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ENFORCEMENT OF MONEY JUDGMENTS
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ENFORCEMENT OF MONEY JUDGMENTS

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ALBERTA LAW REFORM INSTITUTE

The Alberta Law Reform Institute was established on January 1, 1968, by the Government of Alberta, the University of Alberta and the Law Society of Alberta for the purposes, among others, of conducting legal research and recommending reforms in the law. Funding of the Institute's operations is provided by the Government of Alberta, the University of Alberta and the Alberta Law Foundation.

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ENFORCEMENT OF MONEY JUDGMENTS

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REMEDIES FOR UNSECURED CREDITORS

VOLUME 2

MODEL JUDGMENT ENFORCEMENT ACT

PURPOSE OF THE MODEL JUDGMENT ENFORCEMENT ACT

The model *Judgment Enforcement Act* ("JEA") set out in this volume gives statutory expression to the recommendations in Volume 1, as well as the recommendations in Report No. 50, *Prejudgment Remedies for Unsecured Claimants*. We have drafted and published the model JEA with several objectives in mind.

Testing our proposals

Criticism of legislative drafting is a sport in which lawyers, judges, and sundry other commentators often and avidly participate. We suspect that over the years, much of the criticism levelled at legislative drafters could have been more accurately levelled at the principle or proposal that the drafter was directed to put into statutory language. Sometimes, a proposal for legislative action that at first glance seems quite simple and straightforward cannot be implemented except through legislative provisions that are anything but simple and straightforward.

Thus, at a relatively early stage of this project, we decided that putting our emerging proposals into statutory form would be a useful exercise, if only to test the susceptibility of these proposals to being "statutized." The drafting of the model JEA was done concurrently with the drafting of the report and recommendations. Indeed, quite a few proposed recommendations were substantially modified or changed altogether in the light of problems or complications that became evident in the course of drafting the model JEA.

The result of this interplay between the drafting of the Report proper and the model JEA is that we are confident that all of our proposals can be successfully reduced to statutory form, because we have done so. Admittedly the model JEA is long and some of its provisions are fairly complex. However, we do not think that either its length or complexity is disproportionate to the breadth or complexities of the subject covered.

Advancing the implementation of our proposals

Drafting from scratch the legislation necessary to implement the proposals in Volume 1 would be a very time-consuming task for legislative counsel. If our proposed reforms are favourably received by the government, the model JEA should considerably reduce the effort and time required of legislative counsel in

order to draft the necessary legislation. We are not so bold as to claim that the model Act is perfect in all respects, or that it deals with every single issue that would have to be addressed by an actual Act. But we do think that the model Act addresses very nearly all the issues that would have to be addressed, and that it does so in a clear, coherent and reasonably concise manner. In short, we believe that the model *JEA* would indeed be a useful model for legislation implementing our proposals.

Filling in details of proposals

Although Volume 1 is hefty and its recommendations numerous, it does not purport to address in detail every issue that will arise in connection with the proposed enforcement system. This reflects a decision that the discussion and recommendations in Volume 1 should describe all the major features of the proposed enforcement system, without necessarily smothering the reader in detail. Thus, readers who want a general description of the proposed system and some of its more important details can find them in Volume 1. Readers who want to wrestle with all the details of the proposed system will want to look at the model *JEA*.

In truth the *JEA* does not provide every last detail of the proposed system. It does leave some details to be dealt with by regulation. However, we have tried to make the *JEA* as complete and self-contained as reasonably possible. We do not think that many readers will criticize the *JEA* on the basis that it leaves too much to be dealt with by regulation.

Provoking comment

This volume is part of a "final report", which contains our considered recommendations for reform. But this does not mean that we think all of our readers will agree that every detail of every single one of our proposals is the embodiment of perfection. Indeed, we would be surprised and disappointed if some of our proposals do not generate constructive criticism. One of our purposes in publishing the model *JEA* is to encourage and facilitate discussion and debate concerning our proposals.

We suspect that for various reasons, many lawyers and other readers of our reports prefer to discuss and criticize reform proposals in the form of a draft Act, rather than in the form of a list of recommendations. This may simply be a matter of being accustomed to scrutinizing and criticizing statutes on a daily basis. Another explanation may be that a detailed draft statute seems more concrete and real than does a list of recommendations. In any event, we publish the model *JEA* in the hope it will encourage discussion and criticism of our proposals.

GUIDE TO VOLUME 2

The focal point of this volume is the model *Judgment Enforcement Act*, with its accompanying comments. There are also four appendices. The appendices contain material to which readers may find it useful to refer in conjunction with the model Act and comments. The following observation provide a brief introduction and guide to the *JEA* and each of the appendices.

Model Act with Comments

Drafting Style

Since we intend the *JEA* to serve as a model for actual legislation based on our proposals, it is drafted in accordance with the stylistic conventions that currently govern legislative drafters in Alberta. This applies to everything from the general layout of the Act to such mundane matters as the numbering of provisions, the use and placement of definitions, and punctuation.

Relationship between *JEA* and Recommendations

As already noted, the *JEA* is primarily based on the recommendations in Volume 1, but goes into much more detail than do the recommendations. The model Act is also organized differently than the report, in terms of the order in which it addresses various subjects. Consequently, readers should not be surprised to find that the provisions of the model Act often take on a very different appearance than the recommendations upon which they are based. In short, the model Act pays more attention to the substance of the recommendations than to their form.

Defined Terms

Any term that is defined in the Act is italicized whenever it appears. Most of the definitions appear in section 1. However, some terms are defined only for the purposes of a particular part, or even a particular section or group of sections, in which case the definition appears there.

Transitional and Consequential Provisions

Obviously, the implementation of our proposals would require a transitional period, and the implementing Act would require transitional provisions. The Act would also have to deal with the amendment or outright repeal of a considerable body of existing legislation. We considered including such provisions in the model *JEA*, but ultimately decided that the purposes of the model Act would not be greatly advanced by including them. What we have done, in Appendix D, is provide a summary of changes that would be required to existing legislation.

Comments

The comments accompanying the model are quite brief, in many cases consisting of nothing more than a reference to a recommendation or section number in an existing act. Part of the explanation for the brevity of the comments is our decision to keep them brief enough to be printed on pages directly opposite the pages on which the relevant provisions of the Act appear. We believe that reference back and forth between provisions of the Act and relevant comments will be made easier by printing them across from each other. Moreover, this method prevents the text of the Act from getting lost in the comments.

Another reason for the brevity of the comments is that we have tried to stay away from using the comments to justify the policy behind the provisions of the Act. That is the office of Volume 1. The first purpose of the comments is to indicate the derivation of the various sections of the *JEA*, by providing cross-references to the relevant recommendations and existing legislation. These cross-references appear in the first (and sometimes only) comment for each section of the *JEA*.

The second purpose of the comments is to describe the purpose or operation of the various provisions, where this may not be self-evident. This is done by a combination of explanations, references to other provisions of the Act, and hypothetical examples, as may be appropriate. The amount of this expository material varies from section to section, depending upon such factors as the complexity of the subject matter covered, and whether the provision in question represents a marked departure from the existing law.

Part 2 of the *JEA* is concerned with prejudgment remedies. That subject was dealt with in our Report No. 50, *Prejudgment Remedies for Unsecured Claimants*. Thus, references to recommendation numbers in the comments for Part 2 are preceded by "PJR", to remind readers that the relevant recommendations come from Report No. 50, rather than Volume 1 of this report. However, those recommendations are reprinted in Appendix A.

Appendix A: Recommendations

Appendix A has two parts. The first part sets out the recommendations from Volume 1 of this report. The second part reprints the recommendations made in Report No. 50, *Prejudgment Remedies for Unsecured Claimants*. Recommendations in the latter report form the basis of Part 2 of the model Act.

Appendix B: Existing Legislation

Appendix B sets out the complete text of three acts: the *Execution Creditors Act*, the *Exemptions Act*, and the *Seizures Act*. It also contains relevant rules from the Alberta Rules of Court.

Appendix C: Tables of Concordance

Most of our readers will probably be quite familiar with existing creditors' remedies legislation, such as the *Seizures Act* and *Execution Creditors Act*, and may be curious to know where, or if, the *JEA* deals with the subject of a particular section of, say, the *Seizures Act*. The Tables of Concordance in Appendix C are designed to provide this information for the three main creditors' remedies acts, as well as the relevant provisions of the *Rules of Court*. The cross-references in these tables are one way. They can be used to find where the subject dealt with by a particular provision of the existing legislation is dealt with by the *JEA*, but not the other way round. The latter sort of information can be found by referring to the comments for any given section of the *JEA*.

It should be emphasized that the purpose of the tables is to indicate where the *subject matter* of a given provision of the existing legislation is dealt with by the *JEA*. It does not indicate that the *JEA* provision is based on the old provision, or even that it deals with the subject matter in the same way as the old provision. The *JEA* provision that "corresponds" to one of the old provisions may take an entirely different approach to the subject matter that they both deal with.

The tables do not attempt to explain the similarities and differences between the old provisions and the corresponding *JEA* provisions. That should be evident from looking at the provisions themselves. What we have done, however, is provide brief explanatory notes regarding some of the existing provisions. For the most part, these are provisions whose subject matter is *not* dealt with by any provision of the *JEA*, and the notes are intended to explain why this is so.

Appendix D: Legislation Requiring Amendment or Repeal

This appendix indicates what provisions of existing legislation would have to be amended or repealed as part of the implementation of the proposals. The appendix does not propose wording for amendments, but indicates the general nature of the amendments required.

JUDGMENT ENFORCEMENT ACT

(WITH COMMENTS)

JUDGMENT ENFORCEMENT ACT

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SCHEDULE A

COMMENTS

LIST OF ABBREVIATIONS

The following abbreviations appear throughout the comments:

Abbreviation Stands for:

ECA	<i>Execution Creditors Act</i>
LTA	<i>Land Titles Act</i>
LTO	Land Titles Office
PPR	Personal Property Registry
PPSA	<i>Personal Property Security Act</i>
JEA	(model) Judgment Enforcement Act

The following abbreviations are used in certain examples in the comments:

Abbreviation Stands for:

C	an enforcement creditor
D	an enforcement debtor
G	a garnishee
T	a third person who is affected by enforcement proceedings

Section 1(1)

(a): "agricultural products"

This definition is similar to the definition of "farm products" in s. 481.110 of the *California Code of Civil Procedure*, Title 6.5 (Attachment), which is in turn based on s. 9-109(3) of the *Uniform Commercial Code*.

(c): "building materials"

This definition is identical to the definition in s. 1(1)(c) of the PPSA. This term makes its only appearance in the definition of "fixture" later in this section.

(d): "chattel paper"

This definition is identical to the definition in s. 1(1)(e) of the PPSA. It appears in the definition of "instrument" in this section, and in s. 45(5), which deals with priority issues.

(e): "clearing agency"

This definition is similar to the definition of this term in National Policy Statement No. 41, "Shareholder Communication" of the Canadian Securities Administrators. S. 46 sets out special priority rules for "market securities" (see definition in this section) traded through a clearing agency. This term also appears in the definition of "intermediary" in s. 87.

MODEL JUDGMENT ENFORCEMENT ACT

Definitions

1

(1) In this Act,

- (a) "agricultural products" includes *crops* or livestock or products of *crops* or livestock in their unmanufactured states, while in the possession of a *person* engaged in raising, fattening, grazing or other agricultural operations;
- (b) "assurance fund" means the assurance fund provided for in Part 12;
- (c) "building materials" means materials that are incorporated into a building and includes goods attached to a building so that their removal
 - (i) would necessarily involve the dislocation or destruction of some other part of the building and cause substantial damage to the building, apart from the loss of value of the building resulting from the removal, or
 - (ii) would result in weakening the structure of the building or exposing the building to weather damage or deterioration,

but does not include heating, air conditioning or conveyancing devices or machinery installed in a building or on land for use in carrying on an activity inside the building or on the land;
- (d) "chattel paper" means 1 or more writings that evidence both an *obligation* and a security interest in or lease of specific goods or specific goods and accessions, but does not include a security agreement providing for a security interest in specific goods and after-acquired goods other than accessions;
- (e) "clearing agency" means an entity that provides centralized facilities for the clearing of trades in securities, or that provides centralized facilities as a depository in connection with the clearing of trades in securities, and includes a nominee of such an entity;
- (f) "Court" means the Court of Queen's Bench;

Section 1(1)

(g): "crops"

This is very similar to the definition of "crops" in s. 1(k) of the PPSA. The only difference is that s. 1(k)(ii) of the PPSA definition is not included here, as it is not considered appropriate for the purposes of the JEA.

(h): "distribute"

This term has a narrow meaning in the JEA. It refers to payments made by sheriffs under one of the two sections referred to by the definition.

(i): "document of title"

This is identical to the definition in s. 1(1)(n) of the PPSA. It appears in s. 45(4) in connection with priority issues.

(j),(k),(l): "enforcement creditor", "enforcement debt", enforcement debtor"

Note the requirement of a subsisting writ in each definition. The circumstances in which a writ is considered to be subsisting are set out in s. 36.

(m): "enforcement proceedings"

Some provisions of the JEA are meant to apply to specific enforcement processes, such as seizure or garnishment, and refer to those processes. However, many provisions are meant to apply generally to all enforcement processes authorized by the JEA, and to any step in any of these enforcement process. Such provisions refer to enforcement proceedings.

(n),(o): "exempt", "exigible"

These two definitions are intended to permit various substantive provisions to refer to "exempt" or "exigible" property, rather than having to refer repeatedly to property that is "exempt from enforcement proceedings under this Act" or that is "subject to enforcement proceedings under this Act". It will be noted that the categories of exigible and exempt property are mutually exclusive.

(p): "fixture"

1. This definition does not purport to solve the problem of determining whether a chattel has become a fixture. That is left to be determined by common law principles. The exclusion of building materials comes from s. 1(1)(r) of the PPSA. The effect of the exclusion of building materials from this definition is that they are treated for all purposes as part of the land.

2. Fixtures receive special attention in two places: s. 44 (in connection with priorities); and s. 105 (seizure).

- (g) "crops" means crops, whether matured or otherwise, and whether naturally grown or planted, attached to *land* by roots or forming part of trees or plants attached to *land*, but does not include trees other than
 - (i) nursery stock, and
 - (ii) trees being grown for use in reforestation of land other than the land on which the trees are growing;
- (h) "distribute" means pay out in accordance with sections 170 through 172;
- (i) "document of title" means a writing issued by or addressed to a bailee
 - (i) that covers goods in the bailee's possession that are identified or are fungible portions of an identified mass, and
 - (ii) in which it is stated that the goods in the bailee's possession that are identified in it will be delivered to a named *person*, or to the transferee of the *person*, to bearer or to the order of a named *person*;
- (j) "enforcement creditor" means a *person* in whose favour there is a subsisting *writ*;
- (k) "enforcement debt" means an amount outstanding on a *money judgment* in respect of which there is a subsisting *writ*;
- (l) "enforcement debtor" means a *person* against whom there is a subsisting *writ*;
- (m) "enforcement proceedings" means any action, step or measure authorized by this Act to be taken for the purpose of enforcing a *money judgment*;
- (n) "exempt" means not subject to *enforcement proceedings*;
- (o) "exigible" means subject to *enforcement proceedings*;
- (p) "fixture" means a chattel that has been annexed to land and that is regarded in law as part of the land to which it has been annexed, but does not include *building materials*;

Section 1(1)

(q): "instructing creditor"

1. This is one of several terms that is defined so that it can be used as a handy shorthand for a long descriptive phrase. Here, "instructing creditor" will take the place of phrases such as "the creditor who instructed the sheriff to seize".
2. The reference to creditors upon whose instructions proceedings are continued contemplates situations such as where the original instructing creditor instructs the sheriff to release a seizure, and another enforcement creditor instructs the sheriff to continue the seizure: see s. 185(2).

(r): "instrument"

This is identical to the definition in s. 1(1)(u) of the PPSA, except that in clause (iv) the term "security certificate" replaces the PPSA term "security".

(s): "judgment"

This definition does not presume to state the circumstances in which an order, decree, duty or right may be enforced as or in the same manner as a judgment of the court. Generally, the answer will be found in the statute under which the order or decree was made, or the obligation or right arose.

(t): "judgment creditor"

This term appears only a few times in the JEA. Most references are to an "enforcement creditor". The term "judgment creditor" is only used to refer to a creditor who has obtained a money judgment, but does not have a subsisting writ. This might occur because the creditor has not yet caused a writ to be registered in the Enforcement Registry or because registration of the writ has expired.

(u): "land"

1. The classification of property as land or personal property does not affect its exigibility under the JEA; s. 4 provides that all property is exigible unless it is specifically exempted.
2. The distinction between personal property and land is relevant when it comes to the effect of a writ of enforcement. Generally speaking, to bind personal property, a writ must be registered in the PPR. To bind a parcel of land, a writ must be recorded on the title to that land in the appropriate LTO: see s. 39(2)
3. Another difference is in the method of enforcement. The procedure for selling an enforcement debtor's land is somewhat different than the procedure for seizing and selling personal property.
4. Growing crops are excluded from the definition of "land", and thus can be seized and sold as personal property of the debtor. However, a growing crop can be sold in an enforcement sale of the land upon which it is growing: see s. 111. Also, the priority rules acknowledge that for certain purposes the general law may treat growing crops as an interest in land: see s. 44.

(v): "market security"

1. Reference: Recommendation 47.
2. Recommendation 47 refers to publicly-traded securities. The JEA uses the term "market security" simply because it is shorter.

- (q) "instructing creditor" means the *enforcement creditor* upon whose instructions certain *enforcement proceedings* are taken or continued;
- (r) "instrument" means
 - (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada).
 - (ii) any other writing that evidences a right to the payment of money and is of a kind that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or
 - (iii) a letter of credit or an advice of credit if the letter or advice states that it must be surrendered on claiming payment under it,

but does not include

 - (iv) *chattel paper, a document of title, a security certificate, or*
 - (v) a writing that provides for or creates a mortgage or charge in respect of an interest in *land* that is specifically identified in the writing;
- (s) "judgment" includes any order, decree, duty or right that may be enforced as or in the same manner as a judgment of the court;
- (t) "judgment creditor" means a *person* entitled to enforce a *money judgment*;
- (u) "land" includes any interest in land, but does not include growing *crops*;
- (v) "market security" means
 - (i) a share or other ownership interest in a body corporate, partnership, association, organization, trust, or fund
 - (ii) an *obligation* of any *person* or entity, including a body corporate, partnership, association, organization, government, trust, or fund or
 - (iii) a right to acquire or to sell such an interest or *obligation*

(v): "market security" (continued)

3. To be treated as a market security, an asset must satisfy one of clauses (i), (ii) or (iii) and one of clauses (iv) or (v). The function of the last two clauses is to identify securities that are publicly traded, either on a stock exchange or in the over-the-counter market.

4. It should also be noted that this definition refers to interests, obligations and rights, rather than to documents that may evidence such rights. Where we want to refer to such documents, we use the term "security certificates".

(x): "mobile home"

This is identical to the definition of "mobile home" in s. 24(1) of the *Seizures Act*.

(y): "money judgment"

A judgment might require a defendant both to pay money to do something else. For example, a judgment might order the defendant not to carry on a certain activity and require the defendant to pay a sum of money to the plaintiff. This definition treats the part of the judgment requiring payment of a sum of money as a distinct money judgment; the injunctive aspect of the judgment would fall outside the scope of the JEA.

(z): "obligation"

When the JEA refers to money that is (or may be) owed by some person to an enforcement debtor, it uses the term "obligation", rather than the term "debt". This is done for two reasons: 1) to avoid as far as possible the legal baggage that comes with the term "debt"; and 2) to avoid confusion between the amount owed by the enforcement debtor (the "enforcement debt") and amounts owed to the enforcement debtor ("obligations").

(ee): "property"

1. This inclusive definition is very broad. It is intended to sweep in any asset that an enforcement debtor might own that could conceivably be converted into money in the hands of a sheriff. Many assets will meet two or more of the listed criteria.

2. The main purpose of clause (i) is to make it clear that the JEA disregards the distinction legal theorists often draw between things, and property rights in things. The JEA regards a car (or any other item) as property, not just as the subject matter of property rights. At the same time, the owner's rights in the car are also regarded as property.

3. Clauses (iii) and (iv) are particularly functional in outlook. Clause (iii) proceeds from the premise that if an enforcement debtor has some right or interest that can be transferred for value to a third person, it should be possible to convert that right or interest into money in the hands of a sheriff. Similarly, clause (iv) is based on the premise that a right in an enforcement debtor to be paid money or to receive some other kind of property has the potential to be converted into money in the hands of a sheriff.

that is one or part of a class or series

- (iv) listed and posted for trading on a securities exchange, or
- (v) for which values or prices routinely appear in published securities market reports or in quotation services used by securities dealers;
- (w) "Minister" means the Attorney-General;
- (x) "mobile home" means
 - (i) a vacation trailer or house trailer, or
 - (ii) a structure, whether ordinarily equipped with wheels or not that is constructed or manufactured to be moved from one point to another by being towed or carried and to provide living accommodation for one or more *persons*;
- (y) "money judgment" means a *judgment* requiring a *person* to pay money, or that part of a *judgment* which requires a *person* to pay money;
- (z) "obligation" means a legal or equitable duty to pay money;
- (aa) "person", except where the context otherwise requires, includes the Crown;
- (bb) "personal property" means *property* other than *land*;
- (cc) "Personal Property Registry" means the Personal Property Registry established under the *Personal Property Security Act*;
- (dd) "private dwelling" includes any building, *mobile home*, room or suite occupied by a *person* as a residence, but does not include the common area of an apartment or similar building;
- (ee) "property" includes
 - (i) things, as well as rights or interests in things,
 - (ii) anything regarded in law or equity as property, or as an interest in property,
 - (iii) any right or interest that can be transferred for value from one *person* to another,

(ee): "property" (continued)

4. Causes of action might not fit into a "standard" legal definition of property. However, they are so treated for the purposes of the JEA, because a cause of action has the potential to be converted into money in the hands of a sheriff.

(gg): "security certificate"

1. This definition is the same as the definition of "security" in s. 1(1)(oo) of the PPSA, which is itself almost identical to the definition of that term in s. 44(2)(n) of the *Business Corporations Act*. The defined term is "security certificate", because we want to reserve the term "security" for the rights or obligations that may be evidenced by a security certificate.

2. In Part 6, which deals with the procedure for seizing securities (among other things), the term "security certificate" is defined a little differently: see s. 87(d).

(ii): "sheriff"

The term "sheriff" has an equivocal meaning in legislation such as the *Seizures Act* and the ECA. Depending on the context, a reference to "the sheriff", may be best understood as a reference (a) to the person who bears the title of "Sheriff" within a particular judicial district, (b) a sheriff's officer (eg, an assistant sheriff or bailiff), or (c) the sheriff's office, viewed not as any particular person but as a government office that performs certain functions connected with the enforcement of judgments. As a matter of fact, most references to "the sheriff" make more sense if read as references to the sheriff's office. This definition is intended to recognize all three possible uses of the term. It should be clear from the context which usage is intended in any given provision. See also s. 11, regarding the powers of sheriff's officers.

Section 1(2)

1. Reference: PPSA, s. 1(2).

2. Whether or not a person has knowledge of some fact can be important for the determination of certain liability and priority issues: see ss 29,43,45,46.

- (iv) any right, including a contingent right, to be paid money or receive any other kind of property, and
 - (v) any cause of action;
 - (ff) "secured obligation" means an *obligation* secured by an interest in *property*;
 - (gg) "security certificate", except in Part 6, means a writing that is
 - (i) in bearer, order or registered form,
 - (ii) of a kind commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
 - (iii) one of a class or series or by its terms divisible into a class or series, and
 - (iv) evidence of a share, participation or other interest in or obligation of the issuer of the writing;
 - (hh) "seizure documents" means the documents referred to in section 63(2);
 - (ii) "sheriff" means a sheriff, *sheriff's officer*, or sheriff's office, as the context requires;
 - (jj) "sheriff's officer" means a *person* duly appointed as such;
 - (kk) "writ" means a writ of enforcement.
- (2) For the purposes of this Act,
- (a) an individual knows or has knowledge when information is acquired by him under circumstances in which a reasonable *person* would take cognizance of it;
 - (b) a partnership has knowledge when information has come to the attention of one of the general partners or a *person* having control or management of the partnership business under circumstances in which a reasonable *person* would take cognizance of it;
 - (c) a corporation knows or has knowledge when information has come to the attention of
 - (i) a managing director or officer of the corporation, or

Section 2

1. Reference: Recommendation 143.
2. Subsection (2) is non-committal as to what proceedings might be available to the Crown under its prerogative. The Institute has considerable doubt that the Crown should have remedies that are not available to other enforcement creditors.
3. If the Crown does use the enforcement mechanisms provided by the JEA, it will be subject to the same rules as any other creditor. It should be noted though, that the distribution rules contemplate that other acts may rank certain enforcement creditors (including, perhaps, the Crown) ahead of other enforcement creditors in a distribution of money in the hands of a sheriff: see s. 172(e).

Section 3

1. Reference: Recommendations 4, 137.
2. Subsection (2) embodies the principle underlying the ECA. It has direct application not only in the distribution of enforcement proceeds among all enforcement creditors of the relevant debtor (Part 11), but also in the provisions, such as s. 182, that allow one enforcement creditor to "take over" enforcement proceedings that are abandoned by the original instructing creditor.

- (ii) a senior employee of the corporation or association with responsibility for matters to which the information relates,

under circumstances in which a reasonable *person* would take cognizance of it, or when the information in writing has been delivered to the registered office of the corporation or attorney for service for the corporation;

- (d) the members of an association know or have knowledge when information has come to the attention of

- (i) a managing director or officer of the association,

- (ii) a senior employee of the association with responsibility for matters to which the information relates, or

- (iii) all the members

under circumstances in which a reasonable person would take cognizance of it;

- (e) the Crown knows or has knowledge when information has come to the attention of a senior employee of the Crown with responsibility for matters to which the information relates under circumstances in which a reasonable person would take cognizance of it.

PART 1

GENERAL

Crown is bound

2

- (1) This Act binds the Crown.
- (2) Notwithstanding subsection (1), nothing in this Act prevents the Crown from collecting a debt through proceedings otherwise available to the Crown under its prerogative.

Enforcement
processes

3

- (1) A *money judgment* may be enforced only through proceedings authorized by this or any other Act.
- (2) Except as otherwise specifically provided by this or any other Act, all *enforcement proceedings* are deemed to be taken on behalf and for the benefit of all *enforcement creditors* of the *enforcement debtor*.

Section 3 (continued)

3. Subsection (3) follows from Recommendation 137. It is intended to make it clear that enforcement of a judgment is to be distinguished from a (more or less) voluntary payment to the creditor by the debtor. Subsection (3) says nothing about whether a direct payment to one judgment creditor could be attacked by other creditors as a fraudulent preference.

Section 4

1. Reference: Recommendation 1.

2. When read with the definitions of "property" and "exigible" in s. 1, this section says that all of a judgment debtor's assets are subject to enforcement proceedings, except those that are specifically exempted.

Section 5

This section states the principle that underlies various recommendations in Volume 1 of our report and many specific provisions of the JEA. The principle is that the enforcement system is province-wide. The one exception is the requirement in s. 73(2) that applications for removal and sale be made in the judicial district where the seizure took place.

Sections 6-9

1. Reference: Recommendation 9.

2. Section 7 states the general principle that the Enforcement Registry is to contain a complete record of all enforcement activities. However, the exact details of what is to be entered in the Enforcement Registry, and how it is to be recorded, is for the most part left to be prescribed by regulation.

3. The Enforcement Registry will be an electronic data base. One of the issues that s. 9 leaves to be determined by regulation is the extent to which remote access to this data base should be permitted.

- (3) Nothing in this section prevents a *judgment creditor* from soliciting or accepting payment from the *judgment debtor*.
- All property exigible 4 Except as otherwise expressly provided in this or any other Act, all *property* of an *enforcement debtor* is *exigible*.
- Province-wide enforcement 5 Except as otherwise expressly provided, *enforcement proceedings* under this Act shall be carried out without regard to judicial district or other geographical divisions within the Province.

ENFORCEMENT REGISTRY

- Enforcement registry 6 A registry called the Enforcement Registry shall be established by the *Minister*.
- Contents of enforcement registry 7
- (1) The Enforcement Registry is contain a record of all *enforcement proceedings* taken with respect to a *money judgment*.
- (2) Except as otherwise provided by this Act,
- (a) the particular information or documents to be entered in the Enforcement Registry,
- (b) the manner in which information or documents are to be entered, and
- (c) the circumstances in which outdated or inaccurate information or documents may be removed from the Enforcement Registry
- shall be prescribed by the regulations.
- Registrations in enforcement registry 8
- (1) A document or information required or permitted to be registered in the Enforcement Registry may be submitted for registration to any *sheriff*.
- (2) The *sheriff* to whom a document or information is submitted in accordance with subsection (1) shall promptly register it in the Enforcement Registry.
- Public access to enforcement registry 9 The Enforcement Registry shall be open to examination by the public, subject to
- (a) payment of the prescribed fee, if any, and

Section 10

1. Reference: Recommendation 25.
2. This section is consistent with sheriffs' offices being organized on the basis of judicial districts or, indeed, on any other basis.

Section 11

1. Reference: Recommendation 42.
2. One object of this section is to dispense with the pretence that the powers of the sheriff are vested in one particular individual, who then delegates this power to his or her subordinates as may be required. Thus, where the JEA gives some power to "the sheriff", it is in fact a grant of power to every sheriff's officer.
3. Recommendation 42 says that the sheriff should be able to obtain "expert assistance" in connection with the sale of seized property. This section generalizes the recommendation to make it clear that a sheriff's officer may obtain assistance or advice to carry out any of his or her responsibilities under the JEA. For example, this section would allow the officer to obtain the services of a real estate agent to sell land, or of a stock broker to sell shares.

Section 12

1. Reference: ECA, s. 4(2)(a).
2. This generalizes the indemnification requirement in the ECA, which applies only to seizure instructions. This section applies to any instructions received by the sheriff. Note, however, that it refers only to payment of the sheriff's fees and expenses. It says nothing about indemnifying the sheriff against liability. That is made unnecessary by the provisions of Part 12, which largely immunize sheriff's officers from liability, and which create an assurance fund to deal with mishaps in the enforcement process.

Section 13

This section assumes that not all the information and documents generated or received by sheriffs will necessarily find their way into the Enforcement Registry. For example, the precise text of a creditor's letter of instructions would almost certainly not be recorded in the Enforcement Registry. However, the letter itself would be retained on the sheriff's file.

Section 14

1. All of the provisions of this Act that require a sheriff to proceed in some particular fashion in given circumstances are intended to protect the interests of some person or class of persons. It is reasonable, therefore, that if all the persons who might be affected by a sheriff's action consent to it, the sheriff should be considered to have taken that action in accordance with the JEA.
2. Section 165 provides that an enforcement debtor cannot agree to waive an exemption.

- (b) such reasonable restrictions on the time, place, and mode of access as may be prescribed by regulation.

SHERIFFS

Sheriff's powers
exercisable
throughout
Province

- 10** A *sheriff* may perform his duties and exercise his powers under this Act anywhere in Alberta.

Sheriff's powers
exercisable by
sheriff's officers

- 11** Anything this Act requires or permits a *sheriff* to do may be done without warrant by any *sheriff's officer*, with such assistance or advice, including the paid assistance or advice of professional agents, brokers or advisers, as the officer considers desirable.

Payment of
sheriff's fees and
expenses

- 12** A *sheriff* is not required to act on any instruction from an *enforcement creditor* until the creditor has paid the *sheriff's* prescribed fee and reasonably anticipated expenses of carrying out the instruction, or made arrangements for payment that are satisfactory to the *sheriff*.

Sheriff's records

- 13**
- (1) Every *sheriff* shall maintain an accurate and complete record of
- (a) instructions received from *enforcement creditors*;
 - (b) steps taken to carry out creditors' instructions, and their results;
 - (c) notices or statements sent or received;
 - (d) money received, indicating the source and the date of receipt;
 - (e) money paid out, indicating the amount paid to each recipient; and
 - (f) every other matter of which the regulations require the *sheriff* to maintain a record.
- (2) Upon payment of the prescribed fee, if any, a *sheriff* shall provide to a *person* who requests it any information of which the *sheriff* is required to maintain a record.

Acting by consent

- 14** Subject to section 165, but notwithstanding any other provision of this Act, anything done by a *sheriff* with the written consent of all interested *persons* is deemed to have been done in accordance with this Act.

Section 15

1. Reference: Recommendation 5; ECA, s. 39.
2. This serves a similar purpose, but is not identical to s. 39 of the ECA. This section allows any interested person to apply for directions, not only the sheriff. It does not purport to protect a sheriff who acts in accordance with the court's direction from liability. This is unnecessary because any liability will fall on the assurance fund, rather than on individual sheriff's officers: see Part 12.

Section 16

1. The definition of "claim" is based on Recommendation PJR 3. In accordance with this recommendation, a claim need not be in respect of a "liquidated demand". A claim for unliquidated damages would satisfy this definition.
2. The definition of "exigible property" is included out of an abundance of caution. Section 4 says that (except as otherwise provided) all property of an enforcement debtor is exigible. However, the defendant against whom the prejudgment attachment order is sought is not yet an enforcement debtor.

Section 17

1. Reference: Recommendation PJR 4.
2. It will be noted that the criteria set out here are conjunctive: they must all be satisfied before an attachment order can be granted.

Direction by the
Court

- 15** On the application of a *sheriff* or any interested *person*, the *Court* may give such directions as it considers proper regarding the exercise or performance of any of the *sheriff's* powers or duties under this Act, and without restricting the generality of the foregoing, may give directions as to the manner in which the *sheriff* should exercise a discretion given to the *sheriff* by this Act.

PART 2

PREJUDGMENT RELIEF

Definitions

- 16** In this Part,
- (a) "claim" means a claim that, if established, would ground a *money judgment*;
 - (b) "claimant" means a *person* asserting a *claim*;
 - (c) "dealing", in reference to *property*, includes transferring, using, disposing of, creating an interest in, or doing anything to the *property*;
 - (d) "defendant" means a *person* against whom a *claim* is asserted.
 - (e) "exigible property" means *property* that would be *exigible* if the *defendant* were an *enforcement debtor*.

ATTACHMENT ORDER

Grounds for
attachment order

- 17** The *Court* may grant an attachment order on the application of a *claimant* where
- (a) there is a reasonable likelihood that his *claim* against the *defendant* will be established,
 - (b) there are reasonable grounds for believing that the *defendant* is *dealing* with his *exigible property*, or is likely to do so,
 - (i) otherwise than for the purpose of meeting his reasonable and ordinary business or living expenses, and
 - (ii) in a manner that would be likely to seriously hinder the *claimant* in the enforcement of a *judgment* against the *defendant*, and

Section 18

1. Reference: Recommendation PJR 11.
2. This section deliberately uses "should" rather than "shall". In effect, it is a statement of a principle that judges should keep in mind when deciding upon the terms of attachment orders.

Section 19

1. Reference: Recommendations PJR 8, 12, 13, 15, 17, 18.
2. This section describes the possible scope of an attachment order, dealing with both the property to which it may apply and the method by which such property may be preserved. It is intended to provide the court with the flexibility to make an order that will be appropriate to the particular circumstances of any given case.
3. In the interest of simplicity, subsection (3) does not preserve the distinction between various methods of attachment that is made by Recommendation PJR 18.

Section 20

Reference: Recommendation PJR 23.

Section 21

1. Reference: Recommendations PJR 6, 24.
2. Subsection (1) permits a claimant who has not yet commenced an action, but who is about to do so, to apply for an attachment order. However, judges will undoubtedly look favourably upon such applications only in the most urgent of circumstances. The usual course would be to make an application for prejudgment relief after an action is commenced.

(c) it would be just and equitable to grant the order.

Minimum
inconvenience to
defendant

18 An attachment order should cause as little inconvenience to the *defendant* as is consistent with achieving its purpose, and if possible should allow the *defendant* to use attached *property* for proper purposes.

Contents of
attachment order

- 19**
- (1) An attachment order may
- (a) apply to any *exigible property* of the *defendant*,
 - (b) prohibit or regulate any specified *dealings* with the *defendant's exigible property*,
 - (c) require the *defendant* or a *person* who has possession or control of *exigible property* of the *defendant* to deliver the *property* up to a *person* identified in the order,
 - (d) authorize the *claimant* to issue a garnishee summons, to which Part 8 shall apply with any necessary modifications,
 - (e) appoint a receiver, to whom section 155 shall apply with any necessary modifications, and
 - (f) include any term, condition or ancillary provision that the *Court* considers necessary or desirable.
- (2) An order under subsection (1)(b) may identify the *property* to which it applies, or may provide that it shall apply to *property* to be subsequently identified in writing by a *sheriff*, in which case the writing shall be considered part of the order.
- (3) The amount or value of *property* to which an attachment order applies shall not exceed what appears to be necessary to meet the *claimant's claim*, including interest and costs, and any subsisting *writs*, unless the *Court* is of the view that such a limitation on the operation of the order would make it unworkable or ineffective.

APPLICATION FOR ATTACHMENT ORDER

Application to
judge

20 An application for an attachment order shall be made to a judge.

Who may apply

21

(1) A *claimant* who has commenced or is about to commence proceedings in Alberta to establish his *claim* may apply for an attachment order.

Section 21 (continued)

3. Subsection (2) establishes the jurisdiction of the court to make an attachment order for the purpose of preserving assets located in Alberta that might be required to satisfy a judgment in proceedings that have been commenced before a foreign tribunal.

Section 22

1. Reference: Recommendations PJR 25-29.

2. It might be thought that subsection (3) is redundant to the last part of subsection (2), but that is not the case. Subsection (2) requires that full and fair disclosure of all material information known to the claimant be made. Subsection (3) requires each deponent to state that he or she has made full and fair disclosure.

Section 23

Reference: Recommendations PJR 38, 39.

Section 24

1. Reference: Recommendations PJR 32, 34, 35.

2. The main purpose of this section is to establish that *ex parte* attachment orders are temporary. They will automatically expire unless renewed within a short time on an application made on notice to the defendant.

- (2) A *claimant* who has commenced proceedings before a foreign tribunal to establish his *claim* may apply for an attachment order if
 - (a) a *judgment* or award of the foreign tribunal could be enforced in Alberta by action or by proceedings under an enactment *dealing* with the reciprocal enforcement of *judgments* or awards, and
 - (b) the *defendant* appears to have *exigible property* in Alberta.

Ex parte
application

22

- (1) An application for an attachment order may be made ex parte.
- (2) The material supporting an ex parte application for an attachment order shall state with as much precision as possible the amount of the *claim*, and shall make full and fair disclosure of all material information known to the *claimant*.
- (3) Every affidavit filed in support of an ex parte application for an attachment order shall state that it makes full and fair disclosure of all material information known to the deponent.
- (4) An application for an attachment order may be granted notwithstanding any defect of form in the material relied upon in support of the application.

Claimant's
undertakings

23

- (1) An attachment order shall not be granted unless the *claimant* undertakes to pay any damages or indemnity that the *Court* may decide should be paid to the *defendant* or a third person.
- (2) The *Court* may at any time require the *claimant* to give such additional undertakings as the *Court* considers appropriate.
- (3) The *Court* may require the *claimant* to provide security for any undertaking.

APPLICATIONS AFTER ORDER GRANTED

Continuation or
termination of ex
parte attachment
order

24

- (1) Unless continued, an *ex parte* attachment order expires on the expiry date specified in the order, which shall not be more than 21 days after the order is granted unless special circumstances justify a later expiry date.
- (2) An application to continue an *ex parte* attachment order beyond its expiry date shall be made on notice to the *defendant*.

Section 24 (continued)

3. Subsection (4) serves two purposes. First it is intended to make it clear that the onus remains on the claimant to establish that the attachment order should be continued. Second, it emphasizes that the issue on the "continuance" application is whether the material before the court at that time justifies an attachment order. The issue is not whether the material that was before the judge on the *ex parte* application justified the granting of an attachment order.

4. Subsection (5) says that the Court always retains a discretion to terminate the an *ex parte* attachment order that was obtained without full and fair disclosure. In deciding how to exercise this discretion, the Court would undoubtedly consider such matters as whether the non-disclosure was innocent or deliberate.

Section 25

1. Reference: Recommendations PJR 33, 36, 37.

2. This section does not specify the circumstances in which the court may terminate or modify an attachment order. The court is intended to have a wide discretion to terminate or modify an attachment order whenever the circumstances suggest that it is appropriate to do so.

Section 26

1. Reference: Recommendation PJR 41.

2. It is anticipated that this section will seldom be used. The purpose of an attachment order is to prevent the property to which it applies from being dealt with improperly, not to permit the property to be sold before the claimant has obtained judgment.

Section 27

1. Reference: Recommendation PJR 14.

2. Recommendation PJR 14 refers only to registration in the LTO, because the PPSA had not been enacted at the time our Prejudgment Remedies Report was issued. However, the arguments made in our Report for allowing registration of attachment orders in the LTO apply equally to registration in the PPR.

Section 28

Reference: Recommendation PJR 20.

Section 29

1. Reference: Recommendation PJR 22.

2. This section mediates between two opposing considerations. The first is that an attachment order is not intended to give the claimant any sort of proprietary interest in the defendant's property. The second is that a third person who knows of an attachment order should not be able to disregard it with impunity. This section mediates these tensions by providing a remedy against the third person only where the third person knowingly participates in a transaction that is inconsistent with an attachment order.

- (3) If it is impracticable to hear and determine an application to continue an *ex parte* attachment order prior to its expiry date, the *Court* may extend the expiry date for such period as is necessary to allow the application to be dealt with.
- (4) On either an application to continue or an application to terminate an *ex parte* attachment order,
 - (a) the *claimant* has the onus of establishing that the order should be continued, and
 - (b) the issue shall be determined on the basis of whether the material now before the *Court* justifies an attachment order.
- (5) Notwithstanding subsection (4)(b), the *Court* may terminate an *ex parte* attachment order where the *claimant* has failed to make full and fair disclosure of material information in obtaining the order.

Termination or
modification at any
time

- 25 On application by any interested *person*, the *Court* may at any time terminate or modify an attachment order, and, in particular, may modify the order so as to except certain *property* or *dealings* from its operation.

Sale or disposition
of attached
property

- 26 The *Court* may authorize the sale or other disposition of attached *property* without the consent of its owner if for any reason, including the likelihood that the *property* would depreciate substantially in value or would be unreasonably expensive to keep under attachment pending conclusion of the proceedings, it appears necessary or prudent to sell or dispose of the *property*.

EFFECT AND DURATION OF ORDER

Registration of
attachment order

- 27 A *claimant* may record an attachment order affecting *land* in the Land Titles Office, and may register an attachment order affecting *personal property* in the *Personal Property Registry*.

No effect on other
enforcement
proceedings

- 28 Any *money judgment* may be enforced against attached *property* to the same extent and in the same manner that it could have been if the *property* had not been attached, and the proceeds of *enforcement proceedings* may be *distributed* without regard to the attachment.

Effect on third
persons

- 29
 - (1) A *person* who has knowledge of an attachment order and who knowingly assists or participates in a *dealing* that is inconsistent with the order may be ordered
 - (a) to compensate any *claimant* or *enforcement creditor* who has suffered actual loss as a result of the *dealing*, or

Section 30

1. Reference: Recommendation PJR 21.
2. This section emphasizes the non-proprietary nature of an attachment order. Under s. 29(1)(b) a person who acquires attached property from a defendant in a transaction that he or she knows to be inconsistent with the terms of the attachment order may be required to return the property to the defendant. But this is a personal liability, rather than a flaw in title. An innocent transferee from the original transferee would not be subject to an order under s. 29(1)(b).

Section 31

1. Reference: Recommendation PJR 40.
2. Perhaps the most likely scenario for the extension of an attachment order pursuant to subsection (2) is where the claimant's action is dismissed at trial upon a difficult question of law, and the claimant applies for the order to be continued pending an appeal.

Section 32

1. Reference: Recommendation 7.
2. Note that the creditor must have a subsisting writ: see s. 36.

- (b) to return to the *defendant* any attached *property* acquired by the third *person* through the *dealing*.
- (2) For the purposes of subsection (1)
 - (a) in the absence of evidence to the contrary, a *person* who assists or participates in a disposition of *property* against which an attachment order is recorded in the Land Titles Office or registered in the *Personal Property Registry* may be presumed to have acted with knowledge of the order, and
 - (b) where a *person* is subject to a legal duty in favour of someone other than the *defendant* when he receives notice of an attachment order, nothing that is necessary for him to do in order to perform that duty shall be regarded as assisting or participating in a *dealing* inconsistent with the order.
- (3) An order under subsection (1)(a) shall be for the benefit of all *persons* referred to in subsection (1)(a), in proportion to the amount of their respective losses.
- (4) Nothing in this section restricts the power of the *Court* to punish for contempt.
- 30 Except as provided by section 29(1), a transfer or other *dealing* with attached *property* is as valid and effective as it would have been if the *property* had not been under attachment.
- 31
 - (1) Unless otherwise ordered by the *Court*, an attachment order terminates upon the dismissal or discontinuance of the *claimant's* proceeding, or sixty days after entry of a *judgment* in favour of the *claimant*.
 - (2) The *Court* may extend the operation of an attachment order beyond the times set out in subsection (1) if it appears just to do so.

Transfers not
affected

Automatic
termination of
order

PART 3

WRITS OF ENFORCEMENT

GENERAL

Subsisting writ
required

- 32 Except as otherwise expressly provided, a *judgment creditor* who does not have a subsisting *writ* may not initiate any *enforcement proceedings*.

Section 33

1. Reference: Recommendation 21.
2. Subsection (1) ties the issuing of a writ in to the time during which a judgment creditor can bring an action on the judgment, and not be met with a limitations defence. See s. 4(1)(f) of the *Limitation of Actions Act* and s. 11 of the *Model Limitations Act* set out in our Report on Limitations.
3. Subsection (3) says that the creditor may deliver the writ to the sheriff for registration, but does not in terms require the sheriff to register it. This latter point is dealt with by s. 8(2), which requires the sheriff promptly to register any document presented for registration.

Section 34

1. Reference: Rule 356.
2. This serves one of the functions served by Rule 356. Rule 356 also deals with the granting of leave to issue a writ more than 6 years after the date of the judgment. That part of r. 356 is dispensed with, since under the JEA a writ can be issued without leave at any time during the 10 year "life" of the judgment.

Section 35

1. Reference: Recommendation 138; ECA, s. 28.
2. The requirements regarding the statement of status are designed to ensure that, as far as is possible, the Enforcement Registry contains an accurate, up-to-date record of the amount outstanding on all subsisting writs.
3. Subsection (2)(a) does not require the registration of a statement of status when a creditor receives a payment from a sheriff on a distribution under the JEA, because the records of the Enforcement Registry can be updated automatically when the sheriff makes the distribution.

Issuing and
registering writ

33

- (1) A *judgment creditor* may require the Clerk of the Court in whose office the *judgment* has been entered to issue a *writ* in respect of the *judgment* at any time before the expiration of 10 years from the date of the *judgment*.
- (2) The *writ* shall be in prescribed form and shall set out
 - (a) the names of the *judgment* debtor and the *judgment creditor*,
 - (b) the date of the *judgment*,
 - (c) the amount of the *judgment*, including costs payable by the *judgment* debtor,
 - (d) the amount presently outstanding on the *judgment*, if it is different than the amount of the *judgment*,
 - (e) the rate of interest payable on the outstanding amount, or on any particular portion of the outstanding amount, and
 - (f) the *judgment creditor's* address for service.
- (3) The *judgment creditor* may deliver the *writ* to a *sheriff* for registration in the Enforcement Registry.

Change in parties

34

Where any change occurs in the *persons* entitled to enforce a *money judgment*, or the *persons* against whom the *judgment* may be enforced, a *person* claiming to be entitled to enforce the *judgment* may apply to the *Court* for leave to issue a *writ* showing the proper parties, or to amend a *writ* that has already been issued.

Statement of status

35

- (1) An *enforcement creditor* may at any time deliver a statement of status to a *sheriff* for registration in the Enforcement Registry.
- (2) An *enforcement creditor* shall deliver a statement of status to a *sheriff* for registration in the Enforcement Registry not more than 1 month after
 - (a) he receives any money or other *property* in full or partial satisfaction of the *enforcement debt*, otherwise than under a distribution under this Act, or
 - (b) enforcement of his *judgment* is stayed or suspended, whether by order or by agreement.
- (3) A statement of status shall be in prescribed form and shall state

Section 36

1. Reference: Recommendation 138; ECA, s. 29.
2. The idea of a subsisting writ is fundamental to the JEA. Only creditors with a subsisting writ (called "enforcement creditors") may take any steps to enforce a money judgment, or participate in a distribution of the fruits of enforcement activities.
3. Subsection (1) sets out two requirements, both of which must be met for a writ to be considered "subsisting". First, the judgment must still be "in force": see subsection (2). Second, the writ must be registered in the Enforcement Registry: see subsection (4).
4. Subsection (3) contemplates a situation such as the following. Nine years and 10 months after a money judgment was originally granted, C initiates proceedings to get a judgment on the judgment. However, in contemplation of the possibility a new judgment on the original judgment will not be granted within the 10 year period, C obtains and files the certificate contemplated by subsection (3). This ensures that for the purposes of the JEA, the original judgment will remain in force until it is replaced by the new judgment, or until the proceedings to get a "new" judgment are dismissed or discontinued.

- (a) the particulars of any change in the amount outstanding on the *judgment* since a statement of status was last registered, or since the *writ* was issued if no statement of status has previously been registered, including particulars of any payments received, costs that have become payable, or interest that has accrued,
- (b) the amount presently outstanding on the *judgment*, including costs and accrued interest, and
- (c) in the case of a statement required by subsection (2)(b), particulars of the stay or suspension of enforcement.

