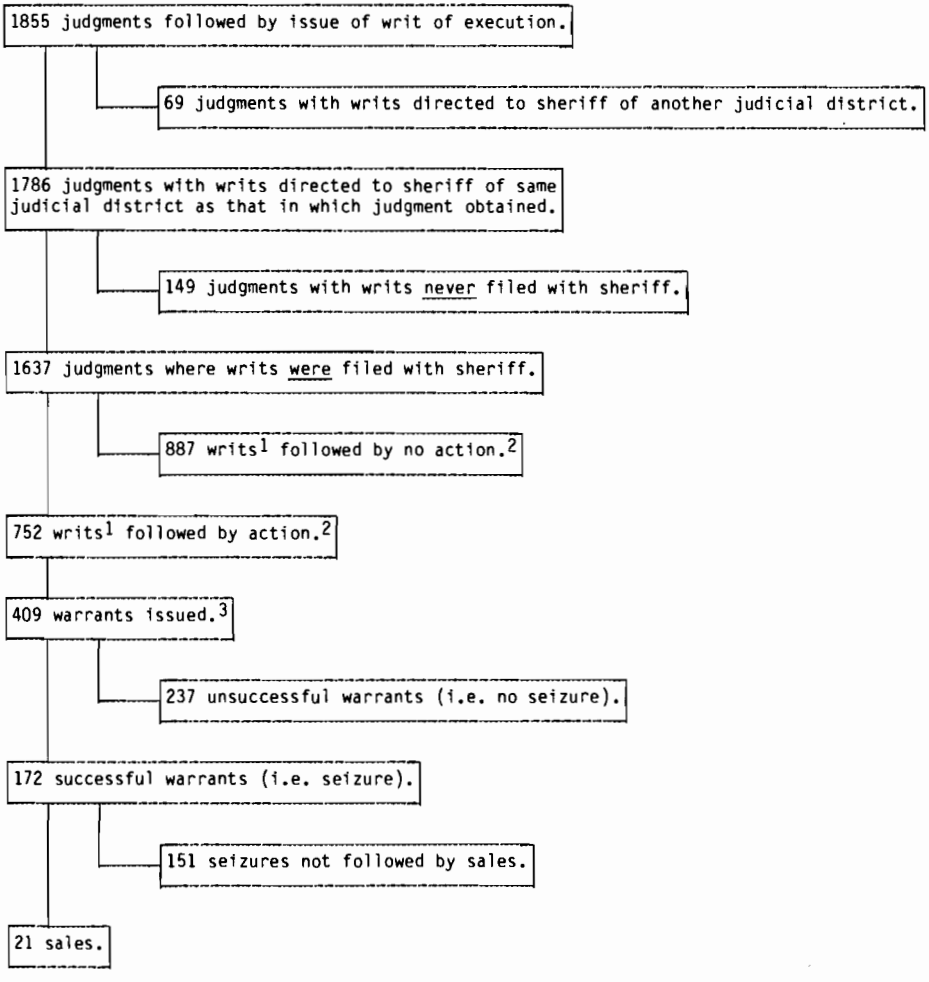
Table 28 - Summary of Sheriffs' Office Figures for 1980 and 1981 - All Districts

	Number	Percent
Judgments with writs directed to sheriff of same judicial district as that in which judgment obtained (Table 19)	1786	100.0
Judgments with writs directed to sheriff of same judicial district (Table 20) and filed with sheriff	1637	91.7
Writs filed with sheriff in which some action[1] was taken other than renewal of the writ (Table 22)	752	42.1
Writs filed with sheriff followed by warrants (Table 24)	409	22.9
Writs filed with sheriff followed by successful warrants (i.e., seizures) (Table 24)	172	9.6
Successful warrants (i.e., seizures) followed by:		
(i) Bailees' undertakings (Table 27)	112	6.3
(ii) Notices of objection (Table 27)	97	5.4
(iii) Applications for removal and sale orders (Table 27)	52	2.9
(iv) Orders for removal and sale (Table 27)	39	2.2
(v) Sales (Table 27)	21	1.2

Note:

[1] See footnote 2 in figure 2 below for definition of "action".

FIGURE 2. ENFORCEMENT OF JUDGMENT BY EXECUTION IN 1980 AND 1981.



[1] 887 writs and 752 writs add up to 1639 writs, not 1637. The reason is that, in two files, judgments were followed by two writs instead of one. The writs are counted separately from this line on.

[2] "Action" was defined broadly to include a warrant, discharge, satisfaction piece or other evidence in the sheriff's file of satisfaction or any other change. We did not regard the mere renewal of a writ as "action".

[3] In a fairly small number of cases, more than one warrant was issued on one writ.

g. Writs of Execution in the Land Titles Office

(17) 1198 writ-holders (about two-thirds of the judgment creditors who issued writs of execution in the clerk's office directed to the sheriff of the same judicial district) filed them in one of the two land titles offices in Alberta. In contrast, 1637 of the same creditors (91.7%) filed their writs with the sheriff.

(18) 784 of the writ-holders in the large district (or 76.3%) filed their writs in a land titles office; the comparable figures for the medium and small districts were 260 writs (56.8%) and 154 writs (51.2%) respectively.

(19) Only 15 of the creditors who used the land titles system (1.3%) filed their writs in both land registration districts.

(20) We found no evidence that land had been seized (if the law requires such a step) or sold pursuant to a writ of execution.

h. Garnishee Summonses

(21) 13 claims enforced by garnishment (1.9% of all such claims) were enforced by pre-judgment garnishees.

(22) 435 of the garnishee summonses (57.5%) were issued against wages, 248 summonses (32.8%) for non-wage bank account debts and the rest for other non-wage debts.

(23) 243 (or 35.2%) of the judgment creditors who used the garnishee summons issued more than one garnishee. 169 of these cases (62.6%) were wage garnishees. Of these multiple wage garnishees, 140 (or 78.7%) were cases of multiple garnishees issued against the same employer.

(24) 576 of the garnishees in our sample (45.9%) resulted in

neither payment nor a reply recorded in the court files. 406 garnishees (32.4%) resulted in payment. Replies were filed in 272 cases, or 21.7% of the garnishee summonses reviewed.

(25) 425 (61.5%) of the judgments enforced by garnishee summonses resulted in no money paid into court. (We are concerned here with judgments enforced by garnishee summonses, not the much larger number of garnishee summonses considered in paras. (22) and (24) above.) 102 judgments (14.8%) resulted in judgments into court less than 25% of the claim or judgment. On the other hand, 94 cases (13.6%) resulted in payment into court of an amount equal to or exceeding 100% of the claim.

(i) Success of the Creditors' Remedies System

(26) 442 of the judgments in our sample were followed by creditors' declarations of satisfaction of the debt. Judgments accompanied by declarations of satisfaction amounted to 22.5% of the number of judgments enforced by some means and 19.1% of the total number of enforced and unenforced judgments in our sample.

(27) 230 writs (19.2% of the writs filed in the two land titles offices) were later classified as discharged by those offices. However 80 writs (or 27.2% of the writs discharged in the sheriffs' offices) were retained as live writs in the land titles offices, suggesting a serious breakdown of communication.

(28) Except for judgments followed by satisfaction pieces, the overwhelming majority of judgment creditors in our sample recovered little or nothing on their judgments. 1585 judgments (86%) fell into the "no recovery" category; only 74 judgments (4%) fell into the "over 90%" recovery class.

(29) However, when we include judgments followed by satisfaction pieces as evidencing some recovery, we find that 731 judgment creditors (31.6% of our sample) recovered something after

filing their judgments. Because our study was limited to court files, we cannot say how much money was actually paid by debtors directly to their creditors.

j. Results of Study

We have summarized above the principal findings of our study. They form part of the basis on which the Institute is developing recommendations for reform of creditors' remedies in Alberta. Tentative recommendations will be published in our Report for Discussion entitled Remedies of Unsecured Creditors.

Part II. The Study

Chapter 1. Introduction

a. Previous Statistical Studies

1.1 One of the problems in proposing reforms of the system of unsecured creditors' remedies in Alberta is the absence of any collections of statistics on the use and operation of these processes.[1] Alberta is not unique in this neglect of judicial statistics on the use of civil remedies. Most jurisdictions have done little or no research of this kind, although there are empirical studies of other aspects of the debt collection system.[2] One notable exception is Scotland where the Law Commission recently published eight research reports as a part of their study on diligence.[3] We will refer in detail to the relevant conclusions of the Scottish researchers later in this paper.

1.2 The Institute decided early in the creditors' remedies project to attempt to repair this deficiency by collecting its own statistics on the subject. Iain D.C. Ramsay and Professor C.R.B. Dunlop conducted separate studies. The Ramsay report, entitled The Use, Effectiveness and Social Impact of Wage Garnishment: An

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1 The annual reports of the Attorney General to the Legislative Assembly contain a few figures.

2 See, e.g., Jacob, Debtors in Court: The Consumption of Government Services (1969); Caplovitz, Consumers in Trouble: A Study of Debtors in Default (1974); Trebilcock and Shulman, "The Pathology of Credit Breakdown" (1976), 22 McGill L.J. 415; Puckett, "Credit Casualties: A Study of Wage Garnishment in Ontario" (1978), 28 U. of T. L.J. 95; Ison, Credit Marketing and Consumer Protection (1979).

3 Scottish Office, Central Research Unit Papers: Research Reports 1-8 for the Scottish Law Commission (1980-81) - hereafter Scot. R.R. #1-8. The Scottish Law Commission has also published a draft report on diligence in five volumes - hereafter Scot. Memos. #47-51 (1980).

Empirical Study[4], was tendered to the Institute in March, 1980. Mr. Ramsay's covering memorandum described the report as a "rough first draft" and "in no sense a finished product." A final report was not completed. However the "first draft" contains much useful information and analysis which will be referred to below and in our Report for Discussion: Remedies of Unsecured Creditors.

1.3 After an introduction to earlier research and a discussion of basic concepts, the Ramsay report goes on to report the results of two groups of empirical studies. The first group consists of two court file surveys intended to collect statistics on the use of creditors' remedies, especially wage garnishment. The second group consists of personal interviews of a small number of debtors and creditors, and telephone interviews of the debtors' employers. In addition, Ramsay interviewed lawyers with substantial collection practices and officials of the Family Financial Counselling Services of the Alberta Department of Consumer and Corporate Affairs. The Ramsay report ends with a summary of the collection process and proposals for reform. Mr. Ramsay expanded upon his reform recommendations in a later draft report.[5]

1.4 As the title suggests, the Ramsay report was primarily concerned with wage garnishment. The study was further limited to files maintained at the clerk of the court's office for the judicial district of Edmonton. The Institute felt that it would be useful to conduct a second study of all remedies used by Alberta unsecured creditors, particularly execution, and to make

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4 Hereafter the Ramsay Report.

5 Ramsay, Debt Recovery in Alberta: Proposals for Reform (1982) - hereafter the Ramsay Proposals.

that study cover various types of judicial districts in order to see what differences existed among districts in the use of remedies.

1.5 Professor Dunlop prepared an outline of the information to be collected in the second study, and the Institute sought and obtained the agreement and cooperation of the Department of the Attorney General. The actual collection of the data began in August, 1982 and was completed a year later. Different parts of this report were written by the authors listed on the cover, and their work was then revised and rewritten by Professor Dunlop. The remainder of this report will be a statement of the findings of this second study.

b. Purposes of Dunlop Study

1.6 The study had four objectives. The first was to discover how many plaintiffs who sue and obtain a money judgment use any enforcement remedies. Secondly we wanted to find out which remedies are commonly used and which are rarely initiated. Our third goal was to discover how these remedies operate and, in the case of execution, how far the remedy is pursued. Finally, we wanted to form an opinion of the success of the process in collecting money for judgment creditors.

c. The Sample

1.7 The first step was to examine a random sample of files in the offices of the clerks of the Court of Queen's Bench for three judicial districts. The study was limited to files opened during 1980 and 1981. It was agreed with the Attorney General's Department not to identify the judicial districts by name, but something must be said about the three districts which were examined.

1.8(1) The large judicial district. It is named after and

contains one of the two major Alberta cities, although it also includes several smaller towns and villages as well as a large rural area. In the large judicial district, there were 33,190 files opened in 1980 and 36,796 in 1981. Because of the volume of records involved, the district has a sophisticated cardex system with one card for each file opened. The practice is to open a file and assign a number to every new action, whether commenced by statement of claim, originating or ordinary notice of motion or petition. Files are also opened for certificates of judgment obtained in Provincial Court, actions or judgments transferred from other judicial districts, and complaints and orders made by a variety of administrative tribunals. Our sample for the large judicial district was obtained by examining every 20th card for 1980 and 1981. Therefore 1,658 cards for 1980 and 1,832 cards for 1981 were viewed.

(2) The medium judicial district. It is named after a smaller Alberta city and contains towns, villages and a rural area. The clerk of the court's office kept records of files opened in procedure books, with one entry in the book for each file. The practice as to the opening of files was otherwise the same as in the large district. 2,184 files were opened in 1980 and 2,257 in 1981. Here we examined every third entry in the procedure book, giving us a sample of 728 files for 1980 and 752 for 1981.

(3) The small judicial district. It is named after a town, although the district includes a city. There are other towns, villages and a rural area. The small district's system of records was the same as that in the medium district. In the small judicial district, there were 912 files opened in 1980 and 988 in 1981. Of these, we chose to examine every second entry which left us with samples of 456 and 494 for 1980 and 1981 respectively.

1.9 Our next step was to separate the cards or entries in our sample into three groups:

(1) Group I consisted of files in which the litigation had not gone to judgment or to an order determining the basic issue between the parties. We also included in Group I transfers of litigation to other jurisdictions, actions consolidated into other actions and appointments to tax bills. In all such cases, the card or entry would say nothing about the progress of the transferred or consolidated litigation, and we did not pursue the matter. In 1980 there were 798 and in 1981 895 cards in Group I in the large district. In our medium sized district, we found 337 Group I entries for 1980 and 373 for 1981. In the small district, there were 225 for 1980 and 256 for 1981.

(2) Group II represented files in which the litigation had proceeded to a judgment which was, for various reasons, not interesting to us. In most cases, these files represented judgments or orders which did not award a sum of money but ordered another kind of relief. Examples include possession and replevin orders, custody and restraining orders, certificates of taxation of accounts, and proceedings under a variety of statutes including the Companies Act, the Land Titles Act and Part X of the Bankruptcy Act. We included in Group II actions for foreclosure or specific performance unless the cards indicated that a writ of execution had been issued, usually against a company. We also included distress warrants pursuant to conditional sales agreements or chattel mortgages. Finally we included all matrimonial disputes, even if they might lead to a writ or a garnishee summons. Applying this definition to the large district, we found 235 files in Group II in 1980 and 277 in 1981. In our medium sized district, we found 71 and 72 for 1980 and 1981 respectively. Our sample in the small district contained 27 Group II entries in 1980 and 43 in 1981.

(3) Our next step was to conduct a physical examination of the files which were left after we had eliminated the cards or entries in Groups I and II. Group III therefore consisted of the

files in which there was a non-matrimonial money judgment. In the large district, we found 625 and 660 Group III files for 1980 and 1981 respectively. In the medium-sized district, there were 320 files in Group III in 1980 and 307 in 1981. In our small district, we found 204 files in 1980 and 195 in 1981.

1.10 The above information is summarized in Table 1.

Table 1 - Files Divided into Three Groups

	1980				1981				
	Large	Medium	Small	Total	Large	Medium	Small	Total	Grand Total
Group I	798 (48.1)	337 (46.3)	225 (49.3)	1360 (47.9)	895 (48.9)	373 (49.6)	256 (51.8)	1524 (49.5)	2884 (48.7)
Group II	235 (14.2)	71 (9.7)	27 (5.9)	333 (11.7)	277 (14.6)	72 (9.6)	43 (8.7)	392 (12.7)	725 (12.2)
Group III	625 (37.7)	320 (44.0)	204 (44.7)	1149 (40.4)	660 (36.5)	307 (40.8)	195 (39.5)	1162 (37.8)	2311 (39.0)
Total	1658 (100.0)	728 (100.0)	456 (99.9)	2842 (100.0)	1832 (100.0)	752 (100.0)	494 (100.0)	3078 (100.0)	5920 (99.9)

d. The Results of the Research

1.11 All of the statistics collected by us have to do with our sample of Group III files. We were interested in seeing whether they were enforced at all. If so, what means of enforcement were used and how far were they pursued? Finally we wanted to form an opinion of the success of the process in collecting money for our judgment creditors.

1.12 We summarize the results of our research in chapter 2 of this report. In chapters 3 to 10, we discuss in more detail the enforcement of the judgments in our sample by execution, garnishment and less common remedies, and the success of the system in collecting money. We do record some observations about the operation of the sheriffs' offices in our three judicial districts. However most of our report is a collection of statistics about the use of remedies and the amount of money collected thereby.

1.13 Two points need to be made about the significance of our conclusions for Alberta as a whole today.

(1) We believe that our findings provide a representative picture of the functioning of the creditors' remedies system in Alberta because (i) our file selection process was random, (ii) our sample was fairly large, (iii) it was collected for three different judicial districts, and (iv) it was collected for two different years (which exhibited great similarity of results).

(2) Since the data was collected in 1982 and 1983, there has been a serious downturn in the Alberta economy. There may be some relationship between economic conditions in the province and the number of judgments filed, the kinds of remedies used and the vigor with which they are pursued. However we do not know the nature of the relationship. In difficult economic times,

creditors may tend to pursue their claims further out of necessity, or they may decide that further enforcement is futile, recognizing that debtors may have no assets. Also we do not know whether the effects of the recession show up with a delay in the court system. For example, if the recession began in a certain year, the effects on the conduct of creditors may not have appeared in the remedial system until, say, two years later.

Subject to these caveats, we nevertheless believe that our findings provide a representative picture of creditors' remedies in Alberta.

1.14 One technical note. In the tables presented in this report, figures in parentheses are percentages.

Chapter 2. Summary of Findings

a. The Sample of Non-Matrimonial Money Judgments

(1) How Many Judgments

2.1 We examined a random sample of files in the offices of the clerks of the Court of Queen's Bench for three judicial districts during the years 1980 and 1981. We separated the files into three groups, only the third of which is relevant to our study. Group III consists of files in which there was at least one non-matrimonial money judgment. We then examined the group III files in more detail in order to determine the number of judgments as contrasted with the number of files in the group. The number of judgments is slightly larger than the number of files for reasons outlined in chapter 3. The results are set out in Table 2.

Table 2 - Number of Non-Matrimonial Money Judgments - All Districts

	1980	1981	Totals
Large District	627	660	1,287
Medium District	320	309	629
Small District	205	195	400
Totals	1,152	1,164	2,316

(2) Enforcement or Not

2.2 We divided the money judgments in our sample into two groups: those where some attempt had been made at enforcement, and those in which there had been no enforcement. We defined

enforcement to include the issue of a garnishee summons or the issue of a writ of execution, even where the latter had not been filed in the sheriff's office.[6] Given this expansive definition of enforcement, we found that 352 judgments (over 15% of our sample) were not followed by any attempt at enforcement, at least through the courts.

2.3 In some of those cases, the judgment debtor may have paid the creditor directly, without record of the payment being noted in the clerk's file. In others, one suspects that the creditor simply abandoned hope of collecting anything. In still other cases, the judgment creditor may have continued his efforts to collect the debt by telephone calls and letters, but without incurring the expense and difficulties of execution or garnishment.

2.4 The creditors' remedies system may be likened to a funnel or, more accurately, to a series of filters.[7] A large number of statements of claim are filed, fewer judgments are obtained, still fewer writs of execution are issued and so on down to the comparative handful of creditors who actually press on to seizure and sale. Some creditors drop out of the process because they have been paid. Others, who have perhaps learned more about the debtor since issuing their statements of claim, give up any further attempt to collect the judgment. The funnel shape of the creditors' remedies system is ambiguous as to success or failure. We will later give a partial answer to the question whether the system succeeds in collecting debts for litigants.

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6 We found no judgments which were enforced only by the commencement of a process other than execution or garnishment.

7 The image is drawn from the Scottish Law Commission. See Scot. Memo 47, pp. 20-24, 132-43; Scot. R.R. #1, pp. 7-9; Scot R.R. #6, pp. 29-56; Scot. R.R. #8, passim.

2.5 Our study did not identify the type of business engaged in by each creditor, the kind of debt involved or whether the parties to the litigation could be labelled as personal or commercial. Ramsay did classify his sample according to the creditor's business and the type of transaction.[8] He found that the heaviest users of garnishment, accounting for 44% of the sample, were retail creditors and finance companies. Individuals launched 10% of the garnishment proceedings, but one-half of these cases involved automobile damages litigation or business debts. The Scottish Law Commission research found that, in the vast majority of actions in which enforcement measures were taken, the pursuers (or plaintiffs) were commercial enterprises. The Scottish researchers also noted some variation in the use of creditors' remedies between different types of creditors.[9] Most defenders (i.e., defendants) in summary debt actions were personal (that is, "named individuals or married couples").[10]

(3) Dollar Amount of Judgments

2.6 1093 judgments (47.2% of our sample) were for amounts of $1004[11] or less. It is important to remember that

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8 Ramsay Report, pp. 50-53.

9 See Scot. R.R. #1, pp. 12-18, 31; Scot. R.R. #2, pp. 6-8, 16; Scot. R.R. #3, pp. 10-16, 37-40, 42-43; Scot. R.R. #8, pp. 36-38.

10 Scot. Memo 47, pp. 137-38, 143-44. In ordinary court payment actions (that is, not summary cause payment actions), about one-half of the defenders were personal and one-half commercial.

11 $1004.00 is used for a dollar category because $1000.00 was during the relevant period the maximum claim allowed in the Small Claims Division of the Provincial Court (Provincial Court Act, R.S.A. 1980, c. P-20, s. 36), and $4.00 was usually the amount of costs awarded (see Alberta Rules of Court, Appendix E, Number 6). We felt it would be advisable to keep all of the Provincial Court judgments together in the two lowest dollar bands rather than including a few of them in a higher category because of the $4.00 costs.

the courts are not just for large dollar claims, but are used extensively for the collection of relatively small sums of money.

2.7 It will be recalled that nearly 85% of the judgments in our sample were enforced, given our wide definition of that term. When enforcement was related to the dollar value of the judgment, it was found that, in most cases, the likelihood of enforcement increased with the dollar value of the judgment. The lowest percentage of enforcement, 63.1%, was for judgments of $500 and less in the large district in 1981.

2.8 Ramsay concluded that the majority of all claims in his sample (i.e., claims enforced by garnishees) were for amounts less than $1000.[12] 34% were for debts under $500. Larger debts (over $1400) were primarily represented by bank and finance company loan claims.

2.9 Ramsay found that over 40% of all retail claims were for amounts under $500, and 52.4% of individual claims were under $500. 55% of claims for professional services were for amounts under $500. There were no department store claims over $2500. Of actions by utilities, 33.3% were under $200, 20% under $299 and 20% under $399. Thus, almost 75% of actions by utilities were under $400.

2.10 The Scottish researchers also found that the creditors' remedies system is used to enforce relatively small claims.[13] They concluded that, as the creditor progressed along the execution process, increasing amounts of principal sum were involved. It would seem reasonable to expect a similar result in

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12 Ramsay Report, pp. 53-65.

13 Scot. R.R. #1, pp. 19-21; Scot. R.R. #2, pp. 8-9, 16; Scot. R.R. #3, pp. 13-16.

A creditor with a judgment for a small dollar amount is more likely to issue a writ of execution than to go on to instruct seizure and sale.

(4) Origin of Judgments

2.11 We next attempted a rough classification of the judgments according to the process or route which they had followed to arrive at the status of judgment. 1517 judgments (65.5% of our sample) resulted from actions commenced in the Court of Queen's Bench. Another 547 judgments (23.6%) took the form of certificates of judgment obtained in the Provincial Court, which certificates had been filed in the Court of Queen's Bench, thereby becoming judgments of the latter court. The remaining 252 judgments (10.8%) were made up largely of orders or certificates of various administrative bodies. These certificates, once filed in the Court of Queen's Bench, could be enforced as judgments of that court.

2.12 When we related enforcement of judgments to their origin, we found a higher percentage of enforcement where the process originated in Queen's Bench than where it originated in Provincial Court. This result is probably related to the higher dollar amounts involved in Queen's Bench litigation. Enforcement of the administrative orders and certificates varied sharply, perhaps reflecting the differing policies towards enforcement of the government departments which initiated most of this litigation.

(5) Use of Court of Queen's Bench for Claims under $1000

2.13 During 1980 and 1981, a litigant with a claim under $1000 could sue either in the Court of Queen's Bench or in the Provincial Court. When we examined all of the judgments below $1004, we found that 385 (or 35.1%) of those plaintiffs had sued

in Queen's Bench rather than in Provincial Court. If we delete those litigants, like administrative tribunals, who were required by statute to sue or to file their orders in Queen's Bench, the percentage of litigants choosing that court would be somewhat lower.

2.14 We can think of two reasons why a litigant, especially if represented by a lawyer, might choose Queen's Bench over the Provincial Court.

(1) If the plaintiff's claim is for a debt or a liquidated demand and if the defendant does not file a statement of defence or a demand of notice, the plaintiff can enter judgment under Rule 148 of the Alberta Rules of Court without being required to appear before a judge. In Provincial Court, all actions are set down for hearing and the plaintiff in effect must attend if he wants to get judgment.

(2) While costs can be granted in both courts, they are likely to be more substantial in Queen's Bench than in Provincial Court.

2.15 Given these two reasons, one is tempted to speculate that lawyers representing plaintiff-clients are likely to choose the Court of Queen's Bench, even for small claims. Provincial Court would likely be more attractive to plaintiffs who have a substantial number of claims and who tend not to use lawyers. Our investigation was not sufficiently extensive to prove or disprove these ideas.

b. Enforcement of Judgments Generally

2.16 The two common remedies used in Alberta by unsecured creditors are the writ of execution and the garnishee summons. In fact, we found no judgments enforced only by a method other than execution or garnishment.

