

BILL 27 – 2023

MONEY JUDGMENT ENFORCEMENT ACT

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HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – INTERPRETATION

Definitions

1 In this Act:

“**accession**” means goods that are installed in or attached to other goods;

“**account**” means a monetary obligation, other than a monetary obligation evidenced by a negotiable instrument or security, that is due to a judgment debtor by a person, whether or not payable or specific as to amount, including

- (a) a monetary obligation under a term deposit contract,
- (b) an insurance contract,
- (c) a letter of credit,
- (d) a guarantee agreement, and

- (e) an indemnity agreement to make payment to the judgment debtor in the discharge of any liability of the deposit-taking institution, insurer, issuer, guarantor or indemnitor to the judgment debtor;

“account debtor” means

- (a) in relation to an account, a person who is obligated to a judgment debtor under the account, and
- (b) in relation to a future account, a person who will become obligated to a judgment debtor under the future account;

“amount recoverable”, in relation to a registered money judgment, means the total of the following:

- (a) the unsatisfied amount of the money judgment;
- (b) any taxable court costs payable to the judgment creditor under section 185 (1) (a), (b) and (g) [*distribution of distributable fund*];
- (c) the fees of the civil enforcement officer and any costs incurred by the officer in relation to enforcement of the judgment;
- (d) the costs of registering a judgment in the money judgment registry or land title registry;
- (e) any prescribed amounts;

“central cooperative credit society” has the same meaning as in the *Canadian Payments Act*;

“civil enforcement officer” means a person who is appointed under section 3 (1) [*court bailiffs*] of the *Sheriff Act*;

“co-owned property” means property, other than partnership property, that is owned by a judgment debtor and another person as joint tenants or tenants in common;

“court”, unless the context requires otherwise, means the Supreme Court;

“Crown land” has the same meaning as in section 1 of the *Land Act*;

“deposit account” means a savings account, passbook account, chequing account or similar demand account at a deposit-taking institution, but does not include either of the following:

- (a) an account under which money is deposited for a fixed term, whether or not the term may be shortened, extended or renewed;
- (b) an account under which a person is obligated to pay a judgment debtor a specified sum of money, with or without interest, at a specified date in the future;

“deposit-taking institution” means

- (a) a person that is, or is eligible to become, a member of the Canadian Payments Association established under the *Canadian Payments Act*, or

- (b) a credit union that is a shareholder or member of a central cooperative credit society;

“distributable fund” means a fund established under section 183 [*establishment of distributable fund*];

“due”, in relation to a monetary obligation, means any of the following:

- (a) that the obligation is owed unconditionally even if it may not be payable;
- (b) that payment of the obligation is conditional only on the passage of time;
- (c) if the obligation is subject to a condition other than or in addition to the passage of time, that the condition has been satisfied even if the payment may not be payable on the satisfaction of the condition;

“employment remuneration”, in relation to a judgment debtor, means the total of

- (a) an amount of money due to the judgment debtor under a contract of employment, and
- (b) the fair market value of all goods or services that the judgment debtor is entitled to receive under the contract of employment referred to in paragraph (a);

“enforcement charge” means,

- (a) in relation to personal property, a charge on the property that is created by the registration of a money judgment under section 11 [*registration in money judgment registry*], and
- (b) in relation to land, a charge on the land that is created by registration of a money judgment under section 28 [*registration in land title office*];

“enforcement instruction” means an enforcement instruction given to a civil enforcement officer under section 45 [*giving enforcement instructions to civil enforcement officer*];

“enforcement proceeding” means an act or measure authorized by this Act to be taken for the purpose of enforcing a money judgment, but does not include the registration of a money judgment in the money judgment registry or the land title office;

“exemption value”, in relation to a type of property, means the amount prescribed in relation to that type of property, as referred to in section 165 (1) (1) [*property that may be claimed as exempt*];

“exigible property”, in relationship to a judgment debtor, means property that is subject to an enforcement charge, including

- (a) partnership property of a partnership in respect of which the judgment debtor is a partner, and
- (b) property that is co-owned by the judgment debtor;

“fixture” includes heating, air conditioning or conveyancing devices and machinery installed in a building or on land for use in carrying on an activity inside the building or on the land, but does not include building materials that are incorporated into a building, including goods attached to a building, if their removal

- (a) 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
- (b) would result in the weakening of the structure of the building or the exposure of the building to weather damage or deterioration;

“future account” means a monetary obligation that would fall within the definition of “account” if the obligation were due at the time of seizure and if either of the following apply:

- (a) the obligation becomes due any time within 12 months after the date that a notice of seizure is given under Division 3 [*Seizure of Existing and Future Accounts and Other Debts*] of Part 9;
- (b) the obligation is to make a payment that is one of a series of periodic recurring payments arising from a legal relationship that exists between the account debtor and the judgment debtor on the date that a notice of seizure is given under Division 3 of Part 9;