Subsisting writ

36

- (1) A *writ* subsists only while the *judgment* upon which it is issued, or any *judgment* based on the original *judgment*, is in force, and the *writ* is registered in the Enforcement Registry.
- (2) For the purposes of subsection (1), a *judgment* is not in force
 - (a) if it has been satisfied,
 - (b) while its enforcement is stayed or suspended, or
 - (c) after the expiration of 10 years from the date of the *judgment*.
- (3) Where, prior to the expiration of the time mentioned in subsection (2)(c), a *judgment creditor* causes to be registered in the Enforcement Registry a certificate of the Clerk of the *Court* certifying that the creditor has commenced proceedings to obtain a *judgment* on the original *judgment*, subsection (2)(c) does not apply unless the proceedings are discontinued or dismissed.
- (4) For the purposes of subsection (1), the registration of a *writ* in the Enforcement Registry expires
 - (a) on the anniversary of the initial registration of the *writ*, if no statement of status has been filed,
 - (b) on the anniversary of the registration of the most recently registered statement of status, or
 - (c) when the *enforcement creditor* fails to submit a statement of status as required by section 35(2).

Section 37

1. Several sections of this refer to the amount outstanding on a writ. This section describes how that amount is to be calculated.
2. Basically, the amount outstanding on a writ is its "face amount" (as determined by the writ or the most recent statement of status) adjusted to take account of the events that have occurred since the writ or statement of status was registered.
3. The rationale for including the costs identified in subsection (2) in the amount outstanding on a writ without the need to file a statement of status is efficiency. This subsection attempts to identify costs that, when incurred by an enforcement creditor, will automatically be known to a sheriff, who can adjust the records of the Enforcement Registry accordingly. Amounts actually paid by the creditor to a sheriff fall in this category, as do taxable costs to which an enforcement creditor is entitled in respect of instructions given to a sheriff. The sheriff usually will have no independent knowledge of other sorts of costs, such as the costs of an application to the court. Therefore, such costs must be included in a statement of status before they can be counted as part of the amount that is outstanding on the creditor's writ.

- (5) Where the registration of a *writ* in the Enforcement Registry has expired, the *judgment creditor* may revive the registration by registering a statement of status, but such revival has no retrospective effect.

Amount
outstanding on writ

37

- (1) The amount outstanding on a subsisting *writ* is the sum of
- (a) the amount outstanding on the *judgment* as set out in the *writ* or the most recently registered statement of status,
 - (b) costs referred to in subsection (2),
 - (c) any interest that has accrued since the *writ* was issued or the statement of status was registered,
- minus any amount received by the creditor on account of the *judgment* since the *writ* was issued or the statement of status was registered.
- (2) The following expenses incurred by an *enforcement creditor* after a statement of status was last registered, or incurred after his *writ* was issued, if no statement of status has been registered, shall automatically be added to the amount outstanding on the *writ*:
- (a) amounts paid to a *sheriff* in respect of the *sheriff's* fees or expenses;
 - (b) taxable costs to which the *enforcement creditor* is entitled in respect of
 - (i) the issuing or registration of documents by or with a *sheriff*, or
 - (ii) instructions given to a *sheriff* in relation to any *enforcement proceedings*.
- (3) Nothing in this section limits the discretion of the *Court* regarding costs.

BINDING EFFECT OF WRITS OF ENFORCEMENT

Definitions

38

- (1) In sections 39 through 49
- (a) "after-acquired property" means property acquired by an *enforcement debtor* after the relevant *writ* is registered in the *Personal Property Registry*;

Section 38

1. The definition of "register" in clause (1)(b) is crucial, in that it refers to the Personal Property Registry, rather than the Enforcement Registry. The binding effect of a writ on personal property depends on registration in the Personal Property Registry.
2. Most of the terms set out in clause (1)(c) are defined in s. 1(1) of the PPSA. The terms "buyer of goods", "ordinary course of business of the seller", and "seller" are defined in s. 30(1) of the PPSA.
3. There are several places in ss 39-49 where a purchaser of certain property is said to have priority unless he has knowledge that the property is bound by a writ. Subsection (2) is intended to prevent a purchaser who knew that a writ was registered against D and that D owned the property in question from arguing that he or she did not appreciate that the writ bound the property. In other words, persons who know that a writ is registered against D are presumed to know that the writ binds all D's personal property. However, a person who knows that a writ is registered against D is not presumed to know that any particular item of property is owned by D. That would be a question of fact.

Section 39

1. Reference: Recommendations 10, 11.
2. It will be noted that, in this section and elsewhere, the JEA refers to a writ being "recorded" on the certificate of title. This term is intended to be equally applicable to a land titles regime in which writs are "registered" on title or noted on title by means of a caveat or other mechanism.

Section 40

1. Reference: Recommendations 11, 14.
2. An exception must be read in to subsection (1) for serial number goods. An earlier version of this model Act stated expressly that serial number goods are not bound by a writ unless the writ is registered by serial number against such goods. However, we have been advised that this result is achieved by the regulations under the PPSA.
3. This section does not state the circumstances in which land is bound by a writ, since this is provided for in s. 17.1(8) the *Land Titles Act* ("LTA"). It is assumed that s. 17.3 of the LTA will be in force by the time the JEA comes into operation.

Section 41

This section is intended to state as clearly as possible exactly what is meant by the "binding effect" of a writ. Subject to the exceptions that follow, an interest acquired in property that is bound by a writ is subordinate to the writ, and liable to be extinguished altogether by the sale of the property in the course of enforcement proceedings.

- (b) "register" or "registration", means register or registration in the *Personal Property Registry*;
- (c) the following terms have the meaning given to them by the *Personal Property Security Act*:

"buyer of goods"; "consumer goods"; "goods"; "inventory"; "money"; "new value"; "ordinary course of business of the seller"; "purchase"; "purchase-money security interest"; "purchaser"; "security interest"; "seller"; "value".

- (2) For the purposes of sections 39 through 49, a *person* who knows that a *writ* is registered in the Personal Property Registry is deemed to know that the *writ* binds all *personal property* of the *enforcement debtor* named in the *writ*, but is not deemed to know that any particular *property* is or was owned by the *enforcement debtor*.

Necessity of
registration

39

- (1) A subsisting *writ* may be *registered* in the *Personal Property Registry* and recorded in the Land Titles Office in accordance with the provisions of the *Personal Property Security Act* and the *Land Titles Act*.
- (2) A *writ* does not bind or otherwise affect the *enforcement debtor's* interest in any *personal property* until *registered* in the *Personal Property Registry*, or in any *land* until recorded on the certificate of title for that *land* in the Land Titles Office.

Writ binds personal
property upon
registration

40

- (1) A subsisting *writ* binds all of the *enforcement debtor's* *exigible personal property* upon *registration*.
- (2) Subsection (1) applies to *after-acquired property* of the *enforcement debtor* from the time the debtor acquires it.

Subordination of
subsequent
interests

41

- (1) Except as otherwise provided in sections 42 through 47 or in any other Act, an interest acquired in *property* that is bound by a *writ* is subordinate to the *writ*.
- (2) Where an interest in *property* is subordinate to a *writ*,
 - (a) the *property* is subject to *enforcement proceedings* to the same extent it would have been if the subordinate interest did not exist, and
 - (b) a *person* who acquires the *property* as a result of *enforcement proceedings* obtains title free of the subordinate interest.

Section 42

1. Reference: Recommendation 20; *Seizures Act*, s. 4(1)(b) (as amended by the PPSA, s. 97(b)).
2. When reading this and the succeeding sections, it should be kept in mind that in contrast to the situation under the former law, there is no gap between the time that a writ binds personal property and the time that the writ is registered in the PPR. There is no such thing as property that is bound by a writ that has not yet been registered in the PPR. Therefore, it is unnecessary to deal with the situation where a writ binds property but has not yet been registered in the PPR.
3. Section 20(1)(a) of the PPSA subordinates unperfected security interests to the claims of creditors entitled to share in a distribution of the proceeds of a seizure or garnishment where the seizure or garnishment takes place before the security interest is perfected. Section 35(5) of the PPSA similarly limits the priority of a perfected security interest in respect of future advances (that is, advances made by the secured party after the property in question has been seized or attached).
4. The situation envisaged by subsection (2) could arise where an enforcement debtor has granted a security interest that is to cover after-acquired property. If the debtor acquires property after the writ is registered in the PPR, the writ would bind the property at the same time that the security interest attaches to it. Priority between the writ and the security interest would then be determined by their order of registration in the PPR.
5. Subsection (3) deals with a situation that is similar to but significantly different from the one dealt with by subsection (2). If an enforcement debtor buys a chattel on a conditional sales basis, the writ would probably bind the chattel at the same time that the conditional seller's security interest attaches. The chances are good that the conditional seller will not have a chance to perfect the security interest before the buyer (the enforcement debtor) gets possession of the chattel. Subsection (2) would give the writ priority. But subsection (3) gives the conditional seller priority, so long as the security interest is perfected within the 15 day period referred to in clause (3)(a).

Section 43

1. Reference: Recommendations 14, 15, 18; PPSA, s. 30(2)-(4), (6)-(8); *Seizures Act*, s. 4(2)-(4) (as amended by the PPSA, s. 97(b)).
2. In one respect, subsection (1) is less generous to buyers and lessees than is the corresponding provision of the PPSA: s. 30(2). Subsection (1) applies only in favour of buyers or lessees who do not have knowledge of the writ, whereas s. 30(2) of the PPSA protects the buyer or lessee unless he or she knows not only of the existence of the security interest, but also that the sale or lease constitutes a breach of the relevant security agreement.
3. In another respect subsection (1) is more favourable to the buyer or lessee than is s. 30(2) of the PPSA. The latter only protects the buyer or lessee where the relevant security interest was **granted by** the seller. By contrast, subsection (1) protects the buyer or lessee against any writ that binds the goods in question. Suppose, for example, that D sells goods to T1 in circumstances such that T1's interest is subordinate to the writ against T1. If T1 sells the goods to T2 in the ordinary course of the former's business, T2 is protected unless he had knowledge of the writ.

Priority between
writs and certain
security interests

42

- (1) Subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, a *security interest* that attaches to *personal property* before the *property* is bound by a *writ* has priority over the *writ*, whether or not the *security interest* is perfected.
- (2) Subject to subsection (3), a *writ* that binds *after-acquired property* at the same time that a *security interest* attaches to the *property* has priority over the *security interest* if and only if the *writ* was *registered* before the *security interest* was perfected.
- (3) Subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, a *purchase money security interest* has priority over a *writ* that was *registered* before the *purchase money security interest* was perfected if the *security interest* is perfected not later than 15 days after
 - (a) the day the debtor, or another *person* at the request of the debtor obtains possession of the collateral, or
 - (b) the *security interest* attaches, where the *property* is an intangible.

Dispositions of
goods in certain
circumstances

43

- (1) A buyer or lessee of *goods* sold or leased in the *ordinary course of business of the seller* or lessor takes free of any *writ* that binds the *goods* unless the buyer or lessee buys or leases with knowledge that the *goods* are bound by a *writ* or are under seizure.
- (2) A buyer or lessee of *goods* that are acquired as *consumer goods* takes free from a *writ* that binds the *goods* if the buyer or lessee
 - (a) gave *value* for the interest acquired, and
 - (b) bought or leased the *goods* without knowledge that the *goods* are bound by a *writ* or are under seizure.
- (3) Subsection (2) does not apply to
 - (a) a *fixture*, or
 - (b) *goods* the *purchase price* of which exceeds \$1000 or, in the case of a lease, the market *value* of which exceeds \$1000.
- (4) A sale or lease under subsection (1) or (2) may be
 - (a) for cash,

Section 44

1. Reference: PPSA, ss 36, 37.
2. Fixtures and growing crops present special problems, because it seems appropriate to treat them, for some purposes, as part of the land to which they are attached, while for other purposes it seems more appropriate to treat them as personal property. The JEA acknowledges the special characteristics of both growing crops and fixtures, although it takes a slightly different approach to each. As far as growing crops are concerned, they are treated, for the most part, as personal property: see s. 1(1)(p). But certain provisions, including this section, acknowledge the close connection (so to speak) between a growing crop and the land upon which it is growing. The converse is true in the case of fixtures. Their common law characterization as part of the land to which they are attached is acknowledged, but for certain purposes they are treated as still being personal property.
3. Subsection (1) contemplates a situation where a chattel that is bound by a writ is attached to land under circumstances in which it becomes, according to the legal principles that govern such matters, part of the land. Subsection (1) says, in effect, that notwithstanding this change in its legal character, it remains bound by the writ as if it were still personal property. Note, however, that none of these provisions regarding "fixtures" would apply to building materials: see s. 1(1)(1),(c). Building materials are treated as land for all purposes.
4. The effect of ss. 36(5) and 37(4) of the PPSA is that priority between a writ that binds a fixture or growing crop and a security interest in the fixture or crop would depend on which of them was recorded first in the LTO.
5. Suppose that D purchases a furnace and hooks it up to the house that he rents. Assume also that the furnace thus becomes a fixture, and that notice of the writ(s) is not recorded against the title to the house. The landlord (L) later sells the house to T. L is not protected by s. 44(4), since this provision only applies in favour of someone who acquires land that contains a fixture that is bound by a writ. So, subject to the protections afforded L by s. 105, C could have caused the furnace to be seized and sold while L was still the owner of the house. However, T fits squarely within and is protected by s. 44(4).

Section 45

1. Reference: Recommendations 17, 18, 49; PPSA, s. 31(1),(3),(4),(5).
2. This section is intended to preserve the negotiability of negotiable documents that are bound by a writ. Note, however, that there is no equivalent here to s. 31(4.1) of the PPSA. For transfers in the ordinary course of the transferor's business s. 31(4.1) defines knowledge of a security interest in an instrument, security or negotiable document of title (collectively, "paper") as knowledge that the transaction by which a purchaser or holder acquired the paper violated the terms of the relevant security agreement. As in the case of "ordinary course of business" sales of goods, we have taken the position that a potential transferee of paper who knows that it is bound by a writ should be presumed to know that the debtor is not entitled to transfer the paper.
3. Subsection (1) should be read with s. 1(2), which describes the circumstances in which individuals and various kinds of juridical persons are considered to have knowledge of a particular fact.

- (b) by exchange for other *property*, or
- (c) on credit,

and includes delivering *goods* or a *document of title* to *goods* under a pre-existing contract for sale but does not include a transfer as *security* for, or in total or partial satisfaction of, a *money* debt or past liability.

Fixtures and
growing crops

44

- (1) A chattel that becomes a *fixture* while it is already bound by a *writ* continues to be bound by the *writ*.
- (2) Where a chattel that is bound by a *writ* becomes a *fixture*, or where a *writ* binds a growing *crop*, the *enforcement creditor* may cause notice of that fact to be recorded on the certificate of title for the *land*.
- (3) Any question of priorities between a *writ* and a *security interest* in a *fixture* or growing *crop* shall be determined in accordance with section 36(5) or section 37(4) of the *Personal Property Security Act*.
- (4) Where a *person* acquires an interest in a *fixture* or growing *crop* that is bound by a *writ* by acquiring an interest in the *land* upon which the *fixture* or *crop* is located, his interest is not subordinate to the *writ* unless the notice referred to in subsection (2) was recorded on the certificate of title before he acquired the interest.
- (5) Subsections (2), (3) and (4) apply only to *land* for which a certificate of title has been registered under the *Land Titles Act*.

Negotiable
documents

45

- (1) For the purpose of this section, a *person* is considered to have knowledge of a *writ* if he has knowledge that the relevant *property* is bound by a *writ* or is under seizure.
- (2) A holder of *money* has priority over a *writ* that binds the *money* if he
 - (a) acquired the *money* without knowledge of the *writ*, or
 - (b) is a holder for *value*, whether or not he has knowledge of the *writ*.
- (3) A *purchaser* of an *instrument* or *security certificate* has priority over a *writ* that binds the *instrument* or *security certificate* if he gave *value*, acquired it without knowledge of the *writ*, and took possession of it.

Section 46

1. Reference: Recommendation 49.
2. The purpose of this section is to preserve the negotiability of securities that are commonly dealt with on securities markets without the exchange of physical security certificates.

Section 47

1. Reference: PPSA, s. 32.
2. This section is identical to the corresponding *PPSA* provision, with the obvious exception that the latter subordinates security interests, while the former subordinates writs, to liens.

Section 48

1. The purpose of this section is to make it clear that seizure is not a particularly significant event, so far as the debtor's ability to transfer "good title" to a third party is concerned. A third party who bought property bound by a writ from the debtor before it was seized would be in the same position as a third party who bought the property from the debtor after it was seized. In either case, their position would be determined by the priority rules set out in the sections mentioned.
2. Sections 41 through 47 do not make seizure entirely irrelevant. In certain situations, knowledge that property has been seized may deprive a third party of priority over a writ: see ss. 43(1)(2), 45, 46. Also, seizure can be relevant in certain situations involving competing security interests; it is made relevant by ss. 20(1)(a) and 35(5) of the *PPSA*, which are referred to in s. 42 of this Act.

Section 49

1. Reference: Recommendation 147.
2. This is intended to eliminate any scope for argument that writs against the same enforcement debtor can be "tacked" onto each other for the purpose of determining priorities against adverse interests. A writ will only establish a priority against adverse interests up to the amount of the writ.

Section 50

1. Reference: Recommendation 22.
2. Having delivered an affidavit to the sheriff, the enforcement debtor will be subject to cross-examination in accordance with the ordinary practice of the court.

Section 51

Reference: Recommendation 24 (2nd para.).

- (4) A holder of a negotiable *document of title* has priority over a *writ* that binds the *document of title* if he gave *value* and acquired it without knowledge of the *writ*.
 - (5) A purchaser of *chattel paper* has priority over a *writ* that binds the *chattel paper* if he gave *new value*, took possession of it in the ordinary course of his business, and at the time of taking possession did not have knowledge of the *writ*.
- Market securities 46 A purchaser who purchases a *market security* in a transaction that is settled through a *clearing agency* has priority over a *writ* that binds the *market security* if the purchaser does not have knowledge at the time of settlement that the *market security* is bound by a *writ* or is under seizure.
- Priority of liens 47 Where a *person* in the ordinary course of business furnishes material or services with respect to goods that are bound by a *writ*, any lien that he has with respect to the materials or services has priority over the *writ* unless the lien is given by an Act that provides that the lien does not have priority.
- Effect of seizure 48 The position of a *person* who acquires an interest in *personal property* bound by a *writ* is determined by sections 41 through 47, whether the *property* has been seized or not.
- No piggybacking 49 An interest in *property* is not subordinate to a *writ* by reason only of the fact that the interest is subordinate to another *writ*, but nothing in this section creates any priority as between *writs*.

PART 4

INFORMATION REGARDING DEBTORS' PROPERTY

- Debtor's voluntary statement 50 An *enforcement debtor* may deliver to a *sheriff* for registration in the Enforcement Registry an affidavit regarding the matters referred to in section 52(1).
- Information from municipality 51
- (1) In this section, "municipality" means a city, town, new town, village, summer village, county, municipal district, improvement district or special area.
 - (2) An *enforcement creditor* is entitled to demand and receive from a municipality a description of any *land* that according to the assessment roll of the municipality is owned by the *enforcement debtor*.

Section 52

1. Reference: Rules 372(1),(2), 373(1).
2. This section combines the rules relating to examination of an individual debtor and examination of an officer of a corporate debtor, as the substance of the rules is essentially the same.
3. The phrase "touching his estate and effects", which appears in Rule 372(1) is omitted because it would add nothing to the references to "property", given the wide definition of this term in s. 1(1). A reference to amounts remaining unpaid upon the stock or shares of a corporate debtor is omitted for the same reason.

Section 53

Reference: Rules 372(3), 373(2).

Section 54

Reference: Rules 374, 375.

- (3) A municipality may charge a reasonable fee for providing the information referred to in subsection (2).

Examination
without order

52

- (1) An *enforcement creditor* may without order examine the *enforcement debtor* or, where the debtor is a corporation, any of its officers on oath regarding
- (a) the *property* and means the debtor had when the liability to which the *judgment* relates was incurred, or if the *judgment* is for costs only, when the proceedings were commenced,
 - (b) the *property* and means the debtor still has,
 - (c) any disposal of *property* made by the debtor since incurring the liability, or if the *judgment* is for costs only, since the proceedings were commenced, and
 - (d) where the debtor is a corporation, the name and address of, and other pertinent information relating to, any director or former director of the corporation.
- (2) No further examination may be conducted without an order until one year after the conclusion of the preceding examination.

Examination of
employees

53

On the order of the *Court*, an *enforcement creditor* may examine an employee or former employee of the *enforcement debtor* with respect to any matter about which he could examine the debtor or an officer of the debtor under section 52.

Examination of
transferee or
person in
possession of
debtor's property

54

- (1) Where it appears that the *enforcement debtor* has transferred any *exigible property* to another *person* since
- (a) the liability to which the *judgment* relates was incurred, or
 - (b) the proceedings were commenced, where the *judgment* is for costs only,
- the *Court* may order the *person* or, if the *person* is a corporation, any of its officers, to submit to examination under oath.
- (2) The person examined pursuant to an order under subsection (1) may be examined regarding
- (a) any disposal of *property* made by the *enforcement debtor* since the dates referred to in subsection (1), and

Section 55

Reference: Rules 379.

Section 56

1. Reference: Recommendation 24 (1st para.).
2. This allows the court to require a person who has information about the debtor's property to disclose it without necessarily submitting to a formal examination.

Section 57

1. Reference: Rule 382.
2. We have not included a provision corresponding to r. 376, which deals with service of an appointment on the person to be examined. Since the rules dealing with examinations for discovery deal with that subject, and this section incorporates those rules, it seems unnecessary to deal specifically with service of the appointment for an examination under this part.

Section 58

Reference: Rule 377.

Section 59

Reference: Recommendation 23.

Section 60

Reference: Rule 380.

Section 61

1. Subsection (1) serves much the same purpose as s. 5(1) of the *Seizures Act*, but is more general.

- (b) any *obligation* owed to the *enforcement debtor*.
- (3) Where there are reasonable grounds for believing that a *person* has possession or control of any *exigible property* of the *enforcement debtor*, the *Court* may order the *person* or, if the *person* is a corporation, any of its officers to submit to examination under oath regarding the *property* of the debtor.
- Examination of other persons 55 Where a difficulty arises in the enforcement of a *judgment*, the *Court* may by order require any *person* to submit to examination under oath regarding any matter mentioned in the order.
- Disclosure without examination 56 Where there are reasonable grounds for believing that a *person* has information regarding *exigible property* of an *enforcement debtor*, the *Court* may order the *person* to disclose the information in writing to an *enforcement creditor* or *sheriff*.
- Rules of Court for discovery apply 57 The Alberta Rules of Court relating to examination for discovery apply with any necessary modifications to all examinations authorized by this Part.
- Failure to attend or answer questions 58 A *person* liable to be examined who does not attend and does not provide a sufficient reason for not attending, or if attending, refuses to disclose any of the matters in respect of which he may be examined may be held in civil contempt.
- Sheriff to be given copies 59 (1) An *enforcement creditor* shall deliver a copy of any appointment or order for an examination under this Part to the *sheriff*.
(2) An *enforcement creditor* who conducts an examination under this Part and obtains a transcript of the examination shall deliver the transcript to the *sheriff*.
- Costs 60 The costs of any examination under this Part are in the discretion of the *Court*.

PART 5

SEIZURE OF PERSONAL PROPERTY

- When seizure available 61 (1) Subject to subsection (2) any *exigible personal property* of an *enforcement debtor* may be seized and dealt with in accordance with this Part.

Section 61 (continued)

2. Subsection (2) is intended to avoid unnecessary and possibly confusing overlap between garnishment and seizure.

Section 62

1. Reference: Recommendation 26.
2. This is one case where "sheriff" refers to a sheriff's office: see s. 1(1)(ii).

Section 63

1. Reference: Recommendations 27, 30, 31; ECA, s. 4(1),(2)(a).
2. There is no reference here to indemnification of the sheriff against liability incurred by the sheriff in carrying out the seizure instructions. Any liability will fall upon the assurance fund created under Part 12. Section 181(2) defines the circumstances in which the instructing creditor will be required to indemnify the assurance fund, and s. 182 allows the court to order the instructing creditor to furnish security in this regard. Ordinarily, though, the creditor would not be required to furnish security.
3. Subsection (1)(b) covers ground that is already covered by s. 12. However, it was thought desirable to include subsection (1)(b), even if it is strictly necessary.

- (2) Except as provided in Part 6 or as authorized by the *Court*, *obligations* subject to garnishment under Part 8 are not subject to seizure.

EFFECTING AND GIVING NOTICE OF SEIZURE

Seizure instructions
to any sheriff

62

- (1) An *enforcement creditor* may instruct any *sheriff* to effect seizure, but the *sheriff* may forward the instructions or any part of them to another *sheriff* for execution.
- (2) A *sheriff* who forwards seizure instructions to another *sheriff* shall inform the *instructing creditor*.

Instructions to seize

63

- (1) A *sheriff* is required to attempt to effect seizure only when the *instructing creditor* has
- (a) given the *sheriff*
 - (i) written instructions to effect seizure,
 - (ii) as many copies of the *seizure documents* as the *sheriff* requires, and
 - (iii) such information regarding the nature and location of the *property* to be seized as the *sheriff* reasonably requires, and
 - (b) paid the *sheriff's* fees and reasonably anticipated expenses of carrying out the instructions, or made arrangements for payment that are satisfactory to the *sheriff*.
- (2) The *seizure documents* referred to in subsection (1)(a) are
- (a) a notice of seizure in prescribed form,
 - (b) a notice of objection in prescribed form, together with a sufficiently stamped envelope addressed to the *sheriff* having responsibility for the seizure,
 - (c) the *instructing creditor's writ* of enforcement, and
 - (d) instructions to debtor in prescribed form.

Section 64

1. Reference: Recommendation 132; ECA, s. 4(3); *Exemptions Act*, s. 7; *Seizures Act*, s. 45.
2. Although subsection (1) serves the same purpose as s. 4(3) of the ECA, it will be noted that there is no mention of the sheriff's warrant, as in s. 4(3)(c) of the ECA. Section 11 of the JEA removes the need for a warrant, and any information that might usefully have been included in the warrant can as easily be included in the notice of seizure.
3. Subsection (2) authorizes a sheriff to seize property in which there are reasonable grounds for believing that the enforcement debtor has an exigible interest. Of course, this does not ensure that the debtor will have an exigible interest in such property. Other sections make sure that the debtor will have ample opportunity to contest the exigibility of the property, and that third persons will have ample opportunity to assert that the property belongs to them, not to the debtor: see ss. 73-75 (debtor) and ss. 76-78 (third persons). In addition provision is made for compensation of third persons who suffer some pecuniary injury as a result of seizure of their property: see s. 178.
4. Strictly speaking, the part of subsection (2) that begins with "but" is probably unnecessary. If property "appears to be exempt", the sheriff is unlikely to have reasonable grounds for believing that the debtor has an exigible interest in it. The "but" clause does, however, emphasize the importance of trying to avoid seizing exempt property.
5. Clause (3)(a) is based on s. 45 of the *Seizures Act*. Clause (7)(b) serves a similar purpose, but is concerned with the situation where the difficulty is not in distinguishing exempt from exigible property, but in confining the seizure by reference to the value of the seized property. It might be difficult, for example, to estimate the realizable value of certain property. Or perhaps there are subsisting writs totalling \$3000, and the sheriff has found a bin full of grain belonging to D, which the sheriff estimates to be worth \$5,000. Unless the sheriff is to remove the seized portion at once, it will be rather difficult to identify and seize \$3000 worth of the grain in the bin.

Section 65

1. Reference: Recommendation 38.
2. This section can be compared with s. 150(1)(b), which provides a similar remedy but depends on a judge's order. The advantage of the remedy under this section is that it does not require an application to the court. The main comparative advantages of the remedy under s. 150(1)(b) are 1) its flexibility and adaptability to particular situations and 2) that it is based on a court order and, if ignored, can be enforced through proceedings for contempt.

Property subject to
seizure

64

- (1) After being instructed to seize, a *sheriff* shall attempt to seize enough of the debtor's *exigible personal property* to satisfy all subsisting *writs* and the sheriff's fees and expenses.
- (2) A *sheriff* may seize any *personal property* in which there are reasonable grounds for believing the *enforcement debtor* has an *exigible* interest, but shall not seize any *property* that appears to be *exempt*.
- (3) Where at the time seizure is effected it is not practicable to
 - (a) distinguish *exempt* from *exigible property*, or
 - (b) limit the value of the *property* seized to the amount of the subsisting *writs* against the *enforcement debtor*,

the *sheriff* may seize all the *property* in question until the part that is *exempt* or in excess of what is required to satisfy the *writs* can be identified and segregated, whereupon the *sheriff* shall release the *exempt* or excess *property* from seizure.

Notice to third
person requiring
delivery

65

- (1) Where
 - (a) there are reasonable grounds for believing that *property* of an *enforcement debtor* that is subject to seizure is in the possession or control of a third *person*, and
 - (b) the *sheriff* is unable to effect seizure of the *property*,

the *sheriff*, if so instructed by the *instructing creditor*, shall serve a demand on the third *person*.
- (2) The demand shall be in prescribed form and shall
 - (a) identify the *property* of the *enforcement debtor* believed to be in the possession or control of the third *person*, and
 - (b) require the third *person* to deliver the *property* to the *sheriff* or make it available for seizure within 14 days of service of the notice.
- (3) A *person* who is served with a demand under this section complies with it by
 - (a) delivering the *property* to the *sheriff*, or

Section 66

1. Reference: Recommendation 32; *Seizures Act*, s. 25(1).
2. Subsection (1)(a) does not require the sheriff do perform the task of identifying the seized property in the notice of seizure. Often, the instructing creditor will want the sheriff to seize a particular item, such as a car or some other valuable chattel. In such cases, the enforcement creditor may identify the property to be seized in the notice of seizure before sending the seizure documents to the sheriff.
3. Subsection (1)(b)(ii) refers to attaching the seizure documents "to property being seized", rather than to "the property being seized". Thus, a sheriff's officer who is seizing many different items at the same premises complies with this particular requirement by attaching the seizure documents to any one of the items.
4. Subsection (2) is important in the context of the notice of objection procedure. Referring to s. 72(1), it will be noted that the 14 day period for filing a notice of objection does not commence until the seizure documents are served on the enforcement debtor or an adult member of the debtor's household.
5. Subsection (3) would allow the instructing creditor to bring an application for an order authorizing sale of the seized property, even though the debtor had not been served with the seizure documents nor filed a notice of objection. Normally, the debtor would still have to be served with notice of the application, but the court would be able to make an order for substituted service, if that was considered appropriate.

(b) advising the *sheriff* of the place at which seizure of the *property* may be effected and taking reasonable steps to ensure that the *property* remains at that place until it is seized.

- (4) The *sheriff* shall compensate the third *person* for any expense reasonably incurred in order to comply with the demand.
- (5) A third *person* who without reasonable excuse fails to comply with a demand under this section is liable to compensate *enforcement creditors* for any pecuniary loss suffered by them as a result of such non-compliance.
- (6) When the *sheriff* takes possession of *property* that was the subject of a demand under this section, the third *person* is discharged of any responsibility he may have been under to hold the *property* for, or return it to, the debtor.

Effecting seizure

66

- (1) Seizure is effected when
- (a) the *property* being seized is identified in the notice of seizure, and
- (b) the *sheriff*, while at the premises or place where the *property* is located, either
- (i) serves the *seizure documents* on the *enforcement debtor*, an occupant of the premises or anyone who has possession or control of the *property*, or,
- (ii) if there is no such *person* present, attaches the *seizure documents* to *property* being seized or posts the *seizure documents* at a conspicuous location on the premises.
- (2) A sheriff who effects seizure without serving the *seizure documents* on the *enforcement debtor* or an adult member of the debtor's household shall serve the *seizure documents* on the debtor as soon after effecting seizure as is practicable.
- (3) Where the *sheriff* is unable to serve the *seizure documents* on the *enforcement debtor* or an adult member of the debtor's household, the *instructing creditor* may proceed as if the debtor had been served with the *seizure documents* and filed a notice of objection.

Entry onto premises

67

- (1) In order to effect seizure or to remove previously seized *property*, a *sheriff* may enter

Section 67

1. Reference: Recommendation 33; *Seizures Act*, s. 23.
2. This section divides premises into four categories, according to whether they are private dwellings and whether they are occupied by the debtor. The four categories are (1) private dwellings occupied by the debtor, (2) private dwellings not occupied by the debtor, (3) other premises (non-dwellings) occupied by the debtor, and (4) other premises not occupied by the debtor.
3. The tightest restrictions are placed on forcible entries. Forcible entry can be made to any premises under a court order, but in the absence of a court order forcible entry can be made only to premises that are occupied by the debtor and that are not a private dwelling. Typically, this would be business premises occupied by the debtor.
4. Assuming that a forcible entry is not contemplated, the main restriction is for private dwellings not occupied by the debtor. If, for example, the sheriff has reasonable grounds for believing that property of the debtor is stored at the home of a friend of the debtor, the sheriff may enter the friend's home only with his or her permission or under an order of the court.

Section 68

Reference: Recommendation 33.

Section 69

This section recognizes that it is possible for innocent procedural slip-ups to occur in the course of a seizure, and takes the position that the seizure should nevertheless be considered valid. If anyone would be prejudiced by the slip-up, subsection (2) allows the court to order that the seizure be discontinued.

Section 70

1. Reference: Recommendations 35, 40; *Seizures Act*, ss 16, 17.
2. Subsection (1) gives the final say on whether seized property is to be removed (at least as between the instructing creditor and the sheriff) to the creditor. However, the requirement that the creditor pay the removal and storage charges would be a deterrent to unnecessary removals. And, of course, the creditor cannot require the sheriff to seize (or remove) property that appears to be exempt: see s. 63(2).

- (a) any premises, other than a *private dwelling* not occupied by the debtor, where there are reasonable grounds for believing that *property* of the debtor is on the premises, or
- (b) any premises with the permission of an occupant or under an order of the *Court*,

but a *sheriff* may use force to gain entry to any premises only as provided by subsection (2).

- (2) A *sheriff* may use reasonable force to gain entry
 - (a) to any premises occupied by the *enforcement debtor*, other than a *private dwelling*, if it is not otherwise practicable to gain entry, or
 - (b) to any premises under an order of the *Court*.
- (3) A sheriff who has gained lawful entry to premises may, if necessary, break into any interior room or enclosure, or into any container, in order to gain access to the *enforcement debtor's property*.
- (4) A sheriff who uses force to gain entry to premises shall make them reasonably secure before leaving.

Time of seizure

- 68 A *sheriff* shall effect seizure at a time of day that is reasonable in all the circumstances, and, unless otherwise ordered by the *Court*, shall effect seizure at a *private dwelling* only between 6 A.M. and 9 P.M.

Seizure valid
notwithstanding
irregularity

- 69
 - (1) Where a *sheriff* purports to effect a seizure, the seizure is valid notwithstanding any irregularity in the procedure by which it is effected.
 - (2) The *Court* may order a seizure to be discontinued if satisfied that someone has been or is likely to be prejudiced because of an irregularity in the procedure by which the seizure was effected.

Custody of seized
property

- 70
 - (1) An *instructing creditor* who has paid the *sheriff's* reasonably anticipated removal and storage expenses or who has made arrangements for payment that are satisfactory to the *sheriff* may require the *sheriff* to remove seized *property* for safekeeping.
 - (2) Subject to subsection (1), the *sheriff* may in his discretion remove seized *property* for safekeeping at any time after effecting seizure.

Section 70 (continued)

3. There are cases in which property will be seized and left in the debtor's possession, even though the debtor has not signed a bailee's undertaking. One possibility is that the enforcement debtor may be absent when the sheriff effects seizure. Subsection (4) imposes the obligations of a bailee on an enforcement debtor who has possession of seized property and who has been served with the seizure documents, whether or not he or she has signed an undertaking.

Section 71

1. Reference: Recommendation 32 (last para.); *Seizures Act*, s. 25(3),(5).
2. It will be noted that although this section is very similar to the corresponding provisions of the *Seizures Act*, the penalty for the offence has been left unspecified. The *Seizures Act* specifies a penalty of \$200 or 60 days imprisonment in default of payment. We are content to leave the penalty to be determined by the *Provincial Offences Procedure Act*.

Section 72

This section requires sheriffs to do what they already do as a matter of practice. Under the existing practice, the instructing creditor receives a bailiff's report, and other creditors are given written notice of the seizure.

Section 73

1. Reference: Recommendation 39; *Seizures Act*, s. 27.
2. It will be noted in subsection (1) that the 14 day period begins to run only after the debtor (or an adult member of the debtor's household) is served with the seizure documents. This may occur after the seizure is actually effected.

- (3) Subject to subsection (1), the *sheriff* may appoint the *enforcement debtor* or some other person as bailee of the seized *property* upon the debtor or other person signing an undertaking to hold the *property* for the *sheriff* and deliver it up to the *sheriff* on demand.
- (4) An *enforcement debtor* who has possession or control of seized *property* and who has been served with the *seizure documents* holds the seized *property* as bailee for the *sheriff*, and shall deliver it up to the *sheriff* upon demand, whether or not he has signed an undertaking in that regard.
- (5) Prior to removing seized *property*, the *sheriff* shall prepare and sign an inventory of the *property* to be removed and give a copy of it to the *person* having possession of the *property*, or if no such *person* is then present, give a copy of it to the *enforcement debtor* as soon as it is practicable to do so.

Identification by
sticker

71

- (1) A *sheriff* who has seized any article may attach a sticker in prescribed form to the article for the purpose of identifying it as being under seizure and distinguishing it from other similar goods.
- (2) The sticker shall be signed by the *sheriff* and shall briefly describe the article to which it is attached.
- (3) Any *person* who without lawful authority removes, damages or otherwise interferes with
 - (a) a sticker that has been attached to an article in accordance with this section, or
 - (b) an article to which a sticker has been attached in accordance with this section

is guilty of an offence.

Report to
instructing creditor

72

The *sheriff* shall report in writing to the *instructing creditor* within a reasonable time after seizing or attempting to seize, and shall give written notice of any seizure to every *enforcement creditor*.

OBJECTION TO SEIZURE

Notice of Objection

73

- (1) An *enforcement debtor* who objects to a seizure shall complete the notice of objection, stating the reason for his objection, and deliver it to the *sheriff* within 14 days of the date upon which the *seizure documents* are served on the debtor or an adult member of the debtor's household in accordance with section 66.

Section 73 (continued)

3. The most significant difference between this section and s. 27 of the *Seizures Act* is that subsection (3) of this section makes it clear that a notice of objection received more than 14 days after the debtor is served with the seizure documents is ineffective.
4. Enforcement debtors who fail to file a notice of objection within 14 days are not foreclosed from raising any objection they may have to the seizure. However, if they wish to raise an objection, they must make an application to the court.

Section 74

1. Reference: Recommendations 39, 126; *Seizures Act*, s. 29.
2. This section is considerably shorter than s. 29 of the *Seizures Act*, partly because some of the procedural matters mentioned in s. 29 are dealt with more generally by s. 186 of the JEA.
3. Subsection (1) refers to an **effective** notice of objection, that is, one that is delivered to the sheriff within the 14 day period referred to in s. 73(1).

Section 75

Reference: *Seizures Act*, s. 29(5)(d).

- (2) A notice of objection is not ineffective by reason only of the debtor's failure to properly complete or sign it.
- (3) A notice of objection delivered after the expiration of the period referred to in subsection (1) is ineffective, and upon receiving such a notice the *sheriff* shall so notify the debtor.
- (4) Notwithstanding subsection (3), an *enforcement debtor* may at any time before the seized *property* is sold apply to the *Court* for the purpose of raising and having determined any objection the debtor may have to the seizure.

Procedure where
notice of objection
filed

74

- (1) Upon receiving an effective notice of objection, the *sheriff* shall immediately notify the *instructing creditor*, who may apply by notice of motion on 7 days notice, or such other notice as the *Court* may approve or direct, for an order authorizing sale.
- (2) Unless otherwise ordered by the *Court* or consented to by the *enforcement debtor*, the application shall be made in the judicial district in which the seizure was effected, or, in the case of a seizure of serial number goods pursuant to section 106(2)(b), in the judicial district in which the *seizure documents* were served on the *enforcement debtor*.
- (3) The notice of motion shall describe in reasonable detail the *property* in respect of which the order is sought, and give notice that any objection the debtor has to the seizure will be dealt with on the application, and that the seized *property* may be presumed not to be *exempt* in the absence of evidence that it is *exempt*.
- (4) On the application
 - (a) it may be presumed in the absence of evidence to the contrary that the *property* identified in the notice of motion is not *exempt*, and
 - (b) the *enforcement debtor* may raise any objection he has to the seizure, whether or not it was mentioned in the notice of objection.

Order for sale

75

Where the *Court* makes an order authorizing sale, it may by the same or subsequent order suspend the order pending the payment of the debt by such instalments as the *Court* may fix, or the giving of such security or the performance of such other conditions as the *Court* may impose.

Section 76

1. Reference: Recommendation 154.
2. Sections 76 through 78 implement certain principles in the "Compensation" chapter (Chapter 11) of the report. There the issue was characterized as being one of compensating a third person who suffers loss as a result of his property being seized (and perhaps sold) by a sheriff in the mistaken belief that it belongs to an enforcement debtor. It was pointed out that it is better to prevent third parties from suffering such loss in the first place than to compensate them after it has occurred. Hence, without working out the details, we proposed a procedure that would be directed at resolving disputes over the ownership of seized property in an expeditious manner. These sections contain the details of that procedure.
3. Subsection (1) is intended to ensure, so far as it is possible to do so, that third persons who may have an interest in seized property receive timely notice of the seizure. Once they have received such notice, subsection (2) requires them to assert their claims promptly, by delivering a written claim to the sheriff.

Section 77

1. Reference: Recommendations 154.
2. The consequences of failing to file a notice of claim within the time mentioned in subsection (1) are set out in s. 78.
3. Subsection (2) recognizes that enforcement debtors often file notices of objection indicating that a third person is the true owner of the seized property. Such a notice of objection is treated as a notice of claim filed by the third person.
4. Subsection (4) contemplates the possibility of a third person claiming, for instance, that he is a co-owner of the seized property along with the enforcement debtor. This should not prevent the sheriff from selling the enforcement debtor's admitted interest in the property, if that is considered to be worthwhile by the instructing creditor.
5. Where an effective notice of claim is delivered to the sheriff, subsections (5) through (7) require the instructing creditor (or some other enforcement creditor) to promptly contest the claim. Otherwise, the sheriff must release seizure. It will be noted that "contesting" the third person's claim requires the creditor to make an application to the court. This relieves the sheriff of the burden of having to institute interpleader proceedings, and puts the onus of applying to the court on the enforcement creditor.

THIRD PERSON CLAIMS

Notice to possible
claimants

76

- (1) A *sheriff* who has reasonable grounds for believing that a third *person* may have an interest in seized *property* shall serve the third *person* with notice of the seizure in prescribed form.
- (2) A *person* who is served with notice pursuant to subsection (1) shall have 14 days from the date of receiving the notice within which to deliver a written notice of claim to the *sheriff*.
- (3) An enforcement creditor may serve the notice referred to in subsection (1), and the notice has the same effect as if served by the *sheriff*.

Procedure where
claim made

77

- (1) A notice of claim is effective only if,
 - (a) in the case of a claim by a *person* who has been served with notice pursuant to section 76, the notice is delivered to the *sheriff* within the period mentioned in section 76(2), or
 - (b) in any other case, the notice is delivered to the *sheriff* before the seized *property* is sold.
- (2) A notice of objection that indicates that a named *person* other than the *enforcement debtor* has an interest in the seized *property* shall be treated as a notice of claim delivered to the *sheriff* by that *person*.
- (3) Upon receiving an effective notice of claim, the *sheriff* shall notify the *instructing creditor* of the claim.
- (4) An effective notice of claim that admits that the debtor has some *exigible* interest in the *property* does not prevent the *sheriff* from selling the debtor's admitted interest in the *property*, if instructed by the *instructing creditor* to do so.
- (5) Except in the case of a claim to which subsection (4) applies, if the *instructing creditor* does not dispute a claim contained in an effective notice of claim within 14 days of being notified of it by the *sheriff*, the *sheriff* shall give written notice of the claim to all other *enforcement creditors*, and if no creditor disputes the claim within a further 14 days, the *sheriff* shall release seizure.
- (6) Where a claim is disputed, any *enforcement creditor* may apply to the *Court* on notice to the claimant, the *sheriff*, and every other *enforcement creditor* for a determination of the issue.

Section 78

1. Reference: Recommendations 154.
2. The position of a third person (T) who is served with notice of the seizure and who does not deliver a claim to the sheriff within 14 days is as follows:
 - T cannot maintain a claim for compensation (damages) for loss resulting from the seizure, detention or sale of T's property: subsection (1)(a);
 - T cannot follow the property into the hands of a purchaser from the sheriff; sale by the sheriff extinguishes T's interest: subsection (1)(b);
 - T can, however, assert a claim to the seized property before it is sold by making an application to the Court: subsection (2)(a);
 - T can assert a claim to the proceeds of sale by applying to the Court before the proceeds are distributed by the sheriff, but cannot do so afterwards: subsections (2)(b), (3).
3. The position of a third person who is not served with notice, but who does in fact have an interest in the seized property differs from that described above in the following respects:
 - T does not lose any right to compensation T would otherwise have for loss resulting from the seizure, detention or sale of the property;
 - although the Act does not give T the right to follow the property into the hands of someone who purchases the property from the sheriff, T would have this right at common law, and the Act does not take it away.

Section 79

The presence of a security interest affecting seized property should be readily apparent from the records of the PPR. It should also be apparent whether the security interest has priority over, or is subordinate to, the relevant writ. The procedure contemplated in the preceding sections is, therefore, unnecessary in the case of security interests.

Section 80

1. Reference: *Seizures Act*, s. 25(2).
2. The purpose of this section, and of s. 25(2) of the *Seizures Act*, is to make it clear that seizure is not released except by the deliberate act of the sheriff. This section substitutes registration in the Enforcement Registry for the requirement of "notice in writing" in s. 25(2) of the *Seizures Act*. As a practical matter, the sheriff would usually also have to notify the enforcement debtor and possibly other persons (such as a person who had signed for the bailee's undertaking) that seizure was released.

Section 81

1. Reference: *Seizures Act*, s. 40.
2. This section is shorter than s. 40 of the *Seizures Act*, largely because the procedural matters are dealt with more generally by s. 186 of the JEA.

- (7) If no application is made pursuant to subsection (6) within 1 month of the date upon which the *sheriff* received notice that the claim was disputed, the *sheriff* shall release the *property* from seizure.
- Claims made outside prescribed period **78**
- (1) Where a third *person* who has been served with notice pursuant to section 76 does not deliver a claim to the *sheriff* within the time mentioned in section 76(2),
- (a) any claim for compensation or cause of action that the third *person* might otherwise have had in respect of the seizure, detention or sale of the *property* identified in the notice is extinguished, and
- (b) a *person* to whom the *property* in question is sold by the *sheriff* obtains title free of any interest that the third *person* had in the *property* at the time of the sale.
- (2) Notwithstanding subsection (1), any *person* may assert a claim
- (a) to the seized *property* itself, by making an application to the *Court* before the *property* is sold, or
- (b) to the proceeds of sale of the seized *property*, by making an application to the *Court* before the proceeds are *distributed*.
- (3) A *person* who does not assert a claim to the proceeds of seized *property* before the proceeds of sale are *distributed* may not trace or otherwise follow the proceeds.
- Non-application to security interests **79** Sections 76 through 78 do not apply to security interests in seized *property*.

TERMINATION OF SEIZURE

- Duration of seizure **80** Seized *property* remains under seizure until the *sheriff* sells it or releases it from seizure by entering a notice of release of seizure in the Enforcement Registry.
- Termination of seizure after 6 months **81** After *property* has been under seizure for 6 months, the *sheriff* may release the *property* from seizure upon giving 2 months written notice to every *enforcement creditor*, but any *enforcement creditor* may apply to the *Court* for an order requiring the seizure to be continued.

Section 82

1. Reference: Recommendation 41.
2. Subsection (3) refers to an effective notice of objection or an effective notice of claim. An effective notice of objection is one that is delivered within the time mentioned in s. 72(1). An effective notice of claim is one delivered within the time mentioned in s. 76(1).

Section 83

1. Reference: Recommendations 42, 43.
2. Subsection (1) recognizes that a sheriff should act promptly on a creditor's instructions to sell, but also recognizes that the sheriff should have some leeway to delay a sale where doing so is likely to produce a significantly better price. If the instructing creditor thinks that the sheriff is delaying a sale for too long or for a marginal or unlikely increase in price, the creditor could apply to the court under s. 15.
3. Subsection (2) requires the sheriff to advise the instructing creditor and the enforcement debtor of the proposed method of sale, but does not say what either of the latter can do if he or she objects to the method of sale proposed by the sheriff. However, either the creditor or the debtor could apply to the court under s. 15, asking the court to direct the sheriff to use some other method of sale.
4. Subsection (3) would allow the method of sale to be set out in the notice of seizure, so that the 14 day period referred to in subsection (2) would run concurrently with the notice of objection period.
5. The first part of subsection (4) merely restates the common law position regarding sales to execution creditors. The latter part recognizes that a private sale to an enforcement creditor may raise special concerns, and that notice of the terms of such a sale should be given to the enforcement debtor and to any other enforcement creditors (who will have an interest in getting the best possible price for the property).

Section 84

Reference: Recommendation 42 (last para.).

SALE

Initiating sale

82

- (1) Subject to section 85, the *sheriff* shall not sell seized *property* until instructed to do so by the *instructing creditor*.
- (2) The *instructing creditor* may not instruct the *sheriff* to sell seized *property* until
 - (a) the expiration of the period within which the *enforcement debtor* may deliver a notice of objection in accordance with section 73(1), and
 - (b) the expiration of the period within which any third *person* who has been served with notice pursuant to section 76 may deliver a notice of claim in accordance with section 76(2).
- (3) A *sheriff* to whom an effective notice of objection or an effective notice of claim is delivered may not sell the *property* to which the objection or claim relates unless the *Court* authorizes a sale, or the *person* delivering the notice of objection or notice of claim withdraws it.

Sale procedure

83

- (1) Unless otherwise ordered by the *Court*, the *sheriff* shall sell seized *property* as soon after being instructed to do so as is practicable, but may delay the sale for a reasonable period where the delay is likely to produce a significantly higher price.
- (2) A *sheriff* may sell seized *property* by any method the *sheriff* considers likely to produce a reasonable price, but shall notify the *instructing creditor* and the *enforcement debtor* of the proposed method of sale at least 14 days before the *property* is sold.
- (3) The proposed method of sale may be set out in the notice of seizure.
- (4) A *sheriff* may sell seized *property* to an *enforcement creditor*, but, at least 14 days before selling seized *property* to an *enforcement creditor* by private sale, shall serve notice of the terms of the proposed sale on the *enforcement debtor* and every other *enforcement creditor*.