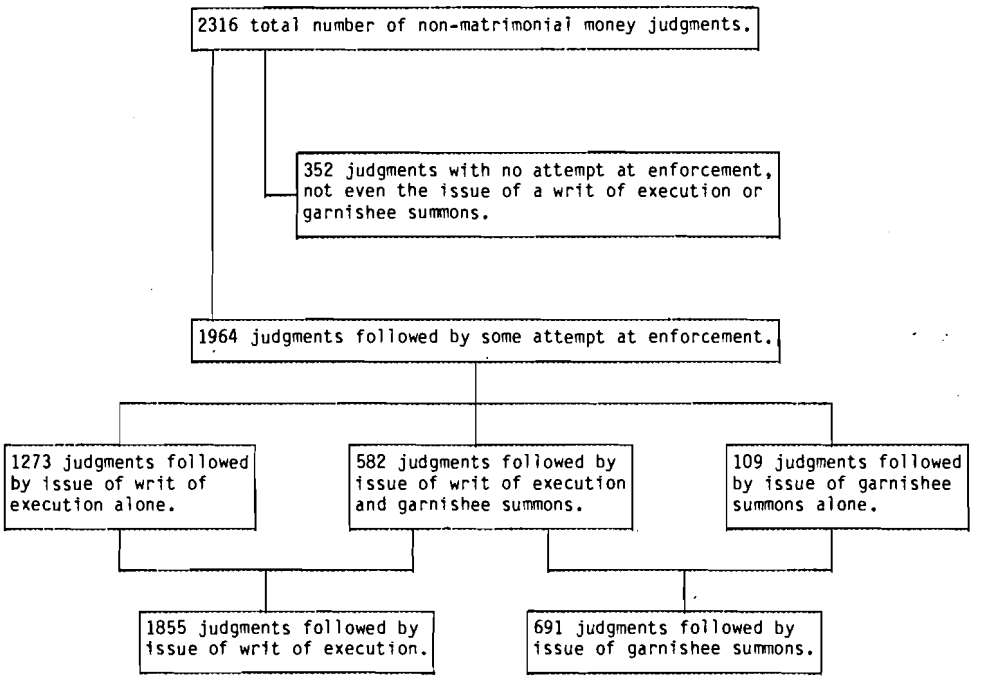
2.17 The writ of execution is the process most commonly initiated by Alberta creditors. In 1855 judgments (over 94% of the enforced judgments in our sample), a writ of execution was issued, either alone or with a garnishee summons. In only 691 of the enforced judgments (35.2%) was a garnishee summons issued. In 109 of the enforced judgments(5.6%), a garnishee summons was issued without a writ, a practice which is risky for the creditor.[14] As we shall see later, it does not follow that creditors more often pursue and complete the execution process than the garnishee process. Table 12 and Figure 1 show the number of judgments enforced by writ of execution, garnishee summons or both.

Table 12 - Types of Enforcement in 1980 and 1981

		Enforced by Writ of Execution		
		Yes	No	Total
Enforced by garnishee Summons	Yes	582 (29.6)	109 (5.6)	691 (35.2)
	No	1273 (64.8)	0.0	1273 (64.8)
	Total	1855 (94.4)	109 (5.6)	1964 (100.0)

14 Infra, para. 4.3.

FIGURE 1. TYPES OF ENFORCEMENT IN 1980 AND 1981.



2.18 The Ramsay study was also interested in the use of garnishee summonses compared to the use of writs.[15] Ramsay took a random sample of 100 files in which a garnishee summons had been issued. He found that, in 25% of the files, no writ of execution was issued. This varies substantially from our figures which showed that there were, for 1980 and 1981 combined, 691 judgments enforced by garnishee summonses. Of those, 109 judgments, or 15.8%, were enforced by garnishee summons but without a writ. The gap of nearly 10% can be explained (1) by viewing the Ramsay sample of 100 files as too small to produce a reliable result, or (2) by concluding that Ramsay's sample of 100 garnishee files is not representative of all enforced files.

c. Execution

(1) Multiple Writs

2.19 221 judgment creditors, or 12% of those who used the execution remedy, issued more than one writ of execution. Solicitors may issue multiple writs for at least two reasons:

(1) The solicitor has sued and gone to judgment against two or more debtors, and then has issued separate writs for each judgment debtor. This was true in 20 of the multiple writ cases (9%).

(2) The solicitor has issued one original writ, usually directed to the sheriff of the judicial district in which the judgment was obtained, and an alias writ directed to the sheriff of another judicial district (although occasionally these were referred to as original writs). This was the reason for the issue of more than one writ in 199 of the multiple writ cases (91%).

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15 Ramsay Report, pp. 102-03.

(2) Examination in Aid of Execution

2.20 Pursuant to Rule 372 of the Alberta Rules of Court, a judgment creditor may examine the judgment debtor before a clerk or deputy clerk "of any judicial district wherein a writ of execution has been entered touching his estate and effects." Rules 373 to 379 provide for examinations of other people who may shed some light on the debtor's property and his means of discharging the judgment.

2.21 We found that the examination in aid is not commonly used by execution creditors. Appointments were issued for only 137 (or 7.4%) of the judgments where writs of execution had been issued. Apparently most creditors give up at this stage, resort to another remedy or instruct seizure without invoking the right to examine in aid.

2.22 We attempted to search for the outcome of the appointments that were issued, but the results were inconclusive. Most court files did not reveal what happened after the issue of the appointment. The appointment may have been served and the debtor failed to show up, or the debtor may have appeared for an examination, but without a transcript being made and filed. Another possibility is that the service of the appointment triggered settlement negotiations. Most files contained nothing except the appointment or appointments, making it impossible to deduce what happened.

2.23 We found seven files in which examinations were held and 23 files in which the debtor's failure to appear was noted. There were 13 applications for an order to the debtor to appear or be committed for contempt. In ten of these cases, the order was granted. In three of these ten cases, the debtor still refused to appear. In only one case was the debtor actually committed under Rule 377, and he was later discharged. It would seem fair to conclude that imprisonment for failure to attend at an examination in aid is a rare occurrence. This fact, together with the cost of

an examination in aid, goes far towards explaining why the process is not commonly used by creditors.

(3) The Sheriffs' Officers

2.24 One of the most important elements of the creditors' remedies system is the office of the sheriff. The functioning of this office will often be crucial in determining whether or not the judgment creditor realizes his claim.

2.25 The researchers placed in the sheriffs' offices during the summer of 1983 were, among other things, asked to accompany some sheriffs' officers as they did their work in order to get an impression of the way the execution process was carried out. The researchers watched and questioned several officers in all three judicial districts in an attempt to understand the impact which the officers have on the operation of the execution remedy.

2.26 The researchers' observations and conclusions are recorded in chapter 6. The researchers were not professional social scientists, and their observations are by no means systematic or complete. However it is still useful to record their general conclusion that a judgment creditor may have difficulty executing on his judgment because of the structure of the sheriffs' offices and the training and attitude of the officer who is responsible for his file. This is so despite the fact that the creditor has acted bona fide and has received a valid judgment and writ of execution from a court with jurisdiction to grant the relief.

(4) Writs Filed with the Sheriff

2.27 69 writs (close to 4% of the writs issued in the clerks' offices) were directed to the sheriff of a judicial district other than the district in which the judgment was obtained and the writ issued. We did not do any more research on these writs, even where they were directed to a sheriff in one of

the three judicial districts within our study. For example, where a judgment and writ was issued in the large judicial district, and the writ was directed to the sheriff of the small judicial district, we did not check to see whether the writ was delivered to that sheriff or further action was taken.

2.28 The rest of the writs in our sample were directed to the sheriff of the same judicial district as that in which the judgment was obtained. As to these writs, the next question was whether they were in fact delivered to the sheriffs' offices, or whether they were permitted to languish in the clerks' offices.

2.29 One would expect that most issued writs would be filed in the sheriff's office. What is surprising is that 149 writ-holders (8.3%) chose not to take this simple step. A writ issued in the clerk's office but not delivered to the sheriff has no binding effect on the debtor's property and will not entitle the creditor to share in distributions under the Execution Creditors Act.[16] The cost of filing the writ with the sheriff is minimal.[17] Filing the writ with the sheriff need not result in the expense of seizure; in fact, many writ-holders take no action on their writs.

2.30 It may be that some debtors pay after judgment but before the writ goes to the sheriff, particularly if urged to do so by the creditor. Some judgment creditors may abandon hope at this stage, but it is hard to explain a decision not to take the final step necessary to trigger such rights as the creditor has, short of seizure and sale.

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16 R.S.A. 1980, c. E-14.

17 $2.00. See Alberta Rules of Court, Schedule E.

(5) Active and Inactive Writs

2.31 We next wanted to distinguish the writs filed with the sheriff into two classes: (i) writs in which some further action was taken and (ii) writs in which no action was taken after the filing. We defined "action" broadly to include a renewal, warrant, discharge, satisfaction piece or other evidence in the sheriff's file of satisfaction or of any other change.

2.32 We found that over 584 writs (35.6% of the writs filed with the sheriff) were not followed by any action. It is unlikely that all of these creditors were paid off and did not file a discharge or a satisfaction piece. Some of the creditors may have received payment, but one suspects that most simply decided to do nothing more, and permitted the writ to lapse for the purpose of distributions under the Execution Creditors Act.

2.33 Section 29 of that Act requires the sheriff to disregard any writ in his hands after the expiration of one year after the filing of the writ or of a statement of payments under section 28 of the Act. However the sheriffs' offices in our study retained lapsed writs in their files along with the live writs. In the large district, the practice was that, if a distribution was to be made, creditors with lapsed writs were advised of that fact and informed that they must file a statement under section 28 of the Act if they wished to share in the distribution. Such a practice would encourage writ-holders to file their writs and then wait for the sheriff's letter rather than filing the appropriate renewal statements.

2.34 Our next step was to break down the "writs with some action" category into two sub-categories: (1) writs and renewals followed by no action, and (2) writs (renewed or not) with further action. There is little practical difference between (1) a creditor who files his writ and does nothing more, and (2) a creditor who files his writ, renews it and does nothing more. In both cases, he has not instructed seizure, and there is no

evidence of payment, at least on the sheriff's file.

2.35 When we add together the "writs with no action" and the "writs and renewals but no further action" for 1980 and 1981, we find that 887 creditors, or 54% of those with writs (and often renewal statements) filed with the sheriff, took no further action on their writs and received no money, so far as the sheriff's records show. They may of course have been paid directly by their debtors, or they may have attached debts owing to the debtor which were paid into and out of court (pursuant to Rule 480 of the Alberta Rules of Court) without passing through the hands of the sheriff. However one suspects that many of these writ-holders simply abandoned hope and received nothing for their efforts (or lack of them).

(6) Seizure and Sale

2.36 Our next step was to find out in how many cases instructions for seizure were given and what was the outcome of those instructions. The practice is that a creditor, on or after filing his writ with the sheriff, may instruct him to carry out a seizure.[18] Upon receipt of such instructions, the sheriff will issue his warrant to an officer authorizing him to conduct the seizure. The officer then will attempt seizure, after which he will prepare his report indicating what he did.

2.37 Our approach was to count the number of warrants of seizure, and to indicate which were successful and which were not. Success for this purpose means that property of the debtor was seized. We then wanted to express these results as percentages of the total number of writs filed with the sheriff. This is somewhat misleading because more than one warrant was issued for some writs. If we had recorded the number of writs for which

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[18] Execution Creditors Act, R.S.A. 1980, c. E-14, s. 4.

warrants were issued, the percentages would have been slightly smaller. However the comparison is still fairly accurate as a guide to the success of the execution procedure.

2.38 Only 409 writs (or one-quarter of the writs filed in the three sheriffs' offices) were followed by an attempted seizure, and in only 172 cases (10 1/2%) was the seizure successful. In other words, 1230 writ-holders (75% of those who filed their writs with the sheriff) elected not to instruct seizure. This result is not particularly surprising. Once a creditor has filed his writ in the sheriff's office, he is entitled under the Execution Creditors Act to share in the proceeds of any seizure so long as the appropriate renewal statements have been filed. Instructing seizure entails substantial expenses for the creditor which can be justified only if it is fairly certain that the debtor has exigible assets.

2.39 It is also not particularly surprising that 237 warrants (57.9% of total warrants) resulted in no seizure. Many debtors who permit writs to be filed against them have little or nothing in the way of valuable exigible assets. If the observations of bailiffs' practices recorded in chapter 6 are representative, some attempts to seize fail because of the failure of the officers to carry out efficiently their duty under the writ.

2.40 We looked at a number of other aspects of the seizure and sale process. Some highlights may be noted briefly:

(1) In nearly two-thirds of the successful seizures (120 cases), the asset seized was a motor vehicle.

(2) In 53% of seizures (91 cases), the goods seized were left with the debtor or a member of his family on a bailee's undertaking. In another 12% (21 cases), the goods were left with a third party as bailee.

(3) In over half of the cases where goods were seized (97 cases), notices of objection were filed, but orders for removal and sale were obtained in only 39 cases (less than 23%).

(4) In 21 cases (about 12% of the cases where assets were seized), they were sold by the sheriff. As a percentage of the total number of cases where writs were filed with the sheriff, the figure is considerably lower, at 1.3%.

(5) We discovered some interesting differences in the operation of the execution process in the three judicial districts. These differences are noted at various points in chapter 6.

(7) Summary of Statistics in Sheriffs' Offices

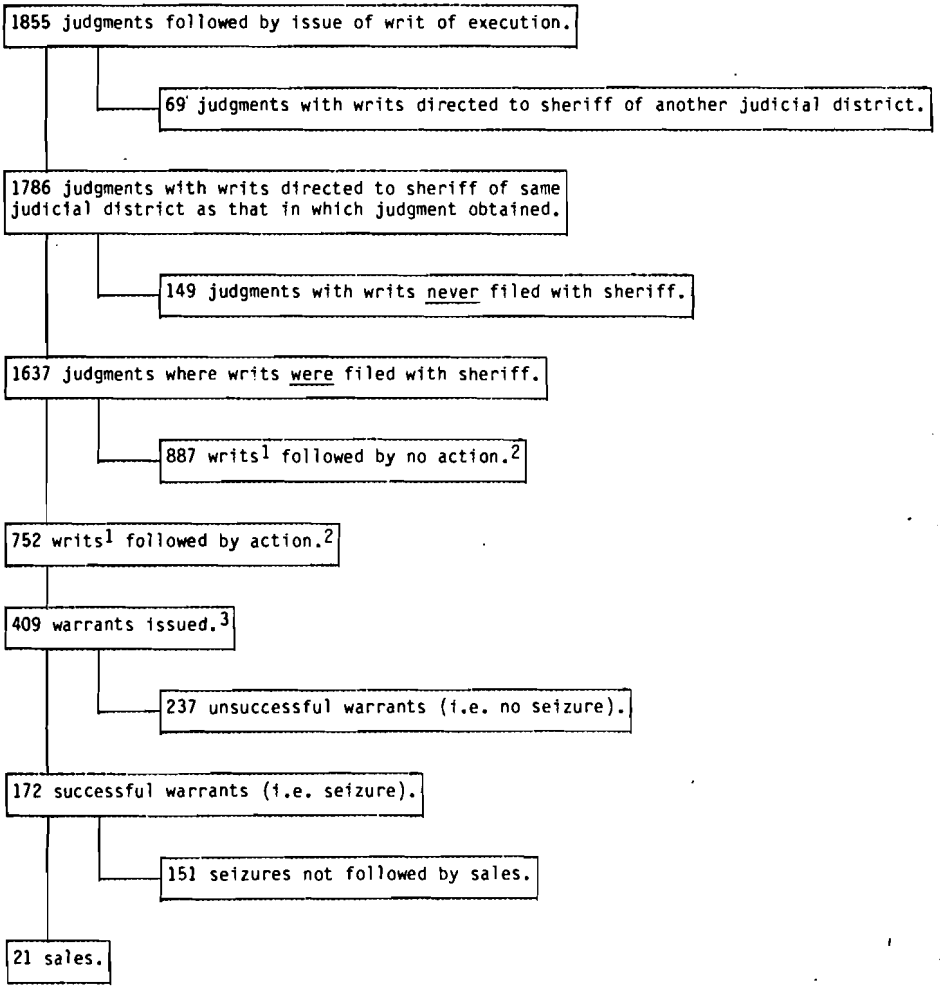
2.41 When we put together the statistics collected in the sheriffs' offices, they demonstrated clearly the funnel shape of the creditors' remedies system in which large numbers of creditors start in the process but relatively few stay to the end. In Table 28, drawn from chapter 6 of the study, we began with the total number of judgments where writs were issued directed to the sheriff of the same judicial district as that in which the judgment was obtained. The judgment creditors in our sample were free to take a series of steps, leading to seizure and sale. As Table 28 and Figure 2 show, the numbers of creditors became progressively smaller at each step of the process.

Table 28 - Summary of Sheriffs' Office
Figures for 1980 and 1981 - All Districts

	Number	Percent
Judgments with writs directed to sheriff of same judicial district as that in which judgment obtained (Table 19)	1786	100.0
Judgments with writs directed to and filed with sheriff of same judicial district (Table 20)	1637	91.7
Writs filed with sheriff in which some action was taken other than renewal of the writ (Table 22)	752	42.1
Writs filed with sheriff followed by warrants (Table 24)	409	22.9
Writs filed with sheriff followed by successful warrants (i.e., seizures) (Table 24)	172	9.6
Successful warrants (i.e., seizures) followed by:		
(i) Bailees' undertakings (Table 27)	112	6.3
(ii) Notices of objection (Table 27)	97	5.4
(iii) Applications for removal and sale orders (Table 27)	52	2.9
(iv) Orders for removal and sale (Table 27)	39	2.2
(v) Sales (Table 27)	21	1.2

2.42 The percentages in Table 28 are based on the total number of judgments where writs were issued directed to the sheriff of the same judicial district as that in which the judgment was obtained. If we had taken as our starting point a larger number, such as the 2316 enforced and unenforced judgments in our sample, the resulting percentages would have been even smaller.

FIGURE 2. ENFORCEMENT OF JUDGMENT BY EXECUTION IN 1980 AND 1981.



[1] 887 writs and 752 writs add up to 1639 writs, not 1637. The reason is that, in two files, judgments were followed by two writs instead of one. The writs are counted separately from this line on.

[2] "Action" was defined broadly to include a warrant, discharge, satisfaction piece or other evidence in the sheriff's file of satisfaction or any other change. We did not regard the mere renewal of a writ as "action".

[3] In a fairly small number of cases, more than one warrant was issued on one writ.

2.43 In paragraph 2.17, we noted that the writ of execution is the process most commonly initiated by Alberta creditors. Our figures show that, for the years 1980 and 1981, 1855 judgments were followed by the issue of a writ of execution, while 691 judgments were enforced by a garnishee summons. When we take into account the funnel shape of the execution process displayed in Table 28, we see that substantially fewer than 1855 writs were carried through the various stages of filing with the sheriff, seizure and sale. We unfortunately do not know what percentage of issued garnishee summonses were actually served on the garnishee, the step which would amount to "completion" of that process.[19] It is therefore not possible to compare the processes as to completion rates.

(8) Writs of Execution in the Land Titles Offices

2.44 The purpose of the study of the two Alberta land titles offices, in Edmonton and in Calgary, was to discover how many of the writs issued in the three court clerks' offices were filed in either or both of the land titles offices. We were also interested in discovering how many creditors filed writs in both Edmonton and Calgary. In order to maintain the anonymity of the judicial districts studied, we identified the two Alberta land titles offices as A and B.

2.45 We wished to compare the number of writs filed in one or both land titles offices with the number of writs issued in the clerk's office directed to the sheriff of the same judicial district. Our overall conclusion was that 1198 writ-holders (about two-thirds of creditors who issued such writs) filed them with a land titles office.

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[19] It would have been necessary to interview all our creditors or our garnishees to discover this useful information.

2.46 It is interesting to note the substantial gap between the large district and the other two districts. 784 writ-holders in the large district (76.3%) filed their writs in a land titles office; the comparable figures for the medium and small districts were 260 writs (56.8%) and 154 writs (51.2%) respectively. The simple explanation is that one of the two land titles offices is located in the major city in the large district. It is easier and cheaper for large district creditors to file than for their counterparts in the other districts. The result is that they use the land titles system more frequently.

2.47 A different explanation lies in the fact that the medium and small judicial districts are much smaller than the large district which contains a large city. A creditor in the two smaller districts is more likely to know whether his debtor has or is likely to acquire land, whereas the large district creditor may be more likely to file his writ in the land titles office on the off chance that the writ may catch something.

2.48 It is interesting to compare the percentages of writs filed in the land titles offices with the percentages of writs filed with the appropriate sheriffs' offices. A substantially larger percentage of writs were filed with the sheriff in all three districts, especially in the medium and small districts. One possible interpretation of the data is that filing with the sheriff is preferred over filing with the land titles office, even when both offices are in the same city, as in the large district.

2.49 An explanation for the assumed preference is that a debtor is more likely to have exigible personalty or a garnishable debt than he is to have land. The odds are much greater that a writ in the sheriff's office will eventually attract a pro rata payment than that a writ in the land titles office will catch a debtor about to sell or mortgage land. In the highly unlikely event that the debtor's land should be seized (assuming that seizure of land is a step required by law) and sold, the proceeds

of the sale may have to be distributed under the Execution Creditors Act, although the point is by no means clear.

2.50 However, it is also possible to read the data in an entirely different manner. The law requires a creditor who wishes to file his writ in the land titles office to file it first with the sheriff. If half of the creditors preferred the land titles office and half preferred the sheriff's office, there would be 100% registration with the sheriff and 50% registration in the land titles system. The bare figures say nothing about the preferences of creditors for one system or the other. Without interviewing all of the execution creditors in our sample, it is impossible to choose between the two interpretations of the data.

2.51 Almost all creditors who used the land titles system filed their writs in only one land registration district. Only 15 writs (1.3%) were filed in both districts. Not surprisingly, creditors file where they think their debtors may have land, and that is almost always the land registration district containing the judicial district to the sheriff of which the writ was directed.

2.52 The fact that it is cheap and perhaps prudent to file the writ in both districts did not influence our creditors to do so, although there was a slight increase in double filings in 1981. None of the three judicial districts bordered the 9th Correction Line which divides the two land registration districts. There would likely have been a substantial number of double filings if we had included in our study the judicial district of Red Deer which lies in both land registration districts.

2.53 During our search at the two land titles offices and our earlier search in the three sheriffs' offices, we did not come across any evidence that land had been seized (if the law requires such a step) or sold pursuant to a writ of execution. One may conclude that such seizures and sales are rare. For an

explanation of the reasons why this may be so, see Westhill Leasing Corporation Ltd. v. Rideout.[20]

d. Garnishee Summonses

(1) Number Issued

2.54 In paragraph 2.17, we noted that creditors issue more writs of execution than garnishee summonses. In 1855 judgments (94.4% of the judgments enforced by any means), a writ of execution was issued, either alone or with a garnishee summons. In 691 judgments (only 35.2% of the enforced judgments) was a garnishee summons issued. We broke down that figure into two components: (i) 582 garnishees issued with writs - 29.6%, and (ii) 109 garnishees issued without writs - 5.6%.

2.55 One reason for this difference between the remedies is that a writ of execution can be issued and filed with the sheriff and the land titles office on the basis of relatively little knowledge of the debtor. To issue a garnishee summons, however, the creditor has to be able to swear the supporting affidavit which, among other things, must identify the proposed garnishee and state that he is indebted to the defendant or judgment debtor.

2.56 The garnishee summons is of no use unless served on the garnishee, unlike a writ of execution which can be filed in the sheriff's office or the land titles office, where it may trigger a payment to the creditor without further action on his part. Even if the garnishee pays money into court, it will have to be divided with other creditors holding valid writs in the appropriate sheriff's office.

2.57 Given the difficulties associated with the garnishee summons, one might ask why a creditor bothers to use it at all.

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20 (1983), 25 Alta. L.R. (2d) 229.

One reason is that, if successful, the garnishee will catch money rather than assets which must be sold, often for a fraction of their true value. The more important factor may be that the garnishee is the only vehicle which can reach two assets which many debtors have: the salary and the bank account. If the creditor has enough information to go after these debts, he will often be prepared to take the time and trouble to do so.

(2) Garnishee Summonses Before Judgment

2.58 Under Rule 470(1), a creditor may before judgment and upon leave of the court issue a garnishee summons. The creditor must be able to swear an affidavit as to the nature of his claim against the defendant and as to the "reasonable possibility" that the plaintiff will not be paid or will be subjected to unreasonable delay in payment unless the summons is issued.

2.59 We concluded that very few creditors apply for or obtain leave to attach debts before judgment. 13 claims enforced by garnishment (1.9% of all such claims) were enforced by pre-judgment garnishees. The reasons are probably the cost in obtaining leave, because of the requirement of an appearance before a master or a judge, and the difficulty in satisfying the grounds set out in Rule 470(1). In most cases, the creditor is further ahead to wait until he gets judgment before issuing his garnishee summons. No application is needed, the summons is relatively mechanical and the grounds for issue are much more lenient.

2.60 Ramsay also found that pre-judgment garnishment was applied for in only 2% of his sample.[21] Pre-judgment garnishment was not used by major creditors and was not used to any

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[21] Ramsay Report, pp. 66-70.

significant extent by retailers, perhaps because the high costs of the remedy precluded its use except where there was a large amount outstanding and a high probability of recovery.

> "Pre-judgment garnishment appears from our evidence to be used by one shot rather than repeat players. ... It appears to be slighly more effective in getting money paid into court than post-judgment garnishment."[22]

(3) Classes of Debts Attached

2.61 We divided the garnishee summonses into classes of debts sought to be attached. The three classes are wage debts, bank account non-wage debts and other non-wage debts. Whether a garnishee summons was counted as wage or non-wage depended on the drafting of the summons. We defined "bank account non-wage" to include all non-wage garnishee summonses against banks, credit unions, caisses or treasury branches.

2.62 We found that 435 of the garnishee summonses (57.5%) were issued against wages, 248 summonses (32.8%) for non-wage bank account debts and the rest for other non-wage debts. Creditors seek to attach wages more often than bank accounts or other debts. The reason probably is that a creditor can more easily discover where a debtor works than where he banks.

(4) Multiple Garnishees

2.63 Multiple garnishees can be issued for different reasons. A creditor may issue a garnishee against two or three banks before hitting the right one, or he may attach the debtor's

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22 Ramsay Report, p. 70. It is possible that orders permitting pre-judgment garnishment are granted only in cases where there is clear evidence of a debt, whereas post-judgment garnishment has no such check on its issue.

bank account and his salary check. Alternatively the creditor may issue several garnishees to the debtor's employer, each catching part of a pay check.

2.64 We found that 243 (or 35.2% of) judgment creditors who used the garnishee summons issued more than one garnishee. When we divided the cases of multiple garnishees according to the debts sought to be attached, we discovered that 169 of those cases (62.6%) were wage garnishees, 75 cases (or 27.8%) sought to attach non-wage bank account claims and the rest were against other non-wage claims.

2.65 It will be seen that the judgments in which more than one wage garnishee are issued make up a substantial percentage of the total number of judgments enforced by multiple garnishees. It is also interesting to note the substantial number of files in which six or more wage garnishees were issued against one judgment debtor. We encountered a file in which one creditor issued 12 wage garnishees against the same debtor, as well as other bank garnishees.