“goods” means tangible personal property, fixtures, crops and the unborn young of animals, but does not include chattel paper, a document of title, an instrument, investment property, money, trees other than crops until the trees are severed, or minerals or hydrocarbons until they are extracted;

“income” means money due or payable to the judgment debtor or property to which the judgment debtor is entitled;

“instructing judgment creditor” means a judgment creditor who has given an enforcement instruction to a civil enforcement officer under section 45 [*giving enforcement instructions to civil enforcement officer*];

“intellectual property” means

- (a) a proprietary right or interest in the following:
 - (i) a copyright;
 - (ii) letters patent for an invention;
 - (iii) a trademark;
 - (iv) an industrial design;
 - (v) an integrated circuit topography;
 - (vi) plant breeders’ rights, and

(b) a prescribed type of proprietary right or interest, but does not include a trade secret or an intellectual property licence;

“**intellectual property licence**” means a licence that entitles the holder to use, perform, copy or reproduce intellectual property;

“**interest**”, in relation to property, includes a contingent or equitable interest in the property;

“**inventory**” means goods that are

- (a) held by a person for sale or lease, or that have been leased by the person as lessor,
- (b) furnished by a person under a contract of service,
- (c) raw materials or work in progress, or
- (d) materials used or consumed in a business;

“**judgment creditor**” means a person with a right to be paid money under a money judgment;

“**judgment debtor**” means a person, other than the government or the government of Canada, who is required to pay money under a money judgment;

“**land**” includes an estate or interest in land, including a unit entitlement under the *Strata Property Act*, but does not include fixtures or growing crops;

“**licence**” means a right, whether or not exclusive, that may be transferred by the holder, with or without restriction or the consent of the grantor, and that entitles the holder to

- (a) manufacture, produce, transport, acquire, dispose of, grow, harvest or otherwise deal with property,
- (b) transport persons,
- (c) provide services,
- (d) use, perform, copy or reproduce a work or intellectual property, or
- (e) engage in an undertaking authorized under an enactment,

but does not include a licence in relation to a trade secret or a licence issued under an enactment in relation to unregistered Crown land;

“**money judgment**” means

- (a) an order or judgment of the Supreme Court, the Court of Appeal, the Provincial Court, the Supreme Court of Canada or the Federal Court of Canada that requires one person to pay another person money, or
- (b) an instrument that is, under an enactment, enforceable as if it were an order or judgment of a court,

but does not include

- (c) a prescribed class or type of order or judgment referred to in paragraph (a), or
- (d) a prescribed class or type of instrument referred to in paragraph (b);

“money judgment registry” means the money judgment registry referred to in section 10 [*money judgment registry*];

“partnership” means a partnership in which a judgment debtor is a partner;

“partnership property” has the same meaning as in section 1.1 of the *Partnership Act*;

“payable”, when used in relation to a monetary obligation, means that the time for the discharge of the obligation has arrived;

“payment period” means the period to which a payment of income relates;

“personal property” includes the following:

- (a) fixtures and crops;
- (b) intellectual property;
- (c) an intellectual property licence;
- (d) intangible property;

“personal property registry” means the registry established under section 42 [*personal property registry*] of the *Personal Property Security Act*;

“private dwelling” means

- (a) a structure that is used solely as a private residence, or
- (b) if only part of a structure is used solely as a private residence, that part of the structure;

“realizable value”, in relation to property, means the amount of the proceeds that a civil enforcement officer estimates would be realized from a disposition of the property;

“receiver” means a person appointed by the court

- (a) under section 155 (1) [*appointment of receiver*] as a receiver, or
- (b) as a receiver-manager or a receiver and manager;

“registered”, unless the context requires otherwise, means one of the following, as applicable:

- (a) in relation to a money judgment, registered in the money judgment registry or the land title office, as the context requires;
- (b) in relation to land, registered in the land title office;
- (c) in relation to a financing statement, registered in the personal property registry;
- (d) in relation to a plan, registered for the purposes of the *Income Tax Act* (Canada);
- (e) in relation to a security, registered on books maintained by or on behalf of the issuer of the security;

“**release amount**”, in relation to seized property, means the total of

- (a) the amounts recoverable by all judgment creditors with an enforcement charge on the property, and
- (b) any amount that must be paid out of a distributable fund established under Part 14 [*Distribution*] in relation to the property before the amounts recoverable referred to in paragraph (a) of this definition are paid out;

“**right**”, in relation to property, includes a contingent or future right;

“**trade secret**” means information, including a formula, pattern, compilation, program, device, product, method, technique or process, that

- (a) is used, or may be used, in business or for any commercial advantage,
- (b) derives independent economic value, actual or potential, from it not being generally known to the public or to other persons who could obtain economic value from its disclosure or use,
- (c) is the subject of reasonable efforts to prevent it from becoming generally known, and
- (d) the disclosure of which would result in harm or improper benefit.