Where reasonable price cannot be obtained

84

- (1) Where a *sheriff* is unable to sell seized *property* for a reasonable price, the *Court* may order that it be sold for the best obtainable price.

Section 85

1. Reference: *Seizures Act*, s. 31(2).
2. Subsection (3) would apply, for example, if it becomes necessary to sell perishable property before the expiration of the notice of objection period. The proceeds of sale would have to be retained until the objection period expires or, if a notice of objection is filed, until the objection is dealt with.

Section 86

1. Reference: Recommendation 44; *Seizures Act*, s. 5(2).
2. The two sections referred to in subsection (1) create exceptions to the general rule that the buyer from a sheriff acquires only the interest that the debtor had in the property. Section 41(2) deals with interests that are subordinate to a writ: generally, interests created after the writ was registered in the PPR. Section 78(1) deals with the situation where a third person is given notice of a seizure but fails to assert a claim to the seized property. Once a sale takes place, such a person is, in effect, estopped from asserting a claim to the property.
3. The effect of subsection (2) is that although the buyer obtains a somewhat fragile title to property purchased from the sheriff, the investment is protected by a claim against the assurance fund.

Section 87

(a): "holder"

1. This term plays a key role in the definition of "intermediary" in clause (b).
2. Under this definition, the same security could be held by two different persons at once. For instance, suppose that a clearing agency (defined in s. 1(1)) is the registered holder of a large number of securities of XYZ Inc. The clearing agency's records show that it holds a certain number of these securities for the account of a certain securities broker. Both the clearing agency and the broker are "holders" of the relevant XYZ Inc. securities, under clause (a)(i) and clause (a)(iii), respectively.

- (2) Where a reasonable price for the *property* would not in any event exceed \$1000, the *sheriff* may without order sell it for the best obtainable price.
- Expeditious sales **85**
- (1) A *sheriff* may effect an expeditious sale or disposition of seized *property*
- (a) under an order of the *Court*, or
- (b) without order if the *property* is perishable, depreciating rapidly in value, dangerous, unsanitary or a hazard to health.
- (2) A sheriff who sells or disposes of seized *property* without order shall give every interested *person* as much notice as is practicable in the circumstances.
- (3) Unless otherwise ordered by the *Court*, the proceeds of sale of *property* sold under this section may not be *distributed* before the earliest time at which the *property* could otherwise have been sold.
- Buyer's title **86**
- (1) Except as provided by sections 41(2) and 78(1), a *person* who buys seized *personal property* from the *sheriff* obtains only the interest of the *enforcement debtor* in the *property*, and the sale does not adversely affect the rights or interest of any third *person* in the *property*.
- (2) Where a third *person's* interest in seized *property* survives a sale by the *sheriff*, and the buyer did not have notice of the interest at the time of the sale, the buyer is entitled to compensation from the *assurance fund* for any resulting pecuniary loss.
- (3) The loss recoverable by the buyer under subsection (2), exclusive of prejudgment interest and costs, may not exceed the amount paid by the buyer to the *sheriff* for the *property*.

PART 6

SPECIAL SEIZURE MECHANISMS

- Definitions **87** In this Part
- (a) "holder", in relation to a *security*, means a *person*
- (i) who, or whose nominee, is the registered holder or registered owner of the *security*,

Section 87 (continued)**(b): "intermediary"**

1. The most common example of an intermediary is likely to be an enforcement debtor's broker. But the definition comprehends any situation in which a person holds securities for an enforcement debtor.

2. Where an enforcement debtor's securities are actually registered in the name of a clearing agency (securities depository), which holds the securities on behalf of the debtor's broker, the broker, but not the clearing agency is an intermediary. The broker is a holder by virtue of subclause (iii) of the definition of "holder", and holds the securities on behalf of the debtor. The clearing agency is also a holder, but holds the securities on behalf of the broker.

(d): "security"

It will be noted that publicly traded shares of a corporation satisfy both branches of the definition. The first branch of the definition — "a share" — also brings in shares that are not publicly traded. The second branch — "market security" — brings in certain publicly traded obligations and interests that are not shares in a corporation: see the definition of "market security" in s. 1(1).

(e): "security certificate"

There is a different, more complicated, definition of this term in s. 1. That definition, which is relevant to priority issues, is based on the PPSA's definition of "security". The simpler definition found here is suitable for the purposes of this part.

Section 88

This part sets out special seizure procedures for certain kinds of personal property. However, most of the provisions of Part 5 will also apply to seizure proceedings against such property. For example, the notice of objection procedure set out in Part 5 would be applicable to seizure proceedings against property mentioned in this part.

Section 89

1. Reference: Recommendations 45, 46.

2. It would be in accordance with Part 5 for a sheriff to seize an instrument and then leave it on a bailee's undertaking with the person in whose possession it was at the time of seizure. Such a seizure would not impair the negotiability of the instrument in question: see ss 45(2) and 48.

- (ii) who has possession of a *security certificate* evidencing the *security*, or
- (iii) for whom a *clearing agency* holds the *security*;
- (b) "intermediary" means a *holder* who holds the relevant *security* on behalf of an *enforcement debtor*;
- (c) "issuer" means the issuer of *securities* that are the subject of seizure proceedings;
- (d) "security" means any *share* or *market security*;
- (e) "security certificate" means a document evidencing a *security*;
- (f) "share" means a share in a body corporate.
- (g) "transfer agent" means an entity appointed by an *issuer* as its agent for purposes such as maintaining a *securities* register, recording the transfer of *securities*, or distributing dividends or other payments in respect of its *securities*.

Application of Part
5

88 Except where it would conflict with this Part, Part 5 applies to seizure proceedings against *property* mentioned in this Part.

CASH AND INSTRUMENTS

Seizure of cash or
instruments

- 89**
- (1) Seizure of cash or an *instrument* shall be effected in accordance with Part 5.
 - (2) Cash that is seized by a *sheriff* may not be *distributed* as enforcement proceeds until
 - (a) the expiration of the time within which the *enforcement debtor* can file a notice of objection in accordance with section 73(1), and
 - (b) the expiration of the period within which any third *person* who has been served with notice pursuant to section 76 may deliver a notice of claim in accordance with section 76(2).
 - (3) Seizure of an *instrument* constitutes the *sheriff* the irrevocable agent of the *enforcement debtor* for the purpose of liquidating the *instrument*, and, without restricting the generality of the foregoing, the *sheriff* may

Section 89 (continued)

3. Subsection (4) is intended to protect both the sheriff and the enforcement debtor from being sued by a subsequent holder of the instrument in question.

Section 90

1. Reference: Recommendation 48.

2. In many cases, the sheriff will have an option as to the method of effecting seizure. For example, if the security is registered in the name of the enforcement debtor and is evidenced by a security certificate, seizure could be effected in accordance with either subsection (1)(a) or (1)(b). Of course, the sheriff's choice is likely to be constrained by the circumstances. If the enforcement debtor is in possession of negotiable security certificates, the safest course would be to seize the certificates and remove them from the debtor's possession. Otherwise, they could easily find their way into the hands of a purchaser who would be protected by s. 45(3).

3. Nothing is said in this section about serving seizure documents on the enforcement debtor. However, keeping in mind that Part 5 applies to proceedings under this part except where there is a conflict, s. 66(2) requires the sheriff to serve the seizure documents on the debtor once seizure has been effected. The notice of objection period will not begin to run until that is done: see s. 73(1).

Section 91

1. Reference: Recommendations 48, 50.

2. Subsection (1) applies only where the enforcement debtor is the registered holder of the security, because there is no point in serving the notice of seizure on the issuer if the debtor is not the registered holder.

3. Clause (2)(a) applies only to documents or records that registered holders are entitled to receive or inspect. It would not apply, for example, to records that the enforcement debtor is entitled to inspect by virtue of being an officer of the issuer.

- (a) present the *instrument* for payment, and receive payment thereon,
- (b) sue any *person* liable on the *instrument*, in the name of the debtor, or
- (c) negotiate the *instrument*

as if the *sheriff* were specifically authorized by the debtor to do so.

- (4) A *sheriff* who endorses an *instrument* on behalf of the *enforcement debtor* shall do so in a manner that will exclude recourse against the debtor or the *sheriff*.

SECURITIES

Effecting seizure

90

- (1) Subject to subsection (2), a *sheriff* may seize a *security*,
 - (a) where the *security* is evidenced by a *security certificate*, by seizing the *security certificate* in accordance with Part 5,
 - (b) where the *enforcement debtor* is the registered holder of the *security*, by serving the *issuer* with a notice of seizure in prescribed form, or
 - (c) where the *security* is held by an *intermediary*, by serving the *intermediary* with a notice of seizure in prescribed form,

and if it would be possible to effect seizure by more than one of these methods, the *sheriff* may use whichever method he considers most appropriate to the circumstances.
- (2) Seizure may be effected in accordance with subsection (1)(b) or (1)(c) only if the notice of seizure can be served on the *issuer* or *intermediary* in Alberta.

Duties of issuer

91

- (1) Where the *enforcement debtor* is the registered holder of a *security* that the *sheriff* has seized otherwise than in accordance with section 90(1)(b), the *sheriff* shall serve the notice of seizure on the *issuer* as soon after effecting seizure as is practicable.
- (2) An issuer who has been served with a notice of seizure regarding a *security* of which the *enforcement debtor* is the registered holder shall

Section 92

1. Reference: Recommendations 48, 50.
2. Generally, the information and documents referred to in clause (b) would be the information and documents that the debtor would be entitled to get directly from the issuer if the debtor were the registered holder of the securities.
3. It would be unusual for the sheriff to make the sort of direction contemplated by clause (e). Generally, it would be more convenient for the sheriff to leave the security with the intermediary, and to direct the intermediary to sell or otherwise liquidate the security: see s. 94(1).
4. Clause (f) requires the intermediary to remit to the sheriff any proceeds to which the debtor would otherwise be entitled. Often, a broker who holds securities for a debtor will have a lien on the securities, as where the debtor maintains a margin account. The amount to which the enforcement debtor would otherwise be entitled would be the balance remaining after payment of any commission to which the broker is entitled and payment of any amount necessary to discharge the lien.

Section 93

Reference: Recommendation 50.

- (a) send to the *sheriff* any documents and allow the *sheriff* to inspect any records that registered holders of the *security* are entitled to receive or inspect,
- (b) pay to the *sheriff* any dividend or other payment in respect of the *security* that would otherwise be payable by the *issuer* to the *enforcement debtor*,
- (c) comply with any direction given by the *sheriff* regarding a dividend or payment referred to in clause (b), if the *enforcement debtor* would otherwise be entitled to give the *issuer* such a direction, and
- (d) promptly notify any relevant *transfer agent* of the seizure.

Duties of
intermediary

92 Where a *sheriff* has seized a *security* by serving a notice of seizure on an *intermediary*

- (a) the *intermediary* shall hold the *security* on behalf and in accordance with the directions of the *sheriff*,
- (b) the *sheriff* is entitled to receive any information or documents relating to the *security* that the *intermediary* is required to give to the *enforcement debtor*,
- (c) the *intermediary* shall pay to the *sheriff* any dividend or other payment in respect of the *security* that would otherwise be payable by the *intermediary* to the *enforcement debtor*,
- (d) the *sheriff* is entitled to give any direction to the *intermediary* that the *enforcement debtor* would otherwise be entitled to give in respect of a dividend or payment referred to in clause (c),
- (e) if so directed by the *sheriff*, and if it is possible to do so, the *intermediary* shall cause the *security* to be registered in the name of the *sheriff*, or deliver a *security certificate* evidencing the *security* to the *sheriff*, or both, and
- (f) if so directed by the *sheriff*, the *intermediary* shall liquidate the *security*, and pay to the *sheriff* any proceeds to which the *enforcement debtor* would otherwise be entitled.

Liability of issuer
or intermediary

93

- (1) An *issuer* or *intermediary* who fails to comply with a duty imposed on it by section 91 or 92 is liable for any pecuniary loss suffered by *enforcement creditors* as a result of such failure.

Section 94

1. Reference: Recommendations 51, 52.
2. Subsection (1) uses the term "liquidate" rather than "sell". In most cases, the sheriff would undoubtedly liquidate the security by selling it on the market. But in some cases the appropriate method of liquidation might be surrender for redemption, presentation for payment, or some other mechanism not technically amounting to a sale.
3. Section 168 of the *Business Corporations Act* deals with constraints that may be placed on the issue or transfer of shares in a distributing corporation to comply with "Canadian content" or other statutory restrictions that may affect a corporation.

Section 95

1. Reference: Recommendations 48, 52.
2. Clause (3)(b) is worded broadly, so as not to be confined to particular kinds of rights, such as options. Moreover, the right need not be embodied in any particular document, such as the articles of incorporation or a unanimous shareholder agreement. Even a private agreement between the enforcement debtor and another person would qualify, so long as the sheriff had notice of the agreement.
3. Clause (3)(c) does not require the sheriff to serve every shareholder if there are more than 15 of them. Most corporations whose shares are not market securities will have fewer than 15 registered shareholders. But it is entirely possible for such a corporation to have more than that number of shareholders. In such cases, there would not seem to be a great deal to be gained by serving all these shareholders. In this regard, it should be kept in mind that any shareholders who do have a preferential right to acquire the shares will be served under clause (b).
4. The sheriff's first obligation under subsection (4) is to comply with the sale procedure that the enforcement debtor would have had to follow in order to sell the shares. Therefore, if the enforcement debtor would have been required to offer the shares to a particular person at a pre-determined price, the sheriff's proposal must give that person the first right to acquire the share at that price (subject to subsection (7)). However, if that person fails to exercise the option to acquire the share, the sheriff must then give other shareholders of the corporation a reasonable opportunity to acquire the share in priority to non-shareholders.
5. Subsection (4) gives the sheriff considerable leeway as to the procedure he proposes to follow. For example, it does not attempt to "prioritize" the rights of different classes of shareholders to acquire the shares. If any shareholder or other person with a preferential right to acquire the share considers that the procedure proposed by the sheriff is inappropriate, that person may apply to the court under subsection (8).

- (2) An *issuer* is not liable under this section in respect of anything done on its behalf by a *transfer agent* unless at the time the *transfer agent* acts
 - (a) the *transfer agent* has been notified of the seizure, or
 - (b) 48 hours have elapsed since the notice of seizure was served on the *issuer*.
- (3) Where an *issuer* incurs a liability under this section as a result of anything done by a *transfer agent* after the *transfer agent* has been notified of a seizure, the *transfer agent* is liable to indemnify the *issuer*.

Liquidation of
seized security

94

- (1) A *sheriff* may liquidate a seized *security* by any means that the nature of and market for the *security* permits.
- (2) Except as provided by section 95, no restriction on the transfer of a *security*, other than a constraint under section 168 of the *Business Corporations Act*, applies to the transfer of a *security* by a *sheriff* under this Act.

Procedure for
liquidating

95

- (1) This section applies only to *shares* that are not *market securities*.
- (2) An *issuer* who has been served with a notice of seizure in respect of certain *shares* shall so inform any *person* who requests information from the *issuer* regarding the *enforcement debtor's* ownership of or ability to transfer those *shares*.
- (3) Upon being instructed to sell seized *shares*, the *sheriff* shall serve a notice of intended sale on
 - (a) the *issuer*,
 - (b) any *person* who, to the knowledge of the *sheriff*, would have a preferential right to acquire the *shares* on a voluntary sale of the *shares* by the *enforcement debtor*, and
 - (c) every registered shareholder of the *issuer*, if there are 15 or fewer registered shareholders.
- (4) The notice of intended sale shall set out the sale procedure the *sheriff* intends to follow, which shall

Section 95 (continued)

6. Subsection (6) amplifies the expression "as closely as possible" in clause (4)(a). The sheriff is not required to follow the procedure that the debtor would have to follow if following that procedure would effectively defeat the whole purpose of the seizure. For example, a sheriff might choose to ignore a requirement that any shareholder give one year's notice to the corporation before selling his or her shares, because it would unreasonably delay the enforcement process.

7. Subsection (7) might apply to an option to purchase the enforcement debtor's shares or to the right of the issuing corporation to redeem the shares. A court would undoubtedly be slow to interfere with pre-existing contractual rights of this nature. However, a court might be persuaded to intervene where the option or redemption price was set at an unrealistically low level in relation to the value of the share.

8. Subsection (9) gives the corporation or any other interested person ample opportunity to apply to the court for a determination of any issue relating to the sale procedure the sheriff intends to follow.

- (a) follow as closely as possible any procedure that the *enforcement debtor* would be required to follow in order to sell the *shares*, and
 - (b) subject to clause (a), provide the *issuer* and existing shareholders of the *issuer* a reasonable opportunity to buy or redeem the *shares* before they are offered for sale to any other *person*.
- (5) The *sheriff* shall not take any further steps to sell the *shares* until 14 days after complying with subsection (2).
- (6) Subsection (3)(a) does not require the *sheriff* to follow a procedure that would prevent the *shares* from being sold at all or prevent them from being sold within a reasonable time or for a reasonable price.
- (7) A *person* who would otherwise be entitled to acquire or redeem the *shares* for a predetermined price or at a price fixed by reference to a predetermined formula is entitled to buy or redeem them from the *sheriff* for that price, unless the *Court* determines that a sale at that price would unfairly prejudice the *enforcement debtor* or *enforcement creditors*.
- (8) At any time before *shares* are sold by the *sheriff*, any *person* referred to in subsection (2) may pay to the *sheriff* an amount sufficient to discharge the *enforcement debt* or debts and any outstanding *sheriff's* fees or charges, and that *person* shall have a lien on the *shares* for the amount paid to the *sheriff*, plus interest.
- (9) Upon application by the *sheriff* or any interested *person*, the *Court* may make any order it considers proper regarding the method of liquidating seized *shares*, including an order
 - (a) approving, with or without modification, or rejecting
 - (i) the sale procedure proposed by the *sheriff* or by any other *person*,
 - (ii) any proposed term of sale, or
 - (iii) any proposed method of realizing the value of the *share* other than sale,
 - (b) suspending sale proceedings, or
 - (c) directing that the *issuer* be liquidated and its proceeds disposed of according to law.

Section 95 (continued)

9. Subsection (10) is intended to prevent second-guessing of the procedure that the sheriff used to sell the shares. Thus, anyone who has reservations about the procedure proposed by the sheriff must raise those concerns before the court before the sale.

Section 96

1. Reference: Recommendation 51.

2. This section empowers the sheriff to execute formal transfer documents in place of the enforcement debtor. However, in many cases, it will be unnecessary for the sheriff to enforce a security certificate or execute any sort of formal transfer document, because it would be unnecessary for the enforcement debtor to do so. Where the securities in question are held by an intermediary, the intermediary is likely to have the power to effect a transfer of the debtor's securities without having to get the debtor's endorsement on a security certificate.

Section 97

1. Reference: Recommendation 51.

2. This is very similar to section 75(2) of the *Business Corporations Act*. The main difference here is that the issuer is required to register a transfer, rather than to issue a new security certificate to the original owner (the debtor).

Section 98

1. Subsection (1) is a corollary of the principle adopted in the Report that no restriction on transfer should ultimately be able to prevent the sheriff from transferring a seized share. Thus, when the sheriff has complied with the requirements of s. 96 and sold the share to a purchaser, the purchaser is entitled to have the transfer registered.

- (10) Where the *sheriff* has sent a notice of intended sale to the *persons* mentioned in subsection (2), and no application is made under subsection (8) before the *shares* are sold, the sale procedure set out in the notice of intended sale is deemed to have met the requirements of subsection (3).

Execution of
transfer documents
by sheriff

96

- (1) A *sheriff* may do any act or execute or endorse any document that otherwise would have to be done, executed or endorsed by the *enforcement debtor* in order to liquidate a seized *security*, and an act so done or document so executed or endorsed is as effective as if done, executed or endorsed by the *enforcement debtor*.
- (2) The *issuer* of a *security* is not required to acknowledge any document executed or endorsed by the *sheriff* pursuant to subsection (1) unless the document is accompanied by the certificate of the *sheriff* stating that the document has been executed or endorsed by the *sheriff* under the authority of this Act.

Missing security
certificate

97

Where

- (a) a *sheriff* has seized a *security* for which a *security certificate* has been issued,
- (b) liquidation of the *enforcement debtor's* interest in the *security* would ordinarily require presentation of the *security certificate* to the *issuer* or a transfer agent of the *issuer*,
- (c) the *security certificate* appears to have been lost, destroyed or wrongfully taken,
- (d) it does not appear that the *security certificate* has come into the possession of a *person* whose interest in the *security* would have priority over the relevant *writ*, and
- (e) the *instructing creditor* has made satisfactory provision for indemnification of the *issuer* against any liability the *issuer* may incur in respect of the *security certificate*

the *Court* on application may require the *issuer* to acknowledge a transfer or other disposition of the *security* without presentation of the *security certificate*.

Effect of transfer by
sheriff

98

- (1) Upon presentation of a transfer document endorsed or executed by the *sheriff* in accordance with section 96, the *issuer* shall register the transfer of a registered *security* to the *person* named as transferee in the transfer document.

Section 98 (continued)

2. The principle just referred to does not require that the transferee be permitted to ignore agreements regarding the management of the corporation to which the enforcement debtor was a party. If the enforcement debtor was a party to a unanimous shareholder agreement, the transferee from the sheriff would be deemed to be a party to that agreement by s. 140 of the *Business Corporations Act*. Subsection (2) goes one step further, and declares that the transferee is deemed to be a party to a non-unanimous agreement of which he or she had knowledge at the time of the transfer.

3. Subsection (3) contemplates the possibility that some corporations might try to blunt the effect of section 94(2) and subsection (1) of this section by incorporating into the articles, bylaws or a shareholders agreements provisions that would limit the rights of shareholders who acquire their shares from a sheriff. Subsection (4) gives the court broad powers to deal with such discriminatory provisions.

Section 99.

1. Reference: Recommendation 48.

2. The preceding sections do not distinguish between securities issued by Alberta issuers and securities issued by "foreign" issuers. However, it is entirely possible that certain of the foregoing provisions will conflict with the applicable laws of the issuer's home jurisdiction in a way that could prejudice the issuer or a third party. If satisfied that the issuer or third party was likely to suffer some real prejudice, the court could grant appropriate relief.

3. The expression "incorporated or constituted" acknowledges that the issuer of a security is not necessarily a corporation. It might, for example, be a limited partnership.

Section 100

1. Reference: Recommendation 54; *Seizures Act*, s. 8(1).

2. Subsection (1) is quite similar in effect to s. 8(1) of the *Seizures Act*, except that subsection (1) makes it clear that notice must also be given to the enforcement debtor.

3. Subsection (2) contemplates the possibility that the secured party (ie, the enforcement debtor) has neglected to "perfect" the security interest by carrying out the appropriate registrations in the PPR or the LTO.

- (2) In addition to any agreement to which the transferee is deemed by section 140 of the *Business Corporations Act* to be a party, the transferee is deemed to be a party to any agreement regarding
- (a) the management of the affairs of the *issuer*, or
 - (b) the exercise of voting rights attached to the seized *shares*
- to which the *enforcement debtor* was a party at the time of the seizure, and of which the transferee had knowledge at the time of the transfer.
- (3) Notwithstanding subsection (2) and section 140 of the *Business Corporations Act*, the Court may grant a declaration that the transferee is not bound by a term or provision of any agreement, bylaw or article that discriminates against the transferee because he acquired the *securities* through *enforcement proceedings*.

Application to
foreign issuers

- 99** Where a *security* of an *issuer* that is not incorporated or otherwise constituted under the laws of the Province of Alberta is seized under this Act, and the Court is satisfied that the *issuer* or some other *person* is likely to suffer actual prejudice as a result of a conflict between anything in sections 90 through 98 and the laws under which the *issuer* is incorporated or otherwise constituted, the Court may make any order it considers necessary to protect the *issuer* or *person* from being so prejudiced.

SECURED OBLIGATIONS

Seizure of secured
obligation

- 100**
- (1) Seizure of a *secured obligation* shall be effected by
- (a) identifying the *obligation* and the security therefor in the notice of seizure,
 - (b) registering the notice of seizure in the Land Titles Office or *Personal Property Registry*, as may be appropriate, and
 - (c) serving the *seizure documents* on the *enforcement debtor*.
- (2) If the *enforcement debtor's* security interest has not been registered in the Land Titles Office or *Personal Property Registry* when the *secured obligation* is seized, the *sheriff* may register the security interest.

Section 101

Reference: Recommendation 55; *Seizures Act*, s. 8(4),(5).

Section 102

Obligations, secured or otherwise, that are market securities or are evidenced by an instrument are dealt with earlier in this part.

Section 103

1. Reference: *Seizures Act*, ss 10, 13(5),(7),(8).
2. The *Seizures Act* contains a lengthier series of provisions on the subject of seizing and selling agricultural products than is contained in this and the following section. Most of the specific provisions of the *Seizures Act* are adequately dealt with by the general provisions of the JEA.
3. The provisions in the *Seizures Act* corresponding to subsection (2) date back to 1933. At that time, the two main marketing alternatives for agricultural products were sale on the open market or participation in a co-operative (contractual) marketing scheme. Today, the marketing of many agricultural products is regulated by the *Canadian Wheat Board Act* (Canada) and the *Canada Grain Act* (Canada) or by plans established by regulations under the *Marketing of Agricultural Products Act*. Such plans serve much the same function as the co-operative marketing schemes contemplated by s. 13(7),(8) of the *Seizures Act*. Subsection (2) is intended to capture any such marketing arrangement.

Section 104

1. Reference: *Seizures Act*, s. 13(1),(2),(3).
2. This section recognizes that, without the contemplated expenditures, there would be no proceeds to be distributed. The rationale behind legislation such as the *Threshers' Lien Act* would apply equally to harvesting expenses incurred by the sheriff. That the sheriff (or a creditor who pays the sheriff) is given a charge, as opposed to a mere preference on distributions, may be of significance where there is a prior security interest in the crop.

Section 105

1. Reference: PPSA, 36(8),(11),(12),(13),(14).
2. The purpose of subsections (1) and (2) is to ensure that a fixture will be severed from the land to which it is affixed only if it is reasonable to do so. If the fixture is attached to land that is owned by the enforcement debtor, the proper method of enforcement would be to sell the debtor's interest in the land, rather than to remove and sell the fixture. If the fixture is affixed to land owned by the debtor that is exempt, the fixture should also be exempt. Assuming that the land is owned by someone other than the debtor, whether it is proper to allow the sheriff to seize and remove the fixture must depend on whether, as far as the fixture is concerned, the writ has priority over the land owner's interest: see s. 44.

Collecting secured
obligation

101

- (1) After seizing a *secured obligation*, the *sheriff* may serve the notice of seizure on the *person* liable to pay the *obligation*, whereafter that *person* shall pay to the *sheriff* any amount that is or becomes payable in respect of the *obligation*.
- (2) After serving the notice of seizure on the *person* liable, the *sheriff*, as an alternative to selling the *secured obligation* under Part 5, may collect the *obligation* through any proceedings, including an action or enforcement of the security, that could otherwise have been taken by the *enforcement debtor*.

Non-application to
securities and
instruments

102

Sections 100 and 101 do not apply to a *market security* or an *obligation* evidenced by an instrument.

AGRICULTURAL PRODUCTS

Seizure and sale of
growing crops

103

- (1) A *sheriff* may seize growing *crops* of the *enforcement debtor*, but shall not sell a seized *crop* until it has been harvested.
- (2) The *sheriff* has the same rights and duties as the *enforcement debtor* regarding the sale of seized *agricultural products* under any applicable marketing legislation or plan.

Harvesting
expenses

104

- (1) Unless the *enforcement debtor* undertakes to harvest a seized *crop*, the *sheriff* may require the *instructing creditor* to provide security for the payment of any harvesting expenses that may be incurred by the *sheriff*.
- (2) If the *instructing creditor* does not provide the requested security, the *sheriff* may release the *crop* from seizure.
- (3) Any harvesting expenses incurred by a *sheriff* in connection with a seized *crop* are a first charge on and payable out of the proceeds of the *crop* in priority to any other claim.
- (4) The benefit of the charge referred to in subsection (1) extends to an *enforcement creditor* who has paid the harvesting expenses incurred by the *sheriff*.

FIXTURES

Seizure of fixtures

105

- (1) A *fixture* may be seized and sold as *personal property* only in the circumstances set out in subsection (2), or as authorized by the *Court*.

Section 105 (continued)

3. As is the case with their counterparts in the PPSA, subsections (3) through (7) assume that the land owner's interest in the fixture is subordinate to the writ.

4. Sections 75 through 77 establish a general procedure for dealing with third party claims to seized personal property. Since subsection (5) establishes a specific procedure for dealing with certain claims against fixtures, the procedure set out by sections 75 through 77 would be redundant in the case of such claims. That is the reason for subsection (8).

- (2) A *fixture* bound by a *writ* may be seized and sold in accordance with Part 5 where
 - (a) the fee simple interest in the *land* to which the *fixture* is affixed is not beneficially owned by the *enforcement debtor*, and
 - (b) any interest in the *fixture* of a *person* having an interest in the *land* is subordinate to the *writ*.
- (3) Where a *fixture* is seized and removed, any *person* other than the *enforcement debtor* who had an interest in the *land* at the time the *fixture* was affixed to the *land* is entitled to reimbursement from the *sheriff* for any damage to his interest caused during the removal of the *fixture*, but is not entitled to reimbursement for diminution in the value of the *land* caused by the absence of the *fixture* or the need to replace it.
- (4) Any *person* with an interest in the *land* to which a *fixture* is affixed may retain the *fixture* by paying to the *sheriff* the lesser of
 - (a) the amount for which his interest in the *fixture* is subordinate to any *writs*, and
 - (b) the market value of the *fixture*,
 and upon such payment the *fixture* ceases to be bound by any *writ* against the *enforcement debtor*.
- (5) A *sheriff* who seizes a *fixture* shall serve on each *person* who appears by the records of the land titles office to have an interest in the *land* a notice containing
 - (a) a description of the seized *fixture* and of the *land* to which it is affixed,
 - (b) the amount for which *writs* are alleged to have priority over the *person's* interest in the *fixture*,
 - (c) a statement that the *fixture* may be removed and sold unless the amount referred to in subsection (4) is paid on or before a specified date that is not less than 14 days after the notice is served.
- (6) The notice required by subsection (5) may be served in accordance with section 188 or by registered mail addressed to the address of the *person* to be notified as it appears in the records of the land titles office.

Section 106

Reference: Recommendation 37.

Section 107

Reference: *Seizures Act*, s. 24.

- (7) A *person* entitled to receive a notice under subsection (5) may apply to the *Court* for an order postponing removal of the *fixture* from the *land*, or for the determination of any issue relating to the seizure.
- (8) Sections 76 through 78 do not apply to the interest in a seized *fixture* of a *person* who is entitled to notice under subsection (5).

SERIAL NUMBERED GOODS

Seizure of serial
numbered goods

106

- (1) In this section "serial number goods" means serial number goods as defined by the Personal Property Security Regulation.
- (2) *Serial number goods* may be seized
 - (a) in accordance with Part 5, or
 - (b) by registering in the *Personal Property Registry* a notice of seizure that identifies them by serial number, and serving the *seizure documents* on the *enforcement debtor*.

MOBILE HOMES

Seizure of mobile
home

107

- (1) When a *mobile home* is seized, if
 - (a) the *mobile home* is occupied by the *enforcement debtor* or some other *person*, and
 - (b) the occupant fails, on demand, to deliver up possession of the *mobile home*,

the *instructing creditor*, on notice to the occupant, may apply to the *Court* for an order directing the occupant to deliver up possession of the *mobile home*.
- (2) The order shall provide
 - (a) that if the occupant fails to deliver up possession of the *mobile home* within the time specified in the order, the *sheriff* shall eject and remove the occupant together with all *property* he may have in the *mobile home*, and
 - (b) that if it is not possible otherwise to obtain possession the *sheriff*, either by himself or with the assistance of any *persons* that he requests, may use force to gain entry to the *mobile home*.

Section 108

Reference: Recommendations 57, 59.

Section 109

1. Reference: Recommendation 59.
2. Nothing is said here about employing the services of a real estate agent. This is because s. 11 provides generally for the employment of professional agents by sheriff's officers.

Section 110

1. Reference: Recommendations 57, 126.

- (3) On there being filed with the *sheriff* an affidavit
- (a) showing service of the order on the occupant, and
 - (b) stating that the occupant has failed to deliver up possession of the *mobile home* as requested by the order,
- the *sheriff* shall forthwith proceed to obtain possession of the *mobile home* as authorized by the order.

PART 7

LAND

Initiating sale of
land

108 To initiate the sale of an *enforcement debtor's land*, an *enforcement creditor* shall

- (a) instruct a *sheriff* in writing to sell the *land*,
- (b) suggest a method of sale to the *sheriff*, and
- (c) provide any documents or information required by the *sheriff*.

Method of sale

109 An *enforcement debtor's land* may be sold by any method the *sheriff* considers likely to produce a reasonable price.

Notice of sale

110

- (1) Upon being instructed to sell *land*, the *sheriff* shall
- (a) issue a notice of sale,
 - (b) register the notice of sale in the Enforcement Registry,
 - (c) serve the notice of sale on the *enforcement debtor*,
 - (d) deliver the notice of sale to the *instructing creditor*, and
 - (e) in the case of *land* that is registered under the *Land Titles Act*,
 - (i) cause the notice of sale to be recorded on the certificate of title for the *land*, and
 - (ii) serve the notice of sale on every *person* with a registered or caveated interest in the *land*.

Section 10 (continued)

2. Clauses (c), (d) and (e) of subsection (2) should be read with s. 113.

Section 111

"Land" is defined in s. 1(1) as not including growing crops. This section is intended to make it clear that, the definition notwithstanding, a sale of land under this part can include crops growing on the land. In many cases, it would be more sensible for a sheriff to sell a growing crop as part of the land upon which it is growing than to seize and sell the crop as personal property.

Section 112

Reference: Recommendation 58.

Section 113

1. Reference: Recommendation 126.
2. The effect of this section is that to claim the value-limited exemption for a non-farm home (ie, maximum \$40,000), the enforcement debtor need only file an appropriate claim with the sheriff. If such a claim is filed, the sale would proceed, but the first \$40,000 of the proceeds would be paid to the enforcement debtor. If the enforcement debtor claimed that the land in question was completely exempt under the farm home exemption, his or her claim would have to be asserted through an application to the court.

- (2) The notice of sale shall be in prescribed form and shall
 - (a) describe the *land* that is to be sold,
 - (b) state the proposed method of sale,
 - (c) state that any objection the *enforcement debtor* has to the sale must be raised by an application to the *Court*,
 - (d) state that if the *land* is the *enforcement debtor's* home, the debtor may claim an exemption up to the amount set out in section 158(2) by delivering a written claim to the *sheriff*,
 - (e) state that if the *enforcement debtor* does not apply to the *Court* or deliver a claim to the *sheriff* within 6 months of service of the notice of sale, he will not subsequently be able to assert that the *land* is either wholly or partially *exempt*.
- (3) The steps referred to in subsection (1)(c) and (e) may be carried out by the *instructing creditor* instead of the *sheriff*, at the option of the creditor.

Inclusion of
growing crops in
sale of land

- 111** Growing *crops* may be sold as part of a sale of *land* under this Part if the notice of sale clearly indicates that the *crops* are to be sold along with the *land*.

Waiting period

- 112**
- (1) Subject to subsection (2), the *sheriff* shall not take any further steps to sell the *land* until 6 months after completing the steps required by section 110.
 - (2) The *Court* may extend or shorten the period referred to in subsection (1), but may not shorten the period unless it first determines that the *land* is not *exempt*.

Determination of
exemptions

- 113**
- (1) Before the expiration of the time mentioned in section 112, the *enforcement debtor* may
 - (a) apply to the *Court* for a declaration that the *land* is *exempt*, or
 - (b) deliver to the *sheriff* a written claim that the *land* is the debtor's home.
 - (2) Unless the Court orders otherwise, an *enforcement debtor* who delivers a claim to the *sheriff* in accordance with subsection (1)(b) shall be presumed to be entitled to the exemption described in section 158(1)(b).

Section 114

1. Reference: Recommendation 60.

2. The office of subsection (1) is to prevent the sheriff from suffering the embarrassment of entering into a contract for sale of the debtor's land that appears to be unconditional, and then having the debtor or some other person object to the sale. Since contracts for the sale of land are customarily subject to numerous conditions, the inclusion of a condition such as this should not be a major impediment to finding a buyer.

3. The main object of this section is to eliminate the need for court approval of a proposed sale, unless someone actually objects to it. Thus, subsection (2) requires the sheriff to notify interested persons of the terms of the proposed sale, and subsection (3) puts the onus on such persons to apply to the court to raise any concerns they may have.

4. Subsection (5) would supplant s. 125 of the LTA, which requires court confirmation of any sheriff's sale. Instead, the sheriff would certify that the persons mentioned in subsection (2) have been served with the required notice, and that none of them have applied to the court.

5. Subsection (6) addresses the issue of the "quality" of the title that the purchaser from the sheriff gets. Its main purpose is to make it clear that any interests that were recorded on title after the first writ was recorded on title are extinguished by the sheriff's sale.

Section 115

Reference: Recommendation 62.

Section 116

Reference: Recommendation 61.

- (3) An *enforcement debtor* who does not apply to the *Court* or file a claim within the time mentioned in section 112 may not subsequently assert that the *land* is or was wholly or partially *exempt*.

Completion of sale

114

- (1) Every contract for the sale of *land* entered into by a *sheriff* under this Part shall be expressed to be subject to this section.
- (2) Upon entering into a contract for the sale of *land* the *sheriff* shall serve written notice of the terms of the sale on every *person* who was served with the notice of sale, and, if the contract is with the an *enforcement creditor*, on every other *enforcement creditor*.
- (3) A *person* served with notice of the terms of sale must raise any objection he may have to the sale through an application to the *Court* made within 14 days of the date of service of the notice on all the persons referred to in subsection (2).
- (4) When an application is made under subsection (3) the *Court* may either confirm or direct the *sheriff* not to complete the proposed sale, and in either case may give such further directions to the *sheriff* as it considers proper.
- (5) If no application is made within the time mentioned in subsection (3), the sale may be completed and the *land* may be transferred without the approval of the *Court*, but the *sheriff* shall certify on the transfer of land that he has complied with subsection (2) and that no application has been made to the *Court* within the time mentioned in subsection (3).
- (6) Upon presentation of a transfer of land duly executed by the *sheriff*, the Registrar of Land Titles shall issue to the transferee a certificate of title free of any encumbrance or interest that was not recorded on the certificate of title before the first of the *writs* under which the *land* was sold was recorded thereon.

Severance of joint tenancy

115

Enforcement proceedings against an *enforcement debtor's* interest as a joint tenant of *land* sever the joint tenancy only when the *sheriff* has entered into an agreement to sell the debtor's interest.

Dower consent not required

116

Notwithstanding the *Dower Act*, the *sheriff* may sell *land* under this Act without obtaining the consent of the *enforcement debtor's* spouse, and the buyer obtains title to the *land* free of any right that the *enforcement debtor's* spouse may have had in the *land* under the *Dower Act*.

Section 117(1)**(a): "current obligation"**

1. The reference in this definition to a portion of an obligation contemplates a situation such as this. G owes D \$1,000. \$500 is payable now, and \$500 is payable a month from now. For the purposes of this part, the \$500 that is payable now is a current obligation. The other \$500 would be a future obligation: see clause (d).

2. Conditions to which s. 148(1) applies are certain conditions that may attach to deposit accounts, but which are to be ignored for the purpose of determining whether the account is payable.

(b): "deposit account"

This definition is based on the definition of "deposit account" in s. 9-105(e) of the *Uniform Commercial Code* (1972 official text).

(c): "employment earnings"

Reference: Recommendation 115; *Employment Standards Act*, s. 1(1)(s).

(d): "future obligation"

1. Reference: Recommendation 72.

2. The purpose of this definition is to identify the situations in which a garnishee summons may be issued against an obligation that has not yet arisen, or at least not yet become payable, but which may yet arise or become payable as a result of some relationship or connection between the garnishee and the enforcement debtor. This definition defines the sort of relationship or connection that will suffice for this purpose.

3. It will be noted that the various clauses of this definition are not mutually exclusive. For example, the sort of obligation that would be covered by clause (e)(ii) would almost certainly be covered by clause (e)(i) also, since an employment relationship will almost certainly involve an agreement between the employer and the employee.

4. Several of the clauses of this definition refer to an obligation that may or will "arise or become payable". Much of the case law concerning garnishment is devoted to the distinction that has been drawn between an existing debt that is not yet payable, and a debt that does not yet even exist. Under the present law, the former are garnishable and the latter are not. The JEA wants nothing to do with that distinction. Therefore, the definition lumps together obligations that may "arise" in the future and obligations that may "become payable" in the future.

5. Clause (i) refers to an obligation that "will arise or become payable in certain circumstances". Of course, if the envisaged circumstances never come to pass, the obligation will never arise or become payable. In other words, clause (i) comprehends an obligation that will arise on a condition that might never be met.

(e): "garnished obligation"

This is a definition of convenience, intended to avoid the necessity of having to refer repeatedly to "the obligation against which the garnishee summons has been issued".

(f): "garnishee summons amount"

The role of adjustment notices is explained in s. 132.

PART 8

GARNISHMENT

Definitions

117

(1) In this Part,

- (a) "current obligation" means an *obligation*, or any portion of an *obligation*, that on the date of service of a garnishee summons is payable, payable on demand, or payable upon satisfaction of a condition to which section 148(1) applies;
- (b) "deposit account" means a demand, time, savings passbook or similar account at a bank, treasury branch, trust company, credit union or similar organization, but does not include an account evidenced by an *instrument*;
- (c) "employment earnings" means wages, salary, commissions or remuneration for work however computed;
- (d) "future obligation" means an *obligation*, or any portion of an *obligation*, that is not a *current obligation* and that
 - (i) will arise or become payable in certain circumstances or at a certain time or times under an existing agreement or trust, an issued security or the will of a deceased *person*,
 - (ii) will arise or become payable in the ordinary course of events from an existing employment relationship,
 - (iii) is a *statutory obligation* that is likely to arise or become payable as a result of an event that has occurred,
 - (iv) may arise or become payable in respect of a fund of money that is in *Court*, or
 - (v) may arise or become payable in respect of an existing cause of action;
- (e) "garnished obligation" means an *obligation* against which a garnishee summons has been issued;
- (f) "garnishee summons amount" means
 - (i) the amount for which a garnishee summons was originally issued, if no adjustment notice has been served on the garnishee, or

Section 117(1)**(g): "joint entitlement"**

The defined term is "joint entitlement", rather than "joint obligation", simply to emphasize that the obligation in question is owed to two or more persons jointly, rather than by two persons jointly.

(h): "net pay"

1. Reference: Recommendation 110.

2. It is important to note that this definition requires the calculation of net pay on a **monthly** basis. Moreover, in the interests of simplicity, the definition focuses on amounts that are **payable** in the month, rather than amounts that are **earned** in the month. Usually, employment earnings earned in a month are also payable in the month. However, it would be quite possible for employment earnings such as commissions to accrue over several months. In such a case, the commission earnings would be counted as part of the enforcement debtor's income for the month in which they are payable.

3. The garnishee's prescribed compensation is deducted in calculating net pay in the interest of simplifying the garnishee's calculation of what must be paid to the sheriff: see s. 139(7).

(i): "obligation"

The identical definition appears in s. 1(1). It is repeated here for ease of reference.

(k): "security"

Section 87(d) defines a "security" as any share or market security. "Share" is defined in section 87, while "market security" is defined in s. 1. The term "security" appears only once in this part: in s. 118(4).

Section 117(2)

1. Subsection (2)(a) would apply to such expressions as "existing agreement or trust", "deceased person", "issued share" and "existing cause of action".

2. Subsection (2)(b) is intended to deal with the situation where the agreement that existed between the enforcement debtor and the garnishee at the time the garnishee summons was served is replaced (whether innocently or otherwise) by a new agreement that gives rise to essentially the same obligation on the part of the garnishee.

Section 118

1. Subsection (1) is intended to establish the wide scope for garnishment proceedings under the JEA. Unless it is specifically made non-attachable by this or some other Act, any current or future obligation is subject to attachment.

- (ii) the garnishee summons amount, as set out in the latest adjustment notice to be served on the garnishee.
- (g) "joint entitlement" means an *obligation* that is or will be owed to two or more *persons* jointly;
- (h) "net pay", for any month, means the total employment earnings payable by an employer to a person in that month, minus
 - (i) any amount that the employer is required by an Act of the Legislature of a province or the Parliament of Canada to deduct from such earnings, and
 - (ii) the amount that the employer is permitted to deduct as garnishee's compensation.
- (i) "obligation" means a legal or equitable duty to pay money;
- (j) "pay period" means a period at the end of which a person is entitled to be paid all or some portion of his *employment earnings* for that period;
- (k) "security" has the meaning set out in section 87(d);
- (l) "statutory obligation" means an *obligation* imposed by a statute or regulation.
- (2) In subsection (1)(d),
 - (a) a reference to an existing state of affairs or to an event that has taken place refers to a state of affairs or event that is existing or that has taken place when the relevant garnishee summons is served on the garnishee, and
 - (b) a reference to an existing agreement includes an agreement that amends or replaces an agreement that was existing when the relevant garnishee summons was served on the garnishee.

ISSUING AND SERVICE OF GARNISHEE SUMMONS

Attachable
obligations

118

- (1) Except as otherwise expressly provided by this or any other Act, any *current obligation* or *future obligation* that is owed or that, if it arises, will be owed, by the garnishee to the *enforcement debtor*, is attachable by garnishment.

Section 118 (continued)

2. The obligation or obligations against which a garnishee summons is issued must be identified by the summons: see s. 117(b). Subsection (2) is intended to make it clear that a garnishee summons can identify and attach more than one obligation.

3. The purpose of subsection (3) is to avoid unnecessary confusion from multiple garnishments of the same obligation. So long as the original garnishee summons is in effect, all enforcement creditors of the enforcement debtor will benefit. The amount outstanding on the garnishee summons can be adjusted to take into account the registration of additional writs of enforcement in the Enforcement Registry: see s. 128.

Section 119

Reference: Recommendation 45.

Section 120

1. Reference: Recommendations 64, 66.

2. This section also corresponds roughly to Rule 470(3)(b).

3. It will be noted that clause (a) does not require the deponent to decide whether the obligation is a current or future obligation. The deponent will often not be in a position to determine this. Indeed, it will often simply be a matter of the timing of service of the garnishee summons as to whether it attaches a current or future obligation. The obligation in question might not have been payable when the summons was issued, but may have become payable by the time it is served on the garnishee.

Section 121

1. Reference: Recommendation 73.

2. The expiry date will be relevant only if the garnishee summons is issued against a future obligation, an obligation that is not payable when the summons is served. The effect of the expiry date is explained by ss 130 and 131.

Section 122

1. Reference: Rules 471(2),(4), 473.

2. The JEA allows most documents to be served in the manner set out in s. 185. Some of the methods of serving a document set out in s. 188 might not constitute good service of a statement of claim, and would not constitute service of a garnishee summons.

- (2) A garnishee summons may be issued against more than one *obligation*.
- (3) A garnishee summons may not be issued against an obligation in respect of which another garnishee summons issued under this Act is already in effect.

Obligations
evidenced by
instrument not
attachable

119 An *obligation* evidenced by an *instrument* is not attachable by garnishment.

Initiating
garnishment
proceedings

120 An *enforcement creditor* may require a *sheriff* to issue a garnishee summons by delivering to the *sheriff* an affidavit in prescribed form

- (a) stating that to the best of the deponent's belief, the garnishee is under a *current obligation* or *future obligation* to the *enforcement debtor*, and
- (b) briefly stating the grounds for this belief.

Contents of
garnishee summons

121 A garnishee summons shall be in prescribed form and shall

- (a) be issued for the amount outstanding on all subsisting *writs* against the *enforcement debtor*,
- (b) briefly describe the *obligation* or *obligations* against which it is issued, and
- (c) set out its expiry date, which shall be the anniversary of the date it is issued.

Service of
garnishee summons

122

- (1) A garnishee summons shall be served on the garnishee in the same manner as a statement of claim.
- (2) If it appears that a *garnished obligation* is or may be payable through an office of the garnishee other than the office at which the notice is served,
 - (a) the latter office shall immediately notify the former of the garnishment, and
 - (b) so far as that particular *obligation* is concerned, the garnishee summons is deemed to have been served when the office through which the *obligation* is payable is notified in accordance with clause (a), or 48 hours after service of the garnishee summons in accordance with subsection (1), whichever is earlier.

Section 123

1. Reference: Rule 471(1).
2. This section actually serves two purposes. The first purpose is to say what the garnishee summons actually attaches. The garnishee summons attaches only the garnished obligation(s), that is, obligation(s), described in the garnishee summons. Suppose that D is employed by a financial institution, G, and also has funds in a deposit account with G. A garnishee summons served on G that identified only the obligation arising out of D's employment would not attach the obligation represented by the deposit account.
3. The second purpose of this section is to specify when the garnishee summons attaches these obligations: when it is served on the garnishee. Even if the garnished obligation is not yet payable, it is nonetheless attached upon service of the garnishee summons.

Section 124

Reference: Rule 475(1)(a).

Section 125

1. Reference: Recommendation 78.
2. The function of subsection (3) is similar to that of s. 117(2)(b). However, whereas the latter is concerned with agreements, the former is most likely to apply to a cause of action that the enforcement debtor has, or is at least alleged to have, against the garnishee. If, after service of a garnishee summons in respect of the cause of action, the enforcement debtor's action (or potential action) is settled, the settlement amount would be treated as an obligation attached by the garnishee summons.

- (3) An *obligation* owed by a partnership carrying on business within Alberta may be attached, although one or more members of the partnership is resident out of Alberta, if the garnishee summons is served on the partnership within Alberta.

Obligations
attached

- 123** A garnishee summons attaches the *garnished obligation* when the summons is served on the garnishee.