2.66 When we expressed the total of all judgments with multiple wage garnishees as a percent of the total of all judgments with one or more wage garnishees, we found that, out of a total of 435 judgments, 169 judgments, or 38.9%, used more than one garnishee summons.

2.67 Some multiple wage garnishees are issued against different employers. This is particularly true in cases of employees, like construction workers, who frequently change employers. In other cases, the multiple garnishees are issued against the same employer.

2.68 Because we were interested in the need for a continuing wage garnishee, we pulled out of the multiple garnishee cases those where multiple garnishees were issued against the same employer. We found that, in 140 (or 78.7%) of the cases of

multiple wage garnishees, more than one wage garnishee was issued against the same employer.

(5) Replies to Garnishee Summonses

2.69 Rule 475 provides that, within ten days of service of a garnishee summons, the garnishee shall either pay into court the appropriate amount or file one of a series of approved answers. The rule is mandatory; the garnishee must pay or reply. We were interested in finding out what the garnishees in our sample did in response to the service of garnishee summonses, so far as their actions were recorded in the court files.

2.70 Our most interesting finding was that 576 of the garnishees in our sample (45.9%) resulted in neither payment nor a reply. Some of these garnishees may have been issued but not served. As to the rest, it is likely that many garnishees responded directly to the creditor (or persuaded the debtor to do so) and perhaps paid the creditor directly. Other garnishees may have responded verbally to the clerk's office which relayed the information to the creditor. In all of these cases (except non-service of the garnishee summons), there had been a breach of Rule 475, and the creditor could have applied for judgment against the garnishee under Rule 475(4). In fact, this step is rarely taken. We found fewer than ten orders against garnishees in the whole sample.

2.71 406 garnishees (32.4%) resulted in payment. As we shall see later, however, many of the payments were a small percentage of the claim of the garnishing creditor, and even they might have to be shared with other writ-holders pursuant to the Execution Creditors Act. Replies were filed in 272 cases, or 21.7% of the garnishee summonses reviewed. To summarize, about 46% of the cases resulted in neither reply nor payment into court, 21.7% resulted in a reply but no payment, and about one-third

resulted in payment.

(6) Money Paid Into Court

2.72 425 (61.5%) of the judgments enforced by garnishee summonses resulted in no money paid into court. (We are concerned here with judgments enforced by garnishee summonses, not the much larger number of garnishee summonses considered in paras. 2.61 - 2.62 and 2.69 - 2.71 above.) 102 judgments (14.8%) resulted in payments into court less than 25% of the claim or judgment. On the other hand, 94 cases (13.6%) resulted in payment into court of an amount equal to or exceeding 100% of the claim.[23]

e. Miscellany

(1) Equitable Execution

2.73 Equitable execution as a remedy is very rarely used in Alberta. Of the 2316 judgments examined in our study, we found only seven in which there was an application for the appointment of a receiver pursuant to Rule 466 and none under Rule 465. Of these, four were granted. Some of the orders granted would not have been decided in the same way after the decision of the Alberta Court of Appeal in Fox v. Peterson Livestock Ltd.[24]

(2) Other Remedies

2.74 We found no files in which charging orders, stop orders or Mareva injunctions[25] were granted.

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23 For an explanation, see infra, para. 8.33(3).

24 (1982), 17 Alta. L.R. (2d) 311 (C.A.).

25 Mareva Campania Naviera S.A. v. Int. Bulk Carriers S.A., [1975] 2 Lloyd's Rep. 509 (C.A.).

(3) Judgments Set Aside

2.75 We were interested in the situation where a creditor obtains a default judgment and issues a writ or a garnishee summons. The judgment is subsequently set aside pursuant to Rule 158. What happens to the writ or garnishee?

2.76 We found nine cases where judgments were granted, writs of execution issued, and the judgments were subsequently set aside. In four of these cases, the order setting aside the judgment expressly said that the writ would also be set aside. In the other five, the order made no reference to the writ. We found no orders in our sample which expressly preserved the writ or other enforcement remedy.

f. Success of the Creditors' Remedies System

(1) Introduction

2.77 One of the purposes of the present study was to estimate the overall success of the system in collecting judgment debts. Such an estimate is bound to be incomplete where the study is limited, as ours was, to court, sheriff and land titles files. These sources give only a partial picture of the money actually paid, because they do not record payments made directly from debtor to creditor. In such a case, the creditor might have filed a satisfaction piece, or he might have done nothing but let his writ lapse. Despite these limitations, we will later make an estimate of the system's success in collecting money, insofar as the facts can be gathered from a study of court files alone without interviews with creditors and debtors.

(2) Creditors' Declarations of Satisfaction

2.78 In many files, there appeared satisfaction pieces or letters to the sheriff indicating that the debt had been "satisfied" or "discharged." (The words were used

indiscriminately.) We wanted to add together all the cases in which the creditor indicated in writing that the debt had been satisfied or discharged in full. In some files, this indication took the form of a satisfaction piece or a notice of discontinuance of action filed in the clerk's office. In others, there was a letter to the same effect in the sheriff's office. Still other creditors communicated with both offices.

2.79 Creditors' declarations of satisfaction cannot be taken completely at face value. In most cases, the creditor would not bother to file such a document unless he had received some payment, but he might have been happy to accept part payment direct to him, thus circumventing the operation of the Execution Creditors Act. A few satisfaction pieces may have been filed where no payment was received if the debtor was able to apply some pressure to the creditor, such as a well-founded threat to open up the judgment and file a counterclaim.

2.80 Our principal conclusion was that 442 of the judgments in our sample were followed by creditors' declarations of satisfaction of the debt. Judgments accompanied by declarations of satisfaction amounted to 22.5% of the number of judgments enforced by some means and 19.1% of the total number of enforced and unenforced judgments in our sample. In other words, about one-fifth of the creditors in our sample wrote the clerk or the sheriff to say that their claims had been completely satisfied.

2.81 We noted earlier that a satisfaction piece may be filed by a creditor who has not been paid 100% of his debt. It would be wrong to assume that 20% of our sample were paid in full by their debtors. On the other hand, the 20% figure substantially under-estimates the number of creditors paid their debts because it excludes two groups of successful creditors, namely, (1) creditors paid directly who did not file satisfaction pieces, and (2) creditors who collected money by seizure or garnishment and who did not file a satisfaction piece.

(3) Status of Writs in the Land Titles Offices

2.82 We next wanted to look at the status of writs filed in the land titles offices in order to discover which writs had been discharged and which had not. What we found was that 230 writs (19.2% of the writs filed in the two land titles offices) were later classified as discharged by those offices. Our total would not include writs discharged as to a specific parcel of land. Such specific discharges may be attached to the writ or noted on the certificate of title of the affected land. The writ would however remain in the live writ register.

2.83 It is interesting to note that the percentage of discharged writs in the land titles office is very close to the percentage of declarations of satisfaction in the clerks' and sheriffs' offices, discussed in the previous section. The similarity of the percentages masks a problem in the system. The sheriff will, if asked to do so, inform the land titles office that a writ has been satisfied, but he will not automatically pass on such information. Before 1982, one of the two Alberta land titles offices was sufficiently concerned to send its own staff to the closest sheriff's office to search for indications of satisfaction or discharge. That practice has now stopped, but its existence suggested that the land titles office which adopted the practice felt that it was not getting information as to all satisfaction pieces. The office did not apparently search other sheriffs' offices before 1982. The second Alberta land titles office has not within our study period searched any sheriffs' offices for this purpose.

2.84 We wanted to ascertain whether the total number of writs shown as discharged in the sheriffs' offices was significantly different from the totals of discharged writs in the land titles offics. We therefore searched all writs filed in both the sheriffs' and the land titles offices. We pulled those writs which were recorded as discharged in the former offices to see if the discharge was also recorded in the land titles system. We

excluded files in which writs were filed in the land titles office but without being filed with the sheriff.

2.85 We found that only 214 of the writs filed both in the sheriffs' offices and land titles offices were noted as discharged in the latter offices, while in the sheriffs' offices, 294 of the writs filed were noted as discharged. Thus only 73% of the files with writs recorded as discharged in the sheriffs' offices were also recorded as discharged in the land titles system. Another way of stating these results is that 27% of the writs filed against debtors' land in the land titles offices had actually been discharged according to the records in the sheriffs' offices. This percentage is a significant indication that a serious information breakdown exists in the judgment enforcement scheme, specifically at the point at which the sheriff notes writs in his hands as discharged. The breakdown is less significant in the large district sheriff's office, where 121 writs, or 92.4% of those writs noted as discharged in the sheriff's office, are so noted in the land titles offices. By contrast, the information breakdown is greater in the medium and small districts where only 51 writs and 42 writs, or 53.7% and 61.8% respectively of the writs noted as discharged in the sheriff's office, are so noted in the land titles office.

2.86 On the other hand, it should be remembered that many declarations of discharge in the sheriffs' offices represent only partial satisfaction of the judgment creditor's claim. From his point of view, it is desirable that the writ in the land titles office remains alive to pick up the rest of the debt. The debtor may be unhappy about this result, particularly if his agreement with the creditor amounted to an agreement of part performance which has the legal effect of discharging the rest of the debt.[26]

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[26] See Judicature Act, R.S.A. 1980, c. J-1, s. 13(1).

(4) Estimated Success of the System as a Whole

2.87 In this section, we will try to form an opinion of the success of the creditors' remedies system as a whole in collecting money for creditors. At the outset, it is necessary to remind the reader that our estimate is based on a study limited to court, sheriff and land titles files. We conducted no interviews of creditors or debtors and made no other attempt to discover what money was paid.

2.88 Such a file study underestimates, perhaps substantially, the amount of money recovered because it does not discover money paid by a debtor to a creditor where no record of that payment appears in the files. In another respect, a file study overestimates the success of the process if it takes literally the creditor declarations of satisfaction which are found in the clerks' and sheriffs' offices.

2.89 Despite these reservations, our file study does contain some information relevant to the success of the creditors' remedies system in collecting money. We have earlier in this chapter noted the number of satisfaction pieces in the various offices. We recorded money actually paid into and out of court pursuant to a garnishee summons, money realized as a result of execution, and payments to the creditor noted in his renewal of execution statements filed in the sheriffs' offices pursuant to the Execution Creditors Act. We also noted money distributed to creditors with writs in the sheriff's office as a result of a successful execution or a garnishment by another creditor.

2.90 Based on this data and ignoring for the moment all judgments with satisfaction pieces, we found that the overwhelming majority of judgment creditors in our sample recovered little or nothing on their judgments. 1585 judgments (86%) fell into the "no recovery" category; only 74 judgments (4%) fell into the "over 90%" recovery class. More money was recovered in the medium judicial district than in the other districts.

2.91 The conclusions set out in paragraph 2.90 are misleading because they omit all judgments which were followed by declarations of satisfaction by the creditor, either in general terms or limited to land. Our total sample included 442 judgments followed by satisfaction pieces filed in the clerks' or sheriffs' offices. We also turned up thirty-two judgments which were followed by satisfaction pieces limited to a specific parcel of land or to land generally. The problem was how to compare judgments with and without satisfaction pieces in order to give a more complete picture of the system.

2.92 It is not helpful to assume that satisfaction pieces mean that the creditors were paid their claims in full because, as noted above, this assumption is false in most cases. These documents usually are evidence of a part payment, but how much is impossible to say from the court files. It would be just as misleading to assume that all satisfaction pieces represent 50% recovery.

2.93 However, we can say that almost all satisfaction pieces represent some recovery, without trying to guess at actual percentages. It is therefore more helpful and accurate to divide our total sample into two categories: judgments with no recovery and judgments with some recovery, and to include all judgments followed by satisfaction pieces in the latter group.

2.94 When we follow this plan, we find that 731 judgment creditors (31.6% of our sample) recovered something after filing their judgments. Because our study was limited to court files, we did not record direct payments from debtor to creditor where no satisfaction piece was filed. If we had, the percentage of judgments on which money was paid would no doubt be higher. If we had followed alias writs into judicial districts other than the ones where the judgments were obtained, the percentage would be higher still.

2.95 Even after we correct the recovery percentages upwards, it may still be true that a majority of judgment creditors recovered little or nothing on their claims. In many cases, creditors chose to carry their claims to judgment and often to enforcement and then to discontinue their efforts. Perhaps they had learned more about their debtors as they pursued their lawsuits. If the knowledge was discouraging (e.g., the debtor had no assets), the creditors may have terminated their collection efforts rather than wasting more of their own money on a profitless exercise. Our study did not work out the average length of time which creditors took to collect part or all of their claims.

2.96 Because our study concentrated on court files, we did not record the many cases in which creditors chose to write off their debts rather than litigate at all. A creditor may abandon his claim because it is too small to bother about or because he knows that the debtor has nothing. Another reason for writing off a debt is that the creditor believes that the legal system will fail to collect the money for him. We have no way of knowing how creditor perceptions affected their decision to sue or not.

2.97 Even where creditors sued and carried their remedies as far as possible, many still got nothing. This may be less a fault of the system than a reflection of the fact that many debtors have little or no assets and income above their exemptions. Even if the present exemptions were to be reduced or abolished, it is unlikely that creditors' remedies would recover much more from debtors who have nothing.

Chapter 3. The Judgments

a. Introduction

3.1 In chapter 1, we described our examination of a random sample of files in the offices of the clerks of the court of three judicial districts for the years 1980 and 1981. We separated the files into three groups, only the third of which is relevant to this study. Group III consisted of files in which there was at least one non-matrimonial money judgment. In the large district we found 625 and 660 Group III files for 1980 and 1981 respectively. In the medium-sized district there were 320 files in Group III in 1980 and 307 in 1981. In our small district we found 204 files in 1980 and 195 in 1981.[27]

3.2 We then examined the group III files in more detail in order to determine the number of judgments as contrasted with the number of files. These numbers differed for three reasons:

(1) A few files contained two or more judgments.

(2) In some cases, a judgment creditor would serve a garnishee summons which would not be obeyed. The creditor might then obtain judgment against the garnishee. We have not included these judgments in our count.

(3) In a few cases, actions were commenced, garnishment before judgment occurred, but no judgment had been obtained by the date our research was done. We have arbitrarily included such cases into our total number of money judgments, but they result in very little distortion of the figures.

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[27] See Table 1, supra.

(There were four such cases in 1980 and five in 1981 in the large district, one case in 1981 in the medium-sized district, and no instances of pre-judgment garnishment in the small district.)

3.3 We found that the number of non-matrimonial money judgments in our sample were as follows:

Table 2 - Number of Non-Matrimonial Money Judgments - All Districts[28]

	1980	1981	Totals
Large District	627	660	1287
Medium District	320	309	629
Small District	205	195	400
Totals	1152	1164	2316

Our subsequent calculations are based on number of judgments and not on number of files.

b. Enforcement or Not

3.4 We divided the money judgments into two groups: those where some attempt had been made at enforcement, and those in which there had been no enforcement. We defined enforcement to include the issue of a garnishee summons or

[28] Table 2 also appears in chapter 2 of this report.

the issue of a writ of execution, even when the latter had not been filed in the sheriff's office. The results are shown in Table 3.

Table 3 - Enforcement of Judgments

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Total Total
Judgments without enforcment	101 (16.1)	41 (12.8)	28 (13.7)	170 (14.8)	109 (16.5)	40 (13.0)	33 (16.9)	182 (15.6)	210 (16.3)	81 (12.9)	61 (15.3)	352 (15.2)
Judgments enforced	526 (83.9)	279 (87.2)	177 (86.3)	982 (85.2)	551 (83.5)	269 (87.0)	162 (83.1)	982 (84.4)	1077 (83.7)	548 (87.1)	339 (84.8)	1964 (84.8)
Total Number of Judgments	627 (100.0)	320 (100.0)	205 (100.0)	1152 (100.0)	660 (100.0)	309 (100.0)	195 (100.0)	1164 (100.0)	1287 (100.0)	629 (100.0)	400 (100.1)	2316 (100.0)

3.5 Table 3 reveals that 352 judgments (over 15% of our sample) were not followed by any attempt at enforcement whatever, not even the issue of a writ of execution. In some of these cases, the judgment debtor may have paid the creditor directly, without record of the payment being noted in the clerk's file. In others, one suspects that the creditor simply abandoned hope of collecting anything. In still other cases, the judgment creditor may have continued his efforts to collect the debt by telephone calls and letters, but without incurring the expense and difficulties of execution or garnishment.

3.6 The creditors' remedies system may be likened to a funnel or, more accurately, to a series of filters.[29] A large number of statements of claims are filed, fewer judgments are obtained, still fewer writs of execution are issued and so on down to the comparative handful of creditors who actually press on to seizure and sale. Some creditors drop out of the process because they have been paid. Others, who have perhaps learned more about the debtor since issuing their statements of claim, give up any further attempt to collect the judgment. The funnel shape of the creditors' remedies system is ambiguous as to success or failure. We will later give a partial answer to the question whether the system succeeds in collecting debts for litigants.

3.7 The second point to make about Table 3 is to note the small difference between enforcement in the medium judicial district and in the other two districts. Throughout our report, the statistics suggest that the creditors' remedies system is pursued more vigorously and more

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29 The image is drawn from the Scottish Law Commission, Scot. Memo 47, pp. 20-24, 132-43; Scot. R.R. #1, pp. 7-9; Scot. R.R. #6, pp. 29-56; Scot. R.R. #8, passim.

successfully in the medium district than elsewhere. We speculate on the reasons for this difference in chapter 6.

3.8 Our study did not identify the type of business engaged in by each creditor, the kind of debt involved or whether the parties to the litigation could be labelled as personal or commercial. Ramsay did classify his sample according to the creditor's business and the type of transaction.[30] He found that the heaviest users of garnishment, accounting for 44% of the sample, were retail creditors and finance companies. Individuals launched 10% of the garnishment proceedings, but one-half of these cases involved automobile damages litigation or business debt. The Scottish Law Commission research found that, in the vast majority of actions in which enforcement measures are taken, the pursuers (or plaintiffs) were commercial enterprises. The Scottish researchers also noted some variation in the use of creditors' remedies between different types of creditors.[31] Most defenders (i.e., defendants) in summary debt actions were personal (that is, "named individuals or married couples").[32]

c. Dollar Amounts of Judgments

3.9 We next separated the judgments into dollar bands, reflecting the dollar amount of the judgment plus the costs of obtaining judgment (but not costs subsequent to judgment). In the few cases of garnishment where there was no subsequent judgment, we used the amount claimed in the statement of claim.

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30 Ramsay Report, pp. 50-53.

31 See Scot. R.R. #1, pp. 12-18, 31; Scot. R.R. #2, pp. 6-8, 16; Scot. R.R. #3, pp. 10-16, 37-40, 42-43; Scot. R.R. #8, pp. 36-38.

32 Scot Memo 47, pp. 137-38, 143-44. In ordinary court payment actions (that is, not summary cause payment actions), about one-half of the defenders were personal and one-half commercial.

3.10 $1004.00 is used for a dollar category because $1000.00 was during the relevant period the maximum claim allowed in the Small Claims Division of the Provincial Court,[33] and $4.00 was usually the amount of costs awarded.[34] We felt it would be advisable to keep all of the Provincial Court judgments together in the two lowest dollar bands rather than including a few of them in a higher category because of the $4.00 costs.

3.11 The results are displayed in Table 4.

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33 See Provincial Court Act, R.S.A. 1980, c. P-20, s. 36.

34 See Alberta Rules of Court, Appendix E, Number 6.

Table 4 - Judgments by Dollar Value

	1-500	501-1004	1005-1500	1501-2000	2001-3000	3001-4000	4001-5000	5001-10,000	10,001-20,000	over 20,000	Totals
1980 Large	143 (22.8)	113 (18.0)	65 (10.4)	43 (6.9)	72 (11.5)	39 (6.2)	26 (4.1)	62 (9.9)	28 (4.5)	36 (5.7)	627 (100.0)
1980 Medium	112 (35.0)	79 (24.7)	25 (7.8)	18 (5.6)	16 (5.0)	11 (3.4)	12 (3.8)	23 (7.2)	11 (3.4)	13 (4.1)	320 (100.0)
1980 Small	60 (29.3)	45 (22.0)	23 (11.2)	10 (4.9)	21 (10.2)	12 (5.9)	6 (2.9)	16 (7.8)	9 (4.4)	3 (1.5)	205 (100.0)
1980 Total	315 (27.3)	237 (20.6)	113 (9.8)	71 (6.2)	109 (9.5)	62 (5.4)	44 (3.8)	101 (8.7)	48 (4.2)	52 (4.5)	1152 (100.0)
1981 Large	130 (19.7)	148 (22.4)	69 (10.5)	44 (6.6)	82 (12.4)	28 (4.2)	28 (4.2)	58 (8.7)	40 (6.0)	33 (5.0)	660 (100.0)
1981 Medium	105 (34.0)	54 (17.5)	27 (8.7)	23 (7.4)	22 (7.1)	14 (4.5)	15 (4.9)	27 (8.7)	8 (2.6)	14 (4.5)	309 (99.9)
1981 Small	69 (35.4)	35 (17.9)	18 (9.2)	15 (7.7)	12 (6.2)	7 (3.6)	6 (3.1)	21 (10.8)	9 (4.6)	3 (1.5)	195 (100.0)
1981 Total	304 (26.1)	237 (20.3)	114 (9.8)	82 (7.0)	116 (10.0)	49 (4.2)	49 (4.2)	106 (9.1)	57 (4.9)	50 (4.3)	1164 (99.9)
Total Large	273 (21.2)	261 (20.3)	134 (10.4)	87 (6.8)	154 (12.0)	67 (5.2)	54 (4.2)	120 (9.3)	68 (5.3)	69 (5.4)	1287 (100.0)
Total Medium	217 (34.5)	133 (21.1)	52 (8.3)	41 (6.5)	38 (6.0)	25 (4.0)	27 (4.3)	50 (7.9)	19 (3.0)	27 (4.3)	629 (99.9)
Total Small	129 (32.3)	80 (20.0)	41 (10.3)	25 (6.3)	33 (8.3)	19 (4.7)	12 (3.0)	37 (9.3)	17 (4.3)	7 (1.8)	400 (100.3)
Grand Total	619 (26.7)	474 (20.5)	227 (9.8)	153 (6.6)	225 (9.7)	111 (4.8)	93 (4.0)	207 (8.9)	104 (4.5)	103 (4.4)	2316 (99.9)

3.12 It will be noted that 1093 judgments (47.2% of our sample) were for amounts of $1004 or less. It is important to remember that the courts are not just for large dollar claims. They are used extensively for the collection of relatively small sums of money.

3.13 Ramsay concluded that the majority of all claims in his sample (i.e., claims enforced by garnishees) were for amounts less than $1000.[35] 34% were for debts under $500. Larger debts (over $1400) were primarily represented by bank and finance company loan claims.

3.14 Ramsay found that over 40% of all retail claims were for amounts under $500, and 52.4% of individual claims were under $500. 55% of claims for professional services were for amounts under $500. There were no department store claims over $2500. Of actions by utilities, 33.3% were under $200, 20% under $299 and 20% under $399. Thus, almost 75% of actions by utilities were under $400.

3.15 The Scottish researchers also found that the creditors' remedies system is used to enforce relatively small claims.[36] They concluded that, as the creditor progressed along the execution process, increasing amounts of principal sum were involved. It would seem reasonable to expect a similar result in Alberta. A creditor with a judgment for a small dollar amount is more likely to issue a writ of execution than to go on to instruct seizure and sale.

3.16 Returning to the Dunlop study, we next wanted to determine the number of <u>enforced</u> judgments for each dollar band. (It will be recalled that "enforcement" for our

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35 Ramsay Report, pp. 53-65.

36 Scot. R.R. #1, pp. 19-21; Scot. R.R. #2, pp. 8-9, 16; Scot. R.R. #3, pp. 13-16.

purposes includes all cases where any attempt at enforcement by court process has occurred.) The results are displayed in Table 5.

Table 5 - Judgments with Enforcement

	1-500	501-1004	1005-1500	1501-2000	2001-3000	3001-4000	4001-5000	5001-10,000	10,001-20,000	over 20,000	Totals
1980 Large	100	91	56	40	65	36	24	58	24	32	526
1980 Medium	97	64	23	18	13	11	11	22	10	10	279
1980 Small	44	38	20	10	20	11	6	16	9	3	177
1980 Total	241	193	99	68	98	58	41	96	43	45	982
1981 Large	82	114	60	41	80	26	27	55	36	30	551
1981 Medium	82	45	23	22	21	14	14	27	8	13	269
1981 Small	49	28	16	13	12	7	5	21	9	2	162
1981 Total	213	187	99	76	113	47	46	103	53	45	982
Total Large	182	205	116	81	145	62	51	113	60	62	1077
Total Medium	179	109	46	40	34	25	25	49	18	23	548
Total Small	93	66	36	23	32	18	11	37	17	6	339
Grand Total	454	380	198	144	211	105	87	199	95	91	1964

3.17 The information in Table 5 is more meaningful if it is shown in percentage terms. Table 6 shows the number of enforced judgments for each dollar band as a percentage of the total number of judgments in that dollar band. (It should be remembered that "enforcement" includes the mere issue of a writ of execution or garnishee summons without further steps being taken.)

Table 6 - Enforced Judgments as Percentage of Total Judgments, by dollar bands

	1-500	501-1004	1005-1500	1501-2000	2001-3000	3001-4000	4001-5000	5001-10,000	10,001-20,000	over 20,000	Totals
1980 Large	69.9	80.5	86.2	93.0	90.3	92.3	92.3	93.5	85.7	88.9	83.9
1980 Medium	86.6	81.0	92.0	100.0	81.3	100.0	91.7	95.7	90.9	76.9	87.2
1980 Small	73.3	84.4	87.0	100.0	95.2	91.7	100.0	100.0	100.0	100.0	86.3
1980 Total	76.5	81.4	87.6	95.8	90.0	93.5	93.2	95.0	89.6	86.5	85.2
1981 Large	63.1	77.0	87.0	93.2	97.6	92.9	96.4	94.8	90.0	90.9	83.6
1981 Medium	78.1	83.3	85.2	95.6	95.5	100.0	93.3	100.0	100.0	92.9	87.0
1981 Small	71.0	80.0	88.9	86.7	100.0	100.0	83.3	100.0	100.0	66.6	83.1
1981 Total	70.1	78.9	86.8	92.7	97.4	95.9	93.9	97.2	93.0	90.0	84.4
Large Total	66.7	78.5	86.7	93.1	94.2	92.5	94.4	94.2	88.2	89.9	83.7
Medium Total	82.5	82.0	88.5	97.6	89.5	100.0	92.6	98.0	94.7	85.2	87.1
Small Total	72.1	82.5	87.8	92.0	97.0	94.7	91.7	100.0	100.0	85.7	84.8
Grand Total	73.3	80.2	87.2	94.1	93.8	94.6	93.5	96.1	91.3	88.3	84.8

3.18 Two points about Table 6 can be made:

(1) The table shows that, in most dollar bands, a large number of judgments were enforced. The lowest percentage was 63.1% of judgments in the 1-500 dollar band of the large district in 1981. However, it should be borne in mind that "enforcement" included any step beyond judgment, including the mere issue of a writ of execution in the clerk's office, even if it was not delivered to the relevant sheriff. Given this liberal definition, it may be surprising that the percentages were not higher.