Application of definitions from *Personal Property Security Act*

- 2 For the purposes of this Act, the definition of a word or expression in section 1 (1) of the *Personal Property Security Act* applies to the use of that word or expression in this Act, unless
 - (a) the word or expression is defined in this Act, or
 - (b) the context requires otherwise.

Meaning of words and expressions also used in *Securities Transfer Act*

- 3 For the purposes of this Act, unless the word or expression is defined in this Act, or the context requires otherwise, the following words and expressions have the same meaning as in the *Securities Transfer Act*:
 - (a) securities account;
 - (b) securities intermediary;
 - (c) security;
 - (d) security certificate;
 - (e) security entitlement;
 - (f) uncertificated security.

PART 2 – GENERAL PRINCIPLES

Division 1 – Preliminary Matters

Orders respecting payment of money judgments

- 4** A court that grants a money judgment may make orders
- (a) that require the money judgment to be paid within a specified period of time or by instalments, and
 - (b) that stay one or more enforcement proceedings indefinitely or for a specified period of time.

Division 2 – Scope and Application of Act

Universal exigibility

- 5** Every type of property in which a judgment debtor has an interest may be subject to an enforcement charge and, except as otherwise provided under this Act, an enforcement proceeding.

Prohibition against arrest and imprisonment

- 6** A person must not be arrested or imprisoned for default in payment of a money judgment.

When persons may alter applicability of Act by agreement

- 7**
- (1) If a cause of action exists that gives rise to a money judgment being enforceable under this Act, the application of a provision of this Act that relates to the money judgment may be waived with the written consent of all persons who would be affected by the application of the provision.
 - (2) An act or measure taken by a civil enforcement officer for the purpose of enforcing a money judgment is, with the written consent of all interested persons, deemed to have been taken in accordance with this Act.
 - (3) Despite subsections (1) and (2), a judgment debtor may not, at any time, waive an exemption claim under Part 13 [*Exemptions*].

Offence Act

- 8** Section 5 [*general offence*] of the *Offence Act* does not apply to this Act or the regulations.

**PART 3 – REGISTRATION OF MONEY JUDGMENTS AND
CREATION OF ENFORCEMENT CHARGES**

Division 1 – Definitions

Definitions for Part 3

9 In this Part:

“**change statement**”, in relation to a money judgment, means a statement that is filed with the registrar for the purpose of amending or discharging the registration of the money judgment;

“**extraprovincial judgment**” means any of the following:

- (a) a judgment, order or award of the Supreme Court of Canada that relates to an appeal from a court other than the British Columbia Court of Appeal;
- (b) a judgment, order or award of a court of appeal, a superior court or a provincial court of a province or territory other than British Columbia;
- (c) a certificate specifying that an amount is payable to the government of a province or territory other than British Columbia that
 - (i) has been filed with a superior court in a province or territory other than British Columbia, and
 - (ii) is enforceable as a judgment of that court;
- (d) an order of a tribunal that
 - (i) has been filed with a superior court in a province or territory other than British Columbia, and
 - (ii) is enforceable as a judgment of that court;

“**judgment statement**”, in relation to a money judgment, means a statement that is filed in accordance with section 11 [*registration in money judgment registry*] with the registrar for the purpose of registering the money judgment;

“**local judgment**” means any of the following:

- (a) a judgment, order or award of
 - (i) the Supreme Court of Canada relating to an appeal from a British Columbia court,
 - (ii) the British Columbia Court of Appeal,
 - (iii) the Supreme Court of British Columbia,
 - (iv) the Provincial Court of British Columbia, or
 - (v) an arbitration to which the *Arbitration Act* applies;
- (b) an arbitral award to which the *Foreign Arbitral Awards Act* or the *International Commercial Arbitration Act* applies;

(c) an instrument that is, under an enactment, enforceable as if it were an order or judgment of a court;

“**registrar**”, unless the context requires otherwise, means the registrar of the money judgment registry;

“**registration number**” means

(a) in relation to a judgment statement or a change statement, the number assigned to the statement by the registrar, and

(b) in relation to a financing statement, the number assigned to the statement under the *Personal Property Security Act* for the purposes of the personal property registry;

“**serial numbered goods**” has the prescribed meaning.