GARNISHEE'S DUTIES

Current obligation
attached

- 124** Where a garnishee summons attaches a *current obligation*, the garnishee shall within 14 days of service of the summons pay to the *sheriff* the lesser of

- (a) the amount payable by the garnishee to the *enforcement debtor* in respect of the attached *obligation*, and
- (b) the *garnishee summons amount*.

Future obligation
attached

- 125**
- (1) Where a garnishee summons attaches a *future obligation*, the garnishee shall within 14 days of service of the summons deliver to the *sheriff* a written statement
 - (a) stating the time or times at which the *obligation* is likely to be payable,
 - (b) stating the anticipated amount of the obligation, and
 - (c) describing any contingencies that must be satisfied before the *obligation* will arise or become payable.
 - (2) When a *future obligation* attached by a garnishee summons or any portion thereof becomes payable, the garnishee shall immediately pay to the *sheriff* the lesser of
 - (a) the amount payable by the garnishee to the *enforcement debtor* in respect of the attached *obligation*, and
 - (b) the *garnishee summons amount*.
 - (3) For the purposes of subsection (2) where an amount that may reasonably be regarded as consideration for the *enforcement debtor's* foregoing the possibility of becoming entitled to a payment in respect of a *garnished obligation* is paid or becomes payable to the debtor, the amount so paid or payable is deemed to be an *obligation* attached by the garnishee summons.

Section 126

1. Reference: Recommendation 68; Rule 477.
2. In the context of attachment of employment earnings, this section must be read with s. 139(7), as well as with the definition of "net pay" in s. 117(1).

Section 127

1. Reference: Recommendation 78; Rules 475(1)(b),(d),(3), 476.
2. Subsection (4) may reflect an over-abundance of caution. It is intended to make it clear that whether a garnishee summons actually attaches a given obligation is not determined by whether the garnishee admits or denies the existence or "attachability" of the obligation.

Section 128

Reference: Recommendation 67.

Garnishee's
compensation

- 126** A garnishee paying money to the *sheriff* may deduct a prescribed amount as compensation, but if the amount of the attached *obligation* is larger than the *garnishee summons amount*, the garnishee shall deduct the compensation from the balance owing to the debtor after payment to the *sheriff*.

Garnishee denying
garnishable
obligation

127

- (1) A garnishee who

- (a) disputes the existence of a *garnished obligation* or disputes the existence of circumstances from which it may arise,
- (b) claims that a *garnished obligation* is not attachable, or
- (c) claims that a *garnished obligation* is or may be owed to someone other than the *enforcement debtor*

shall, within 14 days of service of the summons, deliver to the *sheriff* a written statement setting out the grounds for the dispute or claim.

- (2) A garnishee who claims that the *garnished obligation* is or may be owed to someone other than the debtor shall
- (a) state the name and address of the *person* to whom the *obligation* is or may be owed,
 - (b) if the *obligation* is a *future obligation*, state the time or times at which it is likely to be payable, and describe any contingencies that must be satisfied before it will arise or become payable, and
 - (c) unless the *Court* otherwise orders, pay to the *sheriff* any amount that is or that becomes payable in respect of the *obligation*, up to the *garnishee summons amount*.
- (3) A *sheriff* to whom a garnishee pays money pursuant to subsection (2) shall retain the money until the *Court* determines who is entitled to it.
- (4) Delivery of a statement under subsection (1) does not affect the operation of the garnishee summons.

Disclosure of
debtor's address

128

- (1) When making a payment pursuant to section 124 or delivering a statement pursuant to section 125(1) or 127(1), the garnishee shall state the *enforcement debtor's* last known address.

Section 129

1. Reference: Recommendation 67; ECA, s. 8(1)(a).
2. Where the garnishee summons attaches a future obligation, notice has to be given to the debtor only when the garnishee files his or her initial response. The enforcement debtor does not have to be served with notice every time money is paid to the sheriff by the garnishee.
3. The 10 day period referred to in s. 8(1)(a) of the ECA is changed to 14 days in subsection (2) in pursuit of our goal of standardizing time limits within the JEA as much as possible.

Section 130

1. Reference: Recommendation 73.
2. Every garnishee summons will contain the expiry date contemplated by clause (a): see s. 121. However, the expiry date will really only be relevant where the garnishee summons attaches a future obligation that does not become payable within one year of the date upon which the garnishee summons was issued.
3. Clause (c) contemplates a situation that could arise for two reasons. The first is that the garnishee has paid the full amount of the obligation to the sheriff, as required by the garnishee summons. In that case, nothing more will be payable, and it will not be possible for anything to become payable in respect of the attached obligation. The other possibility is that the relationship between the garnishee and the enforcement debtor under which an obligation might have become payable has come to an end without anything having become payable under it. In either case, saying that the garnishee summons is no longer "in effect" is really just a formality. Whether the garnishee summons remains in effect or not, it will have no practical effect if there is no possibility that anything (or anything further) will become payable in respect of the attached obligation.
4. The most likely reason for the sheriff to advise the garnishee that the summons is no longer in effect, as contemplated by clause (d), is that the enforcement debt has been satisfied through some other means.

Section 131

1. Reference: Recommendation 73.
2. It will be noted that the instructing creditor is not required to file an affidavit to have a replacement garnishee summons issued.
3. From two months before the existing garnishee summons expires until one month before it expires, the instructing creditor (ie, the creditor who caused the existing summons to be issued) has the exclusive right to issue a replacement garnishee summons. In the one month period before the expiry date of the existing summons, any enforcement creditor can cause the replacement garnishee summons to be issued.

- (2) Where disclosure of the *enforcement debtor's* address would be unlawful or a breach of a legal duty owed by the garnishee to the debtor, the garnishee, instead of complying with subsection (1), shall deliver the garnishee summons and his response to the debtor, and certify to the *sheriff* that he has done so.

NOTICE TO ENFORCEMENT DEBTOR

Notice to
enforcement debtor

129

- (1) Upon receiving the garnishee's payment under section 124 or statement under section 125(1) or 127(1), the *sheriff* shall serve on the *enforcement debtor* a copy of the garnishee summons and either a statement of the amount received or a copy of the garnishee's statement.
- (2) No money received pursuant to a garnishee summons is distributable until 14 days after the documents referred to in subsection (1) are served on the debtor.

CONTINUING ATTACHMENT

When garnishee
summons in effect

130

A garnishee summons remains in effect until

- (a) the expiry date set out in the summons,
- (b) the garnishee pays the garnishee summons amount to the *sheriff*,
- (c) nothing is payable, and it is not possible for anything to become payable, in respect of any attached *obligation*,
- (d) the *sheriff* notifies the garnishee that the summons is no longer in effect, or
- (e) the garnishment proceedings are terminated by order of the *Court*.

Replacement
garnishee summons

131

- (1) At any time during the 2 month period preceding the expiry date of a garnishee summons, the *instructing creditor* may by notice in writing require the *sheriff* to issue a replacement garnishee summons.
- (2) Any *enforcement creditor* may require the *sheriff* to issue a replacement garnishee summons if the *instructing creditor* has not done so at least one month before the expiry date of an existing summons.

Section 131 (continued)

4. In subsection (3), it will be noted that the expiry date of a replacement garnishee summons is determined by the expiry date of the summons it replaces, not the date upon which the replacement summons is issued. Thus, each one of a continuing series of replacement garnishee summons will expire on the same day of the year. This should simplify diarization problems for both creditors and garnishees.

Section 132

1. In the case of a continuing attachment of a future obligation, it is important for the garnishee to know the maximum amount that must be paid to the sheriff. This is the amount of the subsisting writs against the debtor. This could easily change between the time that the garnishee summons is issued and the time that the attached obligation actually becomes payable. Thus, the sheriff is required to serve the garnishee with an adjustment notice where the amount of the subsisting writs changes.

2. Although the sheriff is obligated to notify the garnishee of a change in the amount of the writs within one month of the change, that might not be soon enough for an enforcement creditor, where the amount of outstanding writs has substantially increased (most likely, because a new writ has been registered in the Enforcement Registry). Thus, subsection (2) gives enforcement creditors the option of serving the adjustment notice, in which case the sheriff is not required to do so.

Section 133

1. Reference: Recommendation 82.

2. Subsection (2) would require the clerk to pay the money paid into court (up to the garnishee summons amount) to the sheriff, since that is what the clerk would have been required to do had the garnishee summons been issued against the money in court.

Section 134

1. Reference: Recommendation 81.

2. This section does not make the insurer directly liable for not paying attention to the garnishee summons, nor does it relieve the garnishee from obligations under the garnishee summons. However, if after receiving the relevant documents the insurer pays insurance monies directly to the enforcement debtor on behalf of the garnishee, the insurer will be liable to indemnify the insured (the garnishee) against liability under the JEA.

- (3) The expiry date set out in the replacement garnishee summons shall be the anniversary of the expiry date of the garnishee summons it will replace.
- (4) The replacement garnishee summons shall be served on the garnishee before the expiry date of the summons it is to replace, and takes effect when the earlier summons expires.
- (5) When the replacement garnishee summons is served on the garnishee, the garnishee shall update the status of any contingency referred to in his response to the earlier summons.

Adjustment notices

132

- (1) The *sheriff* shall serve an adjustment notice on a garnishee within 1 month of any change in the amount outstanding on subsisting *writs* against the *enforcement debtor*.
- (2) Any *enforcement creditor* may serve an adjustment notice on a garnishee where the amount of the subsisting *writs* against the *enforcement debtor* changes.
- (3) A *sheriff* is not required to serve an adjustment notice where the change in the amount of the *writs* is due only to the accrual of interest or where an *enforcement creditor* serves an adjustment notice in respect of the change pursuant to subsection (2).
- (4) An adjustment notice shall be in prescribed form and shall state the new garnishee summons amount, which shall be the amount of all subsisting *writs* against the *enforcement debtor*.
- (5) An adjustment notice may be served by ordinary mail.

Payment into Court
in certain cases**133**

- (1) Where a cause of action has been attached, the garnishee may, upon filing the garnishee summons and any relevant adjustment notice with the Clerk of the Court, pay money into court pursuant to Rule 166 of the Alberta Rules of Court.
- (2) If the *enforcement debtor* accepts the money paid into Court in satisfaction of his claim, the Clerk shall proceed as if the garnishee summons had been issued against the money in Court.

Notification of
garnishee's insurer**134**

- (1) Where
 - (a) a cause of action in respect of which the garnishee has liability insurance has been attached, and

Section 135

1. Reference: Recommendation 77.
2. One obvious application of this section is where an enforcement debtor owns real property from which he derives rental payments. Quite likely, the enforcement debtor will be required to make mortgage payments, as well as payments for taxes and upkeep. The court could exempt the portion of the enforcement debtor's rental income necessary to meet these expenses.
3. Another possible application is where the enforcement debtor is in the process of performing a contract with the garnishee. It is quite possible that a large portion of the amount that will become payable to the enforcement debtor under the contract will be required to meet expenses incurred by the enforcement debtor in order to perform it. If the debtor can persuade the court that such expenses must be met out of the garnished obligation, the court may exempt an appropriate portion of the obligation from attachment.
4. Section 186(3)(f) would allow the court to impose any terms it considers appropriate to ensure that the exempt portion of the obligation is actually used for the purposes contemplated by this section.

Section 136

1. With the exception of section 135, the provisions referred to here all have to do with the garnishee summons amount. To ease the burden of calculations imposed on an employer who is served with a garnishee summons, the employer is not required to be concerned with the "garnishee summons amount". The employer-garnishee is simply required to deduct the enforcement debtor's calculated exemption from his or her calculated net pay, and pay the difference (if any) to the sheriff. The employer-garnishee does this until the sheriff tells the garnishee that the summons is no longer in effect.
2. Section 135 is the discretionary "golden goose" exemption. It is not appropriate for employment earnings, since there is a specific exemption for employment earnings: see s. 139 and Schedule A.

Section 137

1. Reference: Recommendation 88.
2. This section eases the burden of garnishment on employers by not allowing last minute garnishee summons to disrupt the payroll process. From the enforcement creditor's point of view, the availability of continuing attachment of employment earnings makes it unnecessary to serve a garnishee summons at the last possible moment before the enforcement debtor is paid to catch as much of his or her earnings as possible. A garnishee summons will capture employment earnings whether they are earned before or after service of the summons.
3. This section is intended to reduce the burden of garnishment on employers. If an employer does happen to pay money to the sheriff even though the relevant garnishee summons was not served the appropriate number of days before payday, there is no reason not to treat such a payment as having been regularly made in accordance with the garnishee summons. Thus, subsection (2) excludes the application of subsection (1) to such payments.

Section 138

1. Subsection (1) employs two concepts that are defined or explained elsewhere: **net pay**, and **actual employment earnings exemption**. "Net pay" is defined in s. 117(b). As explained in the comment relating to that definition, a debtor's net pay for any month is based on amounts payable during the month. In other words, net pay is calculated on a cash rather than an accrual basis. The enforcement debtor's actual exemption for the month depends on his or her net pay and the number of dependents. Once the debtor's net pay and actual exemption for the month are calculated, it is simply a matter of subtracting the latter from the former to get the amount, if any, payable to the sheriff.

- (b) the garnishee has delivered the summons and any relevant renewal notice or adjustment notice to the insurer,

the insurer shall pay to the *sheriff* any amount, up to the *garnishee summons amount*, that the insurer would otherwise pay to the *enforcement debtor* on behalf of the garnishee.

- (2) The insurer shall indemnify the garnishee in respect of any liability incurred by the garnishee under section 151 as a result of the insurer's failure to comply with subsection (1).

Discretion to
preserve golden
goose

- 135** Where the source of a garnished *future obligation* is *property* of the *enforcement debtor* or an agreement between the *enforcement debtor* and the garnishee, the *Court* may exempt from attachment as much of the *obligation* as is required by the *enforcement debtor* to keep or maintain the property or to meet *obligations* incurred in order to perform the agreement.

EMPLOYMENT EARNINGS

Inapplicable
provisions

- 136** Sections 121(a), 124, 125(2), 130(b), 132 and 135 do not apply to garnishee summons issued against *employment earnings*.

Attaching earnings
of current pay
period

- 137**
(1) Unless a garnishee summons issued against an *enforcement debtor's employment earnings* is served on the garnishee

- (a) at least 5 days before the end of a *pay period*, where the *pay period* is 10 days or less, or
- (b) at least 10 days before the end of a *pay period*, where the *pay period* is more than 10 days,

the summons does not attach any amount ordinarily payable at the end of that period in respect of the debtor's *employment earnings*.

- (2) Subsection (1) does not apply to any amount that the garnishee does in fact pay to the *sheriff*.

Calculation and
payment of amount
attached

- 138**
(1) Subject to section 137, in any month during which a garnishee summons issued against *employment earnings* is in effect, it attaches the amount, if any, by which the *enforcement debtor's net pay* for the month exceeds his actual *employment earnings* exemption for the month.

Section 138 (continued)

2. It is quite common for employees to be paid more frequently than monthly. Subsection (2) attempts to simplify things for the garnishee in such cases. Payments to the sheriff are only required to be made at the end of each month (or, more precisely, at the end of the last pay period that ends during the month). Of course, the amount to be paid to the sheriff is calculated on the basis of the total amount payable to the enforcement debtor at any time during the month.

3. The purpose of subsection (3) is to require the garnishee to provide a statement of the information that will allow the sheriff (or an enforcement creditor) to confirm that the garnishee's calculation of the amount payable to the sheriff is accurate. Of course, the sheriff will only be able to check the accuracy of the calculations based on the information contained in the statement. It will not generally reveal inaccuracies in the raw data--such as the debtor's total earnings for the month--upon which the calculations are based.

Section 139

1. Reference: Recommendations 109-114; Rules 483(3), 484.

2. The amount determined under subsection (1) is deducted from the enforcement debtor's net pay to determine the amount to be paid to the sheriff: see s. 138(1).

3. Subsection (4) has the same purpose as Rule 483, in giving an enforcement debtor who is employed for only part of a month credit for the full minimum and maximum exemptions. It also makes it clear that the debtor is entitled to the full minimum and maximum exemptions where the garnishee summons is served too late in a pay period to catch the earnings payable for that period. If, for example, a garnishee summons is served too late to catch a mid-month advance, the debtor's net pay for the month will be based on the debtor's earnings for the latter half of the month. But the debtor will still be credited with the full minimum and maximum exemptions.

4. For the sake of simplicity, the debtor's minimum and maximum exemptions are based on the number of his or her dependents, as indicated on the TD1 form. It is assumed that a certain portion of the debtor's income must be devoted to the needs of such dependents. Also, the calculation of exempt income assumes that the debtor has only one source of employment income. These assumptions are necessary if the system of employment earnings garnishment is to operate with a minimum of judicial intervention. However, it goes without saying that situations will arise in which either or both of these assumptions are completely inappropriate. Recognizing this, subsection (5) allows the court to adjust the minimum and maximum exemptions to take into account the true circumstances.

- (2) The *employment earnings* attached by a garnishee summons for any month shall be paid by the garnishee to the *sheriff* at the end of the *enforcement debtor's last pay period* that ends during the month.
- (3) At the end of the *enforcement debtor's last pay period* for each month during which a garnishee summons issued against *employment earnings* is in effect, the garnishee shall deliver to the *sheriff* a statement setting out
 - (a) the debtor's total *employment earnings* for *pay periods* that ended during the month,
 - (b) the number of the debtor's *dependants*, and
 - (c) the particulars of any amounts deducted in calculating the debtor's *net pay* for the month.

Partial exemption
of employment
earnings

139

- (1) Subject to subsection (2), an *enforcement debtor's* actual *employment earnings* exemption for any month is the sum of
 - (a) his minimum exemption, and
 - (b) one half of any amount by which his *net pay* exceeds his minimum exemption.
- (2) An *enforcement debtor's* actual *employment earnings* exemption for any month shall not exceed his maximum exemption.
- (3) An *enforcement debtor's* minimum and maximum *employment earnings'* exemption for any month shall be determined in accordance with Schedule A.
- (4) Where an *enforcement debtor* is employed for only part of a month, or where by virtue of section 137 a portion of the debtor's earnings for the month are not attached, the debtor's actual exemption shall be calculated on the basis of the full minimum and maximum exemptions for the month.
- (5) Where
 - (a) a dependant or any member of the *enforcement debtor's* household has an independent source of income or support, or
 - (b) the *enforcement debtor* earns employment income from more than one source

Section 139 (continued)

5. An extreme (and unlikely) example of the sort of situation contemplated by subsection (6) would be where the enforcement debtor is paid solely by commission, and all of the commissions earned during the year are paid on December 31. Since net pay is determined on a cash basis, all the commissions paid on December 31 would be attributed to the month of December. So, if the commissions earned during the year, net of the "statutory deductions", come to \$40,000, and the debtor has no dependents, the maximum exemption would normally be \$2400, and the amount payable to the sheriff would be \$37,600. This would be an obvious case for the court to exercise its discretion to increase the minimum and maximum exemptions for the month of December to reflect that the debtor's net pay for December is really his or her earnings for the entire year.

6. To simplify the garnishee's calculations, the prescribed compensation is deducted from the enforcement debtor's employment earnings in calculating net pay: see s. 117(1)(h). If net pay so calculated exceeds the debtor's actual exemption, the garnishee's compensation is thus automatically deducted from the amount paid to the sheriff. However, if net pay turns out to be less than the debtor's actual exemption, so that nothing is payable to the sheriff, subsection (7) does not permit the garnishee's prescribed compensation to be deducted from the enforcement debtor's pay cheque.

Section 140

Reference: Recommendation 120.

Section 141

The effect of this section is that the enforcement debtor and a garnishee cannot defeat a continuing attachment by terminating the employment relationship one day, and then entering into a new employment contract the following day or the following week. This one day or one week gap would be ignored.

Section 142

1. Reference: Recommendation 70.

2. The purpose of notifying the joint obligees of the garnishment is to allow them to take any steps they wish to take to challenge the applicability of the presumption set out in s. 143.

Section 143

Reference: Recommendation 70.

the *Court* on application may reduce or eliminate the *enforcement debtor's* minimum, maximum or actual exemption applicable to any source of employment income.

- (6) Where an *enforcement debtor's employment earnings* from a particular source vary substantially between months because the debtor is paid at intervals in excess of one month, or at irregular intervals or in irregular amounts, the *Court* on application may increase the minimum or maximum exemption for any particular month, so that the debtor's total exemptions over the course of the garnishment proceedings will approximate what they would have been if his *employment earnings* had been uniformly distributed over the relevant months.
- (7) The garnishee's prescribed compensation shall always be included in the calculation of the amount attached by a garnishee summons, but may actually be deducted from the debtor's *employment earnings* only where the debtor's *net pay* exceeds his actual exemption.

Exemption for
alimony or
maintenance claims

- 140 The portion of an *enforcement debtor's employment earnings* that is *exempt* from, and the portion that is attached by, a garnishee summons issued upon a *judgment* for the payment of alimony or maintenance shall be determined in accordance with the *Maintenance Enforcement Act*.

Interruption of
employment

- 141 An interruption of less than one month in an *enforcement debtor's* employment shall be ignored in determining the effect of a garnishee summons issued against the debtor's *employment earnings*.

JOINT ENTITLEMENTS

Notification of joint
obligees

- 142
 - (1) Where a garnishee summons is issued against a *joint entitlement*, the garnishee's response to the summons shall include the names and addresses of the joint obligees other than the *enforcement debtor*, and the *sheriff* shall serve the garnishee summons on each joint obligee.
 - (2) Where disclosure of a joint obligee's address would be unlawful or a breach of a legal duty owed by the garnishee to the obligee, the garnishee, instead of complying with subsection (1), shall serve the garnishee summons on the obligee, and certify to the *sheriff* that he has done so.

Presumption of
equal entitlement

- 143 Subject to section 144, an equal portion of any garnished *joint entitlement* is, for the purposes of this Part, deemed to be owed to each obligee individually.

Section 144

1. Reference: Recommendation 70.
2. It will be noted that to make an order under subsection (1), the court does not have to be convinced that the enforcement debtor is entitled to a larger portion of the joint entitlement than is presumed by s. 143. It has to be convinced only that he or she may be so entitled. The object of an order under this subsection is to get the money safely into the hands of the sheriff. Once the sheriff has the money, the matter of who is entitled to what portion can be determined by the court.
3. An application under subsection (3) is likely to be made in two situations. It might be made by an enforcement creditor to establish that the enforcement debtor does in fact have a greater interest in the joint entitlement than is presumed by s. 143. Such an application is likely to have been preceded by an *ex parte* application under subsection (1). On the other hand, an application under this subsection could be made by a joint obligee other than the enforcement debtor to establish that the enforcement debtor is not beneficially entitled to the portion of the obligation presumed by s. 143.

Section 145

1. Subsection (1) is intended to provide any joint obligee who wants to contest the attachment ample opportunity to do so.
2. Subsection (2) reflects the fact that an order under s. 144(1) can be made if the court concludes that the enforcement debtor might be beneficially entitled to a larger portion of the joint obligation than is presumed by s. 143. The "excess" portion should not be distributed to creditors unless it is established that the enforcement debtor is entitled to the excess portion.

Section 146

1. Reference: Recommendation 70.
2. Subsection (2) contemplates a situation such as this. D1 and D2 are enforcement debtors of C1 and C2, respectively. G owes money to D1 and D2 jointly. If C1 issues a garnishee summons against the joint entitlement and attaches the amount owed to D1, there is no reason why C2 should not be able to issue a garnishee summons against the portion owed to D2 without waiting for the one month period to expire.

Section 147

1. Reference: Recommendation 75.
2. In effect, this means that a garnishee summons catches only the funds that are in the deposit account at the time the summons is served.

Section 148

1. Reference: Recommendation 84.
2. Subsection (1) is based on the assumption that the sorts of conditions referred to can be disregarded without causing any prejudice to the deposit-taking institution. If, however, the institution can show that it would be prejudiced, subsection (2) allows the court to make whatever order is necessary to prevent such prejudice.
3. This section will not apply at all to any "account" in respect of which the institution in question has issued a negotiable instrument of some sort. Such an account would not fall within the definition of "deposit account" in s. 117(1), and, indeed, would not be an attachable obligation.

Determination of
actual entitlement

144

- (1) Where, on the application of an *enforcement creditor*, it appears that the *enforcement debtor* may be beneficially entitled to a larger portion of the *joint entitlement* than is presumed by section 143, the *Court* may require the garnishee to pay the larger portion to the *sheriff*.
- (2) An application under subsection (1) may be made *ex parte*.
- (3) On application by any interested *person*, the *Court* shall determine the actual beneficial interest of each obligee in a garnished *joint entitlement*, and grant relief accordingly.

Preconditions to
distribution

145

- (1) No money received by a *sheriff* in respect of a *joint entitlement* may be *distributed* until 1 month after it is received.
- (2) No amount in excess of the portion of a *joint entitlement* attributed to the *enforcement debtor* by section 143 may be *distributed* unless it is established on an application on notice to the other obligees that the *enforcement debtor* is beneficially entitled to the excess amount.

Subsequent
garnishment only
with leave

146

- (1) Where a garnishee summons is issued against a *joint entitlement*, no other garnishee summons may be issued against that entitlement except with leave of the *Court* until 1 month after the garnishee summons is served on every joint obligee.
- (2) Subsection (1) does not apply if the garnishee summons are issued in respect of different *enforcement debtors*.

DEPOSIT ACCOUNTS

Only current
obligations
attachable

147

A garnishee summons issued against a *deposit account* does not attach any *future obligation* that may arise out of or become payable in respect of the *deposit account*.

Conditions to be
disregarded

148

- (1) For the purpose of determining whether a *deposit account obligation* has arisen or is payable, a condition of the account agreement that the account holder must apply in *person* to make, or give notice before making a withdrawal, or that any *person* making a withdrawal must present a pass-book or other document to the garnishee, shall be disregarded.
- (2) The *Court* may on application make any order necessary to prevent a garnishee from being prejudiced by subsection (1).

Section 149

1. Reference: Recommendation 85.
2. This section serves a similar purpose to s. 144, but is not limited to deposit account obligations. Here, though, the presumption is that the condition applies unless the court orders otherwise.

Section 150

1. Reference: Recommendation 80.
2. Clause (b) would apply in the following sort of situation. G owes money to D. However, G has entered into a contract to perform services for D for a fee that G will be entitled to set off against the amount owed to D. A garnishee summons is served on G before he performs the contracted services. Although the fee has not yet been earned, it will be earned pursuant to a commitment entered into by G before service of the garnishee summons. Therefore, the fee, when earned, can be set off against the attached obligation.

Section 151

1. Reference: Recommendation 79.
2. This section is intended to emphasize that the relief granted against the garnishee should correspond to the nature of his or her sin. If the garnishee has failed to pay money to the sheriff that should have been paid, the appropriate remedy is likely to be a judgment for that amount. However, if the garnishee has simply failed to respond to a garnishee summons, and it turns out that nothing is in fact payable by the garnishee to the enforcement debtor, the appropriate remedy would probably be to award costs against the garnishee for any expense to which the enforcement creditor has been put in consequence of such failure.

CONDITIONAL OBLIGATIONS

Court's powers
regarding
conditions

149

- (1) Where a *garnished obligation* will arise or become payable only upon the satisfaction of a condition, the *Court*, if satisfied that doing so will not prejudice the garnishee, may
 - (a) direct that the condition be disregarded or modified for the purposes of this Part,
 - (b) require the *enforcement debtor* to satisfy the condition, or
 - (c) authorize the *sheriff* or an *enforcement creditor* to do anything for the purpose of satisfying the condition that would otherwise have to be done by or with the authority of the *enforcement debtor*.
- (2) An order under this section shall not shorten a period of time that otherwise must expire before the *garnished obligation* will arise or become payable.

GENERAL

Set-off

150

A garnishee is entitled to a set-off to which he would have been entitled in the absence of garnishment proceedings if

- (a) the right to the set-off already exists when the garnishee summons is served,
- (b) the right to the set-off arises after the garnishee summons is served, in consequence of a commitment entered into by the garnishee prior to service, or
- (c) it would be inequitable not to allow the set-off.

Applications to
enforce garnishee's
duties

151

- (1) Where a garnishee does not comply with any requirement of this Part, the *Court* may grant appropriate relief on the application of an *enforcement creditor*.
- (2) Where a garnishee has failed to pay money to the *sheriff* as required by this Part, the *Court* may grant *judgment* against the garnishee for the amount that would have been distributable to *enforcement creditors* if the money had been duly paid to the *sheriff*, plus interest.

Section 152

1. Reference: Recommendation 67; Rules 470(5), 481(1).
2. Perhaps the most likely applicant under this section would be a third person who claims some sort of interest in the attached obligation. However, the enforcement debtor or the garnishee might also have reason to apply under this subsection.
3. Subsection (2) fulfils the same function as Rule 470(5). However, this subsection makes the criterion for setting aside the garnishee summons' actual or likely prejudice, rather than "substantial non-compliance".

Section 153

Reference: Rule 482.

Section 154

1. Reference: Recommendations 90-93, 99, 100.
2. Subsection (1) is intended to allow the court to fashion a remedy that is appropriate to the particular difficulty that is encountered. In some circumstances, the court may consider that the only effective solution is to appoint a receiver. In other situations, it may be that a simple order to the enforcement debtor to deliver up certain property to the sheriff will suffice. Sometimes, it may be necessary for the court to design a customized procedure for realizing a particularly exotic species of property.
3. The opening words of subsection (1) are intended to dispose of any artificial constraints that may have been placed on the granting of equitable relief in the past. The only prerequisite to the granting of an order under this section is a finding that the property in question cannot otherwise be conveniently realized.
4. Since the appointment of a receiver is likely to be a more intrusive mechanism for realizing property than are other possible mechanisms, subsection (2) sets out certain factors to be weighed in determining whether to appoint a receiver.

- (3) A *judgment* under subsection (2) may be in the name of the creditor making the application but shall be for the benefit of all *enforcement creditors* who would have shared in the distribution if the money had been duly paid to the *sheriff*.

Setting aside
garnishee summons

152

- (1) Any interested *person* may apply to the *Court* for an order setting aside a garnishee summons, or to determine any issue that arises in the garnishment proceedings.
- (2) A garnishee summons that is defective or irregular or that was issued on the basis of defective or irregular material shall not be set aside unless someone has been or is likely to be prejudiced by the defect or irregularity.

Discharge of
obligation

153

A payment made by a garnishee in accordance with this part or on a judgment under section 152 discharges the garnishee, to the extent of the payment, as against the *enforcement debtor*.

PART 9

SPECIAL REMEDIES

Court may grant
appropriate remedy

154

- (1) Notwithstanding any rule of law or equity to the contrary, where certain *exigible property* of an *enforcement debtor* can not otherwise be conveniently realized, the *Court*, on the application of an *enforcement creditor* may
- (a) appoint a receiver of the *property*,
 - (b) order the debtor or any *person* in possession or control of the *property* to deliver it to the *sheriff* or to another *person* named in the order,
 - (c) enjoin the debtor or any other *person* from disposing of or otherwise dealing with the *property*, or
 - (d) make any other or additional order that the *Court* considers necessary or appropriate to facilitate realization of the *property*.
- (2) In determining whether to appoint a receiver under subsection (1)(a), the *Court* shall consider, but is not limited to considering,

Section 155

1. Reference: Recommendations 94, 95; PPSA, s. 65.
2. As indicated, this section is modelled on s. 65 of the PPSA. However, it has been modified to take into account certain facts regarding a receiver appointed under the JEA. They include the following: 1) here the receiver will always be appointed by the court; 2) often the receiver will be the sheriff; and 3) the receiver is appointed for the benefit of all enforcement creditors. These considerations are reflected in the adaptation of s. 65 of the PPSA to the JEA.
3. It will be noted that subsection (2) does not purport to confer any particular powers on the receiver. The receiver's powers will be those set out in the order of appointment.
4. The record keeping and reporting responsibilities set out in subsections (3) to (5) are similar to those imposed by the PPSA. However, the reporting requirements are simplified by only requiring the semi-annual and final statements to be filed in the Enforcement Registry, rather than having to be sent to various interested persons.

- (a) the practicality of realizing the *property* through other proceedings authorized by this Act,
- (b) the likelihood that appointment of a receiver would be an effective means of realizing the *property*,
- (c) the probable cost of the receivership in relation to its probable benefit,
- (d) the likelihood that appointment of a receiver would cause undue hardship or prejudice to the *enforcement debtor* or a third *person*, and
- (e) the likelihood of the *writs* against the *enforcement debtor* being satisfied without resort to the *property* in question.

Appointment,
powers, duties of
receiver

155

- (1) The *Court* may appoint a *sheriff* or any *person* who maintains a place of business in the Province to act as a receiver under section 154, and, in the case of a *person* other than a *sheriff*, may make the appointment conditional upon the provision of such security for the due performance of the receiver's duties as the *Court* considers proper.
- (2) The *Court* may give a receiver appointed under section 154 such powers as the *Court* considers necessary or appropriate for the realization of the *property*, including, without limiting the generality of the foregoing, the power to manage, sell or bring any proceedings in relation to the *property*.
- (3) Unless otherwise ordered by the *Court*, a receiver shall
 - (a) take into his custody and control the *property* over which he is appointed receiver,
 - (b) open and maintain a bank account in his name as receiver for the deposit of all money coming under his control as receiver,
 - (c) keep detailed records, in accordance with accepted accounting practices, of all receipts, expenditures and transactions involving the *property* over which he is appointed receiver,
 - (d) at least once in every 6-month period after his appointment register in the Enforcement Registry financial statements of his administration that, as far as is practical, are in the form required by section 149 of the *Business Corporations Act*,

Section 155 (continued)

5. Subsection (6) emphasizes that the receiver is acting for all enforcement creditors. The proceeds of the receivership must be paid over to the sheriff, who distributes them in the same manner as the proceeds of any other enforcement process.

Section 156**(a): "dependent"**

This definition turns on the factual question of whether the enforcement debtor is responsible for a particular person's maintenance or support.

(c): "home"

Occupation by the owner is essential if a parcel of land is to be regarded as a home for the purposes of this part.

- (e) on completion of his duties, register in the Enforcement Registry a final account of his administration in the form referred to in clause (d).
- (4) The *enforcement debtor*, an *enforcement creditor*, or a *sheriff* may, by a demand in writing served on the receiver, require the receiver to make available for inspection the records referred to in subsection (3)(c) during regular business hours at the place of business of the receiver in the Province.
- (5) The receiver shall comply with a demand under subsection (4) not later than 14 days from the date of receipt of the demand.
- (6) A receiver other than a *sheriff* shall promptly remit to a *sheriff* any money realized through the receivership that is not necessary to meet the receiver's fees and expenses.
- (7) On the application of any interested *person*, the *Court* may
 - (a) remove, replace or discharge a receiver;
 - (b) give any direction on any matter relating to the duties of a receiver;
 - (c) approve the accounts and fix the remuneration of a receiver.
- (8) The powers referred to in subsection (7) are in addition to any other powers the *Court* may exercise in its jurisdiction over receivers.

PART 10

EXEMPTIONS

Definitions

156 In this Part,

- (a) "dependant" means a *person* for whose maintenance or support an *enforcement debtor* is responsible, or for whose maintenance or support a deceased *enforcement debtor* was responsible at the time of his death;
- (b) "farm" means *land* used primarily for the purpose of producing *agricultural products*;
- (c) "home", except in relation to a *mobile home*, means a parcel of *land* occupied by its owner as his ordinary residence;

Section 156

(d): "home quarter"

Since this definition itself employs the defined term "home", the effect of this definition is that a quarter section is a "home quarter" only if the quarter section is part of a farm, and the enforcement debtor is a farmer who occupies the land in question as his ordinary residence.

(e): "mobile home"

This definition relies on the definition of "mobile home" in s. 1(1). Thus, a "mobile home" for the purposes of this part is a mobile home, as defined by s. 1(1), occupied by its owner as his or her ordinary residence.

Section 157

1. Reference: Recommendations 100, 101, 103, 104, 105, 106; *Exemptions Act*, s. 1(1)(a), (b), (c)(i), (f).
2. The major change here from the equivalent *Exemptions Act* provisions is the removal of the "use in trade or calling" restriction on the automobile exemption, combined with the reduction in the value of the automobile exemption to \$3,000.

Section 158

Reference: Recommendation 102.

- (d) "home quarter" means a *home* of one quarter section or less that is part of a *farm* and that is occupied by a *person* whose primary occupation is farming;
- (e) "mobile home" means a *mobile home* occupied by its owner as his ordinary residence.

Basic necessities

157 The following *property* of an *enforcement debtor* is *exempt*:

- (a) food required by the *enforcement debtor* and his *dependants* during the next 12 months;
- (b) the necessary clothing of the *enforcement debtor* and his *dependants*;
- (c) household furnishings and appliances to the value of \$4000;
- (d) one automobile, to the value of \$5000;
- (e) medical and dental aids required by the *enforcement debtor* or his *dependants*;
- (f) items of sentimental value to the *enforcement debtor*, to the value of \$500.

Shelter

158(1) One of the following is *exempt*:

- (a) the *enforcement debtor's home quarter*; or
- (b) the *enforcement debtor's home* or *mobile home*, to the value calculated in accordance with subsection (2).

(2) The value referred to in subsection (1)(b) is

- (a) \$40,000 for a *home* or \$20,000 for a *mobile home*, if the *enforcement debtor* is the sole owner of the *home* or *mobile home*, or
- (b) the amount set out in clause (a) multiplied by the *enforcement debtor's* proportionate ownership share, if the debtor is a co-owner of the *home* or *mobile home*.

(3) For the purposes of subsection (2)(b), in the absence of evidence to the contrary, co-owners are presumed to share equally.

Section 159

1. Reference: Recommendation 108; *Exemptions Act*, s. 1(1)(h), (i).
2. It will be noted that references to "books of a professional person" and "necessary tools and necessary implements and equipment" in the *Exemptions Act* have been generalized to a reference to personal property. The crucial point is that the personal property, whatever it is, must be used to earn income from an occupation.

Section 160

1. Reference: Recommendation 107; *Exemptions Act*, s. 1(1)(c), (d), (g).
2. This is very similar to the corresponding provisions of the *Exemptions Act*. There are some minor terminological changes, such as the use of the defined term "agricultural products" in clause (a).

Section 161

1. Reference: Recommendations 102, 104, 108, 129, 147.
2. Subsection (1) is intended to make it clear that enforcement proceedings can be taken against an item such as a home or an automobile whose value exceeds the value of the exemption for that kind of property.
3. Clause (2)(b) deals with the scenario described in the report, where the enforcement debtor has granted a security interest (such as a mortgage) in partially exempt property (most likely, an urban home) after the property has been bound by a writ. In such a case, rather than paying the value of the exemption to the debtor, the sheriff pays it into court. As between the enforcement debtor and the holder of the subordinate security interest, it is likely that the latter will be entitled to this fund. But that issue can be sorted out once the fund is paid into court.

- Livelihood **159** Where the *enforcement debtor's* primary occupation is not farming, *personal property* to the value of \$10,000 used by the debtor to earn income from his occupation is *exempt*.
- Farm exemptions **160** An *enforcement debtor* whose primary occupation is farming is entitled to the following exemptions:
- (a) *agricultural products* sufficient in themselves or when converted into cash to provide
 - (i) food and other necessities of life required by the *enforcement debtor* and his *dependants* for the next 12 months,
 - (ii) payment of money borrowed or debts incurred by the *enforcement debtor*
 - (A) in growing and harvesting his current *crop*, or
 - (B) during the preceding period of 6 months, for the purpose of feeding and preparing his livestock for market,
 - (iii) payment of current taxes and one year's arrears of taxes or in case taxes have been consolidated, one year's instalment of the consolidated arrears, and
 - (iv) the necessary cash outlays for the ordinary farming operations of the *enforcement debtor* during the next 12 months and the repair and replacement of necessary *farm* equipment during the same period;
 - (b) the *farm* equipment and vehicles necessary for the proper and efficient conduct of the *enforcement debtor's* agricultural operations for the next 12 months;
 - (c) seed grain sufficient to seed the *enforcement debtor's land* under cultivation.
- Proceeds exempt **161**
- (1) Where *property* of a certain description is *exempt* to a stated value, *property* of that description whose realizable value exceeds the stated value is *exigible*.
 - (2) Where *property* to which subsection (1) applies is sold in *enforcement proceedings*, before *distributing* any of the proceeds under Part 11, the *sheriff* shall

Section 161 (continued)

4. Subsections (4) and (5) preserve the proceeds in the hands of the enforcement debtor for a limited period. The idea here is that the enforcement debtor should be given time to reinvest the proceeds in a more modest version of the item that was sold.

Section 162

1. Reference: Recommendation 131; *Exemptions Act*, s. 6.

2. The exception at the beginning of subsection (2) concerns items of sentimental value to the debtor. For obvious reasons, the sheriff can hardly be expected to make a selection of items that are of sentimental value to the debtor.

Section 163

Reference: Recommendation 130; *Exemptions Act*, s. 5.

Section 164

Reference: Recommendation 128.

- (a) pay the stated value of the exemption to the *enforcement debtor*, or
 - (b) if the *property* was subject to a subordinate security interest or encumbrance, pay the stated value of the exemption into *Court*, and give notice of the payment in to the *enforcement debtor* and to the secured creditor or encumbrancer.
- (3) Subsection (2) does not apply
- (a) to *property* described in section 157(f), or
 - (b) where the *enforcement debtor* has other *property* of the same description that exhausts the relevant exemption.
- (4) Unless money paid to the *enforcement debtor* pursuant to subsection (2) or pursuant to section 168(3) is intermingled with other funds of the debtor, the money and any deposit account into which it is paid are *exempt* for 6 months, if it represents the proceeds of sale of the *enforcement debtor's home* or *mobile home*, or 2 months in any other case.
- (5) Where an *enforcement debtor* sells *exempt property*, or *property* that is *exempt* to a stated value, subsection (4) applies with any necessary modifications to the proceeds of sale.

Selection

162

- (1) Where *property* of a certain description is *exempt* up to a stated value or other limit and the *enforcement debtor* or the debtor's estate owns more items of that description than are actually *exempt*, the debtor or, if the debtor is deceased, the debtor's *dependants*, may select the items to which the exemption will apply.
- (2) Except in the case of *property* described in section 157 (f), the *sheriff* shall make the selection referred to in subsection (1) if for any reason the debtor or the debtor's *dependants* are unable or unwilling to do so.

Survival of exemptions

163

So long as it is required for the maintenance and support of a deceased *person's dependants*, *property* that would be *exempt* if the deceased *person* were alive remains *exempt* in any *enforcement proceedings* against that *person's* estate.

Determining exempt status

164

An issue as to whether certain *property* is *exempt* shall be determined on the basis of the circumstances existing at the time the issue is determined.

Section 165

1. Reference: Recommendation 127.
2. Of course, this provision is not intended to prevent, and would not prevent, holders of security interests in property that would be exempt from enforcement proceedings under the JEA from enforcing their security interests. "Exempt" means not subject to enforcement proceedings under the JEA: see s. 1(1). A secured party who enforces the security interest does not do so "under the JEA".

Section 166

Reference: Recommendations 117, 118, 120; *Exemptions Act*, s. 1(2); *Seizures Act*, s. 46(2).

Section 167

1. Reference: Recommendation 136.
2. Subsection (1) envisions two possibilities. The first is that enforcement proceedings taken under the JEA--seizure, garnishment, receivership, or whatever--directly result in the receipt of money by the sheriff. The other possibility, to which the phrase "otherwise received by a sheriff as a result of the existence of an enforcement debt" is directed, is that the sheriff receives money even though no active enforcement proceedings have been initiated under the JEA. A direct payment by the enforcement debtor to the sheriff would fall into this category, as would the remittance of surplus funds realized upon the enforcement of a security interest, as required by clause (2)(b).
3. The purpose of subsection (2) is to make sure that a surplus resulting from the realization of a prior security interest is available for distribution to enforcement creditors.
4. Sometimes, security interests in property are realized through the sheriff's office. This is the situation contemplated by clause (2)(a). If the proceeds of sale of the collateral are more than sufficient to discharge the security interest, the surplus funds will end up in the hands of the sheriff. Clause (a) is intended to make it clear that the distribution mechanics of this part apply to that surplus.
5. Security interests are often enforced through the appointment of a receiver, who then disposes of the collateral. If the distribution mechanics of this part are to apply to any surplus that results from a receivership, the first order of business is to get that surplus into the hands of a sheriff. That is the function of clause (2)(b), which requires the person selling the collateral to pay the surplus to the sheriff. Since that money will have been paid to the sheriff, "as a result of the existence of an enforcement debt", subsection (1) requires it to be distributed in accordance with this part.
6. The mechanics of distribution set out in this part assume that the potential claims against money in the hands of the sheriff are claims of "participants" in the enforcement process: enforcement creditors, sheriffs, and enforcement debtors. It does not deal with proprietary claims of third parties against money in the hands of the sheriff. Subsection (3) is intended to make it clear that such proprietary claims are not prejudiced by the distribution mechanics of this part. For example, if money in the hands of a sheriff represents the proceeds of sale of a chattel that was subject to a security interest that has priority over any relevant writ, this part would apply only to the surplus, if any, remaining after satisfaction of the secured claim.

No waiver

165 A provision of an agreement by which a *person* waives any exemption given by this Act is void.

Exceptions

166 The exemptions set out in this Part do not apply

- (a) where the *enforcement debtor* is a corporation or partnership,
- (b) to *enforcement proceedings* on a *judgment* for the payment of maintenance or alimony,
- (c) to *property* that the *enforcement debtor* has abandoned, or
- (d) to *enforcement proceedings* on a *money judgment* arising out of an act for which the *enforcement debtor* has been convicted of an offence under the Criminal Code (Canada).

PART 11

DISTRIBUTIONS

Application to all
enforcement
proceeds

167

- (1) All money realized through *enforcement proceedings* or otherwise received by a sheriff as a result of the existence of an *enforcement debt* shall be dealt with in accordance with this Part.
- (2) Where *property* bound by a writ is sold in proceedings to enforce a prior security interest or encumbrance,
 - (a) if the *property* is sold by a *sheriff*, this Part applies to any portion of the proceeds that exceeds the amount necessary to discharge the security interest or encumbrance, and
 - (b) if the *property* is sold by a *person* other than the *sheriff*, that *person* shall pay to the *sheriff* any portion of the proceeds that exceeds the amount necessary to discharge the security interest or encumbrance.
- (3) Nothing in this Part prejudices any right to money in the hands of a *sheriff* that is based on a prior security interest or other prior proprietary interest in the money, or in the *property* from which the money is derived.

Section 168

1. This section recognizes that sheriffs will not infrequently receive sums of money that represent the proceeds, or a portion of the proceeds, of sale of an item that would have been exempt from proceedings initiated by an ordinary enforcement creditor of the enforcement debtor. The most likely source of such funds is sale of exempt property at the behest of a secured party, such as the sale of an enforcement debtor's home at the instance of a mortgagee. Another source of such funds is where enforcement proceedings are initiated by a "maintenance creditor", in which case the normal exemptions do not apply. In either of these cases, special provision must be made for the distribution of the proceeds in question.
2. Subsection (2) requires that if there is a subsisting writ of a "maintenance" or "victim of crime" creditor, money received in the circumstances described by subsection (1) must be applied, in the first instance, on account of those writs. This is because the relevant exemptions do not apply to such writs.
3. If there are no writs belonging to "maintenance" or "victim of crime" creditors, or there is a surplus remaining after payment of such creditors, the normal rule regarding the proceeds of exempt property applies. If the property in question would have been totally exempt from enforcement proceedings (eg, the home quarter), all of the proceeds remaining in the sheriff's hands must be paid to the enforcement debtor. However, if the property in question was exempt only up to a certain value (eg, a non-farm home, or an automobile), the enforcement debtor is entitled to the lesser of the amount remaining in the sheriff's hands, or the maximum value of the exemption.
4. If, after all this, there is money remaining in the sheriff's hands, subsection (4) provides for its distribution to "ordinary" enforcement creditors.

Section 169

1. Reference: Recommendation 141.
2. The point in time at which a distributable fund is constituted is important, because that is when the identity and amount of eligible claims against the fund are fixed: see s. 170(3). A writ registered in the Enforcement Registry after a distributable fund is constituted would not share in a distribution, even if the fund had not actually been distributed before the writ was registered.

Money derived
from exempt
property

168

- (1) This section applies to money received by a *sheriff*
- (a) pursuant to section 167(2) as a result of the enforcement of a security interest or encumbrance in or against *exempt property*, or *property* that is *exempt* up to a stated value, or
 - (b) in consequence of proceedings to enforce a *judgment*
 - (i) for the payment of alimony or maintenance, or
 - (ii) arising out of an act for which the *enforcement debtor* was convicted of an offence under the Criminal Code (Canada)

against *property* that would otherwise be *exempt*, or *exempt* up to a certain value.
- (2) Where there is an amount outstanding on a subsisting *writ* based on a *judgment* described by subsection (1)(b), the money received by the *sheriff* shall be applied against
- (a) the amount outstanding on the *writ*, and
 - (b) any *sheriff's* fees or expenses for which the relevant *enforcement creditor* is liable and which are not included in the amount outstanding on the *writ*.
- (3) Where there is money remaining in the *sheriff's* hands after any payment required by subsection (2), the *sheriff* shall pay to the *enforcement debtor* the lesser of
- (a) the amount remaining in the *sheriff's* hands, and
 - (b) the maximum value of the exemption for the *property* from which the money was derived.
- (4) Any money remaining in the *sheriff's* hands after the payment required by subsection (3) constitutes a distributable fund.

When distributable
fund constituted

169

- (1) Subject to subsections (2) and (3), any money to which this Part applies constitutes a distributable fund as soon as it is received by a *sheriff*.

Section 169 (continued)

3. Generally, funds are distributable by the sheriff as soon as they are received, but subsection (2) recognizes that there are certain circumstances in which a sheriff who receives funds as a result of enforcement proceedings must wait a certain period before distributing those funds. In each case, the "waiting period" is intended to allow certain persons who may possibly have an interest in the funds to take steps to protect their interests. [The relevant provisions are s. 85(3) (expeditious sales of seized property), s. 129(2) (amounts received by the sheriff pursuant to a garnishee summons), and s. 145 (amounts received by sheriff pursuant to garnishment of a joint entitlement).] In these cases, the distributable fund is not constituted until the waiting period expires.