(2) Although there are several exceptions, the table indicates that judgments in the higher dollar bands are more likely to be enforced than those with lower dollar amounts.

d. Origin of Judgments

3.19 We next attempted a rough classification of the judgments according to the process or route which they had followed. The results are set out in Table 7. We used the following categories:

(1) Q.B. - Action commenced and judgment obtained in the Alberta Court of Queen's Bench.

(2) P.C. - Action commenced and judgment obtained in the Provincial Court of Alberta. Certificate of judgment filed in Alberta Court of Queen's Bench.

(3) R.E.J.A. - Judgment obtained in a court in another jurisdiction, and registered under the Reciprocal Enforcement of Judgments Act.[37]

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37 R.S.A. 1980, c. R-6.

(4) W.C.B. - An unpaid assessment under the Workers' Compensation Act[38] can be certified by the secretary to the Board and "filed with the clerk of the Court of Queen's Bench ... and may be enforced as a judgment of the Court."

(5) Labour legislation - includes claims for unpaid wages or prosecutions under the Alberta Labour Act, 1973,[39] the Labour Relations Act[40] and the Employment Standards Act.[41]

(6) Health Insurance - Non-payment by a registrant of a premium under the Health Insurance Premiums Act[42] can result in the registration of a certificate in the Court of Queen's Bench. The certificate "when registered has the same force and effect, and all proceedings may be taken on it, as if the certificate were a judgment obtained in the Court for a debt of the amount specified in the certificate."

(7) Fines under Other Provincial Acts - Included are the Liquor Control Act,[43] the Franchises Act[44] and the Highway Traffic Act.[45] The enforcement mechanism is in the Summary Convictions Act.[46]

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38 R.S.A. 1980, c. W-15, s. 78. See also ss. 87-88.

39 S.A. 1972, c. 33.

40 R.S.A. 1980, c. L-1.1.

41 R.S.A. 1980, c. E-10.1.

42 R.S.A. 1980, c. H-5, s. 17.

43 R.S.A. 1980, c. L-17, ss. 104-11.

44 R.S.A. 1980, c. F-17, s. 34.

45 R.S.A. 1980, c. H-7, s. 168.

46 R.S.A. 1980, c. S-16, ss. 20-21.

(8) Income Tax Act - An amount payable under the Alberta Income Tax Act[47] may be certified by the Provincial Treasurer under s. 39. The certificate may be registered in the Court of Queen's Bench and thereafter operates like a judgment for debt.

(9) Criminal Code - See the Criminal Code,[48] ss. 647-48 (fines on corporations), 652 (recovery of penalties), 653 (compensation for loss of property), 654 (compensation to bona fide purchasers) and 656-57 (costs in case of libel).

(10) O.P.D. - Under Part X of the Bankruptcy Act,[49] a debtor may apply to the clerk of the court for a consolidation order. By s. 196(2), "A consolidation order ... is a judgment of the court in favour of each creditor named in the register for the amount stated therein to be owing to such creditor." The effect of a consolidation order is that no process shall be issued by a creditor to whom Part X applies.[50] The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order.[51] In certain circumstances, including default, a registered creditor can issue his process against the debtor.[52]

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47 R.S.A. 1980, c. A-31.

48 R.S.C. 1970, c. C-34.

49 R.S.C. 1970, c. B-3, s. 190.

50 Section 200.

51 Section 201.

52 Section 204.

Table 7 - Classification of Judgments by Origin

	Q.B.	P.C.	R.E.J.A.	W.C.B.	Labour Leg'n	Health Ins.	Fines Under Other Prov. Acts	Income Tax Act	Criminal Code	O.P.D.	Totals
1980 Large	445 (71.0)	106 (17.0)	7 (1.1)	5 (0.8)	12 (1.9)	36 (5.7)	6 (0.9)	3 (0.5)	1 (0.2)	6 (0.9)	627 (100.0)
1980 Medium	150 (46.9)	143 (44.7)	0 (0.0)	2 (0.6)	4 (1.3)	13 (4.1)	1 (0.3)	6 (1.9)	1 (0.3)	0 (0.0)	320 (100.1)
1980 Small	138 (67.3)	39 (19.0)	1 (0.5)	1 (0.5)	0 (0.0)	22 (10.7)	3 (1.5)	1 (0.5)	0 (0.0)	0 (0.0)	205 (100.0)
1980 Total	733 (63.6)	288 (25.0)	8 (0.7)	8 (0.7)	16 (1.4)	71 (6.2)	10 (0.9)	10 (0.9)	2 (0.2)	6 (0.5)	1152 (100.1)
1981 Large	485 (73.5)	108 (16.4)	3 (0.5)	3 (0.5)	27 (3.9)	26 (3.9)	6 (0.9)	1 (0.2)	0 (0.0)	1 (0.2)	660 (100.0)
1981 Medium	162 (52.4)	113 (36.6)	1 (0.3)	0 (0.0)	19 (6.1)	9 (2.9)	1 (0.3)	4 (1.3)	0 (0.0)	0 (0.0)	309 (99.9)
1981 Small	137 (70.3)	38 (19.5)	5 (2.6)	0 (0.0)	0 (0.0)	15 (7.7)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	195 (100.1)
1981 Total	784 (67.4)	259 (22.3)	9 (0.8)	3 (0.3)	46 (4.0)	50 (4.3)	7 (0.6)	5 (0.4)	0 (0.0)	1 (0.1)	1164 (100.2)
Total Large	930 (72.3)	214 (16.6)	10 (0.8)	8 (0.6)	39 (3.0)	62 (4.8)	12 (0.9)	4 (0.3)	1 (0.1)	7 (0.5)	1287 (100.0)
Total Medium	312 (49.6)	256 (40.7)	1 (0.2)	2 (0.3)	23 (3.7)	22 (3.5)	2 (0.3)	10 (1.6)	1 (0.2)	0 (0.0)	629 (100.1)
Total Small	275 (68.8)	77 (19.3)	6 (1.5)	1 (0.3)	0 (0.0)	37 (9.3)	3 (0.8)	1 (0.3)	0 (0.0)	0 (0.0)	400 (100.3)
Grand Total	1517 (65.5)	547 (23.6)	17 (0.7)	11 (0.5)	62 (2.7)	121 (5.2)	17 (0.7)	15 (0.6)	2 (0.1)	7 (0.3)	2316 (99.9)

3.20 In 1980 and 1981, over 89% of the money judgments examined had originated either in Queen's Bench or Provincial Court. The other 11% was made up largely of orders made by various administrative boards and filed as judgments under the relevant legislation.

3.21 We next wanted to see the number of enforced judgments divided according to origin. This information is set out in Table 8. Table 9 shows the number of enforced judgments divided by source and shown as a percentage of the total number of judgments for that source.

Table 8 - Judgments with Enforcement by origin

	Q.B.	P.C.	R.E.J.A.	W.C.B.	Labour Leg'n	Health Ins.	Fines Under Other Prov. Acts	Income Tax Act	Criminal Code	O.P.D.	Totals
1980 Large	411	80	7	5	2	7	6	2	1	5	526
1980 Medium	137	129	0	2	1	3	0	6	1	0	279
1980 Small	135	29	1	1	0	7	3	1	0	0	177
1980 Total	683	238	8	8	3	17	9	9	2	5	982
1981 Large	452	81	2	3	4	2	6	1	0	1	552
1981 Medium	155	102	1	0	4	2	1	4	0	0	269
1981 Small	127	26	5	0	0	4	0	0	0	0	162
1981 Total	734	209	8	3	8	8	7	5	0	1	983
Total Large	863	161	9	8	6	9	12	3	1	6	1078
Total Medium	292	231	1	2	5	5	1	10	1	0	548
Total Small	262	55	6	1	0	11	3	1	0	0	339
Grand Total	1417	447	16	11	11	25	16	14	2	6	1965

Table 9 - Enforced Judgments as a Percentage of Total Judgments, By Origin

	Q.B.	P.C.	R.E.J.A.	W.C.B.	Labour Leg'n	Health Ins.	Fines Under Other Prov. Acts	Income Tax Act	Criminal Code	O.P.D.	Totals
1980 Large	92.4	75.5	100.0	100.0	16.7	19.4	100.0	66.7	100.0	83.3	83.9
1980 Medium	91.3	90.2	0.0	100.0	25.0	23.1	0.0	100.0	100.0	0.0	87.2
1980 Small	97.8	74.4	100.0	100.0	0.0	31.8	100.0	100.0	0.0	0.0	86.3
1980 Total	93.2	82.6	100.0	100.0	18.8	23.9	90.0	90.0	100.0	83.3	85.2
1981 Large	93.2	75.0	66.7	100.0	15.4	7.7	100.0	100.0	0.0	100.0	83.6
1981 Medium	95.7	90.3	100.0	0.0	21.1	22.2	100.0	100.0	0.0	0.0	87.1
1981 Small	92.7	68.4	100.0	0.0	0.0	26.7	0.0	0.0	0.0	0.0	83.1
1981 Total	93.6	80.7	88.9	100.0	17.4	16.0	100.0	100.0	0.0	100.0	84.5
Large Total	92.8	75.2	90.0	100.0	15.8	14.5	100.0	75.0	100.0	85.7	83.7
Medium Total	93.6	90.2	100.0	100.0	21.7	22.7	50.0	100.0	100.0	0.0	87.1
Small Total	95.3	71.4	100.0	100.0	0.0	29.7	100.0	100.0	0.0	0.0	84.8
Grand Total	93.4	81.7	94.1	100.0	17.7	20.7	94.1	93.3	100.0	85.7	84.8

3.22 Table 9 shows a higher percentage of enforcement of judgments where the process originates in Queen's Bench than where it originates in Provincial Court. This result is probably a reflection of the higher dollar amounts involved in Queen's Bench litigation.

3.23 Enforcement of the administrative orders and certificates varies sharply, perhaps reflecting the differing policies towards enforcement of the government departments which initiated most of this litigation.

e. Use of Court of Queen's Bench for Claims under $1000

3.24 During 1980 and 1981, a litigant with a claim under $1000 could sue either in the Court of Queen's Bench or in Provincial Court. As we carried out our study, we noted that a large number of claims below $1000 were being litigated in Queen's Bench rather than in Provincial Court. We decided to look more closely at judgments under $1004 to see where they originated. The results are displayed in Table 10.

Table 10 - Source of Judgments under $1004

	Q.B.	P.C.	Others	Total
1980	92	177	44	313
1-500	(29.4)	(56.5)	(14.1)	(100.0)
1980	95	105	39	239
501-1004	(39.7)	(43.9)	(16.3)	(99.9)
1980	187	282	83	552
Total	(33.9)	(51.1)	(15.0)	(100.0)
1981	91	154	59	304
1-500	(29.9)	(50.7)	(19.4)	(100.0)
1981	107	102	32	241
501-1004	(44.4)	(42.3)	(13.3)	(100.0)
1981	198	256	91	545
Total	(36.3)	(47.0)	(16.7)	(100.0)
1980 and 1981	183	331	103	617
1-500	(29.7)	(53.7)	(16.7)	(100.1)
1980 and 1981	202	207	71	480
501-1004	(42.1)	(43.1)	(14.8)	(100.0)
1980 and 1981	385	538	174	1097
Total	(35.1)	(49.0)	(15.9)	(100.0)

3.25 What Table 10 shows is that 35.1% of the plaintiffs included in the sample sued in Queen's Bench rather than in Provincial Court. If we delete the "Others" litigants who were by and large required by statute to sue or to file their orders in Queen's Bench, the percentage of litigants choosing Queen's Bench would be somewhat lower.

3.26 We can think of two reasons why a litigant, especially if represented by a lawyer, might choose Queen's Bench over the Provincial Court.

(1) If the plaintiff's claim is for a debt or a liquidated demand and if the defendant does not file a statement of defence or a demand of notice, the plaintiff can enter judgment under Rule 148 of the Rules of Court without being required to appear before a judge. In Provincial Court, all actions are set down for hearing and the plaintiff in effect must attend if he wants to get judgment.

(2) While costs can be granted in both courts, they are likely to be more substantial in Queen's Bench than in Provincial Court.

3.27 Given these two reasons, one is tempted to speculate that lawyers actively representing plaintiff-clients are likely to choose the Court of Queen's Bench, even for small claims. Provincial Court would likely be more attractive to plaintiffs who have a substantial number of claims and who tend not to use lawyers. Our investigation was not sufficiently extensive to prove or disprove these ideas.[53]

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53 Cf. Ramsay Report, pp. 108-13.

Chapter 4. Enforcement of Judgments Generally

4.1 In Table 3, we divided the money judgments in our sample into two groups: those where some attempt had been made at enforcement, and those in which there had been no enforcement. We defined enforcement to include the issue of a garnishee summons or a writ of execution, even where the latter had not been filed with the sheriff's office.

4.2 It is now necessary to look more closely at the types of enforcement used by Alberta creditors. We concentrate on the writ of execution and the garnishee summons because they are the two commonly used remedies in Alberta. We found no judgments enforced only by a method other than execution or garnishment. Table 11 shows how many judgments were enforced by either or both remedies, as well as those judgments where no enforcement occurred.

Table 11 - Enforcement by Judgments

	1980				1981				1980 and 1981			
	Large	Medium	Small	Total	Large	Medium	Small	Total	Large	Medium	Small	Grand Total
Number of judgments without enforcement	101 (16.1)	41 (12.8)	28 (13.7)	170 (14.8)	109 (16.5)	40 (12.9)	33 (16.9)	182 (15.6)	210 (16.3)	81 (12.9)	61 (15.3)	352 (15.2)
Number of judgments enforced by writ but not garnishee	354 (56.5)	180 (56.3)	112 (54.6)	646 (56.1)	340 (51.5)	178 (57.6)	109 (55.9)	627 (53.9)	694 (53.9)	358 (56.9)	221 (55.3)	1273 (55.0)
Number enforced by writ and garnishee summons	154 (24.6)	78 (24.4)	56 (27.3)	288 (25.0)	193 (29.2)	56 (18.1)	45 (23.1)	294 (25.3)	347 (27.0)	134 (21.3)	101 (25.3)	582 (25.1)
Number enforced by garnishee summons but not writ	18 (2.9)	21 (6.6)	9 (4.4)	48 (4.2)	18 (2.7)	35 (11.3)	8 (4.1)	61 (5.2)	36 (2.8)	56 (8.9)	17 (4.3)	109 (4.7)
Total enforced by garnishee summons	172 (27.4)	99 (30.9)	65 (31.7)	336 (29.2)	211 (32.0)	91 (29.4)	53 (27.2)	355 (30.5)	383 (29.7)	190 (30.2)	118 (29.5)	691 (29.8)
Total enforced by writ	508 (81.0)	258 (80.6)	168 (82.0)	934 (81.1)	533 (80.8)	234 (75.7)	154 (79.0)	921 (79.1)	1041 (80.9)	492 (78.2)	322 (80.5)	1855 (80.1)
Total enforced judgments (any method)	526 (83.9)	279 (87.2)	177 (86.3)	982 (85.2)	551 (83.5)	269 (87.1)	162 (83.1)	982 (84.4)	1077 (83.7)	548 (87.1)	339 (84.8)	1964 (84.8)
Total number of judgments	627 (100.0)	320 (100.0)	205 (100.0)	1152 (100.1)	660 (100.0)	309 (99.9)	195 (100.0)	1164 (100.0)	1287 (100.0)	629 (100.0)	400 (100.0)	2316 (100.0)

4.3 Two points of explanation need to be made about Table 11.

(1) When we speak of judgments "enforced" by a writ, it should be remembered that we are including the issue of a writ, even when it is not delivered to the appropriate sheriff.

(2) The category of judgments "enforced by garnishee summons but not writ" can be explained in two ways:

(i) We earlier noted[54] that we were counting as money judgments files where the plaintiff had issued a statement of claim and a garnishee summons before judgment, but no judgment had been obtained. We counted those statements of claim as judgments for the purposes of our count but, as judgments were not in fact obtained, writs could not be issued. There were very few such cases.

(ii) In the rest of the cases, judgment creditors issued garnishee summonses after judgment but without filing writs of execution. This practice is risky. If a garnishee summons is issued and money is obtained which is paid over to the sheriff for distribution, the absence of a writ means that the garnishing creditor will not share in the distribution because he has no subsisting writ which the sheriff can take into account. The garnishing creditor may however be able to overcome the problem by later issuing a writ and delivering it to the appropriate sheriff. If there are no subsisting writs in the sheriff's office, the garnishing creditor

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54 In para. 3.2.

can apply under rule 480 for payment out to the applicant of the attached money, a practice followed in several of the above cases.[55]

4.4 We thought that it might be interesting to work out the numbers of judgments enforced by writ, garnishee or both, expressed as percentages of the total number of enforced judgments, omitting judgments where there was no attempt at enforcement. We present this information in Table 12 and in Figure 1, omitting the division of figures by year and judicial district.

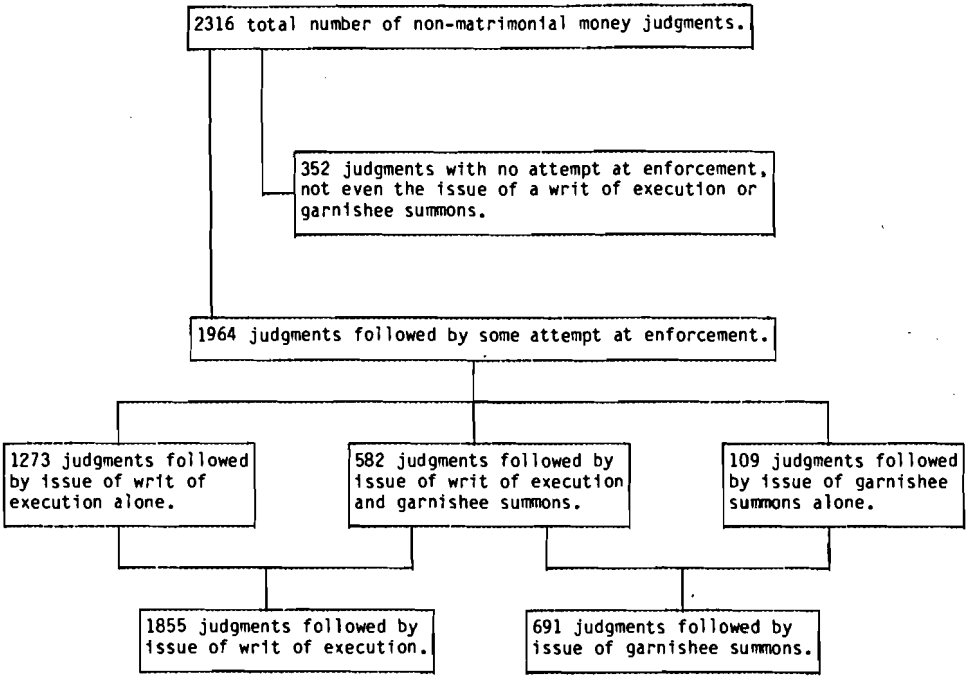
Table 12 - Types of Enforcement in 1980 and 1981

		Judgments enforced by Writ of Execution		
		Yes	No	Total
Judgments enforced by garnishee	Yes	582 (29.6)	109 (5.6)	691 (35.2)
	No	1273 (64.8)	0.0	1273 (64.8)
	Total	1855 (94.4)	109 (5.6)	1964 (100.0)

55 It is not clear whether litigants run this risk out of ignorance or because of a misplaced desire to save money. Creditors' remedies practice as a whole is not characterized by a high degree of legal craftsmanship, no doubt because of the cost of such carefulness.

4.5 One conclusion to be drawn from Tables 11 and 12 and Figure 1 is that the writ of execution is the process most commonly initiated by Alberta creditors. In over 94% of the enforced judgments, a writ was issued, and in nearly two-thirds of those judgments, a writ was the only enforcement process selected. In contrast, a garnishee summons was issued in a little over one-third of the total number of enforced judgments. In 5.6% of the enforced judgments, a garnishee summons was issued without a writ. As we shall see in chapter 6, it does not follow that creditors more often pursue and complete the execution process than the garnishee process.

FIGURE 1. TYPES OF ENFORCEMENT IN 1980 AND 1981.



4.6 The Ramsay study was also interested in the use of garnishee summonses compared to the use of writs.[56] Ramsay took a random sample of 100 files in which a garnishee summons had been issued. He found that, in 25 of the files, no writ of execution was issued. This varies substantially from our results. In our Table 11, there are, for 1980 and 1981 combined, 691 judgments enforced by garnishee summonses. Of those, 109 judgments, or 15.8%, were enforced by garnishee summons but without a writ. The gap of nearly 10% can be explained (1) by viewing the Ramsay sample of 100 files as too small to produce a reliable result, or (2) by concluding that Ramsay's sample of 100 garnishee files is not representative of all enforced files.

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[56] Ramsay Report, pp. 102-03.

Chapter 5. Writs of Execution in the Clerks of the Court's Offices

a. Introduction

5.1 In the next three chapters, it is intended to look at the most popular creditor's remedy: the writ of execution. In chapter 1, we described how we identified our sample of money judgments. Many of the judgment creditors in our sample issued writs of execution in support of their judgments, and some delivered copies to the appropriate sheriff's or land titles office.

5.2 In the present chapter, we will look at our creditors' efforts to enforce their writs as they can be determined from the files of the clerks of the court in the three selected judicial districts. In chapter 6, we trace the writs under examination into the sheriffs' offices in our three judicial districts, and in chapter 7 we look at the enforcement of the same writs in the Alberta land titles offices. The aim is to get a picture of the various ways in which the judgment creditors in our sample enforced their writs of execution, assuming that they bothered to issue writs at all.

b. Multiple Writs

5.3 In some cases, judgment creditors will issue more than one writ in support of a judgment. We wanted to identify the number of cases where this occurred and to express the result in a percentage of total judgments enforced by a writ. Hence Table 13.

5.4 One preliminary point should be made. When a judgment issues against more than one defendant, solicitors follow two different practices. Some issue separate writs against each defendant, while others issue one writ against some or all of the defendants. We have counted a writ as one, whether issued against one or more defendants.

Table 13 - Number of Writs Issued for Judgments Enforced by Writ

	1980	1981	Total
No. of Writs			
1	815 (87.4)	811 (88.7)	1626 (88.0)
2	109 (11.7)	97 (10.6)	206 (11.2)
3	8 (0.9)	6 (0.7)	14 (0.8)
4 or more	1 (0.1)	0 (0.0)	1 (0.1)
Total Judgments Enforced by more than 1 Writ	118 (12.7)	103 (11.3)	221 (12.0)
Total Judgments Enforced by 1 or more Writ	933 (100.1)	914 (100.0)	1847 (100.1)

5.5 Table 13 says that 12% of judgment creditors who followed the writ of execution process issued more than one writ. Solicitors may issue multiple writs for at least two reasons:

(1) The solicitor has sued and gone to judgment against two or more debtors, and then has issued separate writs for each judgment debtor.

(2) The solicitor has issued one original writ, usually directed to the sheriff of the judicial district in which the judgment was obtained, and an alias writ directed to the sheriff of another judicial district (although occasionally these were referred to as original writs).

We differentiated between these and other variants in Table 14.

Table 14 - Reasons for Issue of Multiple Writs

	1980	1981	Total
Separate Writ against each debtor	10 (8.5)	10 (9.9)	20 (9.1)
Original writ to judicial district where judgment obtained; alias writ to another judicial district	104 (88.1)	86 (85.2)	190 (86.8)
Original writ to another judicial district, alias to judicial district where judgment obtained	2 (1.7)	1 (1.0)	3 (1.4)
Original writ to judicial district where judgment obtained; alias to same judicial district	1 (0.9)	4 (4.0)	5 (2.3)
Multiple writs, all to some other judicial district	1 (0.9)	0 (0.0)	1 (0.5)
Total	118 (100.1)	101 (100.1)	219 (100.1)

5.6 There is a difference between the number of judgments enforced by more than one writ in 1981 shown in Table 13 (103) and in Table 14 (101). This would appear to be a computation error. As expected, the principal reason for issuing two or more writs is that an alias writ is necessary for another judicial district.

c. Examinations in Aid of Execution

5.7 Pursuant to Rule 372, a judgment creditor may examine the judgment debtor before a clerk or deputy clerk "of any judicial district wherein a writ of execution has been entered touching his estate and effects." Rules 373 to 379 provide for examinations of other people who may shed some light on the debtor's property and his means of discharging the judgment.

5.8 We first wanted to ascertain the number of judgments in which appointments in aid were issued. (We made no effort to classify the appointments as to the rule under which they issued, but most, if not all, were likely issued under Rules 372 or 373.)

The results are set out in Tables 15, 16 and 17.

Table 15 - Examinations in Aid 1980

	Large District	Medium District	Small District	Totals
Number of judgments pursuant to which appointments issued:				
- 1 appointment	28 (38.4)	19 (26.0)	9 (12.3)	56 (76.7)
- 2 appointments	11 (15.1)	1 (1.4)	1 (1.4)	13 (17.8)
- 3 appointments	1 (1.4)	0 (0.0)	0 (0.0)	1 (1.4)
- 4 or more appointments	3 (4.1)	0 (0.0)	0 (0.0)	3 (4.1)
Total number of judgments with appointments	43 (58.9)	20 (27.4)	10 (13.7)	73 (100.0)

Table 16 - Examinations in Aid 1981

	Large District	Medium District	Small District	Totals
Number of appointments per judgment:				
- 1 appointment	26 (40.6)	16 (25.0)	4 (6.3)	46 (71.9)
- 2 appointments	6 (9.4)	5 (7.8)	0 (0.0)	11 (17.2)
- 3 appointments	0 (0.0)	2 (3.1)	2 (3.1)	4 (6.3)
- 4 or more appointments	1 (1.6)	2 (3.1)	0 (0.0)	3 (4.7)
Total number of judgments with appointments	33 (51.6)	25 (39.1)	6 (9.4)	64 (100.1)

Table 17 - Examinations in Aid - Total 1980 and 1981

	Large District	Medium District	Small District	Totals
Number of appointments per judgment	54	35	13	102
- 1 appointment	(39.4)	(25.5)	(9.5)	(74.4)
- 2 appointments	17	6	1	24
	(12.4)	(4.4)	(0.7)	(17.5)
- 3 appointments	1	2	2	5
	(0.7)	(1.5)	(1.5)	(3.6)
- 4 appointments or more	4	2	0	6
	(2.9)	(1.5)	(0.0)	(4.4)
Total number of judgments with appointments	76	45	16	137
	(55.5)	(32.8)	(11.7)	(99.9)

5.9 These figures become interesting when we set them alongside the total numbers of judgments in which writs were issued. This we do in Table 18.

Table 18 - Judgments with and without appointments for examinations in aid

	Total Number of Judgments with Appointments	Total Number of Judgments in which writs issued
1980 - Large District	43 (8.5)	508 (100.0)
- Medium District	20 (7.8)	258 (100.0)
- Small District	10 (5.6)	168 (100.0)
- Total	73 (7.8)	934 (100.0)
1981 - Large District	33 (6.2)	533 (100.0)
- Medium District	25 (10.7)	234 (100.0)
- Small District	6 (3.9)	154 (100.0)
- Total	64 (7.0)	921 (100.0)
1980 and 1981 - - Large District	76 (7.3)	1041 (100.0)
- Medium District	45 (9.1)	492 (100.0)
- Small District	16 (5.0)	322 (100.0)
Total	137 (7.4)	1855 (100.0)

5.10 What Table 18 establishes is that the examination in aid is not commonly used by execution creditors. Appointments were

issued for only 7.4% of the judgments where writs had been issued.[57] Apparently most creditors give up at this stage, resort to another remedy or instruct seizure without invoking the right to examine in aid.

5.11 We attempted to search for the outcome of the appointments that were issued, but the results were inconclusive. Most court files did not reveal what happened after the issue of the appointment. The appointment may have been served and the debtor failed to show up, or the debtor may have appeared for an examination, but without a transcript being made and filed. Another possibility is that the service of the appointment triggered settlement negotiations. Most files contained nothing except the appointment or appointments, making it impossible to deduce what happened.

5.12 We found seven files in which examinations were held and 23 files in which the debtor's failure to appear was noted. There were 13 applications for an order to the debtor to appear or be committed for contempt. In ten of these cases, the order was granted. In three of these ten cases, the debtor still refused to appear. In only one case was the debtor actually committed under Rule 377, and he was later discharged. It would seem fair to conclude that imprisonment for failure to attend at an examination in aid is a rare occurrence. This fact, together with the cost of an examination in aid, goes far towards explaining why the process is not commonly used by creditors.

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57 See also Ramsay Report, p. 106 (examination in aid applied for in 6% of all cases).

Chapter 6. Writs of Execution in the Sheriffs' Offices

a. Introduction

6.1 One of the most important elements of the creditors' remedies system is the office of the sheriff. The functioning of this office will often be crucial in determining whether or not the judgment creditor realizes his claim.

6.2 The structure of the sheriff's office varies from district to district. In the medium and large districts, the offices of clerk and sheriff are separate, while in the small district, the two functions are carried out by the same people.

6.3 All districts employ the use of a file card system which records the contents of the individual files. In the large and small judicial districts, there is one file card for each sheriff's file opened. In the medium sized district, there is one file card for each judgment debtor with all subsisting writ holders listed.

b. The Sheriffs' Officers

6.4 In addition to collecting statistics, the researchers placed in the sheriffs' offices during the summer of 1983 were asked to accompany some sheriffs' officers as they did their work in order to get an impression of the way that the execution process was carried out. The researchers watched and questioned several officers in all three judicial districts in an attempt to understand the impact which the officers have on the operation of the execution remedy.

6.5 Before setting out the findings of the researchers, two caveats should be made.

(1) The observations of and discussions with the sheriffs' officers cannot be described as a complete assessment of any of

the offices being studied. Questions were asked as a secondary activity, the primary goal being the compiling of statistics.

(2) The researchers were not professional social scientists but law students untrained, at least in law school, in the techniques of empirical research.

6.6 Sheriffs' officers may be categorized as urban or rural bailiffs, and may be paid by salary or by fees generated from their work.

6.7 During the summer of 1983, the sheriff's department in the large district employed twelve full time bailiffs. Two additional positions were expected to be filled in the near future. The bailiffs reported directly to the deputy sheriff who in turn answered to the assistant sheriff. Of the twelve officers employed in the large district, two city bailiffs were paid by salary while the remainder, including the four rural officers, were paid on a fee basis.

6.8 In the medium district, three bailiffs were employed. All were fee officers. The officers reported to one of the assistant court administrators who then reported to the district administrator, although there tended to be informal communication between the district administrator and the bailiffs.

6.9 Three bailiffs were also employed in the small judicial district. All of the officers were remunerated on a fee basis. The officers reported to the court administrator in a similar fashion to the medium district.

6.10 Prior to the 1981 remuneration revisions, fee bailiffs were paid a certain dollar amount for each file completed (e.g., summons served, seizure effected) and a portion thereof for attempts. They were reimbursed for mileage costs.

6.11 After the 1981 revisions, the bailiffs received an

increased amount for each file completed or returned and nothing for attempts. Mileage costs were borne by the officer but billable to the creditor by the Attorney General's Department. An hourly rate for waiting time was alloted where an officer was detained for an extended period of time, but the first one-half hour was not billable. This created a curious situation. For the first one-half hour in which the bailiff was working on a file where waiting time was involved, he did not get paid, but the Attorney General's Department was reimbursed for any mileage costs incurred by the bailiff within that period. The fee structure was similar for the rural bailiffs, the only difference being that a rural bailiff received twice the amount per file to compensate for the extra mileage which had to be travelled.

6.12 The nature of the relationship between the individual officers and the sheriff's department varied with the officer's category. Salary officers were employees, but fee officers were independent contactors with the result that they did not receive holiday pay, sick leave entitlement or pension benefits.[58]

6.13 The training program for new officers appeared overly brief. In the large district, it normally consisted of a new officer riding with an experienced bailiff for three days. In the small district, this period could be as short as one day. Training was slightly more extensive in the medium district where the practice was for the deputy sheriff to go over all relevant legislation with the new bailiff, followed by several days of riding with an experienced officer. The district administrator reviewed all reports returned by the new bailiff and occasionally required additional "apprenticeship" time if he felt there were problems.

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[58] In the following discussion, the term "officer" means both salary and fees officers.

6.14 The absence of a formal introduction to the legal system and to the role of the sheriff's office was a major criticism voiced by the officers. They felt that many exigible assets were passed over by the new bailiff because of lack of training. They also felt that such training would help prevent the complaints and reprimands which characterize the life of many new bailiffs.

6.15 The sheriff's department, in the large district at least, was apparently trying to deal indirectly with the problem in its recruiting of officers. There appeared to be an informal requirement that successful candidates have experience with organizations such as the R.C.M.P., the armed forces or a police department. According to the officers, however, this type of background did not give the new bailiff sufficient knowledge to deal with the problems that are encountered in the sheriff's office.

6.16 In addition to the above, there were a number of other criticisms raised by the officers which should be noted.

6.17 First, and probably of greatest concern to the officers in the large district, was the lack of communication between themselves and the Department administrators. Without any forum in which they might voice their opinions, criticisms and objections, they felt that their job was not being done as effectively as possible.

6.18 The second criticism was essentially an extension of the first. They felt that they were not being given deserved representation by the Attorney General's Department. In particular the officers were concerned about their own legal liability which may arise while carrying out their duties as bailiffs. Sheriffs' officers are often required to participate in dangerous situations involving contacts with demanding, aggressive and hostile people. Officers are occasionally assaulted or abused. According to the officers in one district, they were sometimes reprimanded for becoming involved in difficult

situations, but were not supported in any litigation which might arise. The practice in another district, however, was to support and encourage officers to bring charges under s. 118(c) of the Criminal Code against violent debtors.

6.19 The final general criticism made by the sheriffs' officers was directed to the legal profession. Many lawyers acting for creditors believe that they may direct the manner in which the seizure is to be carried out. The officers maintained, however, that they were not employed by the solicitor but by the Attorney General's Department, and any action taken must be consistent with the latter's policy and procedure.

6.20 The officers also disliked the actual contents of many letters of instruction. Often the officer would receive an instruction to seize, but the debtor's location would be listed as a post box number at a central drop location. Occasionally no instructions would be given as to where the debtor was believed to be living or employed, or if he had a car. Such incomplete letters caused difficulties for the bailiffs, especially as they were told by the Attorney General's Department that they were not investigators. It was not their job to follow up on the debtor once such problems were encountered.

6.21 It is clear that the officers did spend considerable time doing investigations in an effort to close difficult files. Many officers had contacts with local postal stations, utility companies and general informers, or they used special reports such as taxation printouts or phone book reverse lists. The problem is that, while the Department told the officer not to be an investigator, the solicitor was pushing him in the opposite direction, and some investigation was necessary in order to complete the work.

6.22 Having noted some of the major criticisms of the officers, it may now be useful to record some observations made by the researchers as to the operation of the sheriffs' offices.

6.23 The most obvious fact was the extensive de facto discretion which bailiffs exercised. While the officers insisted that they took directions from the Attorney General's Department alone, they also said that they received little instruction from that source as to policy and procedure. The practical result was that the officers had considerable freedom to do their work as they chose.

6.24 Whether the bailiff should have such extensive discretion is an interesting question. Each debtor is different, and the various roles which a bailiff must play to accommodate the divergent personalities he is confronted with dictate that a considerable amount of discretion is necessary. On the other hand, wide discretion leaves the creditors' remedies system open to abuse in the hands of the friendly bailiff, or the bailiff who has patently wrong interpretations of the applicable legislation or of his role within the system.

6.25 Some of the bailiffs had difficulty in understanding their function in the debt collection system. Instances supporting this judgment included bailiffs seizing clearly worthless assets, bailiffs making perfunctory calls at times when it was unlikely that the debtor would be home, bailiffs asking the judgment debtor what assets he (the debtor) would prefer seized, and bailiffs not attempting seizure until the third visit. Some bailiffs commented that it is the creditors' fault for creating the debt problem due to lax credit policies. Perhaps the most striking indication of confusion by a bailiff as to his role was the practice of one officer to refer to the debtor as his "client".

6.26 The third and final observation worth documenting is the use that the bailiffs made of the applicable legislation. The Seizures Act, the Exemptions Act, and the Execution Creditors Act should be viewed at the very least as procedure reference manuals for the bailiffs. However, it was apparent that some officers had

only a cursory knowledge of the Acts. There may be two explanations for this. The provisions may not be known simply because they cannot be understood. Perhaps this is due to the absence of a formal training and ongoing education program. Another reason may be that the legislation is ineffective or antiquated and in need of reform. An example is the use of the "one-third rule" by some of the bailiffs. They felt that a sheriff's auction would bring in only one-third the actual value of the asset and therefore the exemption values should be grossed up. Consequently many assets were not seized because they were treated as being exempt when in fact they were wholly or partly exigible.

6.27 The result of these observations is that a judgment creditor may have difficulty executing on his judgment because of the approach and attitude of the sheriff's officer who is responsible for his file. This is so despite the fact that the creditor has acted bona fide and has received a valid judgment and writ of execution from a court with jurisdiction to grant the relief.

c. Enforcement in the Sheriffs' Offices

6.28 The principal task of the researchers was to collect statistics on the operation of the execution process in the three sheriffs' offices studied. In Table 11, we set out the number of judgments enforced by a writ, enforcement being defined as the issue of a writ of execution in the clerks of the court's offices.

6.29 The first step was to trace the judgments enforced by writs into the sheriffs' offices. From the sheriffs' files, the various occurrences in the life of the particular writ, namely, issue, renewal, seizure, sale, distribution and discharge, could be documented.

6.30 Table 19 divides up the judgments for which writs were issued into 2 groups:

(1) Judgments with writs directed to the sheriff of a judicial district other than the district in which the judgment was obtained and the writ issued. We did not follow these writs, even where they were directed to a sheriff in one of the three judicial districts within our study. For example, where a judgment and writ was issued in the large judicial district, and the writ was directed to the sheriff of the small judicial district, we did not check to see whether the writ was delivered to that sheriff or further action was taken.

(2) Judgments with writs directed to the sheriff of the same judicial district as that in which the judgment was obtained. We did follow up these writs to see if they were delivered to the named sheriff and if further action was taken.

Table 19 - Judgments with Writs

	1980 Large	1980 Medium	1980 Small	1980 Total	1981 Large	1981 Medium	1981 Small	1981 Total	1980 and 1981 Grand Total
Total number of judgments enforced by writs issued in clerks' offices	508	258	168	934	533	234	154	921	1855
Number of judgments with writs directed to sheriff of judicial district other than judicial district in which judgment obtained	7	15	10	32	7	19	11	37	69
Number of judgments with writs directed to sheriff of same judicial district as that in which judgment obtained	501	243	158	902	526	215	143	884	1786

6.31 From this point on, we are concerned only with the second class of writs described in paragraph 6.30, namely, writs directed to the sheriff of the same judicial district as that in which the judgment was obtained. The next question was whether these writs were in fact delivered to the sheriffs' offices or whether they were permitted to languish in the clerks' offices. The results are presented in Table 20.

Table 20 - Writs Filed with Sheriff

	1980 Large	1980 Medium	1980 Small	1980 Total	1981 Large	1981 Medium	1981 Small	1981 Total	1980 and 1981 Grand Total
Judgments with writs directed to sheriff and filed in sheriff's office	458 (91.4)	212 (87.2)	147 (93.0)	817 (90.6)	485 (92.2)	200 (93.0)	135 (94.4)	820 (92.8)	1637 (91.7)
Judgments with writs directed to sheriff but not filed in his office	43 (8.6)	31 (12.8)	11 (7.0)	85 (9.4)	41 (7.8)	15 (7.0)	8 (5.6)	64 (7.2)	149 (8.3)
Total judgments and writs directed to sheriff of same judicial district as that where judgment obtained	501 (100.0)	243 (100.0)	158 (100.0)	902 (100.0)	526 (100.0)	215 (100.0)	143 (100.0)	884 (100.0)	1786 (100.0)

6.32 One would expect that most writs issued in the clerks' offices would be filed in the sheriffs' offices. What is surprising is that over 8% of writ-holders chose not to take this simple step. A writ issued in the clerk's office but not delivered to the sheriff has no binding effect on the debtor's property and will not entitle the creditor to share in distributions under the Execution Creditors Act. The cost of filing the writ with the sheriff is minimal.[59] Filing the writ with the sheriff need not result in the expenses of seizure; in fact, many writ-holders take no action on their writs.

6.33 It may be that some debtors pay after judgment but before the writ goes to the sheriff, particularly if urged to do so by the creditor. Some judgment creditors may abandon hope at this stage, but it is hard to explain a decision not to take the final step necessary to trigger such rights as the creditor has, short of seizure and sale.

6.34 We then sought to distinguish the writs filed with the sheriff into two classes: (1) writs in which some further action was taken and (2) writs in which no action was taken after the filing. We defined "action" broadly to include a renewal, warrant, discharge, satisfaction piece or other evidence in the sheriff's file of satisfaction or any other change. The results are set out in Table 21.

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[59] $2.00. See Alberta Rules of Court, Schedule E.

Table 21 - Actions on Writs - 1980 and 1981 All Districts

	1980 Large	1980 Medium	1980 Small	1980 Total	1981 Large	1981 Medium	1981 Small	1981 Total	Large Total	Medium Total	Small Total	Grand Total
Writs with no action	171 (37.3)	62 (29.2)	38 (25.9)	271 (33.2)	200 (41.2)	63 (31.2)	50 (37.0)	313 (38.1)	371 (39.3)	125 (30.2)	88 (31.2)	584 (35.6)
Writs with some action	287 (62.7)	150 (70.8)	109 (74.1)	546 (66.8)	285 (58.8)	139 (68.8)	85 (63.0)	509 (61.9)	572 (60.7)	289 (69.8)	194 (68.8)	1055 (64.4)
Total number of writs filed	458 (100.0)	212 (100.0)	147 (100.0)	817 (100.0)	485 (100.0)	202* (100.0)	135 (100.0)	822 (100.0)	943 (100.0)	414 (100.0)	282 (100.0)	1639 (100.0)

* This figure differs from that in the previous table because of 2 files with separate writs against each of 2 defendants. These are counted separately hereafter.

6.35 After the writ is filed with the sheriff, there is a substantial number of creditors who do nothing more. It is unlikely that over 35% of the writ-holders in Table 21 were paid off and did not file a discharge or a satisfaction piece. Some of the creditors may have received payment, but one suspects that most simply decided to do nothing more, and permitted the writ to lapse for the purposes of distributions under the Execution Creditors Act.

6.36 Section 29 of that Act requires the sheriff to disregard any writ in his hands after the expiration of one year after the filing of the writ or of a statement of payments under section 28 of the Act. However the sheriffs' offices in our study retained lapsed writs in their files along with the live writs. In the large district, the practice was that, if a distribution was to be made, creditors with lapsed writs were advised of that fact and informed that they must file a statement under section 28 of the Act if they wished to share in the distribution. Such a practice would encourage writ-holders to file their writs and then wait for the sheriff's letter rather than filing the appropriate renewal statements.

6.37 Another interesting element of Table 21 is the difference which existed between the districts. In the large district, over 39 percent of the writs were followed by no action, whereas the equivalent figures for the medium and small districts are 30.2% and 31.2% respectively. Similar differences among the three districts will be noted later in this chapter.

6.38 Our next step was to modify Table 21 by breaking down the "Writs with some Action" category into two subcategories: (1) writs and renewals followed by no action, and (2) writs (renewed or not) with further action. There is little practical difference between (1) a creditor who files his writ and does nothing more, and (2) a creditor who files his writ, renews it and does nothing more. In both cases, he has not instructed seizure, and there is no evidence of payment, at least on the sheriff's file. As Table

22 shows, there is a substantial group of creditors who filed and renewed their writs, took no further action and received no money, at least as far as the sheriff's file reveals that fact.

Table 22 - Actions on Writs - 1980 and 1981 All Districts

	1980 Large	1980 Medium	1980 Small	1980 Total	1981 Large	1981 Medium	1981 Small	1981 Total	Large Total	Medium Total	Small Total	Grand Total
Writs with no action	171 (37.3)	62 (29.2)	38 (25.9)	271 (33.2)	200 (41.2)	63 (31.2)	50 (37.0)	313 (38.1)	371 (39.3)	125 (30.2)	88 (31.2)	584 (35.6)
Writs and renewals but no further action	100 (21.8)	33 (15.6)	20 (13.6)	153 (18.7)	97 (20.0)	32 (15.8)	21 (15.6)	150 (18.2)	197 (20.9)	65 (15.7)	41 (14.5)	303 (18.5)
Writs (renewed or not) with further action	187 (40.8)	117 (55.2)	89 (60.5)	393 (48.1)	188 (38.9)	107 (53.0)	64 (47.4)	359 (43.7)	375 (39.8)	224 (54.1)	153 (54.3)	752 (45.9)
Total number of writs filed	458 (99.9)	212 (100.0)	147 (100.0)	817 (100.0)	485 (100.1)	202 (100.0)	135 (100.0)	822 (100.0)	943 (100.0)	414 (100.0)	282 (100.0)	1639 (100.0)

6.39 When we add together the "writs with no action" and the "writs and renewals but no further action" for 1980 and 1981, we find that 887 creditors, or 54% of those with writs (and often renewal statements) filed with the sheriff, took no further action on their writs and received no money, so far as the sheriff's records show. They may of course have been paid directly by their debtors, or they may have attached debts owing to the debtor which were paid into and out of court[60] without passing through the hands of the sheriff. However one suspects that many of these writ-holders simply abandoned hope and received nothing for their efforts (or lack of them).

6.40 Another interesting aspect of Table 22 is the growing gap between the large district and the other two districts. In the large district in 1980 and 1981, over 60% of writ-holders took no further action (except to renew their writs) and no payments to them were recorded. The comparable figures in the medium and small districts were 45.9% and 45.7% respectively. The disparity is sufficiently large to call for an explanation.[61]

6.41 Most of the population of the large district is concentrated in and around one of the two large Alberta cities. Tracking down a delinquent debtor is much easier in a smaller city or a rural area than it is in a large city with the result that many creditors pursuing city debtors may simply file their writs and hope for the best. It is also possible that some institutional and government creditors use the large district clerk's and sheriff's office to file their writs but, as a matter of policy, go no further.

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60 Pursuant to Rule 480, Alberta Rules of Court.

61 Divergencies between sheriffdoms were also noted in the research reports prepared for the Scottish Law Commission. See Scot. R.R. #1, pp. 28-31; Scot. R.R. #2, pp. 18-19; Scot. R.R. #3, pp. 41-48.

6.42 The large district includes not only the city but also a large rural area. The volume of business in the sheriff's office in the large district is much greater than in the other two districts combined. All of these factors appear to make the creditors' remedies system work less effectively in the large district than in the other two districts.

d. Seizure and Sale

6.43 Our next step was to find out in how many cases instructions for seizure were given and what was the outcome of those instructions. The practice is that a creditor, on or after filing his writ with the sheriff, may instruct him to carry out a seizure.[62] Upon receipt of such instructions, the sheriff will issue his warrant to an officer authorizing him to conduct the seizure. The officer then will attempt seizure, after which he will prepare his report indicating what he did.

6.44 Our approach was to count the number of warrants of seizure, and to indicate which were successful and which were not. Success for this purpose means that property of the debtor was seized. Table 23 sets out the results of that inquiry.

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62 Execution Creditors Act, R.S.A. 1980, c. E-14, s. 4.

Table 23 - Outcome of Warrants of Seizure

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Total Large	Total Medium	Total Small	Grand Total
Successful warrants (i.e. seizure)	24 (28.9)	33 (48.5)	18 (39.1)	75 (38.1)	44 (40.7)	40 (56.3)	13 (39.4)	97 (45.8)	68 (35.6)	73 (52.5)	31 (39.2)	172 (42.1)
Unsuccessful warrants (i.e. no seizure)	59 (71.1)	35 (51.5)	28 (60.9)	122 (61.9)	64 (59.3)	31 (43.7)	20 (60.6)	115 (54.2)	123 (64.4)	66 (47.5)	48 (60.8)	237 (57.9)
Total number of warrants issued	83 (100.0)	68 (100.0)	46 (100.0)	197 (100.0)	108 (100.0)	71 (100.0)	33 (100.0)	212 (100.0)	191 (100.0)	139 (100.0)	79 (100.0)	409 (100.0)

6.45 The first point to make about Table 23 and subsequent tables in this section is that they record number of warrants rather than number of writs. This is significant because in some cases more than one warrant was issued on one writ. It is still interesting to work out the number of warrants as a percent of the total number of writs filed with the sheriff (drawn from Table 22). The results are displayed in Table 24.

Table 24 - Warrants of seizure as percent of total number of writs filed

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Total Large	Total Medium	Total Small	Grand Total
Successful warrants	24 (5.2)	33 (15.6)	18 (12.2)	75 (9.2)	44 (9.1)	40 (19.8)	13 (9.6)	97 (11.8)	68 (7.2)	73 (17.6)	31 (11.0)	172 (10.5)
Unsuccessful warrants	59 (12.9)	35 (16.5)	28 (19.0)	122 (14.9)	64 (13.2)	31 (15.3)	20 (14.8)	115 (14.0)	123 (13.0)	66 (15.9)	48 (17.0)	237 (14.5)
Successful and unsuccessful warrants	83 (18.1)	68 (32.1)	46 (31.3)	197 (24.1)	108 (22.3)	71 (35.1)	33 (24.4)	212 (25.8)	191 (20.2)	139 (33.6)	79 (28.0)	409 (25.0)
Total writs filed	458 (100.0)	212 (100.0)	147 (100.0)	817 (100.0)	485 (100.0)	202 (100.0)	135 (100.0)	822 (100.0)	943 (100.0)	414 (100.0)	282 (100.0)	1639 (100.0)

6.46 As we pointed out in paragraph 6.45, Table 24 is somewhat misleading because more than one warrant was issued for some writs. If we had recorded the number of writs for which warrants were issued, the percentages would have been slightly smaller. However Table 24 is still fairly accurate as a guide to the success of the execution procedure.

6.47 Only one-quarter of the writs filed in the three sheriffs' offices were followed by an attempted seizure, and in only 10 1/2 percent of the cases was the seizure successful. In other words, three-quarters of writ-holders who filed their writs with the sheriff elected not to instruct seizure. This result is not particularly surprising. Once a creditor has filed his writ in the sheriff's offfice, he is entitled under the Execution Creditors Act to share in the proceeds of any seizure so long as the appropriate renewal statements have been filed. Instructing seizure entails substantial expenses for the creditor which can be justified only if it is fairly certain that the debtor has exigible assets.[63]

6.48 It is also not particularly surprising that close to 60% of the warrants resulted in no seizure. Many debtors who permit writs to be filed against them have little or nothing in the way of valuable exigible assets. If the observations of bailiffs' practices recorded earlier in this chapter are representative, some attempts to seize fail because of the failure of the officers to carry out efficiently their duty under the writ.

6.49 Tables 23 and 24 give further supporting evidence to the disparity between districts which we noted earlier. In the medium district, a much higher percentage of writ-holders instructed seizure than in the other two districts. Also the medium district was the one area in which more warrants resulted in seizure than

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[63] Cf. Ramsay Report, pp. 102-06.

did not. The researchers thought that the greater success of the execution process in the medium district could be attributed to three factors:

(1) Size of district, especially in comparison to the large urban district. This is relevant when trying to locate the judgment debtor.[64]

(2) Degree of communication between administrators in the sheriff's office and the bailiffs as well as between the bailiffs themselves. Particularly good communication and rapport was found in the medium sized office.[65]

(3) Overall attitude of the particular office. In the medium district, there was a noticeable "pro-creditor" perspective.

6.50 We then looked at the reasons contained in the bailiffs' reports for the seizure being unsuccessful. These reasons are classified in Table 25.

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64 See Table 25, infra.