Section 170

1. Reference: Recommendation 141.

2. The function of this section is to define the sorts of claims that can be considered in a distribution of a distributable fund. Section 171 then deals with the payment of those claims where the amount of the fund exceeds the amount of the claims, and s. 172 deals with the situation where the amount of the claims exceeds the amount of the fund. Obviously, it is only in the latter situation that there is any need to be concerned about priorities between claims.

3. The aim of subsection (2) is to allow a sheriff who has a distributable fund to identify and calculate the amount of eligible claims against the fund on the basis of information that is readily available to the sheriff, most likely because it is registered in the Enforcement Registry.

4. The relationship between clauses (2)(a) and (2)(b) can best be appreciated by referring back to s. 37, which describes how the amount outstanding on a subsisting writ is calculated. Referring to s. 37(2)(a), it will be seen that amounts that an enforcement creditor has paid to a sheriff in respect of the latter's fees or expenses will automatically be credited to the amount outstanding on the writ. However, it is conceivable that at the time a sheriff receives a distributable fund, the sheriff will have incurred expenses that have not been paid by the enforcement creditor. For example, if the distributable fund is the result of the sale of seized property that was in storage before it was sold, the sheriff may have incurred storage charges that have not yet been billed to, much less paid by, the enforcement creditor. Clause (2)(b) would apply to such storage charges.

5. Clause (2)(c) will rarely be relevant: see the comments pertaining to s. 173(2).

6. As previously noted, subsection (3) fixes both the identity and the amount of eligible claims as of the date the fund is constituted.

Section 171

The "other persons" contemplated by this section would include a person who had a subordinate interest - subordinate to the relevant writs - in the property from which the distributable fund was derived.

Section 172

1. Reference: Recommendation 144; ECA, s. 12.

2. Referring to clauses (a)-(c), it will be noted that it is only expenses and costs incurred in connection with the enforcement measures that have produced the distributable fund that are entitled to any sort of priority. Any other costs, to the extent they are included in an eligible claim, are dealt with by clause (g).

- (2) Where this Act requires that money received by a *sheriff* not be *distributed* before a certain period elapses or a certain event occurs, the money constitutes a distributable fund as soon as the period elapses or the event occurs.
- (3) Money payable in accordance with section 161(2), or section 168(2) or (3) does not constitute or form part of a distributable fund.

Eligible claims

170

- (1) A distributable fund shall be paid out to the holders of eligible claims in accordance with section 171 or section 172.
- (2) The following are eligible claims against a distributable fund:
 - (a) the amount outstanding on subsisting *writs* against the *enforcement debtor*;
 - (b) *sheriffs'* fees and expenses earned or incurred in connection with *enforcement proceedings* against the *enforcement debtor* and not otherwise included in an eligible claim;
 - (c) costs that the *Court* has directed to be paid out of the fund pursuant to section 173(2), if not otherwise included in an eligible claim.
- (3) Subject to section 173(2), eligible claims against a distributable fund shall be identified and the amount of each claim fixed as of the date the fund is constituted.

Fund exceeds
eligible claims**171**

Where the amount of a distributable fund is equal to or greater than the amount of the eligible claims against it, the *sheriff* shall pay the claims immediately, and then pay any remaining balance to the *enforcement debtor*, or to such other persons as may be entitled thereto.

Eligible claims
exceed fund**172**

Where the amount of the distributable fund is less than the amount of the eligible claims against it, the *sheriff* shall apply the fund towards the claims in the following order of priority:

- (a) if the fund is proceeds of sale of a crop, any charge for harvesting or marketing expenses to which a *sheriff* or *enforcement creditor* is entitled under section 104;
- (b) other fees and expenses of a *sheriff* earned or incurred in connection with the enforcement measures that have produced the fund;

Section 172 (continued)

3. The purpose of clause (d) is explained in the comments for s. 173.
4. An example of a claim to which clause (e) might apply is the claims of wage earners that are given a priority by the *Employment Standards Act*.
5. Clause (f) implements Recommendation 144, regarding the preferred payment to the active creditor.
6. Ordinarily, the only provisions likely to be applicable are clauses (b), (c), (f) and (g). Clauses (a), (d) and (e) deal with relatively unusual situations.

Section 173

1. Reference: ECA, ss 33, 35.
2. Proceedings under s. 77(6) of the JEA are similar to interpleader proceedings, except that they are initiated by an enforcement creditor, rather than the sheriff. The rationale behind s. 33 of the ECA, and this section, is that if no creditors were prepared to foot the bill for the proceedings in question, there would be no money to be distributed to any enforcement creditor. Therefore, it is only fair that the creditors who do contribute to the costs of the proceedings should get some benefit from doing so.
3. The phrase in subsection (1), "to the extent that they are not entitled to a higher priority", contemplates that an enforcement creditor who has contributed to the cost of interpleader proceedings may also have incurred costs for which he or she is entitled to a priority under clause (a), (b) or (c) of s. 172.
4. Subsection (2) gives a discretion to the court regarding the payment of costs of interpleader or s. 77(6) proceedings out of a distributable fund. This is somewhat different than s. 35 of the ECA, which simply makes such costs a first charge on the proceeds, without any reference to the court. Given the variety of circumstances in which such proceedings can arise and such costs can be incurred, it seems appropriate to leave this matter to the discretion of the court.
5. It will be noted that if the court does order the costs to be paid out of the distributable fund, s. 172(c) puts them on the same priority footing as costs incurred by the instructing creditor in connection with the enforcement measures that have produced the distributable fund in question. The rationale for equating such costs to each other is that both sorts of costs can be said to have been necessarily incurred to produce the distributable fund. There is therefore no particular reason for giving one sort of costs priority over the other.

Section 174

Reference: ECA, s. 31(1)-(6).

- (c) other costs incurred by the *instructing creditor* in connection with the enforcement measures that have produced the fund, and any other costs that the *Court* has directed to be paid out of the fund;
- (d) claims referred to in section 173(1);
- (e) claims that by virtue of any other Act are entitled to priority over the claims of enforcement creditors generally;
- (f) the balance of the *instructing creditor's* claim, up to an amount not exceeding 15% of the balance of the fund remaining after payments under clauses (a) to (e);
- (g) all other eligible claims, including any unpaid balance of the *instructing creditor's* claim, on a *pro rata* basis.

Fund produced or
preserved through
court proceedings

173

- (1) Where interpleader proceedings or proceedings pursuant to section 77(6) are taken by a *sheriff* or *enforcement creditor*, the eligible claims of creditors who agree to contribute *pro rata* to the cost of contesting the adverse claim, to the extent that they are not entitled to a higher priority, have priority under section 172(d) with respect to any portion of a distributable fund that results from or is preserved by the proceedings.
- (2) The *Court* may direct that insofar as the costs, including solicitor and client costs, of proceedings referred to in subsection (1) are not paid by an adverse party, such costs shall be paid out of a distributable fund that results from or is preserved by the proceedings.

Statement of
proposed
distribution

174

- (1) Where the amount of the eligible claims exceeds the amount of the distributable fund, the *sheriff* shall prepare a distribution statement in prescribed form, and serve it on the *enforcement debtor* and every *enforcement creditor*.
- (2) A *person* affected by the proposed scheme of distribution may contest it by delivering to the *sheriff* a notice in writing stating his objection to the scheme.
- (3) If no objection is made within 14 days after a distribution statement has been served on every *person* entitled to receive one, or within any further time that the *Court* may allow, the statement is final and conclusive as between all *persons* and the *sheriff*, and the *sheriff* shall immediately *distribute* the fund pursuant to the statement.

Section 175

This section would apply where C1 is an enforcement **creditor** of D, but is also the enforcement **debtor** of C2. If the sheriff gets money that is payable to the enforcement creditors of D, the share that would normally go to C1 is treated as having been received on account of C1's enforcement debt. Hence, C1's share of the enforcement proceedings against D is distributed by the sheriff to C1's enforcement creditors (ie, C2).

Section 176

1. Reference: Recommendations 157, 158.
2. Subsection (1) is based on the premise that it is unnecessary for the assurance fund to have a separate, physical existence. The assurance fund levy could in fact be paid into the General Revenue Fund, and the assurance fund would exist as an account within the General Revenue Fund.
3. It is anticipated that, in accordance with Recommendation 158, the regulations will prescribe a three-tiered system of fees for filing writs. As indicated by subsection (3)(b), it is also anticipated that the amount of the levy will be adjusted from time to time to reflect the actual needs of the assurance fund. These adjustments need not necessarily be upwards.
4. Subsection (5) contemplates a situation that is not likely to occur. If it did occur, consideration would no doubt be given to increasing the amount of the assurance fund levy.

- (4) If an objection to the proposed distribution is made, the *sheriff* shall *distribute* as much of the fund as will not prejudice the effect of the objection.
- (5) Unless within 14 days of making the objection the objector applies to the *Court* for a determination of the matter in dispute, the objection is deemed to be abandoned.

Claimant is an
enforcement debtor

- 175** Notwithstanding anything else in this Part, where there is a subsisting *writ* against an *enforcement creditor* who is entitled to a share of any money received by the *sheriff*, the *sheriff* shall deal with that share as money received on account of the *enforcement debt* owed by the *enforcement creditor*.

PART 12

COMPENSATION FOR LOSS

Assurance fund

176

- (1) The Provincial Treasurer shall keep an account within the General Revenue Fund in respect of the *assurance fund* referred to in this Part.
- (2) A prescribed portion of the fee for registering a *writ* in the Enforcement Registry shall be credited to the *assurance fund*.
- (3) The prescribed fee for registering a *writ*, and the portion of the fee to be credited to the *assurance fund*,
 - (a) may reflect the amount of the *writ*, and
 - (b) may be adjusted from time to time in order to maintain the balance of the fund at a level considered sufficient to meet anticipated liabilities.
- (4) The Provincial Treasurer may authorize payment or settlement of any claim that is made against the *assurance fund*.
- (5) If the *assurance fund* becomes liable for an amount in excess of its balance,
 - (a) the excess amount may be paid out of amounts subsequently credited to the *assurance fund*, or

Section 177

1. Reference: Recommendations 150, 159.
2. The purpose of subsection (1) is to bring claims for compensation as a result of mishaps in the enforcement process within the scheme set out in this part. More specifically, it has the effect of requiring an injured party to look to the assurance fund for compensation, rather than bringing an action against, say, a sheriff or an enforcement creditor.

Section 178

1. Reference: Recommendations 151-154.
2. Section 78(1) creates a sort of estoppel against a third person who is given notice of the seizure of property in which he or she might have an interest, and who does not then promptly assert a claim to the property.
3. Subsection (2)(a) does not contain any requirement that the seizure or sale be unauthorized, or in breach of the JEA. For example, s. 63(2) authorizes a sheriff to seize "any property in which there are reasonable grounds for believing the enforcement debtor has an exigible interest". A sheriff might well, on the basis of such a reasonable belief, seize property that turns out to belong to some third party, and in which the debtor has no exigible interest at all. If that happens, and the person who owns the property suffers actual pecuniary loss as a result of the seizure, the assurance fund is liable, even though the sheriff's action was actually authorized by the JEA.
4. Note however, that the third person must suffer some pecuniary loss. A "wrongful" seizure of a third person's property gives rise to no cause of action unless he or she suffers some actual pecuniary injury. This requirement of pecuniary injury is also present in ss 179 and 180.

Section 179

Reference: Recommendations 151, 155.

Section 180

Reference: Recommendations 151, 156.

- (b) the Provincial Treasurer may authorize the excess amount to be paid out of the General Revenue Fund, in which case the amount so paid shall be reimbursed out of amounts subsequently credited to the *assurance fund*.

Cause of action
only if provided by
Act

177

- (1) Except as expressly provided by this Act, no *person* has any cause of action whatsoever in respect of
- (a) any interference or dealing with *property* by a *sheriff* acting, or purporting to act, under the authority of this Act, or
- (b) the improper performance or the non-performance of any of the *sheriff's* duties under this Act.
- (2) Nothing in this section prevents a *person* from bringing proceedings to recover possession of *property* to which he is entitled.

Loss suffered by
third persons

178

- (1) In this section "third person" means a *person* other than
- (a) the *enforcement debtor*, or
- (b) an *enforcement creditor*.
- (2) Subject to section 78(1), the *assurance fund* is liable for pecuniary loss suffered by a third *person* as a result of
- (a) the seizure, detention or sale by a *sheriff* of *property* in which the third *person* has an interest that is not subordinate to any relevant *writ*,
- (b) damage to *property* in which he has an interest caused by a *sheriff* in the course of *enforcement proceedings*, or
- (c) the failure of a *sheriff* to comply with any provision of this Act.

Loss suffered by
enforcement
debtors

179

The *assurance fund* is liable for pecuniary loss suffered by an *enforcement debtor* as a result of non-compliance with this Act by a *sheriff* or *enforcement creditor*.

Loss suffered by
enforcement
creditors

180

The *assurance fund* is liable for pecuniary loss suffered by an *enforcement creditor* as a result of the negligent performance or non-performance of a *sheriff's* duties under this Act.

Section 181

1. Reference: Recommendation 160.
2. Note that subsection (1) would change the common law, as embodied by s. 5(6) of the *Proceedings Against the Crown Act*. However, given that the assurance fund is simply a paper account within the General Revenue Fund, the Crown's liability to indemnify the assurance fund would not actually result in any money changing hands. The practical consequence of the Crown's being liable to indemnify the fund is that the assurance fund balance will be higher than it would otherwise have been. This, in turn, could affect the amount of the assurance fund levy subsequently charged to enforcement creditors.

Section 182

Reference: Recommendation 160.

Section 183

Reference: Recommendations 151, 161.

Section 184

Reference: Recommendation 6.

Section 185

1. Reference: ECA, s. 4(5),(6).
2. This section generalizes the requirements of the ECA, which apply only to seizures.
3. Under the ECA, s. 4(6), the sheriff is directed, in effect, to ignore the writs of any creditor who has instructed the sheriff "not to seize, or not to continue seizure, or to discontinue, release or abandon the seizure". This provision is not carried forward into the JEA. If the original instructing creditor instructs the sheriff to release seizure, and another enforcement creditor tells the sheriff to continue the seizure, the original instructing creditor loses the status of instructing creditor (which carries with it the entitlement to the "preferred share" given by s. 172(f)). However, his or her status as an enforcement creditor is otherwise not impaired.

Indemnification of
assurance fund

181

- (1) The Crown shall indemnify the *assurance fund* if the fund incurs a liability as the result of the deliberate misconduct or negligence of a *sheriff*.
- (2) The *instructing creditor* shall indemnify the *assurance fund* if the fund incurs a liability as the result of an action taken by a *sheriff* in accordance with the creditor's instructions, and the creditor knew or ought to have known that it was likely that by acting upon the instructions the *sheriff* would cause a loss for which the fund would be liable.
- (3) An *enforcement creditor* shall indemnify the *assurance fund* if the fund incurs a liability as a result of the creditor's deliberate or negligent failure to register required information in the Enforcement Registry.

Court ordered
security

182

On application by a *sheriff*, the *Court* may require an *instructing creditor* to provide security for his potential *obligation* to indemnify the *assurance fund* under section 181(2).

Court's discretion

183

- (1) Notwithstanding anything in this Part, in an action brought in respect of anything done under the authority of this Act, if the conduct of any *person* or any other special circumstance makes it just and equitable to do so, the *Court* may
 - (a) dismiss the action,
 - (b) reduce the damages that would otherwise be payable to the plaintiff.
- (2) Nothing in this Part prevents the *Court* from awarding punitive damages against any *person* where it would be in accordance with the practice of the *Court* to do so.

PART 13

MISCELLANEOUS

No imprisonment
for debt

184

Except as provided in any Act, no *person* may be arrested or imprisoned for default in payment of a *money judgment*.

Discontinuance of
proceedings

185

- (1) Before discontinuing or withdrawing any *enforcement proceedings* at the direction of the *instructing creditor*, the *sheriff* shall serve written notice of the direction on every other *enforcement creditor*.

Section 186

1. Reference: Recommendation 5.
2. This section is intended to give the court considerable flexibility, both as to the matters with which it may deal and the manner in which it deals with them.

- (2) If within 14 days of receiving notice under subsection (1), an *enforcement creditor* instructs the *sheriff* in writing to continue the *enforcement proceedings* and makes any payment required by the *sheriff*
 - (a) the proceedings shall continue, and
 - (b) the creditor upon whose instructions the proceedings are continued is thereafter deemed to be the *instructing creditor*.

Applications to
Court

186

- (1) The *Court* may determine any matter or issue that arises in *enforcement proceedings* under this Act on application by a *sheriff* or any interested *person*.
- (2) Unless otherwise expressly provided, any application under this Act shall be made by motion on notice to such *persons* as the *Court* may approve or direct.
- (3) On any application under this Act the *Court* may
 - (a) summarily determine any issue on the basis of oral or affidavit evidence, or both,
 - (b) adjourn the hearing of the application, either indefinitely or for any period it considers appropriate,
 - (c) give such directions as it considers proper regarding the parties to and carriage of the proceedings,
 - (d) direct the trial of an issue,
 - (e) give such directions as it considers proper regarding the interim preservation, custody or control of any *property* that is the subject of *enforcement proceedings*,
 - (f) make an order subject to any terms or conditions that it considers proper, and
 - (g) make any order regarding costs that it considers proper.
- (4) The provisions of the *Court of Queen's Bench Act*, the *Judicature Act*, and the Alberta Rules of Court apply to any proceedings under this Act, except where inconsistent with this Act or any regulations made under this Act.

Section 187

The main purpose of this section is to dispense with frequent references to "the enforcement creditor or his solicitor" and similar references.

Section 188

1. Reference: PPSA, s. 70.
2. Clauses (1)(f) and (1)(g) are not contained in the PPSA. The purpose of (f) should be readily apparent. Clause (g) is primarily intended to allow the regulations to provide for service through electronic methods, such as facsimile transmission. Given the pace of technological developments in this area, it would be pointless to attempt to deal with such methods of service in the JEA itself.

Authorized
representat
ives

187 Where this Act requires or permits anything to be done by, served on or paid to a certain *person*, it may be done by, served on or paid to

- (a) the *person's* solicitor of record, or
- (b) anyone who the *person* has authorized in writing to do or receive that thing on his behalf.

Service of
documents

188

(1) Except as otherwise expressly required, a notice or document required or permitted to be served or delivered under this Act may be served or delivered as follows:

- (a) for an individual by leaving it with the individual or by registered mail addressed by indicating the individual's name and residence, or the name and place of any business of the individual;
- (b) for a partnership
 - (i) by leaving it with
 - (A) one or more of the general partners, or
 - (B) a *person* having control or management of the partnership business, or
 - (ii) by registered mail addressed to
 - (A) the partnership,
 - (B) any one or more of the general partners, or
 - (C) any *person* having control or management of the partnership business

at the address of the partnership business;
- (c) for a corporation, other than a municipality,
 - (i) by leaving it with an officer or director of the corporation or *person* in charge of any office or place of business of the corporation,
 - (ii) by leaving it with or by registered mail addressed to the registered or head office of the corporation,

Section 188 (continued)

3. Subsection (3) recognizes the possibility that even registered mail may not always reach the addressee within 4 days, or at all. This subsection is intended to deal with situations where the "deemed service" rule in subsection (2)(b) would be prejudicial to the addressee.

- (iii) where the corporation has its registered or head office outside the Province, by leaving it with, or by registered mail addressed to, its attorney for service appointed under Part 21 of the *Business Corporations Act*;
 - (d) for a municipal corporation by leaving it with, or by registered mail addressed to, the principal office of the corporation or to the chief administrative officer of the corporation;
 - (e) for an association
 - (i) by leaving it with an officer of the association, or
 - (ii) by registered mail addressed to an officer of the association at the address of the officer;
 - (f) for a *sheriff*, by leaving it with the *sheriff* or by registered mail addressed to the *sheriff's* office;
 - (g) by a method permitted by the regulations.
- (2) A document sent by registered mail is deemed to be served or delivered
- (a) when the addressee actually receives it, or
 - (b) on the expiry of 4 days after registration,
- whichever is earlier.
- (3) Where the *Court* is satisfied that
- (a) the addressee did not receive a document sent by registered mail within 4 days of registration,
 - (b) the failure of the addressee to receive the document is not attributable to his own efforts to avoid receiving it, and
 - (c) the addressee would be prejudiced by the strict application of subsection (2)(b),

the *Court* may make any order it considers proper regarding any matter relating to the document.

Section 189

1. Reference: Recommendation 128.
2. Recommendation 128 only mentions monetary limits having to do with exemptions, but the principle behind it is equally applicable to any other monetary limits.
3. The purpose of subsection (2) is to make it clear whether the old limit or the revised limit applies where an enforcement proceeding to which the limit applies is under way when a revision takes place.

- (4) Unless a provision of this Act requiring service or delivery of a document expressly refers to the original or a certified copy of the document, it is sufficient to serve or deliver a copy of the document.

Adjustment of
dollar amounts

189

- (1) The Lieutenant Governor in Council may, by regulation, revise upwards the amount of any monetary limit set out in section 43, 84, 157, 158 or 159 or in Schedule A (section 139).
- (2) Where a monetary limit is revised in accordance with subsection (1), the following rules shall apply in any proceedings for which the limit is relevant:
- (a) for the purposes of section 43, the limit is the one in force on the date of a relevant sale or lease;
 - (b) for the purposes of section 84, the limit is the one in force on the date the *property* is sold by the *sheriff*;
 - (c) for the purposes of section 139 and Schedule A, until the garnishee is served with notice of the revised limit, the limit is the one in force on the date the relevant garnishee summons was issued;
 - (d) for the purposes of sections 157, 158, and 159, the limit is the one in force on the date of a relevant seizure or, in the case of *land*, on the date the *sheriff* completes a sale of the *land*.
- (3) Where the minimum or maximum employment earnings exemption set out in Schedule A is revised while a continuing garnishee summons against employment earnings is in effect, the *sheriff* shall serve on the garnishee a notice in prescribed form setting out the revised minimum or maximum exemption.

Regulations

190

- (1) The Lieutenant Governor in Council may make regulations
- (a) providing for the appointment of officials to administer the Enforcement Registry and for their titles and duties;
 - (b) respecting fees, including
 - (i) the amount of fees,
 - (ii) the circumstances in which fees may be charged to an account, and

- (iii) the portion of the fee for registering a *writ* that is to be credited to the *assurance fund*;
 - (c) respecting the form and contents of notices or other documents provided for by this Act;
 - (d) respecting *sheriffs'* records, including
 - (i) matters additional to those specifically referred to in section 13 of which *sheriffs* shall maintain a record,
 - (ii) the length of time for which *sheriffs* shall retain a record of any particular matter;
 - (e) fixing the amount of garnishees' compensation;
 - (f) providing for the service of documents or notices by methods not provided for by this Act;
 - (g) respecting the transitional application of the provisions of this Act;
 - (h) respecting any matter required or authorized by this Act to be prescribed.
- (2) Where this Act states that a document is to be in prescribed form, and also states that the document is to contain certain information or statements, the regulations may require the document to contain information or statements additional to those required by this Act.

CONSEQUENTIAL

References

191

- (1) A reference in an Act or regulation to the *Execution Creditors Act*, the *Exemptions Act*, the *Seizures Act* or the Rules of Court that relates to the enforcement of a *money judgment* is deemed to be a reference to this Act or the corresponding provisions of this Act.
- (2) A reference in an Act or regulation to a writ of fieri facias, writ of attachment, writ of execution, execution creditor, execution debtor or any cognate term is deemed to be a reference to a writ of enforcement, attachment order, *enforcement creditor* or *enforcement debtor*, as the context requires.

Schedule A

Reference: Recommendation 111.

SCHEDULE A

JUDGMENT ENFORCEMENT ACT

The minimum and maximum *employment earnings* exemptions referred to in section 135(3) are as follows:

NUMBER OF Dependants	MINIMUM EXEMPTION	MAXIMUM
0	\$ 800.00	\$ 2400.00
1	1330.00	2930.00
2	1596.00	3196.00
3	1862.00	3462.00
4	2128.00	3728.00
5	2394.00	3994.00

If the enforcement debtor has more than 5 dependants,

- (a) the debtor's minimum exemption is equal to \$ 2394.00 plus the product of \$ 266.00 multiplied by the number of dependants in excess of 5, and
- (b) the debtor's maximum exemption is equal to his minimum exemption plus \$ 1600.00

For the purposes of this Schedule and section 139 of the Act, unless otherwise ordered by the *Court*, a garnishee shall treat the following persons as an *enforcement debtor's* dependants:

- (a) persons treated as dependants of the *enforcement debtor* for the purpose of determining payroll deductions under the *Income Tax Act* (Canada);
- (b) the *enforcement debtor's* spouse, if the debtor's payroll deductions under the *Income Tax Act* (Canada) reflect a claim for a "married amount" tax credit or deduction.

APPENDIX A

LISTS OF RECOMMENDATIONS

LIST OF RECOMMENDATIONS FROM VOLUME 1

RECOMMENDATION 1 UNIVERSAL EXIGIBILITY

All the property of a judgment debtor should be subject to enforcement regardless of its form or character, excepting only property that has been excluded deliberately from enforcement. No property should be "exempt" from enforcement for lack of an enforcement procedure.

RECOMMENDATION 2 JUST EXEMPTIONS

The deliberately exempted property should be sufficient to permit debtors to maintain themselves and their dependents at a reasonable standard and to have reasonable security that they will be able to continue to do so in the future.

RECOMMENDATION 3 CREDITOR INITIATIVE

The enforcement process should rely on the initiative of the creditor for its operation. The suggestion, made in other jurisdictions, of an enforcement system operated entirely by a court or government official without specific instructions from creditors should not be adopted in Alberta.

RECOMMENDATION 4 ONE STATUTE

The enforcement of money judgments should be governed by one statute that describes the system of enforcement and the various processes, and the procedures that are a part of it, in consistent, coherent and logically ordered terms.

RECOMMENDATION 5 JUDICIAL SUPERVISION

The various enforcement processes should be designed to minimize the occasions when an application to the court is required; however, the processes should also be designed to permit easy access to the court whenever judicial supervision of a specific aspect of enforcement is required. All parties should have the right to seek the direction of the court on any point that arises in the course of enforcement.

RECOMMENDATION 6 IMPRISONMENT FOR DEBT

The existing policy of prohibiting imprisonment as a remedy to enforce money judgments should be continued.

RECOMMENDATION 7 ONE COMMENCEMENT DOCUMENT

A creditor who wishes to undertake any enforcement process should be required first to deliver to the sheriff a document issued by the clerk of the court certifying that a judgment has been entered against the judgment debtor and setting out

such particulars of that judgment as are required for the conduct of enforcement procedures.

RECOMMENDATION 8 THE WRIT OF ENFORCEMENT

The enforcement commencement document should be called the "writ of enforcement".

RECOMMENDATION 9 THE ENFORCEMENT REGISTER

There should be a computer register of all enforcement activity undertaken against each enforcement debtor. The register should be maintained centrally and should be accessible province wide from the offices of all sheriffs. The register should be available for public searches. It should be called the Enforcement Register.

Upon receipt of a writ of enforcement, the sheriff should enter the particulars in the Enforcement Register.

RECOMMENDATION 10 EFFECT OF DELIVERY OF THE WRIT TO THE SHERIFF

When the writ of enforcement has been delivered to the sheriff, the creditor should be able to undertake or instruct any enforcement process. The delivery of the writ of enforcement to the sheriff should authorize the sheriff to accept and carry out the lawful enforcement instructions of the creditor; however, that the writ has been delivered to the sheriff should have no effect on a third party who might deal with the debtor, even where the third party has knowledge of the writ.

RECOMMENDATION 11 ALL PERSONAL PROPERTY BOUND

Upon registration of the writ of enforcement in the PPR, all the personal property of the debtor should be bound. The binding effect should not be confined to the property exigible at common law.

RECOMMENDATION 12 BINDING EFFECT — INTERESTS IN LAND

The debtor's interests in land should be bound only upon registration of the writ in accordance with the provisions of the *Land Titles Act*.

RECOMMENDATION 13 BINDING EFFECT — GARNISHABLE DEBTS

Garnishable debts owed to the debtor should be bound from the time of registration of the writ in the PPR.

The binding effect of the writ in this context should be distinguished from the "binding effect" of service of the garnishee summons. The binding effect of the writ will not affect the conduct of the potential garnishee, who should be able to

pay the debt to the debtor notwithstanding the writ. Only the debtor and transferees of the debt from the debtor will be affected.

The word "attach" should be used to describe the effect of serving the garnishee summons on the garnishee.

RECOMMENDATION 14 PROVINCE-WIDE EFFECT

The binding effect of the writ in respect of personal property should be province wide. The present limitation of the effect to property within the judicial district of the sheriff to whom the writ is delivered should be abandoned.

RECOMMENDATION 15 ORDINARY COURSE OF BUSINESS EXCEPTION

A writ registered in the PPR should not affect the interest of a third party in goods acquired from the debtor in good faith, for valuable consideration, without actual knowledge of the writ, and in the ordinary course of the debtor's business.

The course of business exception should also apply to sales by the debtor of seized goods that have been left with the debtor on a bailee's undertaking.

RECOMMENDATION 16 "GARAGE SALE" EXCEPTION

A writ registered in the PPR should not affect the interest of a third party in consumer goods acquired from the debtor in good faith, for valuable consideration, and without actual knowledge of the writ where the consideration paid or the value of the goods does not exceed \$1000.

This "garage sale" exception should also apply to sales by the debtor of seized consumer goods that have been left with the debtor on a bailee's undertaking.

RECOMMENDATION 17 NEGOTIABLE INSTRUMENTS EXCEPTION

A writ registered in the PPR should not affect the interest of a holder of a negotiable instrument acquired from the debtor in good faith, for valuable consideration, and without actual knowledge of the writ.

This exception should also apply to transfers by the debtor of seized negotiable instruments that have been left with the debtor on a bailee's undertaking.

RECOMMENDATION 18 MONEY EXCEPTION

A writ registered in the PPR should not affect a person who acquires money from the debtor in good faith or for valuable consideration, whether or not the person had actual knowledge of the writ.

RECOMMENDATION 19 SERIAL-NUMBERED GOODS EXCEPTION

A writ registered in the PPR should not affect the interest of a purchaser of "serial-numbered goods" acquired from the debtor in good faith, for valuable consideration, and without actual knowledge of the writ unless the writ is registered against the serial number specifically.

RECOMMENDATION 20 PRIORITIES BETWEEN SECURITY INTERESTS AND REGISTERED WRITS

A security interest, whether perfected or not, that exists at the time the writ is issued should have priority over the writ, whether the writ is registered or not, except that where there has been seizure under a writ the interest arising by reason of the seizure should have priority over an unperfected security.

RECOMMENDATION 21 TIME OF ISSUING WRIT AND DURATION OF WRIT

The judgment creditor should be allowed to issue a writ of enforcement anytime after entry of the formal judgment and during the time that the judgment is in force.

The existing rule, which says that after six years a writ can be issued only with leave, should be abandoned.

The writ of enforcement should continue in force for so long as the judgment on which it is issued remains in force and the debt remains unsatisfied.

RECOMMENDATION 22 VOLUNTARY FINANCIAL STATEMENT

The enforcement debtor should be given the opportunity to file with the sheriff a sworn statement of his or her assets and liabilities and the dispositions of property he or she has made since the debt was incurred. A simple form, on which such a statement can be made, should be available to debtors from the sheriff. The debtor should be subject to cross-examination on the statement by the creditor. The statement should be available to all enforcement creditors of the debtor.

RECOMMENDATION 23 INFORMATION FOR THE ASSISTANCE OF OTHER CREDITORS

There should be no requirement that a transcript of every examination in aid be prepared, but creditors should be obliged to inform the sheriff's office of examinations held so that this information can be entered in the Enforcement Registry. Other enforcement creditors may order a transcript from the officer who conducted the examination if they wish.

RECOMMENDATION 24 THIRD-PARTY INFORMATION

Where a reasonable possibility that a third party has information regarding the debtor or his or her assets is established, and there is no reason why the third party should not be called upon to reveal the information to the creditor, the court should be able to order the third party to reveal the information to the creditor.

A court order should not be required, however, to compel municipalities to release information as to whether or not an enforcement debtor is shown as the owner of land on municipal tax rolls. A municipality should be required to reveal this information to an enforcement creditor upon payment of a reasonable fee. The municipality might validly require production of a certified copy of the writ of enforcement to be satisfied that the creditor has a legitimate interest in obtaining the information.

RECOMMENDATION 25 SHERIFF'S EXCLUSIVE AUTHORITY TO SEIZE

The present requirement that seizure must be carried out by the sheriff, or a person authorized by the sheriff, should not be changed.

RECOMMENDATION 26 TERRITORIAL AUTHORITY OF THE SHERIFF

Each sheriff should have the authority to effect seizure anywhere in Alberta. A creditor should be at liberty to instruct any sheriff to effect seizure. If the sheriff receiving the instructions considers it more convenient that another sheriff carry out the instructions, or any part of them, then that sheriff should be able to assign the instructions, or any part of them, to another sheriff and give notice of the assignment to the instructing creditor.

RECOMMENDATION 27 SEIZURE INSTRUCTIONS

Written instructions for seizure should continue to be required before the sheriff is obliged to initiate seizure. A standard letter of instruction acceptable to all sheriffs, should be developed.

RECOMMENDATION 28 SEIZURE INSTRUCTIONS — SUBSISTING WRIT

The sheriff should not accept any seizure instructions from a creditor unless the creditor's writ is subsisting at the time the instructions are given.

RECOMMENDATION 29 SECURITY

A creditor who delivers seizure instructions to the sheriff should be required to give security for the fees, charges and expenses of the sheriff in carrying out the instructions. The present requirement of security sufficient to indemnify the sheriff in respect of claims for damages incurred in making seizure should be

replaced by an "assurance fund levy", paid at the time of filing the writ of enforcement with the sheriff as described in the recommendations below dealing with the establishment of an assurance fund.

RECOMMENDATION 30 INFORMATION AS TO DEBTOR'S ASSETS

The creditor should be required to provide the sheriff with such information as the sheriff reasonably requires to attempt seizure. The sheriff should be under no duty to attempt seizure until in receipt of such information.

RECOMMENDATION 31 DOCUMENTATION

The seizure instructions should include such documentation as the sheriff will require to complete the instructed seizure.

RECOMMENDATION 32 EFFECTING SEIZURE

The method of effecting seizure should be set out in the statute, and for a "standard" seizure (seizure of non-serial number goods), should consist of the following requirements:

- (a) the property to be seized must be identified in the notice of seizure;
- (b) the sheriff must go to the premises or other place where the property to be seized is located and do one of the following:
 - (i) serve the seizure documents on the enforcement debtor, an occupant of the premises, or a person who appears to be in possession of the property; or
 - (ii) if there is no one present upon whom the seizure documents can be served, post the seizure documents on the premises, or attach them to property that is seized.

The sheriff should continue to have the option of attaching a sticker to seized property in order to help identify it and distinguish it from property that is not seized.

If the seizure documents are not served on the enforcement debtor or an adult member of the debtor's household while seizure is being effected, they should be served on the enforcement debtor later.

Service of the seizure documents should be effected by one of the methods of service set out in section 70 of the PPSA.

RECOMMENDATION 33 ENTRY ONTO PREMISES

Entry:

The sheriff should have statutory authority to enter onto the debtor's premises, or the non-residential premises of a third party, to effect seizure.

Unless he has the consent of a third party to enter a third party's residential premises to effect seizure of the debtor's property, the sheriff should have the authority of a court order to do so. Such an order should be granted where there is a reasonable likelihood that exigible property of the debtor is located on the premises of the third party.

Use of Force:

The sheriff should be able to use force to gain entry to the debtor's non-residential premises without a court order.

Forcible entry to any other premises (the debtor's residence or any premises of a third party) should require a court order.

After gaining entry, the sheriff should be able to break an interior door or other closure to gain access to the debtor's property.

Where the sheriff uses force to gain entry to any premises for the purpose of seizure, he should take reasonable care to ensure that the property is secure when he leaves.

Damages to Third Party:

A third party who suffers damages as a result of a forced entry should be compensated unless the third party could reasonably have prevented the damage.

RECOMMENDATION 34 TIME OF SEIZURE

Unless the court orders otherwise, no seizure under a writ of enforcement should be permitted on residential premises between the hours of 9 pm and 6 am.

RECOMMENDATION 35 BAILEE'S UNDERTAKINGS

The existing bailee's undertaking procedure should be continued in the reformed legislation. The form of undertaking should inform the bailee of the consequences of a breach of the undertaking.

RECOMMENDATION 36 REGISTRATION OF NOTICE OF SEIZURE

After effecting seizure, the sheriff should enter the notice of seizure into the Enforcement Registry.

RECOMMENDATION 37 SEIZURE OF SERIAL-NUMBERED PROPERTY

As an alternative to the regular seizure procedure, seizure of serial-numbered property should be effected by registration of a notice of seizure that describes the property by its serial number in the PPR. Such registration should be followed by service of the notice of seizure on the debtor.

Where serial-numbered property is seized by the ordinary seizure process, the exception to the effect of registration of the writ of enforcement in the PPR should continue until the writ is registered against the serial number of the seized property.

RECOMMENDATION 38 PROPERTY IN THE HANDS OF A THIRD PARTY

As an alternative to seizure by the ordinary process, where property of the debtor is in the hands of a third party, the sheriff, on the creditor's instruction, should issue a notice for service on the third party, requiring the third party to deliver the property to the sheriff or to make it available for seizure.

The process should operate in a parallel manner to the process of garnishment of debts owed to the debtor. For example, the third party should be required to respond to the notice if unable to comply with it, and should be liable in the same manner as a garnishee if he or she fails to respond or comply. Compliance with the requirements of the notice should relieve the third party of his or her obligation to the debtor. The third party should be compensated for the cost in complying with the sheriff's requirements.

RECOMMENDATION 39 OBJECTION PROCEDURE

At the same time as the debtor is served with the notice of objection to seizure, he or she should also be served with a document called "Instructions to Debtor", which should include:

- a. a simple explanation of the seizure process;
- b. a description of the exemptions to which debtors are entitled;
- c. an explanation of the court's power to delay removal and sale if the debtor can establish that he or she can pay the debt over time;
- d. a description of the process whereby objections are brought before the court to be dealt with;
- e. advice as to where the debtor might seek advice and assistance; and
- f. a statement that the debtor might become liable for added costs if he or she uses the objection procedure frivolously.

The debtor should be required to state the nature of his or her objection to the seizure in the notice of objection. The sheriff should not reject any notice of objection that states an obviously inadequate reason or is silent as to the reason. The debtor should not be restricted to the reason given on the notice of objection at the removal and sale application.

The sheriff should be required to reject any notice of objection delivered to him more than 14 days after the date of service of the notice of seizure on the debtor, except where otherwise ordered by the court.

The existing procedure of a court application initiated by the creditor who wishes to challenge the debtor's objection should be retained.

The creditor should be obliged to bring the application for removal and sale in the judicial district in which the seizure occurred unless the debtor otherwise consents or the court otherwise orders.

The debtor should be able to consent to the removal and sale of seized property anytime after seizure.

RECOMMENDATION 40 REMOVAL

The sheriff should be required to remove seized property from the debtor, at the time of seizure or anytime thereafter, upon receiving from the creditor instructions to that effect and such security as the sheriff requires to ensure that the cost of removal and storage of the property pending sale is covered.

Where the sheriff takes possession of seized property from the debtor, he should provide the debtor (or whoever was in possession of the property) with a written inventory of the property removed.

RECOMMENDATION 41 SALE INSTRUCTIONS

The sheriff should not proceed to sell the seized property until he has received written instructions from the creditor to do so.

RECOMMENDATION 42 METHOD OF SALE

The creditor should suggest a method of sale at the time that he or she instructs sale. The sheriff, after considering the creditor's suggestion, should use whatever method of sale he thinks will produce the best price.

The sheriff should be able to retain such expert assistance as he reasonably requires to effect a sale, subject to the creditor's willingness to indemnify him for the costs involved.

The sheriff should give the debtor and the creditor notice before the proposed sale, indicating the method of sale that he intends to use. Either the creditor or

the debtor should have the right to apply to the court within 14 days of the notice for directions if either objects to the method of sale proposed by the sheriff.

If the sheriff cannot obtain a reasonable price for the property, the creditor should be able to apply to the court for authorization to sell at whatever price the property will bring, except where the reasonable value of the property is less than \$1000, in which case the sheriff should be at liberty to sell at the best obtainable price without application.

RECOMMENDATION 43 SALES TO THE CREDITOR

The creditor should be able to buy the seized goods from the sheriff, but where the sale is private the sale should not be concluded unless the price bears a reasonable relationship to the market value of the property and until the debtor has been given notice of the proposed terms of the sale and has had an opportunity to object by application to the court. The objection period should be 14 days.

RECOMMENDATION 44 THE BUYER'S TITLE

The sheriff should be required to inform prospective purchasers of registered encumbrances affecting the debtor's title to the seized property at the time of sale. If he fails to do so and a purchaser is prejudiced as a result, the purchaser should be compensated from the enforcement assurance fund. A purchaser who suffers a loss as a result of the debtor not having had title to the property should also have a right to compensation from the assurance fund.

RECOMMENDATION 45 NEGOTIABLE INSTRUMENTS — SEIZURE

Enforcement against a negotiable instrument held by the debtor should be accomplished by the same seizure process that applies to tangible chattels.

As in the general seizure process, removal of the instrument from the possession of the debtor should not be an essential element of a legally effective seizure, even though it might be required to render the seizure practically effective.

RECOMMENDATION 46 REALIZATION ON NEGOTIABLE INSTRUMENTS

The statute should provide that the sheriff is the agent of the debtor with authority to deal with seized negotiable instruments as fully as would be the case if the debtor had granted such authority.

The present provision that contemplates the sheriff paying or assigning a seized instrument to the creditor should be abolished in favour of the "sale to creditor", which is part of the recommended general seizure procedure.

RECOMMENDATION 47 DEFINITIONS RELATING TO SEIZURE OF SECURITIES

The proposed enforcement system should make special provision for seizure of securities, defined as including:

- (a) non-publicly traded shares in corporations;
- (b) publicly traded interests in and obligations of corporations and other entities, such as governments, limited partnerships and trusts; and
- (c) publicly traded rights to acquire or sell interests or obligations referred to in (b).

For certain purposes, a distinction should be drawn between publicly traded securities and non-publicly traded securities. The latter category would consist only of non-publicly traded shares.

A security would be considered to be publicly traded if it met either of the following two criteria:

- (a) the security is listed on a securities exchange; or
- (b) prices or values for the security routinely appear in published securities market reports or in quotation services used by securities dealers.

RECOMMENDATION 48 SEIZURE OF SECURITIES

Seizure of securities owned by an enforcement debtor should be accomplished by one of the following methods:

- (a) seizure of the security certificates that represent the securities;
- (b) service of an appropriately worded notice of seizure on the issuer of the securities where the enforcement debtor is the registered holder of the securities; and
- (c) service of an appropriately worded notice of seizure on a broker or other third party who holds the securities for the enforcement debtor.

The method of seizure actually used should be at the discretion of the sheriff, except that seizure by method (b) or method (c) should be permissible only where the notice of seizure can be served on the relevant person (issuer or third party) in Alberta.

The mechanics of seizure should not depend on the place of incorporation or the residence of the issuer; however, where a security issued by a "foreign" issuer is seized, the court should be able to make any order it considers necessary to

prevent the issuer, or any other person, from being prejudiced as a result of a conflict between the Alberta laws and the laws of the issuer's home jurisdiction.

Where a notice of seizure is served on the issuer of certain non-publicly traded shares, the issuer should be obliged to indicate this to any third party who makes enquiries regarding the enforcement debtor's ownership of an ability to transfer the shares.

Where seizure is effected by serving a notice of seizure on a third party, the third party should be obliged to hold and deal with the security in accordance with the directions of the sheriff, and should be liable to enforcement creditors for failing to do so.

RECOMMENDATION 49 EFFECT OF SEIZURE ON SUBSEQUENT TRANSFEREES

Regardless of whether a security that is bound by a writ has been seized or not, a purchaser for value who takes possession of the security certificate evidencing the security without knowledge of the seizure or knowledge of the writ, should have priority over the writ.

A person who purchases a publicly traded security in a transaction that is settled through a clearing agency should have priority over a writ that binds the security, as long as at the time of settlement of the transaction the purchaser did not have knowledge that the security was bound by the writ or was under seizure.

RECOMMENDATION 50 DIVIDENDS AND OTHER PAYMENTS

Where the enforcement debtor is the registered holder of a security that has been seized by a method other than serving the notice of seizure on the issuer, the sheriff should be required to serve a copy of the notice of seizure on the issuer as soon after effecting seizure as is practicable.

Where a notice of seizure has been served on the issuer of a security of which the enforcement debtor is the registered holder, the issuer should be required to pay to the sheriff any dividend or other payment that it would otherwise be required to pay to the enforcement debtor.

An issuer should not be liable if its transfer agent pays a dividend to the enforcement debtor after service of a notice of seizure on the issuer unless the transfer agent has been notified of the seizure or 48 hours have elapsed since the notice of seizure was served on the issuer. A transfer agent who does pay a dividend to an enforcement debtor after being notified of a seizure should be liable to indemnify the issuer.

Where the enforcement debtor is not the registered holder of the seized security, and seizure has been effected by serving the notice of seizure on a third party, the third party should be required to divert to the sheriff any dividend or other

payment in respect of the security that it would otherwise be required to pay to the debtor.

The sheriff should be entitled to make any election that the enforcement debtor would otherwise be entitled to make with respect to a dividend or other payment.

RECOMMENDATION 51 REALIZATION OF PUBLICLY TRADED SECURITIES

A sheriff who has seized a publicly traded security should be authorized to sell or otherwise realize the security through the normal market mechanism.

Where it would ordinarily be necessary for the enforcement debtor to endorse a security certificate or other document to dispose of the security, the sheriff should be authorized to do so in place of the debtor.

Where the transfer or other disposition of a security would ordinarily require delivery of the security certificate, this requirement should apply to a disposition by the sheriff. If the court is satisfied, however, that:

- (a) the security certificate in question appears to have been lost, destroyed or wrongfully taken from the enforcement debtor;
- (b) there is no evidence that the missing certificate has got into the hands of a purchaser for value whose interest in the security would have priority over the relevant writ or writs; and
- (c) an adequate indemnity bond has been provided to the issuer by the instructing creditor;

then the court should be able to require the issuer to recognize a disposition by the sheriff of the security represented by the missing certificate.

RECOMMENDATION 52 REALIZATION ON SHARES WITH A TRANSFER RESTRICTION

Where the sheriff seizes shares of a debtor in a corporation, and the corporation's incorporating documents, unanimous shareholders' agreement, or other documents restrict or prohibit the right to transfer those shares, such restriction or prohibition should not apply to the sale by the sheriff.

Provisions in such corporate documents that provide for the sale of shares to other shareholders at less than fair value, when enforcement is entered against one shareholder, should be ineffective to frustrate enforcement.

The other shareholders, severally and collectively, and the corporation should have the right to:

- a) discharge the debt and have the seizure released;

- b) purchase the shares before anyone else;
- c) have the corporation wound up before the shares are offered for sale;
- d) make any other proposal to the sheriff and creditors as an alternative to the sale of the shares; and
- e) seek approval of such a proposal by the court where the sheriff and the creditors do not accept it. The court should approve such a proposal where it will not cause substantial prejudice to the creditors.

The sheriff should give the corporation and the creditors notice of the process by which he proposes to dispose of the shares. That process should include any procedures required by the corporation's incorporating documents that will not prevent the sale. The sheriff should be at liberty to seek directions from the court in establishing the sale process. The corporation should be at liberty to seek the intervention of the court to require the sheriff to include in the proposed method of sale any requirement of the incorporating documents that he has omitted, except those that would prevent the sale. The court should order the sheriff to include the procedure that will not prevent the sale, and the omission of which would be prejudicial to the interests of the corporation.

The enforcement process should be designed so as to give the corporation and the other shareholders generous opportunity to preserve the membership of the corporation, but if they do not or cannot avail themselves of that opportunity, enforcement should not be frustrated. Any restriction on the transferability of shares that would prevent the purchaser from registering the purchase and exercising shareholder rights should not apply in a sale under a writ of enforcement.

RECOMMENDATION 53 FINANCIAL INFORMATION ON THE CORPORATION

Upon service of a notice of seizure in respect of shares of a corporation, and upon seizure of negotiable shares, the sheriff should become entitled to receipt of the financial information to which a shareholder in the corporation is entitled.

The sheriff should use that information to determine the value of the shares against which enforcement is proceeding and in assessing offers made for the shares in the course of the sale process. In conducting the sale, the sheriff should be able to use the information in any way that the debtor could use it.

Where the sheriff is not able to effect a sale at a price he considers reasonable, he should be at liberty to apply to the court for authorization to sell the shares at the best obtainable price.

**RECOMMENDATION 54 ENFORCEMENT AGAINST DEBTOR'S
INTERESTS AS A SECURED CREDITOR**

Enforcement against a debtor's security interest in real property should be accomplished by the sheriff registering a notice of sale, on instruction from the creditor, on the title to the land in which the security interest is held according to the procedure recommended hereafter for enforcement against land.

Enforcement against a debtor's security interest in chattels should be accomplished by the sheriff registering a financing statement in respect of the enforcement against the debtor in the PPR.

The sheriff should also serve a notice of enforcement and a notice of objection on the debtor according to the procedure recommended for the seizure of serial-numbered goods.

**RECOMMENDATION 55 REALIZATION ON SEIZED DEBT
SECURITY AGREEMENTS**

Payments to be made to the debtor under seized debt security agreement should be diverted to the sheriff upon the sheriff serving the party obliged to make those payments with an appropriate notice.

The sheriff should be able to collect the payments due and to enforce the security in the same manner as the debtor if the party obligated under the security agreement is in default.

The sheriff should also be able to sell the security agreement as he would sell any seized property. The present requirement of a court order to authorize such a sale should be abandoned.

RECOMMENDATION 56 EXIGIBILITY OF INTERESTS IN LAND

All interests in land, regardless of whether they are legal, equitable, registered, unregistered, classified as interests in land or classified as personalty, should be exigible, except those that are deliberately exempted. Exigibility should not depend on whether the interest can be classified as an "interest in land".