65 See supra, para. 6.13.

Table 25 - Attempted Seizures - All Districts 1980 and 1981

Reason for unsuccessful seizure	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Total Large	Total Medium	Total Small	Grand Total
Prior satisfaction	1 (1.7)	1 (2.9)	0 (0.0)	2 (1.6)	1 (1.6)	0 (0.0)	3 (15.0)	4 (3.5)	2 (1.6)	1 (1.5)	3 (6.3)	6 (2.5)
Payoff on attempt	4 (6.8)	5 (14.3)	2 (7.1)	11 (9.0)	3 (4.7)	3 (9.7)	2 (10.0)	8 (7.0)	7 (5.7)	8 (12.3)	4 (8.3)	19 (8.1)
Debtor whereabouts unknown	29 (49.0)	3 (8.6)	8 (28.6)	40 (32.8)	32 (50.0)	6 (19.4)	4 (20.0)	42 (36.5)	61 (49.6)	9 (13.8)	12 (25.0)	82 (34.7)
No exigible assets above exemptions	8 (13.6)	19 (54.3)	6 (21.4)	33 (27.0)	18 (28.1)	13 (41.9)	6 (30.0)	37 (32.2)	26 (21.1)	32 (49.2)	12 (25.0)	70 (29.7)
Assets owned by third party	4 (6.8)	1 (2.9)	0 (0.0)	5 (4.1)	1 (1.6)	1 (3.2)	0 (0.0)	2 (1.7)	5 (4.1)	2 (3.1)	0 (0.0)	7 (3.0)
Instruction to hold action	4 (6.8)	5 (14.3)	6 (21.4)	15 (12.3)	6 (9.4)	2 (6.5)	1 (5.0)	9 (7.8)	10 (8.1)	7 (10.8)	7 (14.6)	24 (10.2)
Nulla-bona return*	1 (1.7)	0 (0.0)	0 (0.0)	1 (0.8)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (0.8)	0 (0.0)	0 (0.0)	1 (0.4)
No reason or other reason	8 (13.6)	1 (2.9)	6 (21.4)	15 (12.3)	3 (4.7)	6 (19.4)	4 (20.0)	13 (11.3)	11 (8.9)	6 (9.2)	10 (20.8)	27 (11.4)
Total	59 (100.0)	35 (100.2)	28 (99.9)	122 (99.9)	64 (100.1)	31 (100.1)	20 (100.0)	115 (100.0)	123 (99.9)	65 (99.9)	48 (100.0)	236 (100.0)

* Pursuant to s. 15(1) Seizures Act.

6.51 Table 25 shows a number of differences between the three districts. Of particular interest is the extent of failure to seize in the large district due to the inability to locate the debtor. This may be explained in two ways:

(1) Difficulties in locating the debtor in a large urban district compared to the two smaller rural ones.

(2) Degree of anonymity in an urban setting as contrasted to the other districts where general information regarding residents is more easily obtained.

6.52 Differences also appear in the "payoff on attempt" category, with a larger percentage of this in the medium-sized district. This may be a result of sheriff's office practice or bailiffs' attitudes, or, particularly as the numbers involved are quite small, it may be simply a statistical aberration.

6.53 Discrepancies between the districts may also be noted as to failures to seize for want of assets above exemptions. These were considerably higher in the medium district. This may simply be a result of locating a larger percentage of debtors, only to find they have no assets. It could also be due to an increased frequency of "grossed up" exemption values in the medium district.[66]

6.54 We then looked at files where seizures had been effected in order to document the type of asset seized. Table 26 sets out this information.

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66 See supra, para. 6.26.

Table 26 - Type of Assets Seized

Asset seized	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Motor Vehicle	16 (61.5)	25 (75.8)	15 (62.5)	56 (67.5)	23 (59.0)	31 (68.9)	9 (52.9)	63 (62.4)	39 (60.0)	57 (72.2)	24 (58.5)	120 (64.9)
Farm machinery	0 (0.0)	1 (3.0)	3 (12.5)	4 (4.8)	0 (0.0)	4 (8.9)	2 (11.8)	6 (5.9)	0 (0.0)	5 (6.3)	5 (12.2)	10 (5.4)
Shares	0 (0.0)	0 (0.0)	1 (4.2)	1 (1.2)	3 (7.7)	0 (0.0)	0 (0.0)	3 (3.0)	3 (4.6)	0 (0.0)	1 (2.4)	4 (2.2)
Office furnishings	3 (11.5)	0 (0.0)	0 (0.0)	3 (3.6)	3 (7.7)	4 (8.9)	0 (0.0)	7 (6.9)	6 (9.2)	4 (5.1)	0 (0.0)	10 (5.4)
Other	7 (26.9)	7 (21.2)	5 (20.8)	19 (22.9)	10 (25.6)	6 (13.3)	6 (35.3)	22 (21.8)	17 (26.2)	13 (16.5)	11 (26.8)	41 (22.2)
Totals	26 (99.9)	33 (100.0)	24 (100.0)	83 (100.0)	39 (100.0)	45 (100.0)	17 (100.0)	101 (100.0)	65 (100.0)	79 (100.1)	41 (99.9)	185 (100.1)

6.55 Totals in this table may add up to a number larger than that of total successful warrants because, where assets of two different types were seized on the same warrant, they were counted separately.

6.56 The "other" category in Table 26 includes goods such as household furnishings (usually televisions and stereo equipment), grain, and other miscellaneous assets.

6.57 Table 26 clearly demonstrates the high frequency of motor vehicle seizures. Motor vehicles are a prime target for seizure for a number of reasons:

(1) the ease of determining ownership through motor vehicle branch searches,

(2) the ease of accurate identification due to clearly visible licence plate and serial numbers,

(3) the ease of removal, except that a break and enter order may be required where the vehicle is stored in an "attached" garage, and

(4) the ease of determining an approximate value, because there is an extensive market for used motor vehicles.

6.58 Finally we wanted to find out what happened after seizure took place. Goods might be left with the debtor on a bailee's undertaking, the seizure might be released or the goods might be sold. These and other events are set out in Table 27. Four points should be made about this table.

(1) The percentages are taken out of all successful warrants.

(2) A file may be counted under several headings. A seizure followed by a bailee's undertaking, or an order for removal and

sale and a sale would be listed under those three headings.

(3) Where two assets were seized under the same warrant but were dealt with differently, there would be two entries under the separate headings.

(4) The figures on removal and sale applications and orders, and orders to break in are taken from the court clerks' offices.

Table 27 - Disposition of Seizure - All Districts

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
No further action	4 (16.7)	0 (0.0)	5 (27.8)	9 (12.0)	6 (13.6)	2 (5.0)	2 (15.4)	10 (10.3)	10 (14.7)	2 (2.7)	7 (22.6)	19 (11.0)
Bailee undertaking - debtor	9 (37.5)	23 (69.7)	6 (33.3)	38 (50.7)	14 (31.8)	25 (62.5)	4 (30.8)	43 (44.3)	23 (33.8)	48 (65.7)	10 (32.3)	81 (47.1)
- debtor's family	1 (4.2)	2 (6.1)	2 (11.1)	5 (6.7)	1 (2.3)	4 (10.0)	0 (0.0)	5 (5.2)	2 (2.9)	6 (8.2)	2 (16.1)	10 (5.8)
- other third party	5 (20.8)	4 (12.1)	0 (0.0)	9 (12.0)	6 (13.6)	5 (12.5)	1 (7.7)	12 (12.4)	11 (16.2)	9 (12.3)	1 (3.2)	21 (12.2)
Notice of objection	11 (45.8)	19 (57.6)	11 (61.1)	41 (54.7)	25 (56.8)	24 (60.0)	7 (53.8)	56 (57.7)	36 (52.9)	43 (58.9)	18 (58.1)	97 (56.4)
Release of seizure	7 (29.2)	12 (36.4)	7 (38.9)	26 (34.7)	9 (20.5)	13 (32.5)	1 (7.7)	23 (23.7)	16 (23.5)	25 (34.2)	8 (25.8)	49 (28.5)
Application for removal & sale order	8 (33.3)	12 (36.4)	10 (55.6)	30 (40.0)	9 (20.5)	10 (25.0)	3 (23.1)	22 (22.7)	17 (25.0)	22 (30.1)	13 (41.9)	52 (30.2)
Order for removal & sale	7 (29.2)	7 (21.2)	7 (38.9)	21 (28.0)	9 (20.5)	7 (17.5)	2 (15.4)	18 (18.6)	16 (23.5)	14 (19.2)	9 (29.0)	39 (22.7)
Order to break in and effect seizure	1 (4.2)	0 (0.0)	0 (0.0)	1 (1.3)	1 (2.3)	0 (0.0)	0 (0.0)	1 (1.0)	2 (2.9)	0 (0.0)	0 (0.0)	2 (1.2)
Demand notice	1 (4.2)	1 (3.0)	1 (5.6)	3 (4.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (1.5)	1 (1.4)	1 (3.2)	3 (1.7)
Sale	4 (16.7)	4 (12.1)	3 (16.7)	11 (14.7)	4 (9.1)	5 (12.5)	1 (7.7)	10 (10.3)	8 (11.8)	9 (12.3)	4 (12.9)	21 (12.2)
Total of Successful Warrants	24 (100.0)	33 (100.0)	18 (100.0)	75 (100.0)	44 (100.0)	40 (100.0)	13 (100.0)	97 (100.0)	68 (100.0)	73 (100.0)	31 (100.0)	172 (100.0)

6.59 Table 27 indicates considerable divergence in the manner in which seized goods are dealt with, particularly in the use of bailees' undertakings. In the medium district, the assets were left with the debtor nearly twice as often as in the small and large districts. One can only speculate as to the reasons for this disparity. Perhaps one motive was the curtailing of excessive storage costs. In many cases, there was sufficient rapport between the debtor and the bailiff to permit leaving the goods without great risk of disposal of them by the debtor. In the case of farm machinery, the clear practice was to allow the debtor to continue operations.

6.60 There is also some divergence in the "no further action" category, ranging from approximately 3% in the medium district to 22% in the small. We have no way of explaining this result, although part of it may be attributed merely to poor record keeping (e.g., seizure may have been released without this being recorded). Also the sample at this stage is very small.

6.61 In over half of the cases where goods were seized, notices of objection were filed, but orders for removal and sale were obtained in less than 23% of the same cases. The gap may be explained partly by creditors giving up hope, and partly by debtors making arrangements to pay.

6.62 It will be noted that not all applications for removal and sale result in orders. This may be explained by creditors abandoning their applications because the debtors have tendered money or for some other reason, although some applications may have actually gone forward, but were dismissed.

6.63 Table 27 illustrates the very low incidence of sale of seized assets. In about 12% of the cases where assets were seized, they were sold by the sheriff. As a percentage of the total number of cases where writs were filed with the sheriff, the figure is considerably lower, at 1.3%.

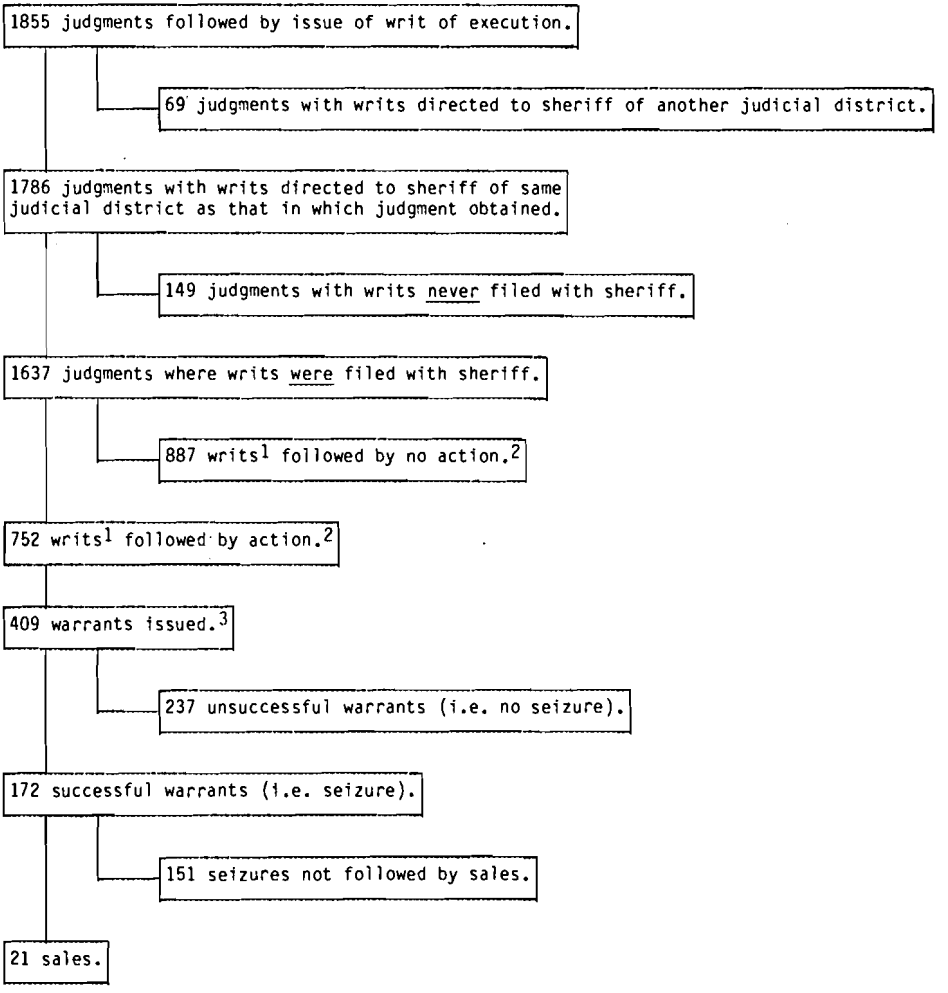
e. Summary

6.64 When we bring together the figures discussed in this chapter, we can see vividly the funnel shape of the creditors' remedies system in which large numbers of creditors start in the process but relatively few stay to the end. In Table 28, we start with the total number of judgments where writs were issued directed to the sheriff of the same judicial district as that in which the judgment was obtained. The judgment creditors in our sample were free to take a series of steps, leading to seizure and sale. As Table 28 and Figure 2 show, the numbers of creditors became progressively smaller at each step of the process.

Table 28 - Summary of Sheriffs' Office Figures for 1980 and 1981 - All Districts

	Number	Percent
Judgments with writs directed to sheriff of same judicial district as that in which judgment obtained (Table 19)	1786	100.0
Judgments with writs directed to and filed with sheriff of same judicial district (Table 20)	1637	91.7
Writs filed with sheriff in which some action was taken other than renewal of the writ (Table 22)	752	42.1
Writs filed with sheriff followed by warrants (Table 24)	409	22.9
Writs filed with sheriff followed by successful warrants (i.e., seizures) (Table 24)	172	9.6
Successful warrants (i.e., seizures) followed by:		
(i) Bailees' undertakings (Table 27)	112	6.3
(ii) Notices of objection (Table 27)	97	5.4
(iii) Applications for removal and sale orders (Table 27)	52	2.9
(iv) Orders for removal and sale (Table 27)	39	2.2
(v) Sales (Table 27)	21	1.2

FIGURE 2. ENFORCEMENT OF JUDGMENT BY EXECUTION IN 1980 AND 1981.



[1] 887 writs and 752 writs add up to 1639 writs, not 1637. The reason is that, in two files, judgments were followed by two writs instead of one. The writs are counted separately from this line on.

[2] "Action" was defined broadly to include a warrant, discharge, satisfaction piece or other evidence in the sheriff's file of satisfaction or any other change. We did not regard the mere renewal of a writ as "action".

[3] In a fairly small number of cases, more than one warrant was issued on one writ.

6.65 The percentages in Table 28 are based on the total number of judgments where writs were issued directed to the sheriff of the same judicial district as that in which the judgment was obtained. If we had taken as our starting point a larger number, such as the 2316 enforced and unenforced judgments in our sample, the resulting percentages would have been even smaller.

6.66 In paragraph 4.5, we noted that the writ of execution is the process most commonly initiated by Alberta creditors. Table 11 shows that, for the years 1980 and 1981, 1855 judgments were followed by the issue of a writ of execution, while 691 judgments were enforced by a garnishee summons. When we take into account the funnel shape of the execution process displayed in Table 28, we see that substantially fewer than 1855 writs were carried through the various stages of filing with the sheriff, seizure and sale. We unfortunately do not know what percentage of issued garnishee summonses were actually served on the garnishee, the step which would amount to "completion" of that process.[67] It is therefore not possible to compare the processes as to completion rates.

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67 It would have been necessary to interview all our creditors or our garnishees to discover this useful information.

Chapter 7. Writs of Execution in the Land Titles Offices

a. Introduction

7.1 The purpose of the study of the two Alberta land titles offices, in Edmonton and in Calgary, was to discover how many of the writs issued in the three court clerks' offices were filed in either or both of the land titles offices. We were also interested in discovering how many creditors filed writs in both Edmonton and Calgary. In order to maintain the anonymity of the judicial districts studied, we will identify the two Alberta land titles offices as A and B.

7.2 The Land Titles Act which was in force until January 1, 1982[68] provided in s. 128(1) that the sheriff, "after the delivery to him of any execution or other writ affecting land, if a copy of the writ has not already been delivered or transmitted to the Registrar, shall, on payment to him of 50 cents by the execution creditor named therein, ... forthwith deliver or transmit by registered letter to the Registrar a copy of the writ." Section 128 suggests that it is the sheriff who forwards the writ to the land titles registrar. In fact, the usual practice was that it was the creditor who, after filing his writ with the sheriff, would deliver a copy to the land titles office. It is important to understand that it was up to the creditor whether or not the writ should go further than the sheriff's office. In practice, both of the land titles offices required (and require) that writs be stamped with the sheriff's seal before they are filed in land titles.

7.3 In the 1980 revised statutes,[69] section 128 of the Land Titles Act became section 122. As amended,[70] it now provides that

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68 R.S.A. 1970, c. 198.

69 Land Titles Act, R.S.A. 1980, c. L-5.

70 S.A. 1982, c. 23, s. 15.

only when a copy of the writ of execution has been certified by the sheriff may it be filed with the registrar of land titles. "The Registrar may register a copy of a subsisting execution or other writ affecting land if the copy is certified by the sheriff under his hand and seal of office." Again the practice is for the creditor (or his lawyer) to file the writ with the land titles office.

b. Writs Filed in Land Titles

7.4 We first tried to discover the number of writs filed in either or both of the Alberta land titles offices. These figures are set out in Table 29.

Table 29 - Writs Filed in One or Both Land Titles Offices

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Total number of writs filed in one or both land titles offices	373 (74.5)	134 (55.1)	81 (51.3)	588 (65.2)	411 (78.1)	126 (58.6)	73 (51.0)	610 (69.0)	784 (76.3)	260 (56.8)	154 (51.2)	1198 (67.1)
Total judgments with writs directed to sheriff of same judicial district as that in which judgment obtained	501 (100.0)	243 (100.0)	158 (100.0)	902 (100.0)	526 (100.0)	215 (100.0)	143 (100.0)	884 (100.0)	1027 (100.0)	458 (100.0)	301 (100.0)	1786 (100.0)

7.5 The lower line of figures is drawn from Table 20. Over all, about two-thirds of creditors with writs filed those writs with the land titles office. It is interesting to note the substantial gap between the large district and the other two districts. Over 76% of the writ-holders in the large district filed their writs in a land titles office; the comparable figures for the medium and small districts were 57% and 51% respectively. The simple explanation is that one of the two land titles offices is located in the major city in the large district. It is easier and cheaper for large district creditors to file than for their counterparts in the other districts. The result is that they use the land titles system more frequently.

7.6 A different explanation lies in the fact that the medium and small judicial districts are much smaller than the large district which contains a large city. A creditor in the two smaller districts is more likely to know whether his debtor has or is likely to acquire land, whereas the large district creditor may be more likely to file his writ in the land titles office on the off chance that the writ may catch something.

7.7 It is interesting to compare the percentages of writs filed in the land titles offices[71] with the percentages of writs filed with the appropriate sheriffs' offices.[72] A substantially larger percentage of writs were filed with the sheriff in all three districts, especially in the medium and small disticts. One possible interpretation of the data is that filing with the sheriff is preferred over filing with the land titles office, even when the land titles office is in the same city as the clerk's and sheriff's offices, as in the large district.

7.8 An explanation for the assumed preference is that a debtor is more likely to have exigible personalty or a garnishable

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71 Table 29.

72 Table 20, first line.

debt than he is to have land. The odds are much greater that a writ filed with the sheriff will eventually attract a pro rata payment than that a writ in the land titles office will catch a debtor about to sell or mortgage Blackacre. In the highly unlikely event that the debtor's land should be seized (assuming that seizure of land is a step required by law) and sold, the proceeds of the sale may have to be distributed under the Execution Creditors Act, although the point is by no means clear.

7.9 However, it is also possible to read the data in an entirely different manner. The law requires a creditor who wishes to file his writ in the land titles office to file it first with the sheriff. If half of the creditors preferred the land titles office and half preferred the sheriff's office, there would be 100% registration with the sheriff and 50% registration in the land titles system. The bare figures say nothing about the preferences of creditors for one system or the other. Without interviewing all of the execution creditors in our sample, it is impossible to choose between the two interpretations of the data.

7.10 We next separated out writs filed in land titles office A or office B, and writs filed in both places. The results are displayed in Table 30.

Table 30 - Writs filed in Land Titles divided as to Office

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large 1980 & 1981	Medium 1980 & 1981	Small 1980 & 1981	Grand Total 1980 & 1981
Total number of writs filed only in land titles office A	371 (99.5)	0 (0.0)	81 (100.0)	452 (76.9)	396 (96.4)	3 (2.4)	71 (97.3)	470 (77.1)	767 (97.8)	3 (1.2)	152 (98.7)	922 (77.0)
Total number of writs filed only in land titles office B	1 (0.3)	134 (100.0)	0 (0.0)	135 (23.0)	5 (1.2)	121 (96.0)	0 (0.0)	126 (20.7)	6 (0.8)	255 (98.1)	0 (0.0)	261 (21.8)
Total number of writs filed in both land titles offices	1 (0.3)	0 (0.0)	0 (0.0)	1 (0.2)	10 (2.4)	2 (1.6)	2 (2.7)	14 (2.3)	11 (1.4)	2 (0.8)	2 (1.3)	15 (1.3)
Grand total writs filed in one or both land titles offices	373 (100.1)	134 (100.0)	81 (100.0)	588 (100.1)	411 (100.0)	126 (100.0)	73 (100.0)	610 (100.1)	784 (100.0)	260 (100.1)	154 (100.0)	1198 (100.1)

7.11 Table 30 makes sense when we understand that the large and small judicial districts lie in Alberta Land Registration District A while the medium district is located in Land Registration District B. Not surprisingly, creditors file where they think their debtors may have land, and that is almost always the land registration district containing the judicial district to the sheriff of which the writ was directed.

7.12 The fact that it is cheap and perhaps prudent to file the writ in both districts did not influence our creditors to do so, although there was a slight increase in double filings in 1981. None of the three judicial districts bordered the 9th Correction Line which divides the two land registration districts. There would likely have been a substantial number of double filings if we had included in our study the judicial district of Red Deer which lies in both land registration districts.

c. Writs Filed in Land Titles but not in the Sheriff's Office

7.13 Under the present Land Titles Act, and probably under the Act as it stood before 1982, the judgment creditor must first file his writ with the sheriff before it can be filed in a land titles office. The policy of both the land titles offices at all times was to require that writs be stamped with the sheriff's seal before they could be filed in the land titles system. As we did our searches, however, we found some writs filed in the land titles office which did not appear to have been filed with the sheriff. Table 31 sets out that information.

Table 31 - Writs filed in Land Titles but not in Sheriff's Office

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Writs filed in land titles and not in sheriff's office	22 (5.9)	10 (7.5)	3 (3.7)	35 (6.0)	17 (4.1)	4 (3.2)	2 (2.7)	23 (3.8)	39 (5.0)	14 (5.4)	5 (3.2)	58 (4.8)
Writs filed in land titles and in sheriff's office	351 (94.1)	124 (92.5)	78 (96.3)	553 (94.0)	394 (95.9)	122 (96.8)	71 (97.3)	587 (96.2)	745 (95.0)	246 (94.6)	149 (96.8)	1140 (95.2)
Total writs filed in land titles	373 (100.0)	134 (100.0)	81 (100.0)	588 (100.0)	411 (100.0)	126 (100.0)	73 (100.0)	610 (100.0)	784 (100.0)	260 (100.0)	154 (100.0)	1198 (100.0)

7.14 Table 31 is not very significant. The 5% of cases where writs were filed in a land titles office but not in the sheriff's office may be explained in at least two ways:

(1) The land titles examiner who accepted the writ did not check to see that it had been filed with the sheriff.

(2) The writ may have been filed with the sheriff, but, at the time of our search, the sheriff's file card may have been lost or misfiled. The files in all three sheriffs' offices consist of drawers of file cards which are being continually searched, cards pulled out and put back. The possibility of misfiling is a real one.

d. Sale of Land Under Execution

7.15 During our search at the two land titles offices and our earlier search in the three sheriffs' offices, we did not come across any evidence that land has been seized (if the law requires such a step) or sold pursuant to a writ of execution. One may conclude that such seizures and sales are rare. For an explanation of the reasons why this may be so, see Westhill Leasing Corporation Ltd. v. Rideout.[73]

e. Use of the Caveat by the Unsecured Creditor

7.16 Section 130 of the Land Titles Act presently provides in part as follows:

> 130 A person claiming to be interested in land for which a certificate of title has been issued or in a mortgage or encumbrance relating to that land

[73] (1983), 25 Alta. L.R. (2d) 229.

(a) pursuant to

.....

(iv) an execution where the execution creditor seeks to affect land in which the execution debtor is interested beneficially but the title to which is registered in the name of some other person,

.....

may cause to be filed with the Registrar a caveat on his behalf in the prescribed form against the registration of any person as transferee or owner of, or any instrument affecting, the estate or interest....

Some lawyers take the view that section 130 provides an alternative or (more likely) an additional means by which the creditor may bind the debtor's interest in land, especially the interest of a debtor who is purchasing land by agreement of sale.

7.17 During our search at the land titles offices, we did not come across this use of a caveat because caveats are not filed by the debtor's surname but rather by the exact legal description of the parcel of land. We searched only the execution register but not specific certificates of title.

Chapter 8. Garnishee Summonses

a. Number Issued

8.1 In chapter 4, we set out in Table 11 the numbers of writs of execution and garnishee summonses issued by the judgment creditors in our sample. In Table 12, we worked out the number of judgments enforced by garnishees, expressed as a percentage of the total number of enforced judgments. The reader should review chapter 4 before reading this chapter.

8.2 In the two years studied, creditors in all three districts issued garnishee summonses, with or without writs, in support of 691 judgments, or 35.2% of the total number of judgments enforced by some means. We broke down that figure into two components: (1) 582 garnishees issued with writs - 29.6%, and (2) 109 garnishees issued without writs - 5.6%. Some explanatory comments about the second category appear in paragraph 4.3.

8.3 The garnishee summons was less popular as a creditor's remedy than the mere issue of a writ of execution. One reason may be that a writ can be issued and filed with the sheriff and the land titles office on the basis of relatively little knowledge of the debtor. To issue a garnishee summons, however, the creditor has to be able to swear the supporting affidavit which, among other things, must identify the proposed garnishee and state that he is indebted to the defendant or judgment debtor.