**RECOMMENDATION 57 INITIATION OF SALE OF REGISTERED
LAND**

Enforcement against interests in registered land should be initiated by the creditor instructing the sheriff to sell the land. The sheriff would then issue a notice of sale, which would be recorded on title and served on the debtor and all parties having an interest recorded on title. The sheriff would enter the notice of sale in the Enforcement Registry.

**RECOMMENDATION 58 PROCEDURAL RESTRICTIONS ON
ENFORCEMENT AGAINST LAND**

The present requirement of a return *nulla bona* before sale of land in enforcement proceedings should be abandoned.

A requirement that the sheriff not sell the land before the expiry of a six-month period from the date of service of the notice of sale on all the parties upon whom service is required should be substituted for the present one-year delay.

The court should have a discretion to order the enlargement or reduction of this six-month delay where it considers it just to do so, and should also have a discretion to impose such terms as it considers just.

The present provision disentitling the creditor to costs of advertising land for sale, where the debt is satisfied by enforcement against goods and chattels, should be abandoned.

RECOMMENDATION 59 METHOD OF SALE

A creditor who instructs the sheriff to issue a notice of sale in respect of land should suggest a method of sale to the sheriff. The sheriff should be at able to accept the creditor's suggestion or choose some other method of sale.

The notice of sale should describe the method of sale that the sheriff intends to use. Any party upon whom the notice of sale is served should be able to apply for an order requiring a particular method to be used if dis-satisfied with the sheriff's choice.

If no such application is made during the 6-month delay period, the sheriff should be at liberty to use the method indicated in the notice of sale.

The court should have the power to make such orders as are required to facilitate the sale process.

RECOMMENDATION 60 COMPLETION OF SALE

The present requirement of an order confirming sale should be replaced by a requirement that the sheriff, upon finding a purchaser, serve notice of that fact on the debtor, on the holders of other encumbrances on the title of the land to be sold, and on the instructing creditor. The notice should recite the terms of the sale.

Any interested party should have the right to apply within 14 days of receipt of service for judicial intervention in the procedure to prevent conclusion of the sale.

The court should order that the sale not be concluded if there has been any deficiency in the procedure that has prejudiced the debtor or any other interested party, if it considers that reasonable efforts to find a buyer have not been made,

if it considers any other term of the proposed sale is unacceptable, or if it considers that any other circumstance justifies such an order.

On such an application, the court should give directions to the sheriff for the continuation of the sale process.

If no such application is commenced within 14 days, the sale should be deemed confirmed, the sheriff should be able to deliver a transfer or other closing documentation, and all interested parties should be estopped from making any application to challenge the sale.

RECOMMENDATION 61 DOWER CONSENT TO SHERIFF'S DISPOSITION

The consent of the debtor's spouse should not be required for an enforcement sale of a homestead.

The contingent life interest created by the *Dower Act* should not survive an enforcement sale.

RECOMMENDATION 62 ENFORCEMENT AGAINST JOINT INTERESTS IN LAND

Legislation should make it clear that the interest of a debtor in land held as a joint tenant with another or others is exigible.

There should not be any change to the law regarding the effect of survivorship in joint tenancy on the binding effect of the writ. The binding effect should continue to be subject to the joint tenant's right of survivorship. If the debtor joint tenant dies, so that the debtor joint tenant's interest ceases to exist, the binding effect of the writ of enforcement on that land should be at an end.

RECOMMENDATION 63 ENFORCEMENT AGAINST UNREGISTERED INTERESTS IN LAND

The process proposed for enforcement against registered interests in land should apply as well to cases where the debtor holds an unregistered interest in registered land. Where the debtor owns an interest in unregistered land, the enforcement process should be left for determination of the court on application of the creditor wishing to enforce against it.

RECOMMENDATION 64 TRANSFER OF DUTIES FROM CLERK TO SHERIFF

The present functions of the clerk of the court relating to garnishment should be transferred to the sheriff.

RECOMMENDATION 65 TRANSFER OF PROVISIONS FROM THE RULES

The provisions establishing the garnishment process, both substantive and procedural, should be located in one statute — the same statute in which the provisions relating to the other enforcement processes are located.

RECOMMENDATION 66 GARNISHMENT AS OF RIGHT — ON AFFIDAVIT

Garnishment should continue to be available as of right. The remedy should not be dependant on the discretion of the court, the sheriff or any other official.

The procedure, however, should continue to require the enforcement creditor to file an affidavit in which the facts required to exist before the process can be invoked are established on oath.

RECOMMENDATION 67 OBJECTION PROCEDURE

The enforcement debtor should be served with a copy of the garnishee summons and the garnishee's response.

The enforcement debtor should be given the right to apply to the court for the determination of any objection he or she might have to the garnishment.

The garnishee should be required to state the last known address of the enforcement debtor; or, if that is contrary to a legal or contractual obligation binding the garnishee, the garnishee should be required to give the enforcement debtor notice of the garnishment and of his or her response.

RECOMMENDATION 68 COMPENSATION FOR THE GARNISHEE

The garnishee should be entitled to compensation from each payment made in, or from the fund remaining in his or her hands if the entire indebtedness to the debtor is not required to be paid into court. The amount of the compensation should be established by regulation and should be maintained at a fair level. It should not be less than \$25 per payment in.

RECOMMENDATION 69 GARNISHMENT OF JOINT DEBTS

The scope of garnishment should extend to an enforcement debtor's interest in obligations due to the enforcement debtor and another, or others, jointly.

RECOMMENDATION 70 PROTECTION OF THE JOINT OBLIGEEES

Where a joint debt is the subject of garnishment, the garnishee should assume that the interests of the various joint obligees are equal, except where the garnishee is by order instructed otherwise.

Where the creditor establishes, on application, that the enforcement debtor is entitled to a greater portion of the joint debt, the garnishee should be ordered to pay the greater sum in response to the garnishee summons.

After payment by the garnishee, but before distribution of the money, either the enforcement debtor or the joint obligee should have the opportunity to establish that the allocation of the joint debt between the joint obligees was inaccurate, and the court should make whatever order is required to correct the allocation.

The garnishee should be required to give notice of his or her payment to the joint obligee. The notice should include clear directions as to how the joint obligee can bring forward an objection.

There should be a prohibition of further garnishments of the same debt, except with leave of the court, until 30 days after the date of the notice to the joint obligee.

RECOMMENDATION 71 ATTACHMENT OF FUTURE ENTITLEMENTS

Subject to the limitations described in the following recommendations, the scope of garnishment should be expanded to permit an enforcement creditor to attach future entitlements of the enforcement debtor.

RECOMMENDATION 72 LIMITATION — OBLIGATION ARISING FROM EXISTING LEGAL RELATIONSHIP

Attachment of future obligations should be limited to such entitlements as might reasonably be expected to arise out of a legal relationship existing between the enforcement debtor and the proposed garnishee at the time of the attachment.

RECOMMENDATION 73 DURATION OF GARNISHMENT

A garnishment of a future obligation should expire one year after the date it is served on the garnishee unless a renewal summons is issued and served before the end of the year.

RECOMMENDATION 74 ADJUSTMENT OF AMOUNT BOUND BY THE GARNISHMENT

The amount attached by the garnishee summons should increase or decrease with the total amount owing on writs of enforcement against the debtor filed with the sheriff.

An enforcement creditor who files a new writ of enforcement should not be able to issue a new garnishee summons to a garnishee already subject to a garnishee summons.

The procedure should ensure that any changes in the total amount owing under writs of enforcement filed with the sheriff are communicated to the garnishee and that the amount bound by the garnishee summons is adjusted accordingly.

RECOMMENDATION 75 DEPOSIT ACCOUNTS

Deposit accounts should not be susceptible to garnishment except in respect of the balance held in the account at the time of service of the garnishment.

RECOMMENDATION 76 PERSONAL COMPENSATION ENTITLEMENTS

An enforcement debtor's possible future entitlement arising out of a cause of action for damages for personal injury or other damages, including the proceeds of a settlement of the cause of action, should be subject to attachment.

RECOMMENDATION 77 DISCRETIONARY EXEMPTION

Where an enforcement creditor issues a garnishee summons against a future obligation, the court, on the application of the enforcement debtor, should have the discretion to exempt such portion of the obligation from attachment as the enforcement debtor can establish is required to pay expenses that were, or will necessarily be, incurred for the enforcement debtor to maintain the future obligation.

The court should have the discretion to impose such terms as are necessary to ensure that the exempted portion of the obligation is used for the purpose for which it is required.

The discretion should not permit the exemption of a portion of a debt that is payable to the enforcement debtor at the time of the service of the garnishee summons.

RECOMMENDATION 78 RESPONSE BY THE GARNISHEE

In the case of garnishment of a future obligation, the garnishee should be required to file a response to the garnishee summons that either acknowledges or denies the existence of the legal relationship upon which the garnishment is founded.

A garnishee who acknowledges the legal relationship should state when it is expected that the future entitlement will become payable and the nature of the contingencies affecting the future entitlement.

Where a renewal garnishee summons is served, a new response should be required from the garnishee.

The garnishee summons should make it clear to a garnishee who denies the existence of the legal relationship that the garnishee summons remains in force, notwithstanding the denial.

RECOMMENDATION 79 SANCTION FOR GARNISHEE'S FAILURE TO RESPOND

If a garnishee fails to file any of the responses that he or she is required to file after the service of the garnishee summons or during the currency of the garnishment, the enforcement creditor should be able to apply for judgment against the garnishee.

On the application, the failure of the garnishee to respond to the summons should give rise to a rebuttable presumption that the garnishee is indebted to the debtor for the full amount claimed in the garnishee summons.

The garnishee should not be estopped from raising in answer to such an application anything that might have been stated in a required response, and no judgment should be awarded against the garnishee except for the amount that would have been payable to the sheriff under the garnishee summons had the garnishee complied with the procedural requirements.

If the application would have been unnecessary had the garnishee complied with the procedural requirements, costs of the application should be awarded against the garnishee notwithstanding that the enforcement creditor is not granted judgment.

The level of costs should be high enough to encourage garnishees to file the answers required by the procedure.

RECOMMENDATION 80 GARNISHEE SET-OFFS

A garnishee should be able to raise any set-off against the enforcement debtor that exists at the time of the garnishment.

A set-off arising after service of a garnishee summons, however, should not be effective as a response to the garnishment unless the garnishee establishes:

- a) that the set-off arose pursuant to a binding commitment entered into before service of the garnishment, or
- b) that it would be inequitable to deny the set-off.

RECOMMENDATION 81 ATTACHMENT OF AN INSURED CLAIM

Where the garnishee is insured with respect to an attached future entitlement, the garnishee should be permitted to direct the insurer to pay the appropriate portion of the insurance proceeds to the sheriff when liability of the garnishee to the debtor is determined. The insurer should be required to comply with the undertaking.

If the insurer fails to comply, the garnishee should be able to seek indemnity from the insurer in the proceedings brought by the creditor against the garnishee for

judgment and should be indemnified if it is established that the garnishee was entitled to insurance coverage and the direction was given.

**RECOMMENDATION 82 PAYMENTS INTO COURT IN THE
PROCEEDINGS BETWEEN THE
GARNISHEE AND THE ENFORCEMENT
DEBTOR**

Where a contingent future obligation is attached, the garnishee should still be able to make a payment into court to effect a compromise of the litigation or in the course of interpleader proceedings. The garnishee should, however, be obliged to give notice of the garnishment to the clerk of the court.

If the payment in is accepted by the enforcement debtor, the clerk of the court should not make payment out to the enforcement debtor but should be required to pay in accordance with the garnishment.

RECOMMENDATION 83 ONE GARNISHMENT PROCESS

The same procedure should be used for the attachment of present obligations as is used for the attachment of future obligations. The forms should be designed for use in either situation and should clearly communicate to the garnishee the full extent of his or her obligations depending on the nature of the materials filed in support of the garnishment.

**RECOMMENDATION 84 CONDITIONS AFFECTING ATTACHABLE
DEPOSITS**

There should be a statutory list of conditions, similar to the list contained in the English *Supreme Court Act*, 1961, that are deemed not to prevent attachment of a deposit held by an enforcement debtor.

**RECOMMENDATION 85 JUDICIAL DISCRETION REGARDING
CONDITIONS OR CONTINGENCIES**

The court, on application of the enforcement creditor, should be authorized to order:

- a) that the condition affecting the debt otherwise attached be waived and the garnishee required to make payment into court, notwithstanding the condition, where the court is satisfied that such an order would cause no prejudice to the garnishee;
- b) that the enforcement debtor satisfy the condition, where the court is satisfied that such an order would cause the enforcement debtor no unreasonable prejudice, or

- c) that some alternative action be taken to permit the garnishee to make payment pursuant to the garnishee summons, notwithstanding the condition, without suffering prejudice.

No such order should have the effect of requiring the garnishee to make payment into court pursuant to the garnishee summons before the earliest time that he or she could have been required to make such payment pursuant to the terms of his or her relationship with the enforcement debtor.

RECOMMENDATION 86 RETENTION OF WAGE GARNISHMENT

Wage garnishment should be retained as a remedy for judgment creditors.

RECOMMENDATION 87 PROHIBITION ON TERMINATION

The receipt of a garnishee summons by an employer should never be acceptable as a justification, even a partial justification, for dismissal of an employee. Section 115 of the *Employment Standards Code* should be amended by removing the word "sole".

RECOMMENDATION 88 GARNISHMENT OF CURRENT WAGES

A garnishee summons should be effective only in respect of wages payable for the current pay period if it is served 10 days before pay-day. If the pay period is less than 10 days, then the summons should be effective if served five days before pay-day.

RECOMMENDATION 89 FUNDS IN COURT

Garnishment should replace both the stop order and the ECA, section 7, application as the means by which an enforcement creditor can attach a fund in court to which the enforcement debtor is, or might become, entitled. The creditor wishing to enforce against funds in the hands of the clerk should serve a garnishee summons.

RECOMMENDATION 90 RETENTION OF EQUITABLE RECEIVERSHIP

The remedy of receivership should be maintained as an enforcement process available to creditors who have filed writs of enforcement with the sheriff in cases where no other remedy is available or where the available remedy cannot be used effectively.

RECOMMENDATION 91 JUDICIAL INVOLVEMENT

Receivership should be initiated by order of the court. Its availability should continue to be at the discretion of the court, and the court should tailor the remedy to suit the circumstances of the case in which it will be used.

RECOMMENDATION 92 PRINCIPLE GOVERNING DISCRETION

The appointment should be made where the standard enforcement processes cannot be employed effectively and it is just and convenient that a receiver be appointed. The courts should be given a list of factors that can be considered in determining whether or not the appointment is just and convenient. The statute should also make it clear that the remedy is available whether or not the asset is one that is susceptible to the standard enforcement processes. It should also be available regardless of the nature of the impediment or hindrance that prevents use of a standard enforcement process.

RECOMMENDATION 93 SPECIFIC ASSETS

A receivership should be granted only for a specific asset or class of assets. It should not be ordered for the exigible assets of the debtor generally.

RECOMMENDATION 94 THE RECEIVER

A person who is competent and willing to carry out the tasks that will be required in the particular situation, and whose integrity is warranted, should be appointed as a receiver. This might be the sheriff, or in the proper case, and subject to the proper controls, even the creditor.

RECOMMENDATION 95 POWERS AND DUTIES OF THE RECEIVER

The statute should provide that the court can grant the receiver whatever powers are necessary to carry out the receiver's responsibility. There should be no limitation as to the kinds of powers that the court can give the receiver. The powers should be tailored to fit the circumstances. For the sake of clarity, the statute should provide a non-exhaustive list of specific powers that the court might grant. The statute should also list the minimum duties of the receiver.

**RECOMMENDATION 96 COURT-FASHIONED ENFORCEMENT
PROCESS**

The court should have the power to give directions for enforcement against a specific asset when the standard enforcement processes are not suitable. The process ordered should ensure the protection of all interests that require protection.

RECOMMENDATION 97 IN PERSONAM REMEDY

Where the sheriff has been unable to realize a specific exigible asset of the debtor because of the interference of the debtor, or for any other reason, the court should have the power to grant an *in personam* order requiring the debtor, if it is within the debtor's power to obey, to deliver up the asset for enforcement or to take any other steps possible to make the asset available for enforcement or to effect a liquidation of the asset or the completion of a sheriff's sale.

RECOMMENDATION 98 THE CHARGING ORDER

The charging order remedy established by the *Judgments Act, 1838* should be abolished.

The charging order procedure provided by the *Partnership Act* for enforcement against a debtor's interest in a partnership should be abolished and replaced by a receivership procedure that accomplishes the same purpose and gives the same protection to other partners.

RECOMMENDATION 99 STRUCTURE OF THE EXEMPTIONS SYSTEM

The present overall structure of the exemptions system should be continued, whereby protection is given to:

- a. property that is required to meet basic necessities such as food, clothing and shelter;
- b. property that is required by the debtor to earn a livelihood; and
- c. a portion of the debtor's income from employment.

The approach taken in the current statute to avoid obsolescence and promote currency of the descriptions of exempt property, through the use of general descriptions for the classes of exempt property with monetary or other forms of limitation, should be continued.

The exemptions provisions should be restructured so that their central focus is not on the participants in any one industry, such as agriculture. Exemptions appropriate for a specific class of debtors should be stated separately from those appropriate for all debtors.

There should be some mechanism to ensure that the monetary limits are altered to account for inflation.

RECOMMENDATION 100 FOOD

There should be an exemption for such food, and products from which food can be made, as is sufficient to provide for the reasonable needs of the debtor and for the debtor's dependants, for the next 12 months.

RECOMMENDATION 101 CLOTHING

There should be an exemption for the necessary clothing of the debtor and for the debtor's dependants.

RECOMMENDATION 102 SHELTER

The present shelter exemption, which exempts the rural debtor's home (one quarter section) regardless of its value, and the urban debtor's home if the debtor's equity in it is less than \$40,000, should be continued subject to a reconsideration of the adequacy of the monetary limit.

The rural exemption should apply, however, only if the debtor gains the primary portion of his or her livelihood from farming land that includes the land on which the house is located; otherwise, the rural home should be subject to the same exemption provision as an urban home.

Where the debtor's equity exceeds \$40,000 and the house is sold and \$40,000 is paid to the debtor, the fund or any portion of it should be exempt from enforcement in the debtor's hands for six months provided the debtor is able to establish that the source of the fund for which such exemption is claimed is the exempt proceeds of an enforcement sale.

Where the debtor owns the exempt home jointly or as a tenant in common with another or others, the exemption limit should be reduced. Only that portion of the standard exemption (\$40,000) that equals the debtor's portion of the total equity held by all the co-owners should be exempt. For the purpose of calculating the exemption in such a situation, each joint tenant should be presumed to have an equal share in the equity of the house. The house should not be exempt from enforcement sale if the debtor's share of the equity exceeds the appropriate portion of \$40,000.

The monetary limit prescribed by the provision, \$40,000 at present, should be adjusted periodically in response to inflation. The process of adjustment should be that recommended below.

RECOMMENDATION 103 FURNITURE

The present exemption of furniture and household furnishings and household appliances to the value of \$4000 should be continued, with this monetary limit being adjusted periodically in response to inflation.

RECOMMENDATION 104 MOTOR VEHICLE

There should be an exemption for a motor vehicle to the value of \$5000. The provision should not require that the motor vehicle be needed by the debtor for employment or any other specified purpose. The provision should be so structured that, where the debtor's only motor vehicle is worth more than \$5000, the debtor's equity up to \$5000 should be paid to the debtor and should be exempt for 60 days provided that the debtor can establish that any fund for which such an exemption is claimed is indeed the exempt proceeds of the enforcement sale of the motor vehicle. The monetary limit of this exemption should be adjusted periodically in response to inflation.

RECOMMENDATION 105 MEDICAL AND DENTAL EQUIPMENT

There should be an exemption for medical and dental aids and equipment necessary for the debtor and for the debtor's dependants, with no monetary limit.

RECOMMENDATION 106 PERSONAL SENTIMENTAL MEMORABILIA

There should be an exemption for personal sentimental memorabilia to a value of \$500. The monetary limit should be adjusted periodically in response to inflation.

RECOMMENDATION 107 FARM EXEMPTIONS

The present exemptions giving specific protection to farm debtors should be continued, but they should not be the central focus of the reformed exemptions provision. The reformed exemptions provision should be arranged so that exemptions generally available for all debtors are given primary focus.

The exemption of "one tractor" should be abolished since it is redundant to the general exemption of "farm machinery" and "farm equipment". To forestall any restrictive interpretation of the general provision on the basis that there was once but is no more a specific tractor exemption, the general exemption should be expanded to include "farm vehicles".

RECOMMENDATION 108 GENERAL LIVELIHOOD EXEMPTIONS

There should be one general livelihood exemption of such personal property as the debtor requires in his or her occupation to a maximum value of \$10,000.

The present "tractor", "motor vehicle required in the debtor's trade or calling" and "books of a professional person" exemptions should be abolished.

The monetary limit of \$10,000 should be adjusted periodically in response to inflation.

If one item is selected by the debtor for this exemption and it is worth more than \$10,000, the item should be sold, but \$10,000 of the proceeds should be paid to the debtor and should be exempt for a period of 60 days. If the exemption is claimed for a group of assets, the total value of which exceeds the monetary limit, some part of the group should be sold and the amount of the proceeds representing the unused portion of the exemption should be paid to the debtor on the same basis.

RECOMMENDATION 109 PERCENTAGE EXEMPTION

The amount of a debtor's wages exempt from enforcement should be determined on a percentage basis.

RECOMMENDATION 110 CALCULATION ON NET INCOME

The percentage exemption should be calculated on the debtor's gross employment earnings, minus the basic statutory deductions: income tax; Canada Pension Plan contributions; unemployment insurance premiums; Alberta Health care premiums; and workers' compensation premiums.

RECOMMENDATION 111 MINIMUM EXEMPTION

There should be a minimum wage exemption. The wages of debtors who earn the minimum or less should be completely exempt from enforcement. The minimum monthly exemption should be \$800 for a debtor without dependants. The minimum should increase according to a weighting formula, where the minimum for a debtor with no dependants is weighted as 3, a debtor with one dependant is weighted as 5 (minimum exemption 1330), a debtor with two dependants is weighted as 6 (minimum exemption 1596), and thereafter each additional dependant adds one weighting unit.

The minimum exemption for a debtor with no dependants should be subject to periodic review and adjustment for inflation, and if it is altered the minimum exemptions for debtors with various numbers of dependants should be adjusted according to the weighting formula described above.

The employer should rely on information supplied by the debtor in the TD1 (or equivalent) form filed with the employer to determine the number of dependants to use in the calculations. The debtor's spouse should be regarded as a dependant if the debtor has claimed any amount for a "supported" spouse on the that form.

The creditor should continue to have the right to apply for a reduction of the amount of the exemption to reflect earnings of the debtor's spouse.

RECOMMENDATION 112 APPROPRIATE PERCENTAGE

The percentage for the percentage exemption should be 50% of the debtor's earnings in excess of the minimum exemption.

RECOMMENDATION 113 MAXIMUM EXEMPTION

There should be a maximum exemption of triple the amount of the minimum exemption for a debtor without dependants, and the difference between the minimum and maximum exemptions should be constant, regardless of the number of dependants.

**RECOMMENDATION 114 PROPORTIONAL ADJUSTMENT OF
MAXIMUM AND MINIMUM EXEMPTIONS
FOR PORTIONS OF A MONTH**

The amount of the maximum and minimum exemptions should be increased or decreased proportionately where the period for which the wages or salary is payable is greater or less than one month, assuming that the debtor has earned income for the whole month. If the debtor is employed only during part of a month, however, the full maximum and minimum exemptions should apply.

RECOMMENDATION 115 SCOPE OF EXEMPTION

The exemption should not apply to income from property. It should apply only to income from employment, which might be defined as including wages, salary, commissions or remuneration for work, however computed.

RECOMMENDATION 116 EXEMPTION OF FUTURE SECURITY PLANS

The government should establish a policy for the exemption from enforcement of future income security plans and should review the present policy for the exemption of insurance contracts from enforcement.

RECOMMENDATION 117 ABSCONDING DEBTOR

The denial of exemptions to debtors who have absconded or who are about to abscond should be abolished; however, exemptions should not apply to property that the debtor has abandoned.

**RECOMMENDATION 118 DEBTS ARISING FROM CRIMINAL
ACTIVITY**

Exemptions should continue not to apply to enforcement of debts arising from criminal activity; however, the language of the provision establishing the exemption should be improved so that it is clear that it does not intend to refer to a restitution order under the Criminal Code.

If otherwise exempt property is sold under this exception, and if the proceeds are greater than those required to satisfy the debt, the surplus should be returned to the debtor. It should not be distributed to other enforcement creditors.

RECOMMENDATION 119 CORPORATIONS

The reformed legislation should provide expressly that exemptions do not apply to corporations or partnerships.

RECOMMENDATION 120 ALIMONY AND MAINTENANCE CREDITORS

Generally, exemptions should not apply to the enforcement of alimony or maintenance judgments and orders; however, a debtor should be entitled to the

exemption for wages granted by the regulations under the *Maintenance Enforcement Act*, regardless of whether the alimony or maintenance creditor proceeds under that act or under the general enforcement procedures.

If otherwise exempt property is sold pursuant to this exception, and if there is a surplus of proceeds after the debt is satisfied, the surplus should be returned to the debtor. It should not be distributed to other enforcement creditors.

RECOMMENDATION 121 ROOM AND BOARD CREDITOR

The exception to wage exemptions for debts contracted for board and lodging should be abolished.

RECOMMENDATION 122 CREDITOR FOR PRICE OF EXEMPT PROPERTY

The exemptions provisions should apply to the enforcement of a judgment for the price of the exempt property. The present exception should be abolished.

RECOMMENDATION 123 HOSPITAL CREDITORS

The limited exception created by section 8 of the *Exemptions Act* for hospital creditors should be abolished.

RECOMMENDATION 124 CROWN CREDITORS

The reformed exemptions legislation should provide expressly that the Crown is bound by it.

RECOMMENDATION 125 ADJUSTMENT FOR INFLATION

The lieutenant governor in council should examine the monetary limits for specific exemptions and the minimum wage exemption at least every three years, and the limit or minimum should be adjusted accordingly if it is considered that any of them have been eroded by inflation.

RECOMMENDATION 126 EXEMPTIONS EXIST AS OF RIGHT

The reformed legislation should provide expressly that exemptions, with one exception, are applicable automatically. The procedure mandated by Stevenson D.C.J. in *Carmar Holdings v. Harpe* should be incorporated into the reformed legislation. The exception should be the shelter exemption. Land against which enforcement proceedings are taken should be presumed not to be exempt unless the debtor claims the exemption.

RECOMMENDATION 127 WAIVER OF EXEMPTIONS

Exemptions should not be waivable by the debtor.

RECOMMENDATION 128 RELEVANT TIME

The determination of whether or not property is exempt should be based on the facts at that stage of the enforcement process when the issue of exemptions is relevant. Property exempt at the time of seizure, but no longer exempt at the time of the application for the sale order, should not be considered exempt, and *vice versa*. The exemptions should be considered exemptions from enforcement, and not from seizure.

RECOMMENDATION 129 EXTENDED EXEMPTION

Where the debtor is paid the exempt portion of the proceeds of an enforcement sale, or where exempt property is voluntarily sold by the debtor, the fund should be exempt for 60 days following the conversion, provided that the debtor keeps the fund separate from all other funds. This extended exemption should be lost if the fund is mixed with other funds. In the case of the sale of the debtor's house, the period of the extended exemption should be six months.

RECOMMENDATION 130 SURVIVAL OF EXEMPTIONS

Exemptions from enforcement should continue to apply after the death of the debtor as provided for at present. The debtor's spouse and minor children should be able to claim the deceased debtor's exemptions also where the judgment being enforced was obtained against the estate after the debtor's death.

RECOMMENDATION 131 SELECTION WITHIN THE CLASS

The debtor should continue to have the right to select the particular items in an exempt class of property that shall be exempt. The debtor should be required to make the selection at the time of seizure. If the debtor fails to do so, the selection should be made by the sheriff's officer conducting the seizure.

RECOMMENDATION 132 INSTRUCTION TO SHERIFF

The sheriff should be instructed by the reformed legislation not to seize property that appears to be exempt. The instruction should be subject to the same qualifications as appear now in section 7 of the *Exemptions Act* and in section 45 of the *Seizures Act*.

RECOMMENDATION 133 DISPUTE RESOLUTION

The creditor should continue to have a right to apply for an order declaring any specified property of the debtor to be not exempt from enforcement.

The requirement that the sheriff refer any dispute over the claim of an exemption to the court should be continued.

RECOMMENDATION 134 EXEMPTIONS FROM DISTRESS SEIZURE

The present section 2 of the *Exemptions Act*, which deals with an unrelated matter, exemption from distress seizure by a landlord for rent, should be moved to another appropriate statute, probably the *Landlord and Tenant Act*.

RECOMMENDATION 135 THE SHARING PRINCIPLE

The existing policy foundation of the ECA, the sharing principle, should be retained. The proceeds of enforcement processes against a judgment debtor should be shared among the judgment creditors of that debtor proportionally according to the amount of the creditors' individual judgments.

RECOMMENDATION 136 APPLICATION TO ALL ENFORCEMENT PROCESSES

All monies that come into the sheriff's hands because of the existence of a writ of enforcement, regardless of the process by which the money was raised, should be distributed among enforcement creditors according to the sharing principle.

RECOMMENDATION 137 DIRECT PAYMENTS

The sharing principle should not be applied to direct payments made by an execution debtor to an execution creditor.

RECOMMENDATION 138 SUBSISTING WRITS OF ENFORCEMENT

Distribution of enforcement proceeds should be made only among those creditors whose writs of enforcement or statements as to the status of the judgment debt owed to them have been delivered to the sheriff and have been registered in the Enforcement Registry within the year preceding the distribution.

A writ of enforcement should be considered "subsisting" until one year has elapsed from either the date of its entry in the Enforcement Registry or the date on which the most recent statement of status was registered in the Enforcement Registry.

The present requirements, that a creditor advise the sheriff of any payments received in satisfaction of the judgment debt and of any agreement whereby proceedings under a writ or execution are to be stayed or suspended, should be continued. In the latter case, the writ should cease to be subsisting during the suspension.

RECOMMENDATION 139 PROVINCE WIDE DISTRIBUTION

Distribution of enforcement proceeds should be made on a province-wide basis. Every creditor who has a subsisting writ of enforcement against the debtor in the Enforcement Registry should share, regardless of the sheriff to whom the writ was delivered originally for registration in the Enforcement Registry.

RECOMMENDATION 140 THE CERTIFICATE PROCESS

The certificate procedure contained in the ECA should be abolished.

RECOMMENDATION 141 THE GRACE PERIOD

The 14-day grace period provision should be abolished. The sheriff should make distribution to those creditors in respect of whom he holds a subsisting writ of enforcement at the time that he receives a fund for distribution.

RECOMMENDATION 142 THE RESERVED SHARE

Section 41 of the ECA, which contemplates a judge ordering the sheriff to levy in respect of a claim that a debtor has disputed and the sheriff holding a "reserved share" of the proceeds for the creditor until the claim has been reduced to judgment, should be abolished.

RECOMMENDATION 143 APPLICATION TO THE CROWN

The reformed legislation should provide expressly that it applies to the Crown where the crown debt does not have priority by virtue of statute or crown prerogative.

RECOMMENDATION 144 PREFERRED PAYMENT TO THE ACTIVE CREDITOR

The creditor who instructs and directs an enforcement process that produces a distributable fund should receive a preferred payment of the taxable costs expended in the course of the successful enforcement process plus 15% of the proceeds of the enforcement process, after the taxable costs have been paid. The present priority for the costs of the successful creditor should be abolished. The distributive shares should be calculated after the taxable costs relating to the successful enforcement effort and the preferred payment have been deducted from the enforcement proceeds.

RECOMMENDATION 145 WAGE EARNER PRIORITY

The wage earner priority created by the ECA should not be continued in the reformed legislation. The subject should be left entirely to the *Employment Standards Code*, which should be amended if it does not at present contain all that the Legislature wants to grant by way of special priority to wage earners. The reformed enforcement legislation should require the sheriff merely to honour the preferences and priorities established by other statutes when making a distribution.

RECOMMENDATION 146 DISTRIBUTION OF PROCEEDS OF ENFORCEMENT AGAINST LAND

The sharing principle should apply to the distribution of the proceeds of an enforcement sale of land.

RECOMMENDATION 147 INTERVENING ENCUMBRANCES

An intervening encumbrance on property that is sold in enforcement proceedings should be subordinate only to those writs that were on title before the encumbrance was registered.

As between enforcement creditors, the sharing principle should apply notwithstanding the presence of an intervening encumbrance.

Where "partially exempt" property that is subject to an intervening encumbrance is sold, the amount otherwise payable to the enforcement debtor as exempt proceeds should be reduced by the amount paid out of the proceeds on the intervening encumbrance.

RECOMMENDATION 148 OFF-TITLE WRITS

In the distribution of enforcement proceeds, no distinction should be made between writs that bound the property that is the source of the proceeds and writs that did not.

Registration of writs against the title to debtors' land should be made as easy as possible, if not an automatic consequence of registration of the writ in the Enforcement Registry.

Until automatic registration is possible, the fact that a writ has been registered against the title to a debtor's land, along with a legal description of the land, should be recorded in the Enforcement Registry, for the information of other enforcement creditors.

RECOMMENDATION 149 DISTRIBUTION OF SURPLUS RESULTING FROM ENFORCEMENT OF PRIOR SECURITY INTEREST OR ENCUMBRANCE

A surplus resulting from the enforcement of a security interest in any property bound by a writ should be paid to (or retained by) the sheriff, who should then distribute the funds in the same manner as funds realized through enforcement proceedings, taking into account any exemptions to which the enforcement debtor is entitled.

RECOMMENDATION 150 RULES IN ACT

The basic rules regarding compensation for loss suffered in the course of enforcement proceedings should be set out in the statute.

RECOMMENDATION 151 ENTITLEMENT TO COMPENSATION

A person should have a remedy in respect of an interference or dealing with the person's property in the course of enforcement proceedings only if (a) he or she suffers actual pecuniary loss, or (b) the interference or dealing is a result of misconduct that justifies an award of exemplary damages.

RECOMMENDATION 152 COMPENSATION FOR THIRD PARTIES

Subject to Recommendations 156 and 157, a third person should be entitled to compensation for pecuniary loss suffered as a result of damage to or any interference or dealing with his or her property in the course of enforcement proceedings.

RECOMMENDATION 153 NO COMPENSATION WHERE INTEREST SUBORDINATE TO WRIT

A third person should not be entitled to compensation for pecuniary loss suffered because his or her interest in property is subordinate to a writ of enforcement.

RECOMMENDATION 154 LOSS OF RIGHT TO COMPENSATION THROUGH DELAY

A sheriff who knows of a potential claim against seized property should be required to give notice of the seizure and of the procedure for asserting a claim to the potential claimant.

A potential claimant who does not assert a claim within 14 days after receiving notice should lose any right to compensation that would otherwise have been afforded in respect of the seizure or sale of the property.

Where a claim is asserted within the relevant period, the instructing creditor (or another enforcement creditor, if the instructing creditor does not do so) should then bear the onus of contesting the claim and of applying to the court to determine the issue.

RECOMMENDATION 155 COMPENSATION FOR DEBTORS

An enforcement debtor should be compensated for actual pecuniary loss suffered as a result of someone else's non-compliance with the act in the course of enforcement proceedings.

RECOMMENDATION 156 COMPENSATION FOR CREDITORS

An enforcement creditor who suffers actual pecuniary loss as a result of the negligent performance or non-performance of any of the sheriff's duties under the statute should be entitled to compensation for such loss.

RECOMMENDATION 157 ASSURANCE FUND

Where it is appropriate to compensate a person for loss suffered as a result of enforcement proceedings, the compensation should come from an assurance fund.

RECOMMENDATION 158 FUNDING OF ASSURANCE FUND

The assurance fund should be funded by a levy on enforcement creditors that is included in the fee charged for filing a writ of enforcement in the Enforcement Registry. Writs should be grouped into three levels that are based on their amounts. The levy (and hence the filing fee) should be moderately higher for each successive level.

RECOMMENDATION 159 EXCLUSIVE LIABILITY OF FUND

The assurance fund should be the exclusive source of compensation for any compensable loss suffered by any person as a result of enforcement proceedings.

RECOMMENDATION 160 INDEMNIFICATION OF ASSURANCE FUND

The Crown should be liable to indemnify the assurance fund for a liability incurred through deliberate misconduct or negligence within the sheriff's office.

A creditor upon whose instructions a sheriff takes an action that causes a loss for which the assurance fund is liable should be required to indemnify the fund if the creditor knew or ought to have known that in following the instructions the sheriff would be likely to cause a loss for which the fund could be liable.

A creditor whose negligent or deliberate failure to register required information in the Enforcement Registry causes a loss for which the assurance fund is liable should be required to indemnify the fund.

Creditors who give instructions to the sheriff to take some enforcement step should not in general be required to provide security for their potential obligation to indemnify the assurance fund. On application by a sheriff, however, the court should be able to require a creditor to provide such security.

RECOMMENDATION 161 JUDICIAL DISCRETION

The court should be able to override the specific liability rules set out in the act in special circumstances. These special circumstances would usually relate to the conduct of the various parties. In particular, the court should be able to:

- (a) dismiss an action, even where all the statutory requisites for liability are present, or
- (b) reduce the damages that would otherwise be payable to a party.

LIST OF RECOMMENDATIONS FROM REPORT 50 -
PREJUDGMENT REMEDIES FOR UNSECURED CLAIMANTS

RECOMMENDATION 1

A statutory prejudgment remedy called the "attachment order" should be created. Attachment orders should only be available in the circumstances and in accordance with the procedure and safeguards set out in this report.

RECOMMENDATION 2

The following mechanisms by which an unsecured claimant may obtain prejudgment relief should be eliminated:

- (a) writs of attachment under Rules 485-493 of the Rules of Court;
- (b) garnishee summons before judgment under Rule 470(1);
- (c) appointment of a receiver of proceeds of an auction sale under Rule 465;
- (d) the granting of Mareva injunctions or similar relief under s. 13(2) of the Judicature Act;
- (e) the various existing methods of providing security for a claimant whose default judgment is set aside pursuant to Rule 158.

RECOMMENDATION 3

The Court of Queen's Bench should be authorized to grant an attachment order in respect of any claim which could lead to the recovery by the claimant of a money judgment against the defendant.

RECOMMENDATION 4

An attachment order may be granted only where the court is satisfied that

- (a) there is a reasonable likelihood that the claimant will recover a money judgment against the defendant;
- (b) there are reasonable grounds for believing that the defendant is disposing of or dealing with his property, or is likely to do so (i) otherwise than for the purpose of meeting the reasonable and ordinary business or living expenses of the defendant, and (ii) in a way that is likely to seriously hinder the claimant in the

enforcement of any judgment he might get against the defendant;
and

- (c) it would be just and equitable, taking into account the interests of the claimant, the defendant, and any affected third persons, to grant an attachment order.

RECOMMENDATION 5

An attachment order shall not be used as a means of acquiring jurisdiction to determine the merits of a dispute where the court would not otherwise have or be able to obtain personal jurisdiction over the defendant under the Rules of Court.

RECOMMENDATION 6

- (a) A claimant who has commenced proceedings before a foreign tribunal may apply for an attachment order.
- (b) The court shall not grant such an application unless it is satisfied that
 - (i) a judgment granted by the foreign tribunal would be enforceable in Alberta either by an action on the judgment or by registration of the judgment under the Reciprocal Enforcement of Judgments Act;
 - (ii) the defendant has attachable property in Alberta; and
 - (iii) the grounds for attachment as set out in Recommendation 4 exist.

RECOMMENDATION 7

The power of the court to issue the writ *ne exeat regno* in civil actions should be abolished.

RECOMMENDATION 8

The property potentially subject to prejudgment attachment should consist of all the defendant's exigible property. Property of the defendant which would be exempt from postjudgment execution should be immune from prejudgment attachment, but there should be no special immunities in the latter case.

RECOMMENDATION 9

Notwithstanding Recommendation 8, a prejudgment attachment order shall not permit the garnishment of a defendant's wages, salary or similar income unless the court is satisfied that no other remedy or combination of remedies is likely

to achieve the intended purpose with less serious consequences for the defendant.

RECOMMENDATION 10

The property to be attached shall be determined by the court.

RECOMMENDATION 11

- (a) An attachment order should cause no more inconvenience and disruption to the defendant than is considered by the court to be reasonably necessary in order to achieve the object of the order.
- (b) Without restricting the generality of paragraph (a), an attachment order should allow the defendant to retain possession and control of the attached property so that he may use it for proper purposes, unless the court is satisfied that such an order would be unlikely to prevent the improper disposition of the defendant's property.

RECOMMENDATION 12

Subject to Recommendation 11 an attachment order may:

- (a) prohibit any disposition of or dealing with any property of the defendant, or impose restrictions or conditions on any disposition of or dealing with such property;
- (b) order the defendant or any person in possession of the defendant's property to deliver it up to a person identified in the order;
- (c) authorize the claimant to issue one or more garnishee summons;
- (d) appoint a receiver over any property of the defendant; and
- (e) include or be subject to such terms, conditions, and ancillary provisions as the court considers necessary to ensure that the order operates fairly and effectively.

RECOMMENDATION 13

An attachment order under Recommendation 12(a) may provide that it shall apply to such property as may be subsequently identified for that purpose by the sheriff. A list of the property so identified shall be served on the defendant.

RECOMMENDATION 14

A copy of an attachment order affecting an interest in land may be registered against the title to that land in the Land Titles Office.

RECOMMENDATION 15

The value of the defendant's property to be attached shall be fixed by reference to the claimant's claim (including an allowance for prejudgment interest and costs) plus subsisting enforcement orders.

RECOMMENDATION 16

Two or more claimants may be able to combine their applications for an attachment order, in which case the value of the defendant's property to be attached shall be fixed by reference to the several claims of those applicants whom the court is satisfied are entitled to attachment orders, plus subsisting enforcement orders.

RECOMMENDATION 17

For the purpose of Recommendations 15 and 16, the value of a claimant's claim shall be estimated by the court on the basis of the evidence before it.

RECOMMENDATION 18

- (a) The value of the property attached under Recommendation 12(b), (c) or (d) shall not exceed the amount determined by the court under Recommendations 15 or 16.
- (b) Where the court makes an attachment order under Recommendation 12(a) it may dispense with any monetary limitation on the scope of the order if such a limitation is likely to make the order unworkable or ineffective.

RECOMMENDATION 19

No antecedent interest of any third person in any property shall be adversely affected by an attachment order.

RECOMMENDATION 20

Any money judgment may be enforced against attached property, and the proceeds of enforcement distributed, as if the property had not been attached.

RECOMMENDATION 21

Subject to Recommendation 22, any purported transfer of an interest in attached property shall have the same effect that it would have had if the attachment order had not been made.

RECOMMENDATION 22

- (a) Any person who, having received notice or having knowledge of an attachment order, knowingly assists or participates in a disposition of or dealing with property which is inconsistent with the terms of the order may be required, in the discretion of the court,
 - (i) to pay compensation in respect of any loss suffered by creditors of the defendant as a result of the disposition or dealing; or
 - (ii) to transfer back to the defendant any attached property or interest therein acquired by that person as a result of the disposition or dealing.
- (b) For the purpose of this recommendation, a person who assists or participates in a disposition of land against which an attachment order is registered in the Land Titles Office may be presumed to have done so with knowledge of the terms of the order, unless it is established that he did not have such knowledge.
- (c) Where a person has incurred a legal duty in favour of someone other than the defendant prior to receiving notice or knowledge of an attachment order, nothing which it is necessary for that person to do in order to discharge that duty shall be regarded, as against him, as participating or assisting in a disposition or dealing which is inconsistent with the terms of the order.
- (d) An order under clause (a)(i) shall be for the benefit of all creditors who would be entitled to share in a distribution of monies in the hands of the sheriff as a result of an enforcement order against the defendant, and the respective shares of such creditors in any amount recovered under the order shall be determined in the same manner that their respective shares in monies in the hands of the sheriff as a result of an enforcement order against the defendant would be determined.
- (e) An order under clause (a)(ii) shall not affect any interest in the attached property of any person not referred to in paragraph (a).
- (f) This recommendation is not intended to limit the power of the court to punish for contempt.

RECOMMENDATION 23

An application for an attachment order shall be made to a judge.

RECOMMENDATION 24

The court may grant an attachment order notwithstanding that the claimant has not commenced an action.

RECOMMENDATION 25

An application for an attachment order may be made *ex parte*.

RECOMMENDATION 26

A claimant making an *ex parte* application for an attachment order shall make full and fair disclosure of all material information known to the claimant.

RECOMMENDATION 27

An affidavit filed in support of an application for an attachment order, or at least one of the affidavits filed in support of the application where more than one is filed, shall state with as much precision as possible the net amount claimed by the claimant from the defendant after allowing for all just set-offs, counterclaims and credits. Such a statement shall not preclude the claimant from recovering a larger amount at the trial of the action.

RECOMMENDATION 28

Every affidavit filed in support of an application for an attachment order shall contain a statement that the affidavit makes full and fair disclosure of all material information known to the affiant, whether that information favours the claimant or not.

RECOMMENDATION 29

An attachment order may be granted or, if already granted, continued, notwithstanding any defect of form in the material relied upon in support of the application for the order.

RECOMMENDATION 30

- (a) The defendant, any person claiming an interest in attached property or the person in whose possession the property was at the time of its attachment may have it released from attachment upon providing sufficient alternative security.
- (b) The form and amount of the security may be determined by agreement between all interested persons or may be determined

by the court, having regard to all the circumstances, including the apparent value of the defendant's interest in the attached property.

RECOMMENDATION 31

Every attachment order shall be served on the defendant as soon as reasonably possible after it is made.

RECOMMENDATION 32

- (a) Every attachment order granted on an *ex parte* application shall specify a date after which it shall expire unless it is in the meantime continued beyond that date on an application made on notice to the defendant.
- (b) The date so specified shall be not more than 21 days after the date the order is made, unless the court is satisfied that special circumstances exist which justify a later date.
- (c) If it would be impractical or inexpedient to hear the claimant's application on notice to continue the *ex parte* attachment order before the order would otherwise expire, the court may extend the order on a further *ex parte* application by the claimant.

RECOMMENDATION 33

Notwithstanding Recommendation 32, a defendant against whom an *ex parte* attachment order has been granted may apply at any time for an order terminating or modifying the attachment order.

RECOMMENDATION 34

- (a) Subject to Recommendation 35, on an application to continue or to terminate an *ex parte* attachment order, the issue shall be whether the evidence presently before the court justifies the continuation of the order, rather than whether the *ex parte* order was properly granted in the first instance.
- (b) On any such application the claimant shall have the onus of justifying the continuation of the order.

RECOMMENDATION 35

Where a claimant has failed to disclose material information in obtaining an *ex parte* attachment order, the court may terminate or may continue the order, and in either case may make any order as to costs which the court considers appropriate.

RECOMMENDATION 36

The court may terminate an attachment order on the application of the defendant or any affected third person where for any reason it appears to the court that it would be just to do so.

RECOMMENDATION 37

- (a) The claimant, the defendant or any affected third person may apply at any time to have an attachment order varied or clarified, and the court may vary or clarify an attachment order in any case where it appears just to do so.
- (b) Without limiting the generality of the foregoing, the court may vary an attachment order so as to permit legitimate dispositions of the defendant's property.

RECOMMENDATION 38

- (a) A claimant who obtains an attachment order shall file an undertaking in favour of the defendant and third persons to pay any damages, including exemplary damages, or indemnification that the court considers the claimant ought to pay.
- (b) The claimant may be required to file any additional undertakings which the court considers appropriate.

RECOMMENDATION 39

The court may require the claimant to provide security for his undertaking or undertakings, in such amount and in such form as the court considers appropriate.

RECOMMENDATION 40

Unless it is otherwise ordered by the court, and subject to Recommendation 32, an attachment order shall terminate:

- (a) upon the dismissal, discontinuance or other termination of the claimant's proceeding; or
- (b) where the claimant recovers a money judgment against the defendant, at the end of the sixtieth day following the issuing of an enforcement order in respect of the judgment.

RECOMMENDATION 41

- (a) The court may authorize the sale or other disposition of attached property where

- (i) the property is likely, through physical deterioration or other cause, to depreciate substantially in value prior to the conclusion of the proceedings;
 - (ii) keeping the property under attachment pending the conclusion of the proceedings would be likely to result in unreasonable costs in relation to its value; or
 - (iii) for any other reason it appears just and expedient to do so.
- (b) The court may require the claimant to provide security for any damages which may be suffered by any person as a result of the sale or disposition of the attached property.

APPENDIX B

EXISTING LEGISLATION

and

RULES OF COURT

EXECUTION CREDITORS ACT

CHAPTER E-14

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) "Court" means the Court of Queen's Bench;
- (b) "district" means a judicial district;
- (c) "execution" means a writ of fieri facias, and every subsequent writ for giving effect to a writ of fieri facias;
- (d) "judge" means a judge of the Court of Queen's Bench;
- (e) "subsisting execution" means an execution in the hands of a sheriff other than one that by this Act he is directed to disregard.

Attachment on behalf of creditors

2 Except in the cases where it is otherwise specifically provided by this Act, all property seized or attached by virtue of

- (a) a writ of execution,
- (b) a writ of attachment,
- (c) garnishee proceedings, or
- (d) proceedings in the nature of equitable execution,

shall be deemed to have been attached on behalf of all creditors entitled by this Act to share in any money received by the sheriff by reason of the seizure or attachment.

Jurisdiction of sheriff

3 All money realized by the seizure or attachment shall be dealt with and distributed by the sheriff of the district in which the seizure or attachment is made under this Act.

Seizure Under Writ of Execution

Seizure under writ of execution

4(1) A sheriff shall not proceed to make a seizure under a writ of execution until he has been instructed to do so in writing by or on behalf of the execution creditor.

(2) A sheriff is not bound to make a seizure under a writ of execution until he has been furnished with security which he considers to be reasonably sufficient for indemnity in respect of

(a) his fees, charges and expenses, and

(b) any claims for damages that might be incurred by him in making the seizure and levy and anything done in relation thereto.