8.4 The garnishee summons is of no use unless served on the garnishee, unlike a writ of execution which can be filed in the sheriff's office or the land titles office, where it may trigger a payment to the creditor without further action on his part. Even if the garnishee pays money into court, it will have to be divided with other creditors holding valid writs in the appropriate sheriff's office.

8.5 Given the difficulties associated with the garnishee

summons, one might ask why a creditor bothers to use it at all. One reason is that, if successful, the garnishee will catch money rather than assets which must be sold, often for a fraction of their true value. The more important factor may be that the garnishee is the only vehicle which can reach two assets which many debtors have: the salary and the bank account. If the creditor has enough information to go after these debts, he will often be prepared to take the time and trouble to do so.

b. Garnishee Summonses before Judgment

8.6 Under Rule 470(1), a creditor may before judgment and upon leave of the court issue a garnishee summons. The creditor must be able to swear an affidavit as to the nature of his claim against the defendant and as to the "reasonable possibility" that the plaintiff will not be paid or will be subjected to unreasonable delay in payment unless the summons is issued.

8.7 We wanted to find out the number of cases in which garnishee summonses were issued before judgment, and express those results as percentages of all cases in which garnishees were issued. The results are set out in Table 32.

Table 32 - Enforcement of Garnishee before Judgment

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Number of judgments enforced by one or more garnishee summonses before judgment	6 (3.5)	0 (0.0)	0 (0.0)	6 (1.8)	6 (2.8)	1 (1.1)	0 (0.0)	7 (2.0)	12 (3.1)	1 (0.5)	0 (0.0)	13 (1.9)
Total number of judgments enforced by garnishee before or after judgment	172 (100.0)	99 (100.0)	65 (100.0)	336 (100.0)	211 (100.0)	91 (100.0)	53 (100.0)	355 (100.0)	383 (100.0)	190 (100.0)	118 (100.0)	691 (100.0)

8.8 Three specific points should be made about Table 32.

(1) In one of the cases in the large district in 1980, three garnishee summonses were issued before judgment.

(2) In one of the large district cases in 1981 involving a judgment debt between $1500 and $2000, two garnishee summonses before judgment were issued.

(3) In another case involving a claim between $10,000 and $20,000, also in the large district in 1981, the plaintiff issued one garnishee summons before judgment and six garnishee summonses after judgment.

8.9 The obvious general observation is that very few creditors apply for or obtain leave to attach debts before judgment. Fewer than 2% of the claims enforced by garnishment were enforced by pre-judgment garnishees. The reasons are probably the cost in obtaining leave, because of the requirement of an appearance before a master or a judge, and the difficulty in satisfying the grounds set out in Rule 470(1). In most cases, the creditor is further ahead to wait until he gets judgment before issuing his garnishee summons. No application is needed, the summons is relatively mechanical and the grounds for issue are much more lenient.

8.10 Ramsay also found that pre-judgment garnishment was applied for in only 2% of his sample.[74] Pre-judgment garnishment was not used by major bureaucratized creditors and was not used to any significant extent by retailers, perhaps because the high costs of the remedy precluded its use except where there was a large amount outstanding and a high probability of recovery.

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[74] Ramsay Report, pp. 66-70.

> "Pre-judgment garnishment appears from our evidence to be used by one shot rather than repeat players....It appears to be slightly more effective in getting money paid into court than post-judgment garnishment."[75]

c. Multiple Garnishees

8.11 We wanted to find out how many creditors issued more than one garnishee. Table 33 sets out the results of that inquiry.

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75 Ramsay Report, p. 70. It is possible that orders permitting pre-judgment garnishment are granted only in cases where there is clear evidence of a debt, whereas post-judgment garnishment has no such check on its issue.

Table 33 - Number of Garnishee Summonses per Judgment

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
One summons	88	63	50	201	146	62	39	247	234	125	89	448
	(51.2)	(64.3)	(76.9)	(62.0)	(69.2)	(68.1)	(72.2)	(69.4)	(61.1)	(66.1)	(74.8)	(64.8)
Two summonses	40	25	10	75	39	16	9	64	79	41	19	139
	(23.3)	(25.5)	(15.4)	(22.4)	(18.5)	(17.6)	(16.7)	(18.0)	(20.6)	(21.7)	(16.0)	(20.1)
Three summonses	18	7	1	26	10	5	5	20	28	12	6	46
	(10.5)	(7.1)	(1.5)	(7.8)	(4.7)	(5.5)	(9.3)	(5.6)	(7.3)	(6.3)	(5.0)	(6.7)
Four summonses	10	0	2	12	6	3	1	10	16	3	3	22
	(5.8)	(0.0)	(3.1)	(3.6)	(2.8)	(3.3)	(1.9)	(2.8)	(4.2)	(1.6)	(2.5)	(3.2)
Five summonses	4	0	2	6	1	2	0	3	5	2	2	9
	(2.3)	(0.0)	(3.1)	(1.8)	(0.5)	(2.2)	(0.0)	(0.8)	(1.3)	(1.1)	(1.7)	(1.3)
Six or more summonses	12	3	0	15	9	3	0	12	21	6	0	27
	(7.0)	(3.1)	(0.0)	(4.5)	(4.3)	(3.3)	(0.0)	(3.4)	(5.5)	(3.2)	(0.0)	(3.9)
Total of all judgments with more than one garnishee	84	35	15	134	65	29	15	109	149	64	30	243
	(48.8)	(35.7)	(23.1)	(40.0)	(30.8)	(31.9)	(27.8)	(30.6)	(38.9)	(33.9)	(25.2)	(35.2)
Total of all judgments with one or more garnishees	172	98	65	335	211	91	54	356	383	189	119	691
	(100.1)	(100.0)	(100.0)	(100.1)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

8.12 Two specific points about Table 33 should be noted.

(1) The table lumps together pre- and post-judgment garnishee summonses. Thus if a person issued one garnishee before judgment and another after judgment, we counted that case as a judgment enforced by two garnishees.

(2) The totals for Medium 1980 and Small 1981 do not jibe with the equivalent totals in the other tables, e.g., Table 32. These are probably computation errors.

8.13 Multiple garnishees can be issued for different reasons. A creditor may issue a garnishee against two or three banks before hitting the right one, or he may attach the debtor's bank account and his salary check. Alternatively the creditor may issue several garnishees to the debtor's employer, each catching part of a pay check.

8.14 In order to find out which of these explanations of Table 33 was more accurate, it was necessary to analyze the garnishee summonses into type of debt attached, and then to find out the use of multiple garnishees against different classes of debt.

d. Classes of Debts Attached

8.15 We first divided the garnishee summonses into classes of debts sought to be attached. The three classes are wage debts, bank account non-wage debts and other non-wage debts.

8.16 Whether a garnishee summons was counted as wage or non-wage depended on the drafting of the summons. No attempt was made to second guess the draftsperson, although some decisions seemed peculiar (e.g., a company judgment debtor whose debt was described as "wages"). Notwithstanding the economic sense such decisions may make, they represent doubtful legal conclusions.

8.17 We defined "bank account non-wage" to include all non-wage garnishee summonses against banks, credit unions, caisses or treasury branches.

8.18 The results of this analysis are shown in Table 34. The final totals add up to more than the total number of judgments in which garnishee summonses were issued because judgments followed by separate wage and non-wage garnishees are counted twice.

Table 34 - Classes of Debts Attached

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Wages	102	62	38	202	132	65	36	233	234	127	74	435
	(50.8)	(60.8)	(55.1)	(54.3)	(57.6)	(65.7)	(64.3)	(60.7)	(54.4)	(63.2)	(59.2)	(57.5)
Bank account non-wage	77	26	23	126	76	31	15	122	153	57	38	248
	(38.3)	(25.5)	(33.3)	(33.9)	(33.2)	(31.3)	(26.8)	(31.8)	(35.6)	(28.4)	(30.4)	(32.8)
Other non-wage	22	14	8	44	21	3	5	29	43	17	13	73
	(11.0)	(13.7)	(11.6)	(11.8)	(9.2)	(3.0)	(8.9)	(7.6)	(10.0)	(8.5)	(10.4)	(9.7)
Total	201	102	69	372	229	99	56	384	430	201	125	756
	(100.1)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.1)	(100.0)	(100.1)	(130.0)	(100.0)

8.19 Creditors seek to attach wages more often than bank accounts or other debts. The reason probably is that a creditor can more easily discover where a debtor works than where he banks.

8.20 Having divided garnishees into three groups according to the type of debt sought to be attached, it was now possible to find out whether multiple garnishees were more common in the pursuit of wages or other types of debt. Table 35 is the result of that analysis. We have eliminated the divisions into judicial districts and into years for this table.

Table 35 - Multiple garnishees divided according to type of debt

1980 and 1981

	Wages	Bank account (non-wage)	Other (non-wage)	Total
One summons	266 (54.7)	173 (35.6)	47 (9.7)	486 (100.0)
Two summonses	98 (61.3)	46 (28.7)	16 (10.0)	160 (100.0)
Three summonses	35 (74.5)	9 (19.1)	3 (6.4)	47 (100.0)
Four summonses	10 (45.5)	10 (45.5)	2 (9.1)	22 (100.1)
Five summonses	5 (62.5)	2 (25.0)	1 (12.5)	8 (100.0)
Six or more	21 (63.6)	8 (24.2)	4 (12.1)	33 (99.9)
Total of all judgments with more than one garnishee	169 (62.6)	75 (27.8)	26 (9.6)	270 (100.0)
Total of all judgments with one or more garnishees	435 (57.5)	248 (32.8)	73 (9.7)	756 (100.0)

8.21 It will be seen that the judgments in which more than one wage garnishee are issued make up a substantial percentage of

the total number of judgments enforced by multiple garnishees. Over 62% of all judgments enforced by more than one garnishee were enforced by wage garnishees.

8.22 It is also interesting to note the substantial number of files in which six or more wage garnishees were issued against one judgment debtor. We encountered a file in which one creditor issued 12 wage garnishees against the same debtor, as well as other bank garnishees.

8.23 Another way of looking at Table 35 is to express the total of all judgments with multiple wage garnishees as a percent of the total of all judgments with one or more wage garnishees. (In other words, we run the percentages vertically instead of horizontally.) The result is that, out of a total of 435 judgments enforced by wage garnishees, 169 judgments, or 38.9%, used more than one garnishee summons.

8.24 Some multiple wage garnishees are issued against different employers. This is particularly true in cases of employees, like construction workers, who frequently change employers. In other cases, the multiple garnishees are issued against the same employer.

8.25 Because we were interested in the need for a continuing wage garnishee, we pulled out of the multiple wage garnishee cases those where multiple garnishees were issued against the same employer. This information is set out in Table 36 which does not distinguish between year, judicial district or whether the summons was issued before or after judgment.

Table 36 - Judgments enforced by multiple wage garnishees on one employer.

(1980 and 1981 - all districts)

Judgments with two garnishee summonses issued to one employer	80
Judgments with three garnishee summonses	31
Judgments with four garnishee summonses	9
Judgments with five garnishee summonses	2
Judgments with six or more garnishee summonses	18
Total judgments with garnishee summonses issued to one employer	140
Judgments with multiple garnishee summonses but no more than one issued to any one employer	38
Total judgments	178
Less judgments double- and triple-counted (see explanatory note below)	9
Total multiple wage garnishees	169

8.26 Three explanatory notes on Table 36 are needed:

(1) It will be seen that 140 judgments were enforced by two or more garnishee summonses issued against the same employer. 38 judgments were enforced by two or more garnishee summonses issued against different employers. In the latter group, no more than one garnishee was issued to any one employer.

(2) In some cases, more than one garnishee summons was issued to more than one employer. These judgments were therefore counted twice if two employers received multiple garnishees, and three times if three employers received multiple garnishees. There were seven judgments which were counted twice and one judgment which was counted three times. A correction was necessary to return our total to 169, the total number of judgments enforced by multiple wage garnishees (in Table 35). The seven double-counted judgments were deducted once and the one triple-counted judgment deducted twice to accomplish this result.

(3) The numbers of judgments recorded in each of the "number of garnishee" categories vary from the similar categories in column 1 of Table 35 because we are counting different things. In column 1 of Table 35, we are looking for the total number of wage garnishee summonses issued, regardless of whom they were issued to. In Table 36, we are counting them according to the number issued against one employer. For example, a judgment counted under the "five summonses" category in column one of Table 35 may be counted under the "two summonses" category in Table 36 if the table shows that two out of the five garnishee summonses were issued to one employer but the other three were all to different employers.

8.27 The general conclusion to be drawn from Table 36 is that, in most of the cases of multiple wage garnishees, the garnishees were issued against the same employer. Multiple summonses against the same employer were used in 78.7% of the gross total number of judgments enforced by multiple wage garnishees (178). When we take into account the judgments enforced by two or three series of wage garnishees against employers, the percentage would be still higher.[76]

e. Replies to Garnishee Summonses

8.28 Rule 475 provides that, within ten days of service of a garnishee summons, the garnishee shall either pay into court the appropriate amount or shall file one of a series of approved answers. The rule is mandatory; the garnishee must pay or reply.

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76 See also Ramsay Report, pp. 65-66, 84-88; Scot. Memo 49, pp. 4-5; Scot. R.R. #1, p. 9.

8.29 We were interesting in finding out what the garnishees in our sample did in response to the service of garnishee summonses, so far as their actions were recorded in the court files. The result is Table 37 which does not distinguish between years, judicial districts or pre-and post-judgment garnishees, but concentrates solely on the replies of the garnishees, broken up into wage, bank account and other debts sought to be attached. It should be noted that the totals are higher than in previous tables because we recorded responses to the total number of garnishee summonses issued, not the total number of judgments.

Table 37 - Replies to Garnishees

	No reply or payment	Payment	No money owed or not employed	Debt accruing due	Debt assigned or third party rights	Debt less than exemptions	Money in trust	Garnishee withdrawn by creditor	Other	Total
Wage	409	277	112	13	5	12	0	1	3	832
	(49.2)	(33.3)	(13.5)	(1.6)	(0.6)	(1.4)	(0.0)	(0.1)	(0.4)	(100.1)
Bank account	116	103	86	1	2	0	0	0	0	308
non-wage	(37.7)	(33.4)	(27.9)	(0.3)	(0.7)	(0.0)	(0.0)	(0.0)	(0.0)	(100.0)
Other	51	26	33	0	1	0	3	0	1	115
Non-wage	(44.3)	(22.6)	(28.7)	(0.0)	(0.9)	(0.0)	(2.6)	(0.0)	(0.9)	(100.0)
Total	576	406	231	14	8	12	3	1	4	1255
	(45.9)	(32.4)	(18.4)	(1.1)	(0.6)	(1.0)	(0.2)	(0.1)	(0.3)	(100.0)

8.30 The most interesting result of Table 37 is that close to 46% of the garnishees in our sample resulted in neither payment nor a reply. Some of these garnishees may have been issued but not served. As to the rest, it is likely that many garnishees responded directly to the creditor (or persuaded the debtor to do so) and perhaps paid the creditor directly. Other garnishees may have responded verbally to the clerk's office which relayed the information to the creditor. In all of these cases (except non-service of the garnishee summons), there had been a breach of Rule 475, and the creditor could have applied for judgment against the garnishee under Rule 475(4). In fact, this step is rarely taken. We found fewer than ten such orders against garnishees in the whole sample.

8.31 Close to one-third of the garnishees resulted in payment. As we shall see in the next section, however, many of the payments were a small percentage of the claim of the garnishing creditor, and even they might have to be shared with other writ-holders pursuant to the Execution Creditors Act.

8.32 Another conclusion to be drawn from Table 37 is that replies were filed by garnishees in 272 cases, or 21.7% of the garnishee summonses reviewed. To summarize, about 46% of the cases resulted in neither reply nor payment into court, 21.7% resulted in a reply but no payment, and about one-third resulted in payment.

f. Money Paid Into Court

8.33 We next wanted to find out how successful garnishment was as a remedy. To do this, we divided our judgments[77] (or

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77 We are discussing here the number of judgments enforced by garnishee summonses, not the much larger number of garnishee summonses considered in Table 37.

statements of claim in the case of pre-judgment garnishments) into the following bands, representing the amount of money paid into court:

(1) no recovery,
(2) 0-25% of judgment,
(3) 26-50%,
(4) 51-75%,
(5) 76-100%,
(6) 100% and above.

The results are set out in Table 38 which should be read subject to the following notes:

(1) We included under instances of money recovered the following situations:

(a) money recovered but repaid to the debtor's account because the judgment was satisfied prior to payment in by the garnishee;

(b) money recovered but paid back to the debtor pursuant to a court order setting aside the judgment and the writ of execution;

(c) money recovered which was paid over to a trustee in bankruptcy.

(2) In a few cases, money was paid into court pending the trial of an issue. There was no record of payment out to the sheriff or the judgment creditor. These cases were listed as "no recovery".

(3) The band "over 100%" can be explained in one of two ways:

(a) the creditor successfully garnisheed for his judgment and post-judgment costs;

(b) the creditor garnisheed for the amount of his claim and for the amount payable in respect of other subsisting writs of execution.[78]

(4) In several cases, garnishees paid into court in a series of instalments rather than in one lump sum. This response does not appear to be contemplated by the Rules of Court.

(5) We have lumped together pre- and post-judgment garnishees. In the former case, the recovery is expressed as a percentage of the amount claimed in the statement of claim.

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[78] See Execution Creditors Act, R.S.A. 1980, c. E-14, s. 5.

Table 38 - Money Paid into Court Pursuant to Garnishee Summons

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
No recovery	95	65	45	205	134	51	35	220	229	116	80	425
	(55.2)	(65.7)	(69.2)	(61.0)	(63.5)	(56.0)	(66.0)	(62.0)	(59.8)	(61.1)	(67.8)	(61.5)
0-25%	33	15	7	55	30	12	5	47	63	27	12	102
	(19.2)	(15.2)	(10.8)	(16.4)	(14.2)	(13.2)	(9.4)	(13.2)	(16.5)	(14.2)	(10.2)	(14.8)
26-50%	10	2	1	13	9	7	2	18	19	9	3	31
	(5.8)	(2.0)	(1.5)	(3.9)	(4.3)	(7.7)	(3.8)	(5.1)	(5.0)	(4.7)	(2.5)	(4.5)
51-75%	5	0	3	8	7	4	0	11	12	4	3	19
	(2.9)	(0.0)	(4.6)	(2.4)	(3.3)	(4.4)	(0.0)	(3.1)	(3.1)	(2.1)	(2.5)	(2.8)
76-100%	8	1	2	11	3	2	4	9	11	3	6	20
	(4.7)	(1.0)	(3.1)	(3.3)	(1.4)	(2.2)	(7.5)	(2.5)	(2.9)	(1.6)	(5.1)	(2.9)
Over 100%	21	16	7	44	28	15	7	50	49	31	14	94
	(12.2)	(16.2)	(10.8)	(13.1)	(13.3)	(16.5)	(13.2)	(14.1)	(12.8)	(16.3)	(11.9)	(13.6)
Total number of judgments enforced by garnishee	172	99	65	336	211	91	53	355	383	190	118	691
	(100.0)	(100.1)	(100.0)	(100.1)	(100.0)	(100.0)	(99.9)	(100.0)	(100.1)	(100.0)	(100.0)	(100.1)

8.34 In over 60% of the cases in which judgments were enforced by garnishee summonses, no money was paid into court as a result of the garnishees. (It is possible but unlikely that money was paid directly by the garnishee to the creditor.) In almost 15%, the money paid into court was less than 25% of the claim or judgment. On the other hand, 13 1/2% of the cases resulted in payment into court of an amount equal to or exceeding 100% of the claim.[79]

g. Disposition of Money Paid Into Court

8.35 From the creditor's point of view, the most important question is what happens to money paid into court. We worked out the disposition of this money in Tables 39, 40 and 41.[80]

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79 For a roughly confirmatory set of figures, see Ramsay Report, pp. 71-90.

80 See also Ramsay Report, pp. 88-90.

Table 39 - Recipients of Money Paid into Court - 1980

	Large District	Medium District	Small District	Totals
Paid to creditor by consent or court order	16 (20.8)	23 (67.6)	0 (0.0)	39 (30.0)
Paid to sheriff	39 (50.6)	7 (20.6)	13 (68.4)	59 (45.4)
Paid in part to creditor and in part to Sheriff	4 (5.2)	1 (2.9)	1 (5.3)	6 (4.6)
Paid to trustee in bankruptcy	2 (2.6)	0 (0.0)	0 (0.0)	2 (1.5)
Paid in part to creditor and in part to trustee in bankruptcy	1 (1.3)	0 (0.0)	0 (0.0)	1 (0.8)
Repaid to debtor	2 (2.6)	1 (2.9)	0 (0.0)	3 (2.3)
Paid in part to creditor, part repaid to debtor	0 (0.0)	1 (2.9)	0 (0.0)	1 (0.8)
Paid in part to sheriff, part repaid to debtor	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Outcome unknown	12 (15.6)	0 (0.0)	4 (21.1)	16 (12.3)
Paid in part to creditor, outcome of remainder unknown	0 (0.0)	1 (2.9)	0 (0.0)	1 (0.8)
Paid in part to sheriff, outcome of remainder unknown	1 (1.3)	0 (0.0)	1 (5.3)	2 (1.5)
Totals	77 (100.0)	34 (99.8)	19 (100.1)	130 (100.0)

Table 40 - Recipients of Money Paid into Court - 1981

	Large District	Medium District	Small District	Totals
Paid to creditor by consent or court order	12 (15.4)	20 (50.0)	2 (11.1)	34 (25.0)
Paid to sheriff	43 (55.1)	9 (22.5)	13 (72.2)	65 (47.8)
Paid in part to creditor and in part to sheriff	0 (0.0)	2 (5.0)	0 (0.0)	2 (1.5)
Paid to trustee in bankruptcy	1 (1.3)	2 (5.0)	0 (0.0)	3 (2.2)
Paid in part to creditor and in part to trustee in bankruptcy	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Repaid to debtor	1 (1.3)	1 (2.5)	1 (5.6)	3 (2.2)
Paid in part to creditor, part repaid to debtor	0 (0.0)	3 (7.5)	0 (0.0)	3 (2.2)
Paid in part to sheriff, part repaid to debtor	1 (1.3)	0 (0.0)	0 (0.0)	1 (0.7)
Outcome unknown	20 (25.6)	3 (7.5)	2 (11.1)	25 (18.4)
Paid part to creditor, outcome of remainder unknown	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Paid in part to sheriff, outcome of remainder unknown	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)
Totals	78 (100.0)	40 (100.0)	18 (100.0)	136 (100.0)

Table 41 - Recipients of Money Paid into Court - Total of 1980 and 1981

	Large District	Medium District	Small District	Totals
Paid to creditor by consent or court order	28 (18.1)	43 (58.1)	2 (5.4)	73 (27.4)
Paid to sheriff	82 (52.9)	16 (21.6)	26 (70.3)	124 (46.6)
Paid in part to creditor and in part to sheriff	4 (2.6)	3 (4.1)	1 (2.7)	8 (3.0)
Paid to trustee in bankruptcy	3 (1.9)	2 (2.7)	0 (0.0)	5 (1.9)
Paid in part to creditor and in part to trustee in bankruptcy	1 (0.6)	0 (0.0)	0 (0.0)	1 (0.4)
Repaid to debtor	3 (1.9)	2 (2.7)	1 (2.7)	6 (2.3)
Paid in part to creditor, part repaid to debtor	0 (0.0)	4 (5.4)	0 (0.0)	4 (1.5)
Paid in part to sheriff, part repaid to debtor	1 (0.6)	0 (0.0)	0 (0.0)	1 (0.4)
Outcome unknown	32 (20.6)	3 (4.1)	6 (16.2)	41 (15.4)
Paid in part to creditor outcome of remainder unknown	0 (0.0)	1 (1.4)	0 (0.0)	1 (0.4)
Paid in part to sheriff, outcome of remainder unknown	1 (0.6)	0 (0.0)	1 (2.7)	2 (0.8)
Totals	155 (99.8)	74 (100.1)	37 (100.0)	266 (100.1)

8.36 The totals in Tables 39 to 41 do not jibe completely with the totals of judgments with successful garnishees in Table 38. The deviations are apparently due to computation errors.

Chapter 9. Miscellany

a. Equitable Execution

9.1 Equitable execution as a remedy is very rarely used in Alberta. Of the 2316 judgments examined in our study, we found only seven in which there was an application for the appointment of a receiver pursuant to Rule 466 and none under Rule 465. Of these, four were granted. It is interesting to note that all applications and orders occurred in our medium sized district.

9.2 The three orders granted in 1980 all appointed the sheriff receiver of federal government oil money payable to native debtors living on an Indian reservation. In 1981, one order was made appointing the sheriff receiver of money to be paid to the debtor from an estate. Clearly each of these instances represents a rather unusual situation. The three cases on oil money payable to native debtors may be of doubtful validity after Fox v. Peterson Livestock Ltd.[81]

b. Other Remedies

9.3 We found no files in which charging orders, stop orders or Mareva injunctions[82] were granted.

c. Judgments Set Aside

9.4 We were interested in the situation where a creditor obtains a default judgment and issues a writ or a garnishee summons. The judgment is subsequently set aside pursuant to Rule 158. What happens to the writ or garnishee summons? One might

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81 (1982), 17 Alta. L.R. (2d) 311 (C.A.).

82 Mareva Campania Naviera S.A. v. Int. Bulk Carriers S.A., [1975] 2 Lloyd's Rep. 509 (C.A.).

assume that the remedies would fall with the judgment, but there are reported decisions where the remedies have been ordered to remain in place, despite the setting aside of the judgment.[83]

9.5 We found nine cases where judgments were granted, writs of execution issued, and the judgments were subsequently set aside. In four of these cases, the order setting aside the judgment expressly said that the writ would also be set aside. In the other five, the order made no reference to the writ. We found no orders in our sample which expressly preserved the writ or other enforcement remedy.

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83 See e.g., C.I.B.C. v. Sheahen (1978), 22 O.R. (2d) 686 (Div. Ct.); Larnu Distributors (1970) Ltd. v. Brochu (1980), 26 A.R. 373; but cp. Jet Power Credit Union Ltd. v. McInally (1973), 17 O.R. (2d) 59. For critical comment, see Springman, "Case Comment" (1982), 3 Advocates' Quarterly 365; Sims, "The Writ of Execution and the Garnishee Summons," in Legal Education Society of Alberta, Dealings between Creditor and Debtor (1982), pp. 5G-6G.