(3) On the requisite instructions being given and any security required by the sheriff for his indemnity being furnished, the sheriff

(a) shall make a seizure of the exigible goods and chattels sufficient to satisfy all the subsisting writs of execution then in his hands against the judgment debtor,

(b) shall seize for the aggregate amount of all the subsisting executions then in his hands, and

(c) shall set out in his warrant and notice of seizure

(i) the names of all the execution creditors, and

(ii) the aggregate amount for which the seizure is made.

(4) If a sheriff has made a seizure under a writ of execution he shall give notice in writing of the seizure to all persons that at the time of seizure have subsisting executions in his hands.

(5) If the sheriff has made a seizure and the execution creditor on whose instructions the seizure was made instructs the sheriff to release or abandon the seizure at a time at which there are other subsisting executions against the debtor in the hands of the sheriff, the sheriff shall give notice in writing that he has been so instructed to all other persons on whose behalf he has then in his hands a subsisting writ of execution.

(6) If a person on receiving the notice mentioned in subsection (5)

(a) within 10 days after the day on which the notice is mailed gives the sheriff instructions in writing to continue the seizure, and

(b) furnishes the sheriff with the security required by him for his indemnity,

the sheriff shall, in every respect as if that person had been the person who had originally instructed the sheriff to make the seizure, continue the seizure and all proceedings thereunder to the extent of the aggregate of the sums payable under all the subsisting executions then in his hands other than those in respect of which he has been instructed not to seize, or not to continue seizure, or to discontinue, release or abandon the seizure, as the case may be.

(7) The sheriff, on receipt of the instructions referred to in subsection (5) to release or abandon the seizure, shall not release or abandon the seizure until the expiration of the 10 days referred to in subsection (6), unless he is instructed in writing to do so by all persons who at the time of the receipt of the instructions to release or abandon the seizure had subsisting writs of execution in his hands.

(8) If a seizure has been made under a writ of execution any other creditor who has a subsisting writ of execution in the sheriff's hands may by writing require the sheriff to take any proceedings to enforce the executions in his hands that can be lawfully taken by the sheriff, and thereupon on provision being made for the sheriff's fees and expenses and indemnity, if required, the sheriff shall comply with that requirement.

(9) If the sheriff has made a seizure under a writ of execution and subsequent to the seizure receives any other writ of execution, on being instructed to do so and on being furnished with any security required by him for his indemnity, he shall make any further or additional seizure that he considers proper having regard to the amount of money owing under all the subsisting executions then in his hands.

Garnishee Proceedings

Garnishee summons

5(1) On a garnisheeing creditor filing with the clerk of the Court of a district a certificate of the sheriff of that district in the prescribed form, certifying the total amount of the subsisting executions against the debtor in his hands as at the day on which the garnishee summons is to be issued, the clerk at the request of the garnisheeing creditor shall issue the garnishee summons

(a) for the amount of the claim of the garnisheeing creditor, and

(b) for the amount payable in respect of all the subsisting executions other than an execution for the amount of the garnisheeing creditor's claim,

together with costs.

(2) A garnishee summons served on the garnishee as and from the time of service binds each debt due or accruing due from the garnishee to the debtor or so much thereof as is necessary to satisfy the amount set out in the summons

together with the costs payable in respect of the summons under the Alberta Rules of Court.

(3) A garnishee summons issued under this section shall be in the form prescribed by the regulations or by the Alberta Rules of Court.

Availability of money paid into court

6 If money is paid into Court under any garnishee proceedings in the Court, it shall be available for distribution by the sheriff among the execution creditors of the debtor whose debt is garnisheed except when

- (a) the money paid into Court is not liable to attachment,
- (b) the amount paid into Court does not exceed the sum of \$50,
- (c) by virtue of any statute or rule of court the money is required to be paid to the debtor as being exempt from attachment, or
- (d) it is otherwise ordered by the Court.

Payment to sheriff of fund in court

7 When there is in the Court a fund belonging to an execution debtor or to which he is entitled, the fund or a part thereof sufficient to pay the subsisting executions in the sheriff's hands, on application to the Court by the sheriff or any party interested, may be paid over to the sheriff and the money shall be deemed to be money received by him under execution within the meaning of this Act.

Payment to sheriff under garnishee summons

8(1) Except in cases where it is otherwise specifically provided by this Act, or where it is otherwise ordered by the Court, all money paid into Court by virtue of a garnishee summons shall without an order be paid by the clerk of the Court to the sheriff of his judicial district,

- (a) if the garnishee summons is based on a judgment, immediately after the expiration of the 10th day after service of the summons on the judgment debtor and on the garnishee or after any longer period that may be ordered by the Court or judge, or
- (b) if the garnishee summons is issued before judgment, immediately on the plaintiff entering judgment against the defendant or at any later time that may be ordered by the Court or judge.

(2) Immediately on the receipt by the sheriff of any money from the clerk of the Court

- (a) if there are no subsisting writs of execution against the debtor whose debt was garnisheed or against any of the persons entitled to the money,

the sheriff shall immediately pay out the money or the part of the money in respect of which he has no subsisting writs of execution either to the persons entitled by law to receive it or to their solicitors, or

(b) if there is a subsisting execution against the debtor or any of the persons entitled by law to receive the money, the sheriff shall retain the money and shall distribute it as money levied under execution among the creditors of the debtor or the person entitled to receive the money, as the case may be.

Records to be kept by sheriff

9 Immediately on the receipt by the sheriff of any money that is available for distribution among creditors, the sheriff

(a) shall make an entry thereof in a book kept in his office setting out the date of the receipt of the money, and

(b) shall keep any other records and make any other entries prescribed by the regulations.

Distribution of Money

Distribution of money

10(1) Except in cases where it is otherwise specifically provided by this Act and subject to the other provisions of this Act relating to priorities, all money received by a sheriff in respect of an execution shall be distributed immediately after

(a) the expiration of 14 days after the day on which the money is so received, or

(b) any longer period that a judge may order.

(2) The distribution shall be made among those creditors of the execution debtor who have subsisting executions in the hands of the sheriff either

(a) within 14 days after the receipt of the money by the sheriff, or

(b) within any further period, not exceeding 14 days, as a judge may order in a case when it appears to him either

(i) that the money represents the proceeds of all the exigible goods of the debtor, or

(ii) that there are no other goods available to creditors other than those who, within the period of 14 days, had subsisting executions in the hands of the sheriff.

(3) When a sheriff is disbursing money received in respect of an execution he may pay the money to the execution creditor or to the solicitor of the execution creditor.

Costs

11 When a creditor

(a) institutes and continues proceedings for the seizure, garnisheeing or attachment of any property that by this Act he is deemed to have seized or attached on behalf of other creditors, or

(b) instructs continuance of any such proceedings that have been abandoned by the creditor instituting them,

and the proceedings taken by him directly result in payment of any money to the sheriff, then he is entitled to be paid out of the money

(c) his taxed costs subsequent to judgment, and

(d) his costs of all proper and necessary steps or proceedings taken by him for the realization of the money and the payment thereof to the sheriff,

in priority to the claims of the other creditors of the execution debtor entitled by this Act to share in the money.

Distribution when fund insufficient for full payment

12 When the amount received by the sheriff in respect of an execution is not sufficient to pay in full the claims of creditors and the executions with costs, the sheriff shall

(a) firstly, retain his fees,

(b) secondly, in the event of a creditor being entitled under this Act to priority for costs, pay those costs to that creditor or his solicitor,

(c) thirdly, pay the claim of a person who is entitled to be paid in preference to any other creditor, and

(d) fourthly, distribute the balance, if any, ratably among the execution creditors who are entitled to share therein under this Act.

Distribution of money paid without seizure

13 When money is paid to the sheriff in respect of an execution or attachment without a seizure having been made thereunder,

(a) if the amount is sufficient to pay the full amount payable under all executions in the sheriff's hands that are at the time of payment valid and subsisting, or

(b) if the sheriff has at the time of payment no more than one execution in his hands that is then valid and subsisting,

then in either case the sheriff shall deal with the money so paid having regard only to the executions in his hands at the time of payment and that were then valid and subsisting.

Effect of delivery of execution

14 After an execution has been delivered to the sheriff

(a) the subsequent withdrawal or expiration of any other execution on which the proceedings are founded,

(b) any stay on the writ,

(c) the satisfaction of the plaintiff's claim, or

(d) the setting aside of the return of the writ,

does not affect the proceedings under this Act.

Discontinuation of proceedings

15 No proceeding whereby property has been attached by virtue of a writ of attachment, garnishee proceedings or proceedings in the nature of equitable execution shall be discontinued, withdrawn or settled as against a debtor except by leave of a judge, unless at the date of the discontinuance, withdrawal or settlement there are no subsisting writs of execution against the debtor in the hands of the sheriff of the district in which the proceedings are taken.

Priorities

Priority of wage claims

16(1) All persons who

(a) are employed by an execution debtor at the time of or within one month before the seizure under execution in respect of which any money is realized by the sheriff, or

(b) before the expiration of the time fixed for the distribution of the money so realized, file in the office of the sheriff their claim for wages or salary with the particulars thereof proved by affidavit,

are, subject to subsection (3), entitled to be paid out of the money so realized the amounts mentioned in subsection (2).

(2) The persons referred to in subsection (1) are entitled to be paid out of the money realized,

(a) the amount of wages or salary due to each of them by the execution debtor not exceeding wages or salary for 3 months, in priority to the claims of the other creditors of the execution debtor, and

(b) a pro rata share with the other creditors in respect of the residue, if any, of their claims for wages and salary.

(3) This section applies only to wages and salary actually owing and accrued and not for any unearned portion of any wages or salary.

(4) This section applies to wages and salary whether the employment in respect of which they are payable is by the day, week, month or year.

Proceeds of sale

17(1) When money received by the sheriff represents the proceeds of the sale of an article under execution on a judgment rendered in an action for the price of the article, and the article would otherwise be exempt from seizure under the *Exemptions Act*, that money is not liable to distribution among other execution creditors but shall be applied on the execution under which it was levied.

(2) If the amount received by the sheriff is more than sufficient to pay the execution debt with costs in full, the balance in the sheriff's hands shall be paid over to the execution debtor.

(3) If the amount so received is insufficient to pay the execution debt with costs in full, the execution creditor, to the extent of the deficiency, is entitled to share ratably with the other execution creditors in any other money received by the sheriff under execution against the debtor.

Proceedings by Creditors and Claimants

Proceedings by creditors after seizure, etc.

18 When the sheriff has seized goods and chattels under a writ of execution or a debtor allows an execution against his land to remain unsatisfied for 9 months after it has been placed in the sheriff's hands, the proceedings authorized by sections 19 and 20 may be taken by other creditors or claimants in respect of debts that are overdue.

Affidavit of debt

19(1) An affidavit of the debt and the particulars thereof in the prescribed form may be made in duplicate

- (a) by the creditor,
- (b) by one of the creditors in case of a joint debt, or
- (c) by a person cognizant of the facts and authorized by a creditor to do so.

(2) The claimant

- (a) shall serve on the debtor a duplicate of the affidavit of claim and a notice in the prescribed form, and
- (b) shall send a copy of the notice to each creditor who has a subsisting execution in the hands of the sheriff or to his solicitor or agent.

(3) If the affidavit and notice are to be served outside of Alberta, a judge by order may fix the time after which the next step may be taken by the claimant as hereinafter provided.

(4) The claimant shall file a duplicate of the affidavit of claim and a copy of the notice with an affidavit of service thereof in the prescribed form with the clerk of the Court of the district the sheriff of which has the execution.

(5) Before or at the time of filing the affidavit with the clerk of the Court, there shall be filed with him a certificate of the sheriff or an affidavit showing

- (a) that proceedings have been had against the debtor that entitle the creditor to proceed under this Act, and
- (b) the names of the creditors who have in the sheriff's hands subsisting executions.

(6) An execution debtor may by notice in writing to the sheriff furnish him with the address for service within Alberta of all notices and other documents, and the sheriff shall make an entry thereof in his books.

(7) If the notice served on a debtor

- (a) does not state some place, within 16 kilometres of the office of the clerk of the Court of the district within which the proceedings are being taken, at which service may be made on the claimant, or
- (b) does not give the name and address of some solicitor within Alberta who may be served on the claimant's behalf,

good and sufficient service of a notice, paper or document may be made on the claimant by posting up the paper or document in the office of the clerk of the Court.

Certificate of judgment

20(1) When a claim made is not contested in the manner set out in section 21, then, on the application of the claimant and on his filing proof of due service of the affidavit and notice, the clerk of the Court shall, after

- (a) 10 days from the date of service if it was made within Alberta,
 - (b) the time fixed by the order under section 19(3) if the service was made outside Alberta,
 - (c) 20 days from the date of service if it was made in Canada and outside Alberta and no order was made under section 19(3),
- or
- (d) 25 days from the date of service if it was made in the United States of America and no order was made under section 19(3),

make out and enter a certificate of judgment in the prescribed form for the amount of the claim and costs.

(2) When the claim is contested and the dispute is determined wholly or partly in favour of the claimant, the clerk shall make out and enter the certificate of judgment for the amount, including costs, if any, allowed the claimant.

(3) When the claim is disputed with regard to a part only, the claimant may elect by a document in writing filed with the clerk to abandon that part and the clerk shall make out and enter a certificate of judgment for the residue and costs.

(4) Each certificate of judgment made out and entered pursuant to this section is a judgment of the Court and is enforceable in any manner in which a judgment may be enforced.

Contesting claim

21(1) The claim referred to in sections 18 and 19 may be contested by the debtor or by a creditor of the debtor.

(2) If the debtor contests the claim he shall file with the clerk an affidavit stating that he has a good defence to the claim or to a specified part of it on the merits, but a judge may dispense with the affidavit on terms or otherwise.

(3) The debtor shall file the affidavit

- (a) within 10 days after service on him of the affidavit of claim and the notice,
- (b) within the time fixed by order of a judge, or

(c) within any further time that a judge may allow.

(4) When a creditor contests the claim, he shall file with the clerk an affidavit to the effect that he has reason to believe that the debt claimed is not in fact and in good faith due from the debtor to the claimant, but a judge may dispense with the affidavit on terms or otherwise.

(5) Notice that the claim is contested, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served on the claimant within 5 days after the affidavit has been filed or after the order has been made by the judge if the affidavit is dispensed with.

(6) The affidavit by a creditor may be filed and a certified copy of it delivered to the sheriff at any time before the money claimed is distributed, and the sheriff shall forthwith give notice of the receipt of the certified copy to the claimant and all creditors of the debtor who then have subsisting executions in his hands.

(7) The affidavit of the debtor or other contestant shall have endorsed thereon a statement of some place within 5 kilometres of the office of the clerk at which service may be made on him, or the address of a solicitor within Alberta who may be served on his behalf, and in default thereof service of a notice, paper or document may be made on the debtor or contestant by filing it in the office of the clerk.

(8) If the address given for service is that of a solicitor and it is not within 5 kilometres of the clerk's office, service may be made on the solicitor by sending papers by registered mail to him at the address given.

Hearing

22(1) A judge may, on notice being given to any persons he considers proper, proceed to hear and determine in a summary manner the application of a claimant whose claim is contested and for that purpose may

(a) receive evidence either orally or by affidavit, or both,

(b) make an order

(i) allowing the claim and determining the amount thereof,
or

(ii) disallowing the claim,

and

(c) make any order as to the payment of costs that he thinks proper in the circumstances.

(2) If a claimant who has received notice that the claim is contested does not apply to a judge to hear and determine the contest within the period of 10 days after the receipt of the notice or within any further time that a judge may fix by order either before or after the expiration of 10 days, he shall be deemed to have abandoned his claim.

(3) On the application of a creditor, the judge by order may give leave to that creditor to intervene in a contest on the claim if it appears to the judge that a contest on that claim is not being carried on in good faith by any other creditor.

Effect of execution pending distribution

23 Notwithstanding the expiration of an execution before the termination of 14 days after the date of entry of the receipt by the sheriff of any money available for distribution among creditors under this Act, the execution, so far as it relates to any money so received, remains in force until the money has been distributed.

Levy by sheriff

24 When a claim is contested by a creditor after the execution based on the certificate of judgment has been placed in the sheriff's hands, the sheriff, unless the judge otherwise orders,

- (a) shall levy as if the claim had not been contested,
- (b) until the determination of the contest shall retain in a bank or treasury branch the amount that would be apportionable to the claim if valid, and
- (c) as soon after the expiry of the period of 14 days as is practicable shall distribute the residue of the money made from the levy among those entitled.

Sum in controversy

25 If the sum in controversy does not exceed the sum of \$200 the determination of the judge is binding and conclusive on all the parties thereto, and no appeal lies therefrom.

Proceedings before application

26 Before the application to the judge and as a foundation for the application, the same proceedings may be taken for the production of documents and for the examination of parties or others as may be taken in an ordinary action.

Records of Clerk and Sheriff

Recording certificate of judgment

27(1) The clerk of the Court on making out a certificate of judgment shall make an entry thereof in an appropriate book with the following particulars:

- (a) the name and address of the claimant and of the debtor,
- (b) the date of the entry,
- (c) the amount of the debt exclusive of costs,
- (d) the amount of costs, and
- (e) if the proceedings have been set aside, that fact and, briefly, the reason therefor.

(2) The clerk shall index the entries alphabetically in a book under the names of the debtors.

(3) If the original papers are lost or destroyed an entry made under this section shall be deemed to be an entry of final judgment and a copy certified by the clerk is conclusive proof thereof.

Payments

28 If

- (a) an execution creditor
 - (i) receives any money on account of an execution debt,
 - (ii) receives anything by way of satisfaction, either wholly or in part, of an execution debt, or
 - (iii) enters into an agreement whereby proceedings under a writ of execution are to be stayed or suspended,

or

- (b) an order is made staying the execution,

the execution creditor shall immediately thereafter deliver to each sheriff to whom the writ of execution has been delivered a notice in writing setting out with particularity each payment, satisfaction or agreement, or a certified copy of each order, as the case may be.

Term of writ of execution

29(1) The sheriff shall disregard every writ of execution that is in his hands, as the case may be,

- (a) after the expiration of the period of one year from the time of the delivery of the writ of execution to him, or
- (b) after the expiration of the period of one year

(i) from the date of the delivery of the last statement made pursuant to section 28 with respect to the execution, or

(ii) after the delivery to him of a notice in writing by the creditor or his agent setting out the amount leviable under the writ of execution.

(2) Each writ that the sheriff by this section is directed to disregard shall be deemed not to be a subsisting execution.

(3) The sheriff on receipt of any notice referred to in this section shall make an entry with respect thereto as if it were a statement given under section 28.

Failure to make return by creditor

30 If a creditor fails to make a return that he is required to make pursuant to this Act and by reason of the failure

(a) the sheriff makes an excessive or wrongful levy, or

(b) a creditor makes an excessive or wrongful attachment,

the creditor is liable for any damages occasioned thereby and no action is maintainable against the sheriff in respect thereof.

Distribution When Money Insufficient

Distribution statement when money insufficient

31(1) If at the time fixed by this Act for distribution the money realized is insufficient to pay all claims in full, the sheriff shall immediately prepare for examination by the debtor and his creditors a statement setting out the creditors entitled to share in the distribution with the amount due to each for principal, interest and costs.

(2) The statement shall be arranged to show the amount payable to each creditor and the total amount to be distributed, and the sheriff shall deliver or send by registered mail to the debtor and to each creditor or his solicitor a copy of the statement.

(3) If no objection as provided by this Act is made within 10 days after all the copies of the statement have been delivered or posted or within any further time that a judge may allow, the statement is final and conclusive as between all persons and the sheriff, and the sheriff shall make distribution forthwith pursuant to the statement.

(4) If objection is made, the sheriff shall forthwith distribute ratably as much of the money realized and among such persons as will not interfere with the effect of the objection if it should be allowed.

(5) A person affected by the proposed scheme of distribution may contest it by giving, within the time mentioned in subsection (3), a notice in writing to the sheriff stating his objection to the scheme and the grounds thereof.

(6) Unless the person contesting the scheme of distribution applies within 10 days thereafter to a judge for an order adjudicating on the matter in dispute, the objection shall be deemed to be abandoned.

(7) The person contesting the scheme of distribution, within the time mentioned in subsection (6), shall obtain from the judge an appointment for hearing and determining the matter in dispute.

(8) A copy of the appointment and a notice in writing in the prescribed form of the objections, stating the grounds thereof, shall be served by the person contesting the scheme of distribution

(a) on the debtor, unless he himself is the debtor,

(b) on the creditors or such of them as the judge may direct, and

(c) on the sheriff.

(9) The judge may

(a) determine a question in dispute in a summary manner, or

(b) direct an action to be brought or an issue to be tried in any district for the determination of a question in dispute,

and make any order relating to the costs of the proceedings that he considers just.

(10) When an issue is directed, the trial shall take place, and all proceedings subsequent thereto shall be the same as if it had been an action in the Court in which the issue is ordered to be tried.

(11) If the sum in controversy does not exceed \$200 the determination of the judge is binding and conclusive on all the parties thereto, and no appeal lies therefrom.

(12) If a claimant is held to be not entitled, or to be entitled to only part of, his claim,

(a) the money retained pending the determination of the dispute, or

(b) the portion thereof to which the claimant has failed to establish his claim,

as the case may be, shall be distributed among the creditors who would have been entitled thereto, and in the same manner as it would have been distributed had the claim not been made.

Apportionment of costs

32 When several creditors are interested in a contested claim, either for or against it, the judge

(a) shall give directions for saving the expense of an unnecessary number of parties and trials and of unnecessary proceedings as he considers just, and

(b) shall direct by whom and in what proportions any costs incurred in the contest or in any proceedings thereunder shall be paid and what costs, if any, shall be paid out of the money levied.

Rights of creditors in interpleader proceedings

33 When proceedings are taken by the sheriff for relief under any provisions relating to interpleader, only those creditors

(a) who are parties thereto, and

(b) who agree to contribute pro rata to the expense of contesting an adverse claim, in proportion to the amount of their executions or certificates,

are entitled to share in any benefit that might be derived from contesting the claim so far as is necessary to satisfy their execution or certificates.

Undertaking interpleader proceedings

34 The judge may direct that one creditor is to undertake the interpleader proceedings on behalf of all creditors interested.

Costs of interpleader proceedings

35 The costs of interpleader proceedings as between solicitor and client are a first charge on the money or goods that are found by the proceedings to be available to satisfy the executions or certificates.

Poundage

36 When money is to be distributed under this Act the sheriff is entitled only to the fees prescribed by the regulations.

General

Memorandum re amount paid under execution

37 When money is realized under an execution the money shall be taken, for the purposes of the sheriff's return and all other purposes, to be realized on all the executions and certificates entitled to the benefit of the execution and the sheriff, on payment being made to the creditor named in any such execution or certificate, shall endorse thereon a memorandum of the amount so paid but he shall not, except

- (a) on the request of the party who issued the writ, or
- (b) by direction of a judge,

return the writ until it has been fully satisfied or unless it has expired by effluxion of time, in which case the sheriff shall make a formal return of the amount paid thereon.

Compelling payment

38 The same proceedings may be taken to compel payment by the sheriff of money payable in respect of an execution or other claim as may be had to compel the return by the sheriff of a writ of execution.

Application for directions

39 When any question, doubt or difficulty arises with regard to the exercise by the sheriff or the clerk of the Court of any power, duty or authority conferred on him by this Act, he may on his own motion apply to the Court for directions and on the application the Court may

- (a) fix the length and manner of notice to be given to the parties which it in its discretion thinks proper, and
- (b) after hearing any evidence, either orally or by affidavit, which it thinks proper,

make an order giving any directions not inconsistent with this Act that it in its discretion considers proper and convenient, and no action or proceeding lies against the sheriff or clerk for anything done pursuant to or in conformity with any direction so given.

Deposit of receipts

40 Every sheriff shall deposit all money received by him in respect of an execution or other proceeding under this Act in the banks or treasury branches and in the manner the Lieutenant Governor in Council from time to time designates.

Order to levy

41(1) The judge may direct the sheriff to levy for an amount sufficient to cover a claim that is in dispute or part thereof.

(2) If it appears to the judge that it is improbable that the debtor has other sufficient property, he may direct the sheriff to retain in his hands during the contesting of a claim the share of money in his hands that, if the claim is sustained, will be apportionable to the claim or a part thereof.

(3) An order to levy under this section confers on the sheriff the same authority as he has under an execution.

Appeal

42 If any party contesting a claim or matter on which a judge has rendered or made a final judgment or order is dissatisfied therewith and the contest involves a sum greater than \$200, he may appeal therefrom to the Court of Appeal as nearly as possible according to the practice in force in respect of appeals from the Court.

Decision binding

43 The decision of the Court of Appeal on an appeal binds the debtor and all his creditors unless it appears that the decision was obtained by fraud or collusion.

Service of notice

44(1) Unless this Act contains express provisions to the contrary, a notice required to be served on a person pursuant to this Act may be served by sending it by registered mail in a prepaid cover addressed to that person at his last known post office address.

(2) Proof that the notice was properly served may be made by affidavit stating

(a) that the notice was sent by registered mail in a prepaid envelope addressed to the person to be served at his last known post office address,

(b) the date and place of mailing of the registered letter, and

(c) the date at which the registered letter would, in the ordinary course of mail, reach its destination.

(3) The date mentioned in subsection (2)(c) shall be deemed to be the date of service of the notice.

Taking of evidence

45 On any proceeding before a judge the evidence may be taken orally or by affidavit as the judge directs.

Application of other Acts

46 The provisions of the *Court of Queen's Bench Act*, the *Judicature Act* and the Alberta Rules of Court apply to proceedings under this Act except where inconsistent with this Act or any regulations made under this Act.

Defect of form

47(1) No proceeding under this Act is void for any defect of form, and the Alberta Rules of Court relating to amending or otherwise curing irregularities or defects apply to all proceedings under this Act.

(2) Proceedings wrongfully taken under this Act may be set aside by the judge with or without costs as he thinks fit.

Regulations

48 The Lieutenant Governor in Council may make regulations

(a) relating to the procedure to be followed and the forms to be used in any proceeding under this Act;

(b) prescribing a tariff of the fees payable to the clerk or to the sheriff in respect of any proceedings under this Act.

EXEMPTIONS ACT

CHAPTER E-15

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Property exempt from seizure

1(1) The following real and personal property of an execution debtor is exempt from seizure under a writ of execution:

(a) the necessary and ordinary clothing of the execution debtor and his family;

(b) furniture and household furnishings and household appliances to the value of \$4000;

(c) cattle, sheep, pigs, domestic fowl, grain, flour, vegetables, meat, dairy or agricultural produce, whether or not prepared for use, or such of them as will be sufficient either themselves or when converted into cash to provide

(i) food and other necessities of life required by the execution debtor and his family for the next 12 months,

(ii) payment of any money necessarily borrowed or debts necessarily incurred by the execution debtor

(A) in growing and harvesting his current crop, or

(B) during the preceding period of 6 months, for the purpose of feeding and preparing his livestock for market,

(iii) payment of current taxes and one year's arrears of taxes or in case taxes have been consolidated, one year's instalment of the consolidated arrears, and

(iv) the necessary cash outlays for the ordinary farming operations of the execution debtor during the next 12 months and the repair and replacement of necessary agricultural implements and machinery during the same period;

(d) horses or animals and farm machinery, dairy utensils and farm equipment reasonably necessary for the proper and efficient conduct of the execution debtor's agricultural operations for the next 12 months;

(e) one tractor, if it is required by the execution debtor for agricultural purposes or in his trade or calling;

(f) either

(i) one automobile valued at a sum not exceeding \$8000, or

(ii) one motor truck,

required by the execution debtor for agricultural purposes or in his trade or calling;

(g) seed grain sufficient to seed the execution debtor's land under cultivation;

(h) the books of a professional person required in that person's profession;

(i) the necessary tools and necessary implements and equipment to the value of \$7500 used by the execution debtor in the practice of his trade or profession;

(j) the homestead of an execution debtor actually occupied by him, if it is not more than one quarter section, but if it is more, the surplus may be sold subject to any lien or encumbrance on it;

(k) the house actually occupied by the execution debtor and buildings used in connection with it, and the lot or lots on which the house and buildings are situated according to the registered plan thereof, if the value of the house, building and the lot or lots does not exceed \$40 000, but if the value does exceed \$40 000, the house, building and lot or lots may be offered for sale and if the amount bid at the sale after deducting all costs and expenses exceeds \$40 000 the property shall be sold and the amount received from the sale to the extent of the exemption shall be paid at once to the execution debtor and is until then exempt from seizure under any legal process, but the sale shall not be carried out or possession given to any person until the execution debtor has received \$40 000;

(l) the mobile home actually occupied by the execution debtor if the value of the mobile home does not exceed \$20 000, but if the value does exceed \$20 000 the mobile home may be offered for sale and if the amount bid at the sale after deducting all costs and expenses exceeds \$20 000 the mobile home shall be sold and the amount received from the sale to the extent of the exemption shall be paid at once to the execution debtor and is until then exempt from seizure under any legal process, but the sale shall not be carried out or possession given to any person until the execution debtor has received \$20 000.

(2) This section does not apply

- (a) when the execution debtor has absconded or is about to abscond from Alberta, leaving no wife or husband or minor children within Alberta, or
- (b) to an execution issued on a judgment or order
 - (i) for the payment of alimony or for the payment of maintenance by a person to that person's spouse or former spouse, as the case may be,
 - (ii) for the payment of maintenance for any child of the execution debtor,
 - (iii) for restitution made under the *Criminal Code* (Canada), or
 - (iv) for damages and costs, if any, arising out of an act in respect of which the execution debtor was convicted of an offence under the *Criminal Code* (Canada).

Exemption from seizure under distress

2(1) The following goods and chattels are not liable to seizure under distress by a landlord for rent:

- (a) the beds, bedding and bedsteads, including carriages and cradles, in ordinary use by the debtor and his family;
- (b) the necessary and ordinary wearing apparel of the debtor and his family;
- (c) one cooking stove with pipes and furnishings, one other heating stove with pipes, 2 towels, one wash-basin, one kitchen table, one tea kettle, one teapot, one saucepan, one refrigerator, one freezer, one washer, one dryer and one frying-pan;
- (d) for each member of the debtor's family, one chair, one cup and saucer, one plate, one knife, one fork and one spoon;
- (e) all necessary fuel, meat, fish, flour and vegetables for the ordinary consumption of the debtor and his family for 30 days;
- (f) the tools or agricultural implements used by the debtor in the practice of his trade or occupation to the value of \$1000;
- (g) one axe and one saw.

(2) This section does not apply when the tenant debtor has absconded or is about to abscond from Alberta, leaving no spouse or minor children within Alberta.

3 Repealed 1984 c51 s4.

Seizure of article when judgment obtained

4 Nothing in this Act exempts from seizure an article the price of which forms the subject matter of the judgment on which the execution is issued, except articles intended for the food, clothing and bedding of the execution debtor and his family.

Rights of family of deceased debtor

5 In case of the death of an execution debtor, his property that is exempt from seizure under execution is exempt from seizure under execution as long as the property

(a) is in the use and enjoyment of

(i) the surviving spouse and minor children, or

(ii) the surviving spouse or minor children,

of the deceased, and

(b) is necessary for the maintenance and support of the surviving spouse and minor children or any of them.

Selection of chattels for exemption

6 When

(a) an execution debtor holds or his estate contains a greater quantity of chattels of a kind exempted from seizure by virtue of sections 1 and 2 than are exempt, or

(b) the estate of a deceased execution debtor contains a greater quantity of chattels so exempt than are necessary for the maintenance and support of his surviving spouse and minor children or any of them,

the execution debtor, or his surviving spouse or family or in the case of minors, their guardian, as the case may be, may select from chattels of the same kind the chattels that are exempt from seizure.

Seizure of exempt goods

7(1) A person authorized to execute a seizure shall not seize any goods that appear to him to be exempt from seizure under this Act, but no liability attaches to that person if in good faith he seizes goods which are later shown to be so exempt.

(2) A creditor, on notice of motion to the debtor, may apply to the Court of Queen's Bench for an order declaring any specified goods of the debtor to be not exempt from seizure under this Act.

Exemption from seizure on hospital judgment

8 The personal property set out in section 1(1)(c)(ii), (iii) and (iv) is not exempt from seizure under an execution issued upon a judgment for a debt owing to a hospital for hospital services, but the amount recoverable on the execution by the seizure of that property shall not exceed in any calendar year the sum of \$200.

Dispute re exemptions

9 If a claim is made for exemptions and a dispute arises in respect of the claim, the sheriff on his own motion shall refer the matter to the Court of Queen's Bench for summary determination, on such notice as the Court may direct.

SEIZURES ACT

CHAPTER S-11

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

(a) "creditor" means

(i) in relation to a writ of execution, any person entitled to enforce by execution the payment of any money payable pursuant to any judgment or order that is enforceable by execution, and

(ii) in relation to a distress, the person who has the power of distress;

(b) "Court" means the Court of Queen's Bench;

(c) "debtor" means

(i) in relation to a writ of execution, any person liable for the payment of any money under a writ of execution, and

(ii) in relation to a distress, the person who is liable for the payment of any money or the delivery up of any goods or chattels, which payment or delivery up is enforceable by distress or by proceedings in the nature of distress;

(d) "distress" means any and all acts or things done in the exercise of a power of distress;

(d.1) "goods" means tangible personal property other than chattel paper, a document of title, an instrument, a security and money, and includes fixtures, growing crops and the unborn young of animals, but does not include timber until it is cut or minerals until they are extracted;

(e) "judgment creditor" means the person entitled to receive any money payable under any judgment or order of the Court;

(f) "judgment debtor" means the person liable for the payment of any money payable under any judgment or order of the Court;

(g) "power of distress" means the right that a person has to enforce the payment of any claim against, or the taking of any goods or chattels out of the possession of, another person by the taking of a personal chattel out of the possession of that last mentioned person otherwise than by the authority of a writ of execution or other process of a similar nature;

(g.1) "proceeds" means identifiable or traceable personal property, including fixtures and crops,

(i) derived directly or indirectly from any dealing with collateral or the proceeds of the collateral, and

(ii) in which the debtor acquires an interest, and, in the case of goods, of which the debtor obtains possession,

and includes

(iii) a right to an insurance payment or any other payment as indemnity or compensation for loss of or damage to the collateral or proceeds of the collateral, and

(iv) a payment made in total or partial discharge or redemption of an intangible, chattel paper, an instrument or a security;

(g.2) "purchase-money security interest" means

(i) a security interest taken or reserved in collateral to secure payment of all or part of the purchase price, or

(ii) a security interest taken by a person who gives value for the purpose of enabling the debtor to acquire rights in or to collateral, to the extent the value is applied to acquire such rights,

and for the purposes of this definition "purchase price" and "value" include credit charges and interest payable in respect of the purchase or loan;

(g.3) "registered" means, in connection with a security interest or a writ of execution, registered in the Personal Property Registry in accordance with the *Personal Property Security Act* and the regulations made under that Act;

(g.4) "secured party" means a party who has a security interest in goods;

(g.5) "security agreement" means an agreement that creates or provides for a security interest;

(g.6) "security interest" means an interest in goods that secures payment or performance of an obligation;

- (h) "sheriff" includes assistant sheriff and sheriff's bailiff;
- (i) "writ of execution" includes a writ of attachment.

Application of Act

Non-application of Act

2 This Act does not apply

- (a) to a security agreement to which the *Personal Property Security Act* applies except as provided by this Act or the *Personal Property Security Act*,
- (b) to a power of distress for the recovery or enforcement of payment of taxes, nor to any distress thereunder, or
- (c) subject to section 3, to a power of distress to enforce the payment of money payable under a conviction or order of a justice of the peace or a provincial judge by the authority of an Act or by virtue of a by-law having the force of law in Alberta, nor to any distress thereunder.

Masters and Servants Act

3 This Act applies to a power of distress to enforce the payment of money payable under an order made pursuant to the *Masters and Servants Act*.

Exigibility of Property

Binding effect of writ of execution

4(1) A writ of execution, from delivery of it for execution to a sheriff, binds the goods of the judgment debtor situated within the judicial district of that sheriff, but neither the binding effect of the writ nor seizure of the goods by a sheriff pursuant to the writ shall prejudice

- (a) an interest in the goods acquired by any person in good faith for valuable consideration, unless that person had, at the time when he acquired his interest, notice that the writ had been delivered to the sheriff and remained in his hands unsatisfied, or unless the writ was registered before such interest was acquired;
- (b) subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, the interest of a secured party unless the writ is registered before such interest is perfected pursuant to the *Personal Property Security Act*;
- (c) subject to sections 20(1)(a) and 35(5) of the *Personal Property Security Act*, the interest of a secured party who has taken a purchase-money security interest in the goods that is perfected after registration of the writ but not later than 15 days after

- (i) the debtor obtains possession of the goods, or
- (ii) a third party, at the request of the debtor, obtains possession of the goods

whichever is the earlier.

(2) Nothing in subsection (1)(a) affects an interest in goods acquired in good faith for valuable consideration by any person under a transaction which was in the ordinary course of business of the execution debtor, whether or not the writ of execution was registered or the person had notice that the writ had been delivered to the sheriff and remained in his hands unsatisfied.

(3) Nothing in subsection (1) affects an interest in goods acquired as consumer goods by a buyer or lessee who

- (a) gave new value as defined in the *Personal Property Security Act* for the interest acquired, and

- (b) bought or leased the goods without knowledge that the writ had been delivered to the sheriff and remained unsatisfied and without knowledge of the registration of the writ.

(4) Subsection (3) does not apply to an interest acquired in

- (a) a fixture, or

- (b) goods the purchase price of which exceeds \$1000 or, in the case of a lease, the market value of which exceeds \$1000.

Equitable rights, etc.

5(1) By virtue of a writ of execution the sheriff charged with the execution thereof may seize and sell any equitable or other right, property, estate or interest of the debtor in or in respect of any goods or other personal property and any equity of redemption of the debtor therein, and also any leasehold interest in land and any other chattels real that are the property of the debtor.

(2) On the sheriff making a sale of any such property, whatever equitable or other right, property, interest or equity of redemption the debtor had or was entitled to in or in respect of the goods or other personal property so sold at the time of the seizure thereof under the writ of execution, vests in the purchaser.

Seizure of money and securities

6(1) By virtue of a writ of execution a sheriff may seize money or bank notes belonging to the debtor including

- (a) any surplus of a former execution against the debtor, and

(b) any money levied under a writ of execution issued on a judgment or order in the debtor's favour,

as well as any cheques, bills of exchange, promissory notes, bonds, mortgages or other securities for money belonging to the person against whom the execution has been issued.

(2) The sheriff may hold the cheques, bills of exchange, promissory notes, bonds or other securities for money as security for the amount directed to be levied or so much thereof as has not been otherwise levied or raised, and

(a) subject to the *Execution Creditors Act*, may pay and assign those securities to the creditor at the sum actually due on and secured by them respectively if the creditor will accept them as money collected, and the assignment on notice to the debtor vests in the creditor all the rights that are capable of assignment in respect of the securities, or

(b) may sue in his own name for the recovery of the sums secured thereby and for the enforcement of the security.

(3) The transfer by the sheriff to the creditor of any of the property mentioned in this section discharges the sheriff to the extent of the amount due on and secured thereby.

(4) Payment to the sheriff by the person liable under any of the securities mentioned in this section and seized in execution by the sheriff discharges the person so liable from his liability in respect thereof to the extent of the payment.

(5) Subject to the *Execution Creditors Act*, any money realized by the sheriff under a writ of execution in respect of any of the property mentioned in this section, subject to the payment of the proper costs, charges, expenses, fees and poundages of the sheriff, is payable to the person entitled thereto under the *Execution Creditors Act* to the extent to which they are so entitled, and any surplus that then remains shall be paid to the debtor or other person lawfully entitled to receive it.

Seizure of shares and dividends

7(1) Shares and dividends, and any equitable or other right, property or interest or equity of redemption in or in respect of shares or dividends, in a bank or an incorporated company having transferable shares shall be deemed to be personal property found in the place where notice of the seizure thereof is served, and may be seized under execution and may be sold thereunder in like manner as other personal property.

(2) The sheriff, on being informed by or on behalf of the judgment creditor that the debtor has any shares referred to in subsection (1) and on being required to seize them, shall

- (a) seize the share certificates or other documents evidencing the ownership of the shares, and
 - (b) either before or within 5 days after the seizure, serve a copy of the writ of execution on the bank or company and a notice that all the shares of the debtor are seized thereunder.
- (3) When the notice referred to in subsection (2)(b) is served, no transfer of the shares by the debtor is valid unless the sheriff notifies the bank or company that the seizure has been withdrawn.
- (4) Every seizure and sale made under the execution shall include all dividends, premiums, bonuses or other pecuniary profits on the shares seized, and they shall not, after notice has been given in accordance with subsection (2), be paid by the bank or company to anyone except the person to whom the shares have been sold.
- (5) The seizure may be made and notice given by the sheriff of the judicial district within which the bank or company has a place at which service of process may be made or where a share register is kept.
- (6) If the bank or company has more than one place where service of process may be made, and there is some place where transfers of shares may be effected and entered by the bank or company so as to be valid as regards the bank or company, or where dividends or profits on stock may be paid, other than the place where service of the notice has been made, the notice does not affect any transfer or payment of dividends or profits duly made and entered at any place, other than the place where service of the process was made, so as to subject the bank or company to pay twice, or so as to affect the rights of any bona fide purchaser, until after the expiration of a period from the time of service sufficient for the transmission of notice of service by post from the place where it has been made to that other place, which notice the bank or company shall transmit.
- (7) When any share is sold the sheriff shall within 10 days after sale serve on the bank or company at some place where service of process may be made a copy of the execution with his certificate endorsed thereon, certifying the sale and the name of the purchaser.
- (8) The purchaser has the same rights and is under the same obligations as if he had purchased the share from the debtor at the time of the service of notice under subsection (2).
- (9) Nothing in this Act affects any remedy that the creditor might, without this Act, have had against any share or the dividends, premiums, bonuses or other pecuniary profits in respect thereof, and subsections (2) to (8) apply to that remedy in so far as they can be applied thereto.
- (10) If a sheriff seizes the shares of a debtor in a company, and the company's incorporating documents restrict or prohibit the right to transfer those shares, he

shall first offer them for sale to the other shareholders, or any one of them, in the company, and shall send by mail to the company at its registered office and to at least 3 other shareholders of the company if there are so many, and, if not, to the other shareholders, notice of the seizure, and shall sell the shares seized or any part of them to any shareholder who within 30 days of the date of the mailing of the notice

(a) makes an offer for the purchase thereof at a price that appears to the sheriff to be reasonable, and

(b) pays the purchase price to the sheriff.

(11) Any shares referred to in subsection (10) that remain unsold at the expiration of the period of 30 days shall be sold by the sheriff in the same manner as any other personal property.

Seizure of mortgage

8(1) A sheriff charged with the execution of a writ of execution may seize thereunder any registered mortgage of or encumbrance on or security interest in land or chattels of which the debtor is the owner, by delivering a notice in writing of the seizure to the proper officer in the office in which the mortgage or encumbrance is registered.

(2) No mortgage, encumbrance or security interest is affected or charged by a writ of execution until delivery of the notice.

(3) On receipt of the notice and any applicable fees, the proper officer shall make an entry of it in the register or other record in which the mortgage, encumbrance or security interest is registered.

(4) No person who is liable to pay money under a mortgage, encumbrance or security interest seized pursuant to this section is affected by the seizure until

(a) notice in writing of the seizure has been served on him personally, or

(b) he has otherwise acquired actual knowledge of the seizure.

(5) Any payments made by that person to the debtor after service of the notice of the seizure or after acquiring actual knowledge of the seizure are of no effect as against the sheriff and the creditor.

Order of sale

9 No mortgage or other security for money seized under a writ of execution shall be sold except on the order of the Court and then only on any conditions the Court thinks fit to prescribe.

Seizure of growing crop

10 The sheriff by a writ of execution may seize any of the goods and chattels of the debtor including any growing crop of grain or roots or any interest of the debtor therein.

Seizure of growing crops

11 When a sheriff seizes under a writ of execution any growing grain crop or any growing root crop, he may seize all the growing grain crops and all the growing root crops of the execution debtor within his district regardless of the amount of the execution debt.

Notice of seizure of growing crops

12(1) After compliance with section 25, any growing crop shall be deemed to have been seized by the sheriff on the sheriff posting up a notice on any parcel of land on which the crop seized or any part thereof is growing that the growing crop has been seized, and thereupon and thereafter all crops so seized shall be deemed to be continuously under seizure by the sheriff while growing and during and after harvesting until the money levied thereon has been paid and satisfied, unless the sheriff by writing sooner abandons the seizure.

(2) The sheriff is under no obligation to release the crop from seizure until he has been paid out of the proceeds of the crop or otherwise all money payable in respect of the seizure.

Security for harvesting expenses

13(1) Unless, on the seizure of a growing crop of grain or roots, the debtor undertakes on behalf of and as agent for the sheriff to perform the things necessary for the harvesting and gathering in of the growing crop, the sheriff may require the creditor to furnish him, on or before a day to be specified by him, with security to the satisfaction of the sheriff for the due payment of any costs, charges and expenses that might be incurred by him in the harvesting and gathering in of the crop.

(2) If the creditor defaults in furnishing the sheriff with the security, the sheriff may release the crop from seizure.

(3) Any expenses incurred by the sheriff in relation to a growing crop are a first charge on and payable out of the proceeds of the crop in priority to all other claims and demands.

(4) If

(a) more than one person is entitled to the proceeds of the growing crop and their claims are *pari passu*, then the expenses shall be apportioned *pro rata* amongst all the persons entitled to the proceeds in proportion to their respective shares, or

(b) more than one person is entitled to the proceeds of the growing crop and any of those persons is entitled to receive payment in priority to any other person, the expenses

(i) shall be charged against the proceeds of the crop payable to the person or persons whose claim is inferior, and

(ii) shall only be charged against the proceeds payable to any person or persons whose claim is superior to the extent that the amount payable to any person or persons having the inferior claim is insufficient to defray the expenses in full.

(5) No sale under writ of execution shall be made by a sheriff of any grain or roots that are growing or that have not been harvested.

(6) When grain, roots or livestock are in condition for marketing and are ordinarily disposed of in the open market at the price for the time being prevailing in that market, the sheriff may sell the grain, roots or livestock in any available open market at the prevailing market price.

(7) If any grain or roots are subject to a contract requiring the marketing thereof through a co-operative marketing association and the sheriff has notice of the contract, he shall market the grain or roots in accordance with the contract.

(8) If any livestock are subject to a contract requiring the marketing thereof through a co-operative marketing association, the sheriff may, if in his discretion he considers it advisable to do so, market the livestock in accordance with the contract.

(9) If any grain, roots or livestock are subject to a contract for the delivery thereof when made ready for a market at a price that in the opinion of the sheriff is a reasonable price, the sheriff may deliver the goods in accordance with the contract on the payment to him of the contract price.

Sale

Sale of personal property

14(1) Personal property taken in execution under any writ of execution or by virtue of any power of distress and not specifically mentioned in this Act shall, unless the Court otherwise orders, be offered for sale by public auction or by tender.

(2) Notice of the public auction or sale by tender shall be sent by registered mail to the creditor and debtor at their respective last known post office addresses at least 10 days prior to the public auction or sale by tender.

(3) A public notice describing the property to be sold and stating the day, time and place of the public auction or sale by tender

(a) shall be posted for a period of at least 10 days prior to the auction or sale in the office of the sheriff and, if the sheriff so directs, in any other places in the locality of the place where the auction or sale is to be held, and

(b) if the sheriff so directs and in accordance with his directions, shall be advertised by publication in a newspaper circulating in the locality of the place where the auction or sale is to be held.

Sale of land

15(1) No sale of land shall, unless the Court otherwise orders, be had under a writ of execution

(a) until after a return nulla bona in whole or in part, and

(b) until after the expiration of one year from the date of the receipt by the Registrar of the appropriate land titles office of the copy of the writ of execution.

(2) No land shall be sold under a writ of execution until after the giving of such notice of the sale by advertising or otherwise as may be directed by the Court.

(3) When at a sale by auction held by a sheriff of land taken in execution

(a) there are no bidders, or

(b) the sheriff receives for the land no bid that he considers sufficient,

the sheriff may from time to time adjourn the sale to a date to be subsequently fixed by the sheriff and either to the same or a different place and, in any other case, notice of the adjourned sale shall be given in the manner prescribed by section 14.

(4) If the amount authorized to be made and levied under a writ of execution is made and levied thereunder out of goods and chattels, the person issuing the writ is not entitled to the expenses of any advertising of land thereunder.

Sheriff's Agent and Inventory

Appointment of agent by sheriff

16 The sheriff, at any time after making a seizure of goods under a writ of execution or by virtue of a power of distress, may appoint the debtor or some other person as his agent to hold and keep the goods so seized for and on behalf of the sheriff, on the debtor or other person signing an undertaking to hold the goods as bailee for the sheriff and to deliver up the possession thereof to the sheriff on demand.

Delivery of inventory to owner

17 When any goods or chattels are seized the sheriff shall on request deliver to any person who is the owner thereof or who is at the time of seizure in possession thereof, or to the agent or servant of any such person, an inventory of the goods seized before they are removed from the premises on which they have been so seized.

Distress

Persons authorized to make distress

18 Unless it is otherwise ordered by the Court, no distress shall be made, taken, levied, executed or carried into effect except only

(a) by a sheriff, assistant sheriff, deputy sheriff, sheriff's bailiff or some other person authorized in writing to do so by a sheriff, assistant sheriff or deputy sheriff, and

(b) between the hours of 5 a.m. and 8 p.m. in the case of a distress for rent.

Distress for rent

19(1) A landlord shall not distrain for rent on goods and chattels that are the property of any person except the tenant or person who is liable for the rent, although the goods and chattels are found on the premises.

(2) Subsection (1) does not apply

(a) in favour of a person claiming title under or by virtue of an execution against the tenant,

(b) subject to clause (b.1), in favour of a person whose title is derived by purchase, gift, transfer or assignment, or otherwise, from the tenant, whether absolute or in trust,

(b.1) in favour of a person who has a security interest in goods on the premises other than a person who has a purchase-money security interest in the goods as original collateral or as proceeds,

(c) if goods have been exchanged between 2 tenants or persons by the one borrowing or hiring from the other for the purpose of defeating the claim of or the right of distress by the landlord, or

(d) when the property is claimed by the wife, husband, daughter, son, daughter-in-law or son-in-law of the tenant or by any other relative of his if the other relative lives on the premises as a member of the tenant's family.

Distress for interest on mortgage

20 The right of a mortgagee of land or his assigns to distrain for interest in arrears or principal due on a mortgage is, notwithstanding anything stated to the contrary in the mortgage or in any agreement relating to the mortgage, limited

- (a) to the goods and chattels of the mortgagor or his assigns, and
- (b) to only those goods and chattels that are not exempt from seizure under execution.

Claim to goods under distress

21(1) If, on the levying or making of a distress or seizure under a distress, a claim in writing is made to or in respect of the property seized or any part thereof, the sheriff shall proceed as if

- (a) the claim were made to or in respect of goods taken in execution under process of the Court, and
- (b) the person directing the distraint or seizure were an execution creditor.

(2) The rules of court applicable to interpleader by a sheriff apply to procedure by the sheriff under this section.

(3) The right of the sheriff to interpleader relief under the rules of court is not affected by the fact that the sheriff has been furnished with any security that he is permitted to require pursuant to this Act.

Distress warrant

22(1) No distress shall be made and no levy shall be made under a distress unless the person entitled to cause the distress and levy to be made or his authorized agent has executed and delivered a proper warrant in that behalf to some person authorized by this Act to make and levy a distress.

(2) No person to whom a distress warrant is delivered for execution is bound to proceed thereon unless he has been furnished with security that he considers to be reasonably sufficient from time to time to indemnify him in respect of his fees, charges and expenses, and any claims for damages in respect of the distress and levy, and anything done in relation thereto.

Entry and Notice

Entry into buildings to effect seizure

23 For the purpose of effecting the seizure of any goods and chattels authorized by a writ of execution or a distress warrant, or obtaining the possession of any goods that have previously been seized, the person lawfully charged with the execution thereof may, if it is not possible otherwise to effect the seizure or to

obtain possession of goods previously seized, as the case may be, either by himself or with the assistance of any persons he requests, break open the door or doors of any building other than a private dwelling house in which any goods and chattels liable to seizure are contained, and on the order of the Court may similarly break open the door or doors of a private dwelling house.

Mobile home

24(1) In this section "mobile home" means

- (a) a vacation trailer or house trailer, or
- (b) a structure, whether ordinarily equipped with wheels or not, that is constructed or manufactured to be moved from one point to another by being towed or carried and to provide living accommodation for one or more persons.

(2) When a mobile home is seized under a writ of execution or a distress warrant, if

- (a) the mobile home is occupied by the debtor or some other person, and
- (b) the occupant fails, on demand, to deliver up possession of the mobile home,

the creditor, on notice of motion to the occupant, may apply to the Court which may make an order directing the occupant to deliver up possession of the mobile home.

(3) The order shall provide

- (a) that if the occupant fails to deliver up possession of the mobile home within the time specified in the order, the sheriff shall eject and remove the occupant together with all goods and chattels he may have in the mobile home, and
- (b) that if it is not possible otherwise to obtain possession the person charged with the execution of the order, either by himself or with the assistance of any persons that he requests, may break open the door of the mobile home.

(4) On there being filed with the sheriff an affidavit

- (a) showing service of the order on the occupant, and
- (b) stating that the occupant has failed to deliver up possession of the mobile home as requested by the order,

the sheriff or his bailiff shall, with any assistance he may require, forthwith proceed to obtain possession of the mobile home as authorized by the order.

Effecting seizure

25(1) To effect the seizure of any goods or chattels under any writ of execution or under any distress, the person authorized to effect the seizure

- (a) shall serve on the debtor, and if there is more than one debtor, on each one of them, or on some adult member of his household,
- (b) shall attach to the goods to be seized or some or all of them, or
- (c) shall post up in some conspicuous place on the premises on which the goods or some part of them are at the time of seizure

a notice of seizure in the prescribed form and a notice of objection to seizure in the prescribed form.

(2) A seizure made pursuant to this Act shall be deemed to be a continuing seizure

- (a) until the time the sheriff by notice in writing releases the seizure, or
- (b) until the goods or property under seizure have been sold.

(3) If, in the opinion of the person authorized to effect the seizure, any particular goods or chattels are not readily distinguishable and identifiable from other similar goods or chattels, the person so authorized may affix to the goods or chattels a sticker in the prescribed form.

(4) The sticker shall

- (a) briefly describe the article to which it is attached, and
- (b) be signed by the sheriff or other person authorized to effect the seizure.

(5) Any person who

- (a) removes, transfers, defaces or otherwise interferes with a sticker affixed to an article pursuant to this section, or
- (b) removes or in any way interferes with an article to which a sticker has been affixed pursuant to this section,

is guilty of an offence and is liable to a fine of not more than \$200 and in default of payment to imprisonment for not more than 60 days, or to both fine and imprisonment.

Procedure Relating to Sale

Procedure re sale

26(1) The notice of seizure shall bear a heading in red letters and larger type than the body of the document, as follows: "NOTICE OF SEIZURE OF GOODS", and the names of the debtor and creditor shall be inserted therein before the seizure is made.

(2) The notice of objection to seizure shall be accompanied by a sufficiently stamped envelope addressed to the sheriff of the judicial district in which the goods are situated.

(3) The respective names and addresses of the creditor and debtor must be inserted in the notice of objection before the seizure is made.

Notice of objection

27(1) The person liable for the payment of the debt for which the seizure is made, if he objects to the removal and sale of the goods seized, shall sign the notice of objection and within 14 days of the date of the seizure cause it to be delivered to the sheriff.

(2) The absence of the signature or the post office address of the debtor does not invalidate the notice of objection if it be duly made.

Disposal of seized goods

28 If no notice of objection is received by the sheriff within 14 days after the seizure of the goods, the goods seized may be disposed of according to law.

Application for order to remove and sell

29(1) When the sheriff receives a notice of objection he shall immediately notify the creditor and thereupon the creditor may from time to time apply by notice of motion to the Court for an order for the removal and sale or for the removal or the sale of the property seized or any part of it.

(2) When a creditor applies pursuant to subsection (1), the notice of motion shall, as far as is reasonably possible, specify and describe the particular property in respect of which the order is sought.

(3) Seven days' notice of the application shall be given to the debtor, or such other notice as the Court may direct.

(4) Every application shall be dealt with in a summary manner and may be adjourned from time to time.

(5) On the hearing of the application the evidence may be taken either orally or by affidavit as the Court directs and the Court

- (a) may in its discretion either refuse the application, or make an order for the removal or sale of the goods or both,
 - (b) repealed 1988 cP-4.05 s97,
 - (c) may make the order on any terms and conditions as to costs or otherwise it determines,
 - (d) may by the same order, or on the application of the debtor by a subsequent order, suspend the operation of the order pending the payment of the debt by such instalments as the Court may fix, or the giving of such security or the performance of such other conditions as the Court may impose, and
 - (e) may order the release of all or any part of the goods seized.
- (6) When the Court orders a sale, it may give directions as to the manner, time and place of the sale and any other directions that to it seem proper and convenient and may give leave to any party to bid or submit a tender, as the case may be, at the sale.
- (7) An order made under this section shall as far as is reasonably possible specify and describe the particular property in respect of which the order is made.
- (8) If on the hearing of an application under this section it appears that there is a dispute as to
- (a) the right to make the seizure,
 - (b) the amount payable in respect of the seizure, or
 - (c) the ownership of the goods seized,

the Court in its discretion may hear and determine the dispute in a summary manner on the notice and to the persons that it may direct and on either oral or affidavit evidence or both, as the Court considers appropriate.

(9) There is no appeal from an order of the Court except only when the indebtedness in question exceeds the sum of \$500, and in that case an appeal lies to the Court of Appeal.

When no notice of objection received

30(1) If no notice of objection is received by the sheriff within 14 days after the seizure of goods,

- (a) the sheriff may on the instructions of the creditor proceed to sell the goods seized in the manner prescribed by this Act,

(b) if he is entitled to do so, the creditor may sell the goods seized or cause them to be sold by some person other than the sheriff, either by public auction, sale by tender or private sale, on giving to the debtor 5 days' notice in writing of his intention to exercise his rights to do so, or

(c) on the application in writing to the sheriff by the debtor stating that in his opinion the value of the goods seized is greater than the amount of the creditor's claim and costs, the sheriff, if he is satisfied that it is proper in the circumstances to do so, may direct that the goods seized be sold only subject to his approval and in that event no sale of the goods shall be made by the creditor until the approval of the sheriff has been obtained and the proceeds of the sale shall be paid to the sheriff to be dealt with by him according to law.

(2) When goods under seizure are delivered into the possession of a creditor for the purposes of sale pursuant to subsection (1)(b), the sheriff is relieved of all further responsibility in respect of those goods.

(3) When the creditor makes or effects the sale under subsection (1)(b), the creditor

(a) shall within 30 days after the sale file with the sheriff of the judicial district in which the seizure was made a statutory declaration setting out

(i) the particulars of the sale,

(ii) the amount realized by the sale, and

(iii) the necessary and proper disbursements and fees in connection with the sale, which shall not exceed those that a sheriff would have been entitled to charge if the sale had been effected by the sheriff,

and

(b) shall immediately after the sale, if the proceeds of the sale exceed the amount for which the seizure was made together with the disbursements or if that amount with disbursements is realized by the sale of a part only of the goods seized, deliver the excess and any goods unsold to the sheriff to be delivered by him to the persons lawfully entitled thereto.

Disposal of seized goods by sheriff

31(1) Notwithstanding anything in this Act, a sheriff

(a) who has lawfully seized goods under a writ of execution or under a power of distress, and

(b) who believes that it is necessary or advisable that the goods be taken by him and removed,

may, in his discretion, make any removal and disposition of the goods that he considers necessary without any order.

(2) If any of the goods lawfully seized are of a perishable nature the sheriff may, in his discretion, sell the goods in any manner he considers proper without any order and the proceeds of the sale shall take the place of and be dealt with as if the proceeds were the goods so sold.

Adjournment of sale

32(1) If property taken in execution or under a power of distress is offered for sale by auction or tender and

(a) there are no bids or tenders made for the property or any part of it, or

(b) the bids or tenders made are, in the opinion of the sheriff, inadequate, having regard to the value of the property taken in execution or under the power of distress and offered for sale,

the sheriff may adjourn the sale.

(2) If the adjournment of the sale is for a period of more than 7 days or to a different place, the sheriff shall give 5 days' notice of the adjourned sale in the same manner as is provided by section 14, or if the sale has been adjourned sine die, the sheriff shall give notice of any adjourned sale in the manner prescribed by section 14.

Sale by private contract

33 If goods taken in execution or under a power of distress have been offered for sale and remain unsold, the sheriff may, without a writ of venditioni exponas, sell the goods by private contract to the creditor or to any other person if the price offered for the property is, in the opinion of the sheriff, a fair and reasonable price having regard to all the circumstances.

Application for order to restrain proceedings by creditor

34(1) The debtor or any person claiming an interest in the goods or chattels under seizure may, at any time after the seizure of any chattels under distress or under a writ of execution and before they have been sold, apply to the Court, on 4 days' notice to the creditor or such other notice to the creditor as the Court may direct, for an order restraining the creditor from proceeding to remove or sell or remove and sell all or any of the chattels seized.

(2) The Court may refuse the application, or when it is satisfied that it is proper and convenient in the circumstances to do so, it may grant the application in whole or in part and subject to any condition it considers proper, and on making any such order may order the seizure to be released, and may make any order as to the disposition of the goods seized that it considers proper in the circumstances.

Costs against debtor

35 If a creditor claims under a bill of sale, chattel mortgage or lien note or for rent proceeds concurrently by way of distress and by way of action for the recovery of the indebtedness, no costs or other disbursements shall be allowed in the action against the debtor except on the order of the Court and on such notice as the Court may direct.

Sale of goods without warranty of title

36 On the sale by the sheriff of goods pursuant to a writ of execution or a distress, the sale shall be without warranty of title and the purchaser, on paying the purchase price, thereby acquires the precise interest and no more in the goods that are so sold and that are lawfully sold under execution or distress, as the case may be.

Service of notices by mail

37(1) Any notice required to be served on any person pursuant to this Act may, unless this Act contains express provisions to the contrary, be served by sending it by registered mail in a prepaid cover addressed to that person at his latest known post office address.

(2) The notice shall be deemed to have been served on proof being made by affidavit stating

(a) that the notice was sent by registered mail in a prepaid envelope addressed to the person to be served at his latest known post office address,

(b) the date and place of mailing of the registered letter, and

(c) the date at which the registered letter would, in the ordinary course of mail, reach its destination.

(3) The date at which the registered letter would, in the ordinary course of mail, reach its destination shall be deemed to be the date of service of the notice.

Bond of Indemnity

Seizure of property not in possession of debtor

38(1) A sheriff is not under any duty to seize any property that is in the possession of a person, other than the debtor, who claims any interest therein or right thereto unless the creditor

(a) delivers to him in writing

(i) instructions to seize the property, and

(ii) such a description of the property to be seized as will enable the sheriff to identify it

and

(b) furnishes the sheriff with a good and sufficient bond of indemnity to the satisfaction of the sheriff.

(2) Any bond taken by the sheriff pursuant to this section is assignable to any person, other than the debtor, who claims an interest in the property and shall be on the condition that the persons executing the bond are liable for the damages, costs and expenses

(a) which the sheriff or any person claiming an interest in the property might be put to by reason of the seizure and any subsequent proceedings including interpleader proceedings, if any, and

(b) which are not recovered from any other persons who ought to pay them.

(3) If a difference arises as to the bond to be furnished pursuant to this section the sheriff shall, on the request of the creditor, refer the matter to the Court for determination.

Applications to Judge

Application for directions

39(1) When the sheriff has any doubts as to the exercise by him of any power, duty or authority conferred or imposed on him by this Act, he may on his own motion apply to the Court for directions.

(2) At any time after a distress the creditor or debtor may on his own motion apply to the Court for directions with respect to the exercise or intended exercise by the sheriff of any of the powers, duties or authorities conferred or imposed on the sheriff by this Act.

(3) On an application under subsection (1) or (2), the Court may, on whatever notice and to whatever parties it thinks proper, and after hearing any evidence that it considers necessary, make an order giving any directions consistent with this Act that it considers proper and convenient.

(4) No action or proceeding of any kind lies against the sheriff for anything done pursuant to or in conformity with any directions so given.

Notice of intention to release seizure

40(1) A sheriff in his discretion may, at any time after a seizure under writ of execution or distress warrant has been in effect for 6 months, serve on

- (a) the party who instructed the seizure, or
- (b) in the case of a seizure under execution, all persons having subsisting writs of execution in his hands,

a notice in writing informing each person so served that on the expiration of a period of 60 days from the date of service of the notice he intends to release the seizure unless before that time application is made to the Court for an order continuing the seizure.

(2) If no application is made pursuant to subsection (1) the sheriff may release the seizure.

(3) An application made pursuant to subsection (1) may be made ex parte or on such notice as the Court may direct, but in every case the applicant shall serve the sheriff with notice thereof.

(4) The Court on hearing the application may make any order providing for the release of or the continuation of the seizure and in either case on any terms including costs it considers proper.

(5) For the purposes of subsection (1) the date of service shall, when service is made by ordinary mail, be deemed to be the date on which the notice would have arrived at the last known address of the person served in the ordinary course of delivery, if the notice is in fact addressed to the last known address of that person and placed in the mail.

Offences and Penalties

Penalty for unauthorized seizure, etc.

41 A person

- (a) who in contravention of this Act and under a power of distress, makes a seizure or levies a distress or does any act for the purpose of carrying such a seizure or levy into effect, or
- (b) who by means of threats of seizure or sale obtains or takes or receives from a person any goods and chattels or the proceeds thereof when that first mentioned person is not there and then fully authorized to make a seizure or levy a distress in respect of those goods and chattels,

is guilty of an offence and liable, if a corporation, to a fine of not more than \$200, and if any other person, in the case of a first offence to a fine of not more than \$200, and in default of payment forthwith to imprisonment for a term of not less than one nor more than 6 months, and in the case of a 2nd or subsequent offence to imprisonment without the option of a fine for a term of not less than 3 nor more than 6 months.

Penalty for non-delivery

42(1) A person

- (a) who is under a duty to deliver to a sheriff goods or chattels that have been seized by the sheriff, and
- (b) who defaults in delivering the goods or chattels to the sheriff within a reasonable time after being required to do so by the sheriff,

is liable to attachment on application to the Court and may be proceeded against as for a civil contempt of the Court.

(2) An application under subsection (1) shall be made on notice of motion by the person on whose behalf the goods or chattels were seized by the sheriff.

Possession of goods

43 When any goods have been removed from a judicial district while under seizure, the sheriff of the judicial district in which they were seized may either

- (a) enter any other judicial district and obtain possession of the goods, or
- (b) instruct the sheriff of any other judicial district to obtain possession of the goods on his behalf and deliver them to him.

Penalty against creditor selling goods himself

44 A person who contravenes section 30(3) is guilty of an offence and liable

- (a) in the case of a corporation, to a fine of not more than \$200, and
- (b) in the case of any other person, to a fine of not more than \$200 and in default of payment thereof to imprisonment for a term of not less than 2 months nor more than 6 months.

Miscellaneous

Temporary seizure of exempted goods

45 Notwithstanding anything in the *Exemptions Act*, if a seizure under a writ of execution is made of any goods or chattels of such a nature or under such circumstances that the sheriff in his sole discretion considers it impracticable to except from the goods and chattels seized those goods and chattels that are exempt from seizure under the *Exemptions Act*, the sheriff may seize the goods and hold them under seizure until he can conveniently ascertain the goods and chattels exempt from seizure, and thereupon he shall release them to the debtor.

Application of Execution Creditors Act

46(1) The *Execution Creditors Act* is not applicable to the proceeds of sale of any property seized and sold otherwise than under a writ of execution.

(2) Notwithstanding subsection (1), when a chattel has been seized and sold in the exercise of a power of distress to which this Act applies, any surplus money remaining in the hands of the sheriff after he has

(a) paid in full the claim of the person who exercised the power of distress, and

(b) deducted his fees, charges and expenses and any claims for damages in respect of the distress and levy,

shall be deemed to be the proceeds of property seized and sold under a writ of execution and to have been attached on behalf of all creditors who are entitled by the *Execution Creditors Act* to share in any money received by the sheriff by reason of a seizure or attachment.

(3) If the chattel seized and sold in the exercise of a power of distress is one that would otherwise be exempt from seizure under the *Exemptions Act*, subsection (2) does not apply and the surplus money remaining in the hands of the sheriff shall be paid to the person from whom the chattel was seized under the power of distress.

Regulations

47 The Lieutenant Governor in Council may make regulations

(a) as to the procedure to be followed and the forms to be used in any proceeding authorized by this Act;

(b) prescribing the tariff of fees, costs and charges payable to the clerk of the court and the sheriff in relation to any seizure and which may be chargeable against a debtor.

Examination of debtor

48(1) In this section,

(a) "creditor" means the person who has the power of distress under a conditional sale agreement or a chattel mortgage;

(b) "debtor" means the person who under a conditional sale agreement or a chattel mortgage is liable for the payment of any money or the delivery up of any goods or chattels, if the payment of the money or the delivery up of the goods is enforceable by distress or by proceedings in the nature of distress.

(2) At any time after a distress a creditor may, on the order of the Court, examine on oath

(a) the debtor in respect of whom the distress was made, or

(b) any other person or corporation whom the creditor, upon reasonable grounds, believes to be in possession of or to have knowledge respecting the whereabouts of any goods and chattels that comprise the creditor's security under the conditional sale agreement or the chattel mortgage,

before the clerk of the judicial district within which the debtor resides, or before any other person named in the order, as to the whereabouts of the goods and chattels that comprise the creditor's security under the conditional sale agreement or the chattel mortgage.

(3) In an examination under this section Part 28 of the Alberta Rules of Court applies, with all necessary modifications, as if the examination of the debtor under this section were an examination of a judgment debtor under those Rules.

SELECTED RULES OF COURT

342. Any judgment for the payment of money into court may be enforced by any mode by which a judgment for the payment of money to a person may be enforced.

346.(1) Except as otherwise provided, every judgment creditor is entitled immediately to issue one or more writs of *fiery facias* but if the judgment is for payment within a period therein mentioned, the writ shall not be issued until after the expiration of the period.

(2) The court may, at or after the time judgment is given, stay execution or may remove or extend any stay already granted.

347. Every writ of *fiery facias* shall be issued against both the goods and lands of the debtor.

355. As between the original parties to a judgment or order, execution may issue at any time within six years from the date of the judgment or order.

356. Where the six years have elapsed or any change has taken place by death or otherwise in the parties entitled or liable to execution, the party alleging himself to be entitled to execution may apply to the Court for leave to issue execution accordingly or to amend any execution already issued, and the Court may make an order to that effect or may order that any issue or question necessary to determine the rights of the parties be tried in any way in which a question in an action may be tried.

359. Every writ of execution shall bear date of the day on which it is issued.

360.(1) Every writ of execution shall be endorsed with the name and place of abode or office of business of the solicitor issuing it, and if he issues it as agent for another solicitor, the name and place of abode of the other solicitor shall also be endorsed.

(2) Where a solicitor is not employed, the writ shall be endorsed with a memorandum stating that it has been issued by the plaintiff or defendant in person with the name of the city, town or other place, and also the name of the street and number, if any, of the house where he resides.

361.(1) Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer or person to whom the writ is directed

(a) to levy the money really due and payable and sought to be recovered under the judgment, stating the amount, and

- (b) to levy interest thereon, if sought to be recovered, at the rate provided by law from the time when the judgment was entered.

(2) Where there is an agreement between the parties that a higher rate of interest shall be secured by the judgment, the endorsement may be to levy at the rate so agreed.

362. Every writ of execution for recovery of money shall be in Form F in the Schedule with such variations as circumstances may require.

363. Unless otherwise provided by any statute, and except for the purposes of that statute, every writ of execution remains in force so long as the judgment on which it is issued remains in force.

364. When, for the purpose of any statute, a writ of execution requires to be renewed, the writ or the renewed writ may at any time during which the judgment on which it is issued remains in force, be so renewed by being marked in the margin or at the foot with a memorandum signed by the clerk to the following effect: "Renewed from the _____ day of _____".

365. The sheriff shall, upon the receipt of a writ of execution or renewal thereof, endorse thereon the year, the month, the day, the hour and minute when it was received.

366. Upon every execution there may be levied in addition to the sum recovered by the judgment, the fees, expenses of execution and interest on the amount recovered.

367. The Sheriff to whom a writ is directed shall keep a record of all returns to the writ and renewals of the writ and shall give a certificate of those returns and renewals when demanded.

368. Upon a return by the sheriff of goods or lands on hand for want of buyers, a writ of *venditioni exponas* may be issued for the sale of the goods or lands and the original writ of execution remains in force for the residue.

372.(1) A judgment creditor may, without order, examine the judgment debtor on oath before a clerk or deputy clerk of any judicial district wherein a writ of execution has been entered touching his estate and effects and

- (a) as to the property and means he had when the debt or liability that was the subject of the cause or matter in which judgment has been obtained against him was incurred, or in case of a judgment for costs only, at the time of the commencement of the cause or matter,
- (b) as to the property and means he still has of discharging the judgment,

- (c) as to the disposal he has made of any property since contracting the debt or incurring the liability, or in the case of a judgment for costs only, since the commencement of the cause or matter, and
- (d) as to any and what debts are owing to him.

(2) No further examination shall be had without an order until the expiration of one year from the close of the preceding examination.

(3) On the order of the court, a judgment creditor may examine the employee or former employee of the judgment debtor with respect to any matter about which he could examine the judgment debtor under subrule (1).

373.(1) Where the judgment is against a corporation the judgment creditor may in like manner examine any of the officers of the corporation upon oath touching

- (a) any amount unpaid upon the stock or shares held by shareholders of the corporation, and for that purpose may obtain the names and addresses of the shareholders and particulars of the stock or shares held or owned by each and the amount paid thereon,
- (b) the name, address or other pertinent information relating to any director or former director of the corporation,
- (c) what debts are owing to the corporation,
- (d) the estate and effects of the corporation, and
- (e) the disposal made by it of any property since contracting the debt or incurring the liability in respect of which the judgment was obtained or, in the case of a judgment for costs only, since the commencement of the cause or matter.

(2) On the order of the court a judgment creditor may examine the employee or former employee of the corporation with respect to any matter about which he could examine an officer of the corporation under subrule (1).

374.(1) The court may order any person to whom, or the officer of any corporation to which the judgment debtor has transferred property or effects which would have been exigible under execution in the hands of the judgment debtor

- (a) since the date when the liability or debt, which was the subject of the action, was incurred, or
- (b) where the judgment is for costs only, since the commencement of the action

to attend before some person named in the order and submit to be examined under oath.

(2) Upon the examination the person examined may be questioned touching

- (a) the property and means of the judgment debtor so transferred,
- (b) any disposal of property made by the judgment debtor since the dates referred to in subrule (1), and
- (c) any debts owing to the judgment debtor.

375. Where the court is satisfied that there is reasonable ground for supposing that any person or corporation is in possession of any property of the judgment debtor exigible under execution, it may order the person or any officer of the corporation to attend and submit to be examined on oath before some person to be named in the order, touching the property and means of the judgment debtor.

376.(1) A person liable to be examined may be served with an appointment signed by the person before whom the examination is to be held, or a copy thereof, and, where the examination is to take place under an order, also with a copy of the order.

(2) Service shall be made at least 48 hours before the time appointed for the examination.

377. Where the judgment debtor or other person liable to be examined does not attend, does not allege a sufficient reason for not attending or, if attending, refuses to disclose his property or his transactions or does not make satisfactory answers respecting them, he may be held in civil contempt.

378. Where an officer of a corporation does not attend and does not show a sufficient excuse for not attending, or, if attending, refuses to disclose any of the matters in respect of which he may be examined, he may be held in civil contempt.

379. Where a difficulty arises in or about the execution or enforcement of a judgment, the judgment creditor may apply to the court who may make an order thereon for the attendance and examination of any party or person.

380. The costs of any examination in aid of execution are in the discretion of the court.

381. The filing with the sheriff of a certificate of the amount of any costs of or subsequent to judgment payment by the execution debtor to the execution creditor is upon a direction so to do being endorsed upon the original writ of

execution, a sufficient authority to the sheriff to levy those costs and interest thereon under the writ.

382. The rules relating to examination for discovery apply *mutatis mutandis* to all examinations authorized by this Part.

383.(1) Where a judgment creditor alleges that he has a right of relief under either *The Fraudulent Preferences Act* or under the Statute 13 Eliz., Chapter 5, it is not necessary to commence an action to set aside the conveyance with respect to which relief is sought, but the Court may, on motion in the judgment creditor's action served upon the judgment debtor and upon the persons to whom it is alleged the property was conveyed, order the property or part of the property to be sold to realize the amount to be levied under execution.

(2) Where a judgment debtor has an interest in land which cannot be sold under legal process, but can be rendered available by proceedings for equitable execution by sale for satisfaction of the judgment, the Court may, upon motion served upon such persons as may be directed, order the land or the interest therein or a part thereof sold to realize the amount to be levied under execution.

(3) Upon the return of a motion under this Rule the court may

(a) determine the matter summarily, or

(b) direct the trial of an issue to determine any question or questions.

(4) Pending the hearing of the motion or trial of the issue the Court may grant an interim injunction to prevent the transfer or disposition of the property or interest therein or may appoint an interim receiver of the property or interest therein.

465.(1) If a debtor advertises a sale of his goods by auction, a creditor either before or after judgment may apply for a receiver and the court, if satisfied the creditor's claim is likely to be defeated, delayed or hindered, may appoint the sheriff or deputy sheriff receiver of the proceeds of the sale of such of the goods as are not exempt from seizure.

(2) The order may provide that a sum sufficient to satisfy the plaintiff's claim and costs and any outstanding executions against the debtor be held by the receiver to satisfy the executions and any judgment the creditor may recover.

470.(1) In any action for a debt or liquidated demand, upon affidavit by the plaintiff, his solicitor or agent

(a) swearing positively to the facts establishing his cause of action,

(b) stating his belief that the plaintiff is entitled to the relief claimed,

- (c) exhibiting an undertaking of the plaintiff that if monies are paid into court under a garnishee summons issued pursuant to leave granted upon this application, he will proceed with the action without delay, and
- (d) establishing a reasonable possibility that the plaintiff will be unable to collect all or part of his claim or be subjected to unreasonable delay in the collection thereof unless permitted to issue a garnishee summons,

the court may, upon ex parte application, grant leave to the plaintiff to issue a garnishee summons before judgment.

(2) Any person who has obtained a judgment or order for the payment of money may, without leave, issue a garnishee summons.

(3) A garnishee summons shall be in Form K or L in Schedule A, and shall not be issued until an affidavit of the plaintiff or judgment creditor, his solicitor or agent is filed

- (a) showing the nature and amount of the claim or judgment against the defendant or judgment debtor and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor,
- (b) stating to the best of the deponent's information and belief that the proposed garnishee (naming him) is indebted to the defendant or judgment debtor, or that monies are accruing due from the proposed garnishee to the defendant or judgment debtor, and that the proposed garnishee is within Alberta,
- (c) stating, when the garnishee has more than one office or place of business, the place at which or office through which the indebtedness is alleged to be payable,
- (d) stating whether the alleged debt sought to be attached is for wages or salary, the residence of the defendant or judgment debtor and the nature of his occupation in the service of the garnishee at the time the alleged debt was incurred and whether or not the debt sued for or in respect of which the judgment was recovered, was contracted for board and lodging or either of them,

but if the deponent is unable to give all the particulars required by subclauses (c) and (d), it is sufficient if he gives the particulars that are within his knowledge and states that after reasonable inquiry he has been unable to ascertain the other particulars.

(4) The clerk shall endorse on the summons the particulars required to be stated in the affidavit by subclauses (c) and (d) of subrule (3).

(5) No garnishee summons shall be set aside for irregularity unless in the opinion of the court, there has been a substantial non-compliance with these Rules.

471.(1) Service of the summons on the garnishee binds the debt, due or accruing due from the garnishee to the defendant or judgment debtor, the particulars of which are given in the affidavit required by the Rule 470, or so much thereof as is necessary to satisfy the claim of the plaintiff or judgment creditor and the probable costs claimed up to and including the issuance of the garnishee summons; and in the case of doubt the costs shall be fixed by the court.

(2) The Rules relating to service of a statement of claim apply to service of a garnishee summons.

(3) A copy of the garnishee summons shall be served on the defendant or judgment debtor or his solicitor not later than 20 days after payment into court.

(4) If the garnishee has more than one office and it appears from the affidavit filed that money alleged to be due to the defendant or judgment debtor is or may be payable through some other office of the garnishee than that at which the garnishee summons is served, the person in charge of the office at which the garnishee summons is served shall forthwith notify the person in charge of the office at which money alleged to be due to the defendant is or may be payable and that money shall be deemed to have been attached and the garnishee summons is deemed to be served as of the time the notice of the garnishee summons is actually received at the office through which that money is payable or within 48 hours after the actual service of the garnishee summons, whichever is the shorter period.

472. For the purpose of garnishment, wages or salary are deemed to accue due from day to day; but no employer shall be compelled to pay wages or salary or any part thereof otherwise than in accordance with the terms of the hiring.

473.(1) Debts owing from a firm carrying on business within the jurisdiction may be attached, although one or more members of the firm is resident out of the jurisdiction, if the garnishee summons is served within the jurisdiction upon any person having the control or management of the partnership or any member of the firm.

(2) An answer disputing liability in the name of the firm is sufficient.

474. A debt is deemed to be due to the defendant or judgment debtor within the meaning of Rule 471 though it has been assigned, charged or encumbered by the defendant or judgment debtor, if the assignment, charge or encumbrance is fraudulent as against the plaintiff or judgment creditor, as the case may be.

475.(1) Within 10 days after service upon him of the garnishee summons, the garnishee shall either:

- (a) pay into court the lesser of
 - (i) the money due from him to the judgment debtor, or
 - (ii) an amount sufficient to satisfy the claim or judgment and the probable costs of the plaintiff or judgment creditor, or
- (b) file answer, in duplicate in the office of the clerk, disputing his liability to the defendant or judgment debtor or claiming the debt is or may not be attachable, or
- (c) file answer, in duplicate, in the office of the clerk stating that the money is accruing due but is not yet payable and that it is to be payable at a specified future date or upon the happening of a specified event, or
- (d) file answer, in duplicate, in the office of the clerk stating that the debt attached belongs or may belong to some third person whose name and address so far as known to the garnishee shall be stated.

(2) When the garnishee files answer under clause (c) of subrule (1) then upon the specified future date or upon the happening of the specified future event the garnishee shall pay into court the money accrued due at the time of service of the garnishee summons from him to the defendant or judgment debtor or an amount sufficient to satisfy the claim or judgment and the probable costs of the plaintiff or judgment creditor, whichever is the lesser.

(3) When the garnishee files answer under clause (d) of subrule (1) then unless the court otherwise orders the garnishee shall pay into court with the answer the debt attached or so much thereof as is required to satisfy the claim or judgment and the probable costs of the plaintiff or judgment creditor, whichever is the lesser.

(4) If the garnishee does not pay into court or file answer the court may, on notice to the garnishee after judgment has been entered against the defendant, order that judgment be entered against the garnishee in such amount as may be proper.

476.(1) A garnishee disputing liability to the defendant or judgment debtor shall state the grounds upon which liability is disputed or the grounds upon which the debt is or may not be attachable.

(2) A garnishee who answers that the debt attached belongs or may belong to some third person shall state the circumstances and grounds so far as they lie within his knowledge.

477. A garnishee paying money into court is entitled to deduct therefrom \$5 for compensation, but if the debt due from him to the defendant or judgment debtor is larger than the sum of the amount attached by the garnishee summons and any exemption to which the defendant or judgment debtor is entitled, the garnishee shall deduct that compensation from the money remaining in his hands.

478. If the garnishee pays into court money due to an employee for wages or salary he shall at the same time file in court (without any fee being payable to the clerk for the filing), a statement showing the period with respect to which the wages or salary is due and particulars of any payments made on account thereof and any other deductions claimed therefrom.

479.(1) Upon payment into court by the garnishee the clerk shall promptly notify the plaintiff or judgment creditor or his solicitor, of the amount of the payment.

(2) Upon answer being filed by the garnishee, the clerk shall promptly mail one copy of it to the plaintiff or judgment creditor or his solicitor.

480. Subject to The Execution Creditors Act, money paid into court under garnishee proceedings may be paid out to the person entitled thereto or to the solicitor or agent of that person by order of the court on application made ex parte or on such notice as may be directed.

481.(1) Any person claiming to be interested in the money attached may apply to the court to set aside the garnishee summons or for an order for the speedy determination of any questions in the action or in the garnishee proceedings or for such other order as may be just.

(2) Upon the application the court may

(a) summarily determine any question arising in the action or in the garnishee proceedings, or

(b) direct the trial of an issue to determine any question arising in the action or in the garnishee proceedings, or

(c) make such other order as may be just.

(3) Upon the application the court may make such order for the payment of costs by any person as may be just.

482. Payment made by the garnishee or satisfaction of judgment against the garnishee is a valid discharge to him against the defendant or judgment debtor to the extent of the payment or satisfaction.

483.(1) Where the debt due to an employee is for wages or salary the following portion thereof is exempt from attachment by garnishee for each month in respect of which the wages or salary is payable:

- (a) if the debtor is a married person, the sum of \$700, or
 - (b) if the debtor is a married person with dependent children
 - (i) in his or her custody, or
 - (ii) under his or her control, or
 - (iii) in respect of whom he or she is paying maintenance,
\$700 plus \$140 for each child, or
 - (c) if the debtor is a widow, widower, unmarried mother or divorced person with dependent children
 - (i) in his or her custody, or
 - (ii) under his or her control, or
 - (iii) in respect of whom he or she is paying maintenance,
\$525 plus \$140 for each child, or
 - (d) if the debtor is an unmarried person \$525.
- (2) The amount of exemption applicable is increased or decreased proportionately where the period in respect of which the wages or salary is payable is greater or less than one month.
- (3) If the debtor is employed during part only of a month, he is entitled to the full exemption for the month.
- (4) If the amount of the exemption applicable or any portion thereof is paid into court, the clerk shall pay it out to the defendant or judgment debtor.
- (5) This Rule does not apply
- (a) where the debt sued for, or in respect of which judgment was recovered, was contracted for board and lodging or either of them, or
 - (b) where the debtor has absconded or is about to abscond from Alberta, leaving no wife or husband or infant children within Alberta, or
 - (c) to any garnishee summons issued upon any judgment or order for the payment of alimony or for the payment of maintenance by a husband to his wife or his former wife, as the case may be, or for the payment of maintenance for any child of the debtor.

(6) A copy of this Rule shall be attached to or endorsed on each garnishee summons purporting to attach wages or salary.

484. Where both husband and wife are in receipt of wages or salary the court may, upon application, reduce the exemption to which one or both of them would be otherwise entitled under Rule 483.

485. After the commencement of any action wherein the claim is for recovery of a debt of \$200 or upwards,

- (a) upon affidavit, made by the plaintiff or one of several plaintiffs, if more than one, or by his or their agent swearing positively to the facts establishing the debt and that he has reason to believe, specifying the grounds of his belief, that the defendant
 - (i) is about to abscond or has absconded from Alberta, leaving personal property liable to seizure under execution, or
 - (ii) has attempted to remove any of his personal property out of Alberta or to sell or dispose thereof with intent to defraud his creditors generally or the plaintiff in particular, or
 - (iii) keeps concealed to avoid service of process, and that the deponent verily believes that without the benefit of the attachment the plaintiff will lose his debt or sustain damage, and
- (b) upon the further affidavit of one other person swearing that he is well acquainted with the defendant and that he has good reason to believe specifying the grounds of his belief, that the defendant
 - (i) is about to abscond, or
 - (ii) has absconded, or
 - (iii) has attempted to remove any of his property out of Alberta, or
 - (iv) has attempted to sell or dispose of his property, or
 - (v) keeps his property concealed with intent to defraud his creditors,

the court may, on application to it *ex parte*, direct the clerk to issue a writ of attachment in Form M in the schedule, which writ shall be executed by the sheriff according to its tenor.

486.(1) If the debtor can be found, a copy of the writ shall be served on the debtor against whose effects it is issued at the time of making any seizure thereunder, or as soon thereafter as service can be effected.

(2) If personal service cannot be effected a copy of the writ shall be left with some apparently adult resident at the place where the seizure is made, or, if no such person is there resident, posted in a conspicuous place on the premises.

487. Immediately after making a seizure the sheriff shall make a return of the writ and with the return transmit annexed thereto an inventory of the property seized and the estimated value thereof and an affidavit of the manner in which service of the writ was effected.

488. The person from whose possession the property was seized under the writ of attachment is entitled to have it returned to him on giving the sheriff sufficient security for or paying into court an amount equal to its value as shown in the sheriff's return made under Rule 487.

489.(1) Unless the property seized is redelivered or relinquished by the sheriff under these Rules he shall, unless otherwise ordered, hold it until the plaintiff obtains judgment in the cause and an execution upon the judgment is delivered to the sheriff.

(2) Where the plaintiff fails to recover judgment or is guilty of unnecessary delay in the prosecution of his action to judgment, the court may order the redelivery of the property so seized to the person from whose possession it was taken, unless some other writ of attachment or execution against the defendant is in the sheriff's hands for execution.

490.(1) Notwithstanding the issue of a writ of attachment the action shall be proceeded with in the ordinary way, the the plaintiff shall not have judgment against the defendant except by order of the court.

(2) Where judgment is given for the plaintiff for an amount less than the amount of the debt, as sworn to in the affidavit upon which the writ of attachment was issued, the court may order that the plaintiff be deprived of his costs either wholly or in part, or that the plaintiff pay to the defendant his costs, either wholly or in part.

491. A writ of attachment may be set aside by the court on satisfactory proof by affidavit that the creditor who obtained the writ did not have reasonable cause for taking the proceedings.

492. Where

(a) livestock or any perishable goods or chattels that from their nature cannot be safely kept or conveniently taken care of are taken under a writ of attachment, the officer who seized them shall have them appraised and valued on oath by two competent persons, and

- (b) if the plaintiff desires it and deposits with the sheriff a bond to the defendant
 - (i) executed by one or more persons whose sufficiency is approved of by that officer in double the amount of the appraised value of such articles, and
 - (ii) conditioned for the payment of that appraised value to the defendant, together with all costs and damages incurred by the seizure and sale thereof if judgment is not obtained by the plaintiff against the defendant,

the sheriff may sell all or any of those seized articles at public auction to the highest bidder, giving not less than six days' notice of the sale unless any of the articles are of such a nature as not to allow of that delay, in which case the officer shall sell those articles last mentioned forthwith and shall hold the proceeds of the sale for the same purpose as he would have held any property seized under the attachment.

493. If the plaintiff after notice to himself or his solicitor of the seizure of any articles specified in Rule 492 neglects or refuses to deposit the bond or offers a bond with sureties insufficient in the judgment of the sheriff, then after the lapse of four days next after the notice the sheriff is relieved from all liability to the plaintiff in respect to the articles so seized and the sheriff shall forthwith restore them to the person from whose possession he took the articles.

APPENDIX C

TABLES OF CONCORDANCE

EXEMPTIONS ACT

Exemptions Act Section	J.E.A. Section(s)	Notes
1 (1)	157-160	
(2)	166	
2	----	A
4	----	B
5	163	
6	162(1)	
7 (1)	64(2)	F [No personal liability for sheriff's officers in any event: see s. 177(1).]
(2)	186(1)	C
8	----	B
9	186(1)	

Explanation of Notes:

A = Subject matter of section not within scope of J.E.A. (e.g. Landlord's distress for rent).

B = Policy of section rejected by Institute.

C = Specific subject matter of section dealt with by general provision of J.E.A.

D = Part of subject matter of section not within scope of J.E.A.

E = Issue addressed by section does not arise under J.E.A.

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EXECUTION CREDITORS ACT

ECA Section	J.E.A. Section(s)	Notes
1	----	
2	3(2)	
3	----	B
4 (1)	63(1)	
(2)	63(1)	F [No personal liability for sheriff's officers in any event.]
(3)	64(1)	
(4)	72	
(5)-(7)	185	
(8)	----	
(9)	----	
5 (1)	121(a)	F [Garnishee summons issued by sheriff, not clerk.]
(2)	123	
(3)	121	
6	167(1)	
7	117(1)(d)(iv); 118(1)	
8 (1)	----	E [Garnishee summons issued by sheriff, not clerk.]
(2)	129(2)	F [Money would come directly to the sheriff from the garnishee.]
9	13(1)	
10 (1)	169(1),(2)	
(2)	170(3)	

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ECA Section	J.E.A. Section(s)	Notes
10 (3)	187	C
11	172(c)	
12	172	
13	167(1); 169(1),(2); 170(3)	
14	3(2); 185	
15	185	
16	----	A
17	-----	E [Judgment for price of goods sold has no special status so far as exemptions are concerned.]
18-22	----	B
23	-----	E [No 14 day period.]
24-27	----	B
28	35(2)	
29	32; 36(1),(4)	
30	181(3)	
31	174, 186	
32	183(3)(b),(f)	C
33	173(1)	
34	183(3)(b)	C
35	172(c); 173(2)	
36	190(1)(b)	
37	----	E
38	-----	E

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ECA Section	J.E.A. Section(s)	Notes
39	15	F [No personal liability for sheriff's officers in any event.]
40	---	A
41	---	B
42	---	A
43	---	A
44	188	
45	186(3)(a)	
46	186(4)	
47	---	
48	190	

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SEIZURES ACT

Seizures Act Section	J.E.A. Section(s)	Notes
1	----	
2	----	A
3	----	A
4	38-49	
5	(1) 1(bb),(ee); 4; 61	
	(2) 86	
6	(1) 1(bb),(ee); 4; 61	
	(2) 88(3)	
	(3) ----	E
	(4) 88(3)	
	(5) 167(1)	
7	(1) 1(bb),(ee); 4; 61	
	(2) 90	
	(3) 44; 45(2); 46; 48	
	(4) 91(2)(b); 92(c)	
	(5) ---	E
	(6) 93(2)	
	(7) 96	
	(8) 98	
	(9) ----	
	(10),(11) 95	
8	100, 101	
9	----	B

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Seizures Act Section	J.E.A. Section(s)	Notes
10	1(3),(4),(bb); 4; 61	
11	64(3)	
12	66, 80	
13(1),(2),(3)	104	
(4)	---	E
(5)	103(1)	
(6)	83(2)	C
(7),(8)	103(2)	
(9)	83(2)	C
14	---	B, D
15	Part 7	
16	70(3)	
17	70(5)	
18	---	A
19	---	A
20	---	A
21	---	A
22	---	A
23	67	
24	107	
25 (1)	66	D
(2)	80	
(3),(4),(5)	71	
26	63(2)	

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Seizures Act Section	J.E.A. Section(s)	Notes
27	73	
28	82	
29(1),(3)	74(1)	
(2)	74(3)	
(4)	186	C
(5)	75, 186	C, D
(6)	15	C
(7)	---	
(8)	186	C
(9)	---	
30 (1)	82(2)(a); 83(1)	D
(2),(3)	---	A
31 (1)	70(2)	D
(2)	85	
32	83(1)	C
33	83(2),(4)	[The sheriff always has a discretion as to the method of sale.]
34	73(4); 186	
35	---	A
36	86	D
37	188	
38	---	E [The matter of compensation for any damage suffered by third party is addressed in Part 12.]

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Seizures Act Section	J.E.A. Section(s)	Notes
39	15	
40	81	
41	---	A
42	---	
43	10	C
44	---	A
45	64(3)	
46 (1)	167(3)	A
(2)	167(2)	
(3)	168	
47	190	
48	---	A

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SELECTED RULES OF COURT

Rule	J.E.A. Section(s)	Notes
342	1(1)(y)	[A judgment for the payment of money into court falls within the definition of money judgment.]
346 (1)	33(1)	
(2)	---	A
347	39	
355	33(1)	
356	34	
359	33(2)	[The critical date is not really the date of issue, but the date the writ is registered in the Enforcement Register.]
360	33(2)	
361	33(2)	
362	33(2)	
363	36	
364	35	
365	7(2)	
366	33(2)(c); 35(3); 37	
368	84	
372, 373	52; 53	
374	54(1),(2)	
375	54(3)	
376	57	C
377, 378	58	

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Rule	J.E.A. Section(s)	Notes
379	55	
380	60	
381	37	
382	57	
383 (1)	----	A
(2)	154	
(3),(4)	186(3)	
465	17; 19(1)(e)	
470 (1)	17; 19(1)(d)	
(2),(3)	120	
(4)	121	
(5)	152(2)	
471 (1)	123	
(2)	122(1)	
(3)	129	
(4)	122(2)	
472	117(1)(h),(j); 138	
473	122(3)	
474	----	
475 (1),(2),(3)	124, 125, 127	
(4)	151	
476	127	
477	126	
478	138(3)	

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A = Subject matter of section not within scope of J.E.A. (e.g. Landlord's distress for rent).

B = Policy of section rejected by Institute.

C = Specific subject matter of section dealt with by general provision of J.E.A.

D = Part of subject matter of section not within scope of J.E.A.

E = Issue addressed by section does not arise under J.E.A.

F = One or more of the issues addressed by section does not arise under J.E.A.

Rule	J.E.A. Section(s)	Notes
479	----	
480	167(1)	
481	(1)	152(1)
	(2),(3)	186(3)
482	153	
483	138; 139; 140; Schedule A	
484	139(5)	
485-493	Part 2	[The "absconding debtor" provisions of the Rules are wholly superseded by the provisions of Part 2.]

Explanation of Notes:

A = Subject matter of section not within scope of J.E.A. (e.g. Landlord's distress for rent).

B = Policy of section rejected by Institute.

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APPENDIX D

LEGISLATION AND RULES TO BE AMENDED OR REPEALED

LEGISLATION AND RULES TO BE AMENDED OR REPEALED

This appendix identifies the provisions of existing legislation that would have to be repealed or amended if our recommendations were to be implemented. Where amendment of a provision would be required, we briefly describe the required amendment.

Business Corporations Act, R.S.A. 1980, c. B-15

Section 70 of the Act should be amended so that it does not apply to seizures under the *Judgment Enforcement Act*. See Recommendations 50 and 51 and JEA sections 45(3), 46 and 48.

Employment Standards Code, R.S.A. 1980, c. E-10.2

Section 115 should be amended by deletion of the word "sole" in accordance with Recommendation 89.

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

This Act should be repealed.

Exemptions Act, R.S.A. 1980, c. E-15

This Act should be repealed. All of the provisions of this Act which deal specifically with exemptions from seizure under a writ of execution should be repealed. This would leave only section 2, which deals with exemptions on a landlord's distraint for rent, and sections 7 and 9, which would be relevant to a landlord's distraint for rent. These provisions could probably be consolidated with the surviving provisions of the *Seizures Act*: see the discussion pertaining to the *Seizures Act*, below.

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

Sections 125 through 127 should be amended to make it clear that they do not apply to sales of land by a sheriff under the *Judgment Enforcement Act*: see Recommendation 62 and JEA section 114.

Seizures Act, R.S.A. 1980, c. S-11

All sections of this Act that deal exclusively with seizure under a writ of execution should be repealed. These sections are sections 4 through 11, 15, 45 and 46.

Section 2 should be amended so as to make it clear that the Act does not apply to any seizure proceedings to which the *Judgment Enforcement Act* applies. The remaining provisions of the Act should be amended so as to delete all references to seizure under writs of execution, and similar references.

In short, the amended *Seizures Act* would deal only with seizures under what the Act refers to as a power of distress (to which the PPSA does not apply).

Alberta Rules of Court

The following rules should be repealed: 340, 346(1), 347, 361, 362, 368, 372 through 382, 465, 470 through 493, 588.

Rule 350 should be amended so as to require the issuance of separate writs, since our proposed writ of enforcement is specifically designed for enforcing money judgments.

Several of the rules refer to "writs of execution". If the term "writ of execution" referred exclusively to writs issued on money judgments, we would simply say that these rules should also be repealed. However, the term "writ of execution", as used in the rules, could also apply to, say, a writ of possession. Therefore, the following rules, which refer to writs of execution, should be amended so that it is clear that they do not apply to writs of enforcement as defined in the *Judgment Enforcement Act*: Rules 355, 356, 359, 360, 363 through 367, 369 through 371.