Chapter 10. Success of the Creditors' Remedies System

a. Introduction

10.1 One of the purposes of the present study was to estimate the overall success of the system in collecting judgment debts. We will later make an estimate of the system's success in collecting money, insofar as the facts can be gathered from a study of court files alone without interviews with creditors and debtors. The limited nature of the study prevents us from making a more precise assessment as to how well the system is working.

10.2 Our study was limited to court, sheriff and land titles files. These sources could give only a partial picture of the money actually paid, because they did not record payments made directly from debtor to creditor. In such a case, the creditor might have filed a satisfaction piece, or he might have done nothing but let his writ lapse.

10.3 In many files, there appear satisfaction pieces or letters to the sheriff indicating that the debt has been "satisfied" or "discharged." (The words were used interchangeably.) These documents cannot be taken at face value. In most cases, the creditor would not bother to file a satisfaction piece unless he had received some payment, but he might have been happy to accept part payment direct to him, thus circumventing the operation of the Execution Creditors Act. A few satisfaction pieces may have been filed where no payment was received if the debtor was able to apply some pressure to the creditor, such as a well-founded threat to open up the judgment and file a counterclaim.

10.4 What we will do in this chapter is to collect the evidence of payment which is available in the court records searched. We look first at satisfaction pieces and other documents indicating that creditors' claims are satisfied or discharged. Next we summarize the numbers of discharged or

satisfied writs as recorded in the land titles offices. Finally we try to form an opinion of the success of the creditors' remedies system as a whole in collecting money for creditors, bearing in mind the limitations of our study.

b. Creditors' Declarations of Satisfaction

10.5 We first wanted to put together all the cases in which the creditor indicated in writing that the debt had been satisfied or discharged in full. In some files, this indication took the form of a satisfaction piece or a notice of discontinuance of action filed in the clerk's office. In others, there was a letter to the same effect in the sheriff's office. Still other creditors communicated with both offices. The number of judgments where a declaration of satisfaction was filed in either or both the clerk's and the sheriff's offices is displayed in Table 42.

10.6 It is necessary to set out some notes as to our definition of satisfaction:

(1) We did not count letters indicating that a settlement was pending, or that an agreement had been reached whereby the debtor would pay by instalments. We were only interested in declarations by the creditor that the debt was satisfied.

(2) Creditors sometimes wrote to say that a judgment or a writ was discharged as to a parcel of land or as to the debtor's land generally. We did not include these letters in our count.

(3) In some cases, the whole claim was collected by garnishment or by seizure and sale. These files are not included in Table 42 unless the creditor filed his own satisfaction piece or letter saying that the debt was satisfied. The emphasis is not on actual satisfaction, but on the creditor's declaration that his claim has been paid.

Table 42 - Judgments with Satisfaction Pieces

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Total Large	Total Medium	Total Small	Grand Total
Satisfaction piece - clerk's office only	49	23	9	81	35	29	16	80	84	52	25	161
Satisfaction piece - sheriff's office only	33	21	25	79	26	13	11	50	59	34	36	129
Satisfaction piece - sheriff's and clerk's offices	38	28	14	80	35	26	11	72	73	54	25	152
Totals	120	72	48	240	96	68	38	202	216	140	86	442

10.7 The figures in Table 42 are more meaningful when expressed as percentages of the total number of enforced judgments (drawn from Table 11). This comparison is presented in Table 43.

Table 43 - Judgments with Satisfaction Pieces compared to Total Enforced Judgments

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Judgments with satisfaction pieces	120 (22.8)	72 (25.8)	48 (27.1)	240 (24.4)	96 (17.4)	68 (25.3)	38 (23.5)	202 (20.6)	216 (20.1)	140 (25.6)	86 (25.4)	442 (22.5)
Total enforced judgments	526 (100.00	279 (100.0)	177 (100.0)	982 (100.0)	551 (100.0)	269 (100.0)	162 (100.0)	982 (100.0)	1077 (100.0)	548 (100.0)	339 (100.0)	1964 (100.0)

10.8 We also wanted to compare the number of judgments and satisfaction pieces with the total number of enforced and unenforced judgments in our sample (drawn from Table 11). See Table 44.

Table 44 - Judgments with Satisfaction Pieces Compared to Total Judgments

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Judgments with satisfaction pieces	120 (19.1)	72 (22.5)	48 (23.4)	240 (20.8)	96 (14.5)	68 (22.0)	38 (19.5)	202 (17.4)	216 (16.8)	140 (22.3)	86 (21.5)	442 (19.1)
Total judgments, enforced or not	627 (100.0)	320 (100.0)	205 (100.0)	1152 (100.0)	660 (100.0)	309 (100.0)	195 (100.0)	1164 (100.0)	1287 (100.0)	629 (100.0)	400 (100.0)	2316 (100.0)

10.9 The principal conclusion to be drawn from Tables 43 and 44 is that the number of judgments followed by the creditor's declaration of satisfaction of the debt amount to 22.5% of the number of enforced judgments and 19.1% of the number of enforced and unenforced judgments in our sample. In other words, about one-fifth of the creditors in our sample wrote the clerk or the sheriff to say that their claim had been completely satisfied.

10.10 We noted earlier that a satisfaction piece may be filed by a creditor who has not been paid 100% of his debt. One reason for such conduct is that, if the payment of part of the debt is made directly to the creditor, it need not be shared with other writ-holders pursuant to the Execution Creditors Act.

10.11 On the other hand, the 20% figure substantially under-estimates the number of creditors paid their debts because it excludes two groups of successful creditors, namely, (1) those paid directly who did not file satisfaction pieces, and (2) those who collected money by seizure or garnishment and who did not file a satisfaction piece.

c. Status of Writs in the Land Titles Offices

10.12 We next wanted to look at the status of writs filed in the land titles offices. We wanted to know which writs had been discharged and which had not. In order to understand our results, some background is necessary.

10.13 Before 1980, section 129 of the Land Titles Act[84] provided as follows:

> 129. Upon the satisfaction or withdrawal from his hands of any writ, the sheriff or other duly qualified officer shall on payment to him of his proper fee

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84 R.S.A. 1970, c. 198.

> forthwith transmit to the Registrar a certificate under his official seal, if any, to that effect, and upon the production and delivery to the Registrar of the certificate, or of a judge's order, showing the expiration, satisfaction or withdrawal of the writ as against the whole or any portion of the land so bound, the Registrar shall make a memorandum upon the certificate of title to that effect if the land has been brought under the provisions of this Act, and, if not, upon or opposite to the entry of the writ in the execution register, and thenceforth the land of the debtor or portion of land, as the case may be, shall be deemed to be absolutely released and discharged from the writ.

Section 129 says that the sheriff will transmit the certificate of discharge, although one suspects that most such certificates were obtained by the debtor or his lawyer from the sheriff's office and filed at the land titles office. No certificate of satisfaction would be issued by the sheriff without payment of the proper fee.

10.14 In the 1980 Revised Statutes,[85] section 129 became section 123. In 1982,[86] section 123 was repealed and replaced with the following:

> 123 On the production to the Registrar of a judge's order or evidence from the sheriff showing the expiration, satisfaction or withdrawal of a writ as against all or a portion of the land bound by the writ, the Registrar shall make a memorandum on the certificate of title to that effect if the land has been brought under this Act and, if not, on or opposite to the entry of the writ in the execution register, and the land or portion of land, as the case may be, shall be deemed to be absolutely released and discharged from the writ.

The difference is that the sheriff is no longer required to transmit the certificate. The registrar is still required to act on production to him of the necessary evidence or judicial order.

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85 Land Titles Act, R.S.A. 1980, c. L-5.

86 S.A. 1982, c. 23, s. 16.

10.15 At all relevant times, land titles office A has maintained three registers of writs:

(1) a large register containing live writs filed alphabetically by the debtor's surname,

(2) a second register of discharged writs, arranged chronologically by the year of discharge, and then alphabetically by the debtor's surname, and

(3) a small register of satisfied writs, arranged alphabetically by the debtor's surname.

Land titles office B keeps only the first and second registers.

10.16 The A office's distinction between discharged and satisfied writs needs explanation. The discharged register contains writs that have been released as a result of notices from the various sheriffs' offices that the writs have been withdrawn or that the judgments upon which the writs are based have been satisfied. Upon receipt of the sheriffs' notices, the land titles clerks pull the writs from the live register, note that they are released, and file them in the discharged register.

10.17 The satisfied register contains writs which have been noted as released in the large district sheriff's office but which, for whatever reason, have not been the subject of any notice by the sheriff to the A land titles office. Until recently, land titles clerks from the A office were sent to the large district sheriff's office to check its records for releases recorded there but not sent for recording at the land titles office. The clerks then returned to the land titles office with lists of released writs and recorded these releases, filing them in the satisfied register rather than the discharged register. However, land titles office A stopped sending clerks to the large district sheriff's office because, due to inadvertence at either the land titles office or the sheriff's office, some writs noted

as released as a result of the double-check were not truly released. Invariably these mistakes came to light as a result of complaints made by angry creditors, and resulted in the "satisfied" writs being refiled in the live register. No one has been sent to the large district sheriff's office from the A land titles office to double-check the sheriff's records since early 1982.

10.18 The bottom line for the purposes of our study is that the A land titles office's distinction between satisfied and discharged writs is nominal only. Our basic concern is whether writs filed in the land titles system are subsisting or released, and it matters little to us how the information leading to the notation of writs as discharged is obtained.

10.19 It is now possible for us to divide the writs filed in the A and B land titles offices into two groups: those which are still alive and those which have been discharged. This information is set out in Table 45. We include as "discharged writs" all writs in the discharged and satisfied registers in the A land titles office and all writs in the former register in the B office.

Table 45 - Live and discharged writs in land titles offices

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Number of writs still alive	293 (78.6)	99 (73.9)	50 (61.7)	442 (75.2)	360 (87.6)	104 (82.5)	62 (84.9)	526 (86.2)	653 (83.3)	203 (78.1)	112 (72.7)	968 (80.8)
Number of writs discharged or satisfied	80 (21.4)	35 (26.1)	31 (38.3)	146 (24.8)	51 (12.4)	22 (17.5)	11 (15.1)	84 (13.8)	131 (16.7)	57 (21.9)	42 (27.3)	230 (19.2)
Total number of writs filed in land titles	373 (100.0)	134 (100.0)	81 (100.0)	588 (100.0)	411 (100.0)	126 (100.0)	73 (100.0)	610 (100.0)	784 (100.0)	260 (100.0)	154 (100.0)	1198 (100.0)

10.20 The principal conclusion from Table 45 is that 20% of writs filed in the two land titles offices were later classified as discharged by those offices. In the B office, this decision was made, one assumes, only because of the receipt of a judge's order to that effect or a certificate of discharge from the relevant sheriff. In the A office, a writ might also be classified as satisfied (which for our purposes is the same as discharged) if a search by a land titles clerk in the sheriff's office turned up this information.

10.21 Our total of discharged writs would not include writs discharged as to a specific parcel of land. Such specific discharges may be attached to the writ or noted on the certificate of title of the affected land. The writ would however remain in the live writ register.

10.22 It is interesting to note that the percentage of discharged writs in the land titles office is very close to the percentage of declarations of satisfaction in the clerks' and sheriffs' offices. The comments on Tables 43 and 44, set out in paragraphs 10.09 - 10.11 above, are relevant to Table 45 as well.

10.23 The similarity of the percentages masks a problem in the system. We noted earlier that the sheriff will, if asked to do so, inform the land titles office that a writ has been satisfied, but he will not automatically pass on such information. Before 1982, the A land titles office was sufficiently concerned to send its own staff to the large district sheriff's office to search for indications of satisfaction or discharge. That practice has now stopped, but its existence suggested that the A land titles office felt that it was not getting information as to all satisfaction pieces. The A office did not apparently search other sheriffs' offices before 1982, and the B office has not within our study period searched any sheriff's office.

10.24 We wanted to ascertain whether the total numbers of writs shown as discharged in the sheriffs' offices was

significantly different from the totals of discharged writs in the land titles offices. We therefore searched all writs filed in both the sheriffs' and the land titles offices. We pulled those writs which were recorded as discharged in the former office to see if the discharge was also recorded in the land titles system. We excluded files in which writs were filed in the land titles office but without being filed with the sheriff. The results are set out in Table 46.

Table 46 - Discharged Writs in Sheriff's and Land Titles Offices

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
Writs discharged in sheriff's and in land titles offices	69 (97.2)	31 (63.3)	31 (70.5)	131 (80.0)	52 (86.7)	20 (43.5)	11 (45.8)	83 (63.8)	121 (92.4)	51 (53.7)	42 (61.8)	214 (72.8)
Writs discharged in sheriff's but not in land titles offices	2 (2.8)	18 (36.7)	13 (29.5)	33 (20.1)	8 (13.3)	26 (56.5)	13 (54.2)	47 (36.2)	10 (7.6)	44 (46.3)	26 (38.2)	80 (27.2)
Total writs discharged in sheriff's office	71 (100.0)	49 (100.0)	44 (100.0)	164 (100.1)	60 (100.0)	46 (100.0)	24 (100.0)	130 (100.0)	131 (100.0)	95 (100.0)	68 (100.0)	294 (100.0)

10.25 The table shows that only 214 of the writs filed both in the sheriffs' offices and land titles offices were noted as discharged in the latter offices, while in the sheriffs' offices, 294 of the writs filed were noted as discharged. Thus only 73% of the files with writs recorded as discharged in the sheriffs' offices were also recorded as discharged in the land titles system. Another way of stating these results is that in our study, 27% of the writs filed against debtors' land in the land titles offices had actually been discharged according to the sheriffs' offices records. This percentage is a significant indication that a serious information breakdown exists in the judgment enforcement scheme, specifically at the point at which the sheriff notes writs in his hands as discharged. It is interesting to note that the breakdown is less significant in the large district sheriff's office, where a full 92% of writs noted as discharged in the sheriff's office are so noted in the land titles offices, especially in light of the A office's double-check on the large district sheriff's office. By contrast, the information breakdown is greater in the medium and small districts where only 54% and 62%, respectively, of the writs noted as discharged in the sheriff's office are also so noted in the land titles office.

10.26 On the other hand, it should be remembered that many declarations of discharge in the sheriffs' offices represent only partial satisfaction of the judgment creditor's claim. From his point of view, it is desirable that the writ in the land titles office remains alive to pick up the rest of the claim. The debtor may be unhappy about this result, particularly if his agreement with the creditor amounted to an agreement of part performance which has the legal effect of discharging the rest of the debt.[87]

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[87] Judicature Act, R.S.A. 1980, c. J-1, s. 13(1).

d. Estimated Success of the System as a Whole

10.27 In this section, we will try to form an opinion of the success of the creditors' remedies system as a whole in collecting money for creditors. At the outset, it is necessary to remind the reader that our estimate is based on a study limited to court, sheriff and land titles files. We conducted no interviews of creditors or debtors and made no other attempt to discover what money was paid.

10.28 Such a file study underestimates, perhaps substantially, the amount of money recovered because it does not discover money paid by a debtor to a creditor where no record of that payment appears in the files. For example, a creditor goes to judgment against his debtor and informs the debtor of that fact. The creditor does not initiate any enforcement process, but the debtor pays the judgment debt in full. No satisfaction piece is filed. Because we looked only at court files, we would record that situation as one of no recovery. In fact, the debt was fully paid, probably because of the implied threat of future execution or garnishment. The system was successful, but our study would not record this kind of success.

10.29 In another respect, a file study like the present one substantially overestimates the success of the process. In our review of the files, we found many satisfaction pieces in the clerks' offices or letters to the sheriffs indicating that the debt had been satisfied or discharged. We also found a large number of writs in the land titles offices marked satisfied. Literally these various documents say that the judgment debt has been paid in full. In many of these cases, we suspect that the satisfaction piece or letter has been given by the creditor in return for part payment of the debt, perhaps on the theory that 25 cents on the dollar paid directly to the creditor is worth more than the possible proceeds of execution or garnishment, especially if those proceeds must be shared with other creditors pursuant to

the Execution Creditors Act. A satisfaction piece often does not mean payment of the debt in full, whatever the document says.

10.30 Despite these reservations, our file study does enable us to make an estimate of the success of the creditors' remedies system in collecting money. We have earlier in this chapter noted the number of satisfaction pieces in the various offices. We recorded money actually paid into and out of court pursuant to a garnishee summons, money realized as a result of execution, and payments to the creditor noted in his renewal of execution statements filed in the sheriffs' offices pursuant to the Execution Creditors Act. We also noted money distributed to creditors with writs in the sheriff's office as a result of a successful execution or a garnishment by another creditor.

10.31 In organizing this data, we decided to divide the cases into two groups: (1) judgments where no satisfaction piece or letter of satisfaction was filed in the clerk's or sheriff's office, and (2) judgments where a satisfaction piece or letter of satisfaction was filed in the clerk's or sheriff's office. The reason for drawing the distinction is that the satisfaction piece literally indicates a complete satisfaction of the debt (whatever the reality), whereas the judgment without a satisfaction piece is on its face not satisfied unless the file records a payment of some sort.

10.32 We earlier[88] talked about writs marked satisfied or discharged in the land titles offices. These figures need not be referred to here because all such satisfactions simply reflect documents in the sheriffs' offices and are therefore included in our count.

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88 At paras. 10.12-10.26.

10.33 We do need to deal separately with the writ which is recorded in the sheriff's or in the land titles office as satisfied as to a specific parcel of land or as to land generally. We did not include such limited satisfaction pieces in Tables 42, 43 and 44, nor were they included in our counts of satisfied or discharged writs in the land titles offices.[89] They do however reflect in most cases the payment of some money, and we have therefore included them as a separate item in our count of satisfaction pieces for the purpose of determining success.

10.34 We now turn to the judgments in which no satisfaction piece or satisfaction letter was filed in any of the offices studied. We have classified the judgments according to the percent of the judgment debt recovered or recorded in all offices. The results are set out in Table 47.

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89 At paras. 10.12-10.26.

Table 47 - Judgments without Satisfaction Pieces - Amount of Judgment Debt Recovered

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
No recovery	440	194	128	762	496	195	132	823	936	389	260	1585
	(88.9)	(78.9)	(82.6)	(85.0)	(89.4)	(82.6)	(85.2)	(87.0)	(89.1)	(80.7)	(83.9)	(86.0)
1-10%	14	12	5	31	17	6	5	28	31	18	10	59
	(2.8)	(4.9)	(3.2)	(3.5)	(3.1)	(2.5)	(3.2)	(3.0)	(3.0)	(3.7)	(3.2)	(3.2)
11-20%	9	9	2	20	9	10	3	22	18	19	5	42
	(1.8)	(3.7)	(1.3)	(2.2)	(1.6)	(4.3)	(1.9)	(2.3)	(1.7)	(3.9)	(1.6)	(2.3)
21-50%	13	9	4	26	9	6	6	21	22	15	10	47
	(2.6)	(3.7)	(2.6)	(2.9)	(1.6)	(2.5)	(3.9)	(2.2)	(2.1)	(3.1)	(3.2)	(2.6)
51-90%	8	6	7	21	8	3	3	14	16	9	10	35
	(1.6)	(2.4)	(4.5)	(2.3)	(1.4)	(1.3)	(1.9)	(1.5)	(1.5)	(1.9)	(3.2)	(1.9)
over 90%	11	16	9	36	16	16	6	38	27	32	15	74
	(2.2)	(6.5)	(5.8)	(4.0)	(2.9)	(6.8)	(3.9)	(4.0)	(2.6)	(6.6)	(4.8)	(4.0)
Total judgments without satisfaction piece	495	246	155	896	555	236	155	946	1050	482	310	1842
	(99.9)	(100.1)	(100.0)	(99.9)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(99.9)	(99.9)	(100.0)

10.35 Four observations should be made about Table 47.

(1) The category "no recovery" includes default judgments later set aside (eight in total) and judgments which were not enforced by any process (293 in total). In both cases, it is somewhat misleading to fault the system for not collecting the amount of the judgment. In the first situation, the judgment has been set aside and, in the second situation, the judgment creditor has not availed himself of the remedies open to him, even to the extent of issuing a writ of execution.

(2) There is a handful of cases, also included in the "no recovery" category, where a trustee in bankruptcy or a receiver was appointed, and further enforcement by the unsecured judgment creditor became illegal or pointless. Again one can hardly criticize the system of creditors' remedies for these failures to recover the judgment debts.

(3) We have included in Table 47 cases where writs of execution were issued directed to the sheriff of another judicial district. There were 203 judgments in which enforcement processes were partially or entirely conducted outside the district in which the judgment was obtained. Our search was limited to the clerk's and sheriff's offices in the district in which the judgment was obtained, and we recorded any recovery of money noted in the files of those offices. We did not follow the writs directed to other sheriffs into their offices to determine whether money was recovered there as well. The amounts of money recovered as a result of the system may therefore be higher for these 203 judgments than indicated in Table 47.

(4) By "money recovered," we mean money paid out to the creditor. We do not include payments into court or to a sheriff where there is no record of any payment out.

10.36 Given these observations, the principal conclusion to be drawn from Table 47 is that, excluding judgments with

satisfaction pieces and restricting ourselves to evidence of payments on court files, the overwhelming majority of judgment creditors in our sample recovered little or nothing on their judgments. 86% of the judgments fell into the "no recovery" category; only 4% fell into the "over 90%" recovery class. More money was recovered in the medium judicial district than in the other districts.

10.37 Table 47 is incomplete because it omits all judgments which were followed by declarations of satisfaction by the creditor, either in general terms or limited to land. As Table 42 shows, there were 442 judgments followed by satisfaction pieces filed in the clerks' or sheriffs' offices. We also turned up thirty-two judgments which were followed by satisfaction pieces limited to a specific parcel of land or to land generally. The problem is how to incorporate these judgments into Table 47 in order to give a more complete picture of the system.

10.38 One approach is to take all satisfaction pieces at face value and to regard such judgments as fully recovered. As a result, they would all be added to the "over 90%" category in Table 47. The result is set out in Table 48.

Table 48 - All Judgments (assuming that satisfaction piece = 100% recovery)
- Amount of Judgment Debt Recovered

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
No recovery	440	194	128	762	496	195	132	823	936	389	260	1585
	(70.2)	(60.6)	(62.4)	(66.1)	(75.2)	(63.1)	(67.7)	(70.7)	(72.7)	(61.8)	(65.0)	(68.4)
1-10%	14	12	5	31	17	6	5	28	31	18	10	59
	(2.2)	(3.8)	(2.4)	(2.7)	(2.6)	(1.9)	(2.6)	(2.4)	(2.4)	(2.9)	(2.5)	(2.5)
11-20%	9	9	2	20	9	10	3	22	18	19	5	42
	(1.4)	(2.8)	(1.0)	(1.7)	(1.4)	(3.2)	(1.5)	(1.9)	(1.4)	(3.0)	(1.25)	(1.8)
21-50%	13	9	4	26	9	6	6	21	22	15	10	47
	(2.1)	(2.8)	(2.0)	(2.3)	(1.4)	(1.9)	(3.1)	(1.8)	(1.7)	(2.4)	(2.5)	(2.0)
51-90%	8	6	7	21	8	3	3	14	16	9	10	35
	(1.3)	(1.9)	(3.4)	(1.8)	(1.2)	(1.0)	(1.5)	(1.2)	(1.2)	(1.4)	(2.5)	(1.5)
Over 90%	143	90	59	292	121	89	46	256	264	179	105	548
	(22.8)	(28.1)	(28.8)	(25.3)	(18.3)	(28.8)	(23.6)	(22.0)	(20.5)	(28.5)	(26.3)	(23.7)
Total judgments	627	320	205	1152	660	309	195	1164	1287	629	400	2316
	(100.0)	(100.0)	(100.0)	(99.9)	(100.1)	(99.9)	(100.0)	(100.0)	(99.9)	(100.0)	(100.0)	(99.9)

10.39 Table 48 is misleading, because it assumes that all satisfaction pieces mean that the creditors were paid their claims in full. As we noted earlier, this assumption is false in most cases of satisfaction pieces. These documents usually are evidence of a part payment, but how much is impossible to say from the court files. It would be just as misleading to assume that all satisfaction pieces represent a 50% recovery.

10.40 However, we can say that almost all satisfaction pieces represent some recovery, without trying to guess at actual percentages. It is therefore more helpful and accurate to simplify Table 48 to show two categories: (1) no recovery and (2) some recovery. The result is Table 49.

Table 49 - All Judgments (assuming that satisfaction piece = some recovery)
- Amount of Judgment Debt Recovered

	Large 1980	Medium 1980	Small 1980	Total 1980	Large 1981	Medium 1981	Small 1981	Total 1981	Large Total	Medium Total	Small Total	Grand Total
No recovery	440	194	128	762	496	195	132	823	936	389	260	1585
	(70.2)	(60.6)	(62.4)	(66.1)	(75.2)	(63.1)	(67.7)	(70.7)	(72.7)	(61.8)	(65.0)	(68.4)
Some recovery	187	126	77	390	164	114	63	341	351	240	140	731
	(29.8)	(39.4)	(37.6)	(33.9)	(24.8)	(36.9)	(32.3)	(29.3)	(27.3)	(38.2)	(35.0)	(31.6)
Total judgments	627	320	205	1152	660	309	195	1164	1287	629	400	2316
	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)	(100.0)

10.41 The principal conclusion to be drawn from Table 49 is that almost one-third of the judgment creditors in our sample recovered something after filing their judgments. Because our study was limited to court files, we did not record direct payments from debtor to creditor where no satisfaction piece was filed. If we had, the percentage of judgments on which money was paid would no doubt be higher. If we had followed alias writs into judicial districts other than the ones where the judgments were obtained, the percentage would be higher still.

10.42 Even after we correct the recovery percentages upwards, it may still be true that a majority of judgment creditors recovered little or nothing on their claims. In many cases, creditors chose to carry their claims to judgment and often to enforcement and then to discontinue their efforts. Perhaps they had learned more about their debtors as they pursued their lawsuits. If the knowledge was discouraging (e.g., the debtor had no assets), the creditors may have terminated their collection efforts rather than wasting more of their own money on a profitless exercise. Our study did not work out the average length of time which creditors took to collect part or all of their claims.

10.43 Because our study concentrated on court files, we did not record the many cases in which creditors chose to write off their debts rather than litigate at all. A creditor may abandon his claim because it is too small to bother about or because he knows that the debtor has nothing. Another reason for writing off a debt is that the creditor believes that the legal system will fail to collect the money for him. We have no way of knowing how creditor perceptions affected their decision to sue or not.

10.44 Even where creditors sued and carried their remedies as far as possible, many still got nothing. This may be less a fault of the system than a reflection of the fact that many debtors have little or no assets and income above their exemptions. Even if the present exemptions were to be reduced or abolished, it is

unlikely that creditors' remedies would recover much more from debtors who have nothing.