Division 2 – Registration in Money Judgment Registry

Money judgment registry

- 10** (1) The registrar of the personal property registry is the registrar of the money judgment registry.
- (2) The registrar may delegate to a person appointed under the *Public Service Act* any of the registrar’s rights, powers or duties under this Act except the power to delegate under this section.
- (3) A delegation under subsection (2)
- (a) must be in writing,
 - (b) may be to a named person or class of persons, and
 - (c) may contain any conditions or restrictions the registrar considers appropriate.
- (4) If the registrar has delegated a power or duty under subsection (2), a reference to the registrar in relation to that power or duty includes the delegate.
- (5) This section does not restrict or limit the authority in section 23 [*powers to act for ministers, deputy ministers and public officers*] of the *Interpretation Act*.

Registration in money judgment registry

- 11** (1) Subject to section 12, a judgment creditor may register a money judgment in the money judgment registry by
- (a) submitting a judgment statement to the registrar, and
 - (b) paying the fee or making the arrangements referred to in section 24 [*fees*].

- (2) For certainty, subsection (1) applies despite the fact that
 - (a) the time for filing an appeal of, or an application for leave to appeal, the money judgment has not expired, or
 - (b) an appeal of, or an application for leave to appeal, the money judgment has been filed.
- (3) A judgment statement must
 - (a) be submitted in accordance with the requirements set out in the regulations respecting the form and manner of submission of judgment statements, and
 - (b) be accompanied by any prescribed documents or information.
- (4) On receipt of a judgment statement together with the applicable fee,
 - (a) the registrar must assign to the judgment statement a registration number and the date and time of registration, and
 - (b) the money judgment is, for the purposes of this Act, considered to be registered in the registry in relation to the judgment debtor identified in the judgment statement.
- (5) The registration of a money judgment in the money judgment registry is effective from the date and time assigned by the registrar to the judgment statement and continues to be effective for the duration specified in the judgment statement.
- (6) If the registrar assigns the same date and time to 2 or more judgment statements, the order of registration is to be determined by reference to the registration numbers assigned to the judgment statements by the registrar.
- (7) If a judgment statement submitted in respect of a judgment debtor is assigned the same date and time as a financing statement registered in the personal property registry in respect of the same judgment debtor, the order of registration is to be determined by reference to the registration numbers assigned by the registrar to the judgment statement and the financing statement.

Limitation periods for registering money judgments

- 12** (1) In this section, “**applicable period of time**” means
- (a) in respect of a money judgment that is a local judgment, 2 years, or
 - (b) in respect of a money judgment that is an extraprovincial judgment, a period of time that is the lesser of
 - (i) 2 years, and
 - (ii) the period of time that is equal to the limitation period that applies to the commencement of proceedings in the extraprovincial jurisdiction for the payment of money or the return of personal property.

- (2) Subject to subsections (3) and (5), a money judgment may not be registered in the money judgment registry more than the applicable period of time after the later of the following:
 - (a) the date on which the money judgment is granted;
 - (b) the latest date on which the judgment debtor in respect of whom the money judgment is to be registered provides a written acknowledgement of liability that meets the requirements set out in subsection (6).
- (3) Subject to subsection (4), a money judgment may be registered after the date determined for the purposes of subsection (2) if, on application by the judgment creditor before or after that date, a court orders that the money judgment may be registered after the date.
- (4) An order made under subsection (3) must specify a date by which the money judgment must be registered.
- (5) A money judgment may not be registered in the money judgment registry more than 15 years after the date on which the money judgment was granted.
- (6) A judgment debtor's acknowledgement referred to in subsection (2) (b) is not effective unless
 - (a) the acknowledgement is in writing,
 - (b) the acknowledgement is signed by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,
 - (c) the acknowledgement is given by the judgment debtor or the judgment debtor's agent, and
 - (d) the acknowledgement is given to one of the following:
 - (i) the judgment creditor in respect of the money judgment;
 - (ii) an agent of the judgment creditor;
 - (iii) if the judgment creditor is bankrupt, a trustee in bankruptcy.
- (7) The provisions of sections 25 [*limitation periods suspended if claimant becomes person under disability*] and 26 [*notice to proceed if limitation periods suspended under section 25*] of the *Limitation Act* that are applicable to the basic limitation period, as defined in section 1 of that Act, apply, with the necessary modifications, to the limitation period established by subsection (2) of this section.
- (8) The provisions of sections 25 and 26 of the *Limitation Act* that are applicable to the ultimate limitation period, as defined in section 1 of that Act, apply, with the necessary modifications, to any limitation period established by this section.

**Effect of registration – enforcement charge
on personal property**

- 13 (1) Subject to subsections (2) and (3) and section 14, the registration of a money judgment in the money judgment registry creates an enforcement charge, in favour of the judgment creditor, in respect of all personal property of the judgment debtor in respect of whom the money judgment is registered, whether the property was acquired before or after the registration of the money judgment.
- (2) If the registration of a money judgment by a judgment creditor provides that the money judgment is to apply solely to certain specified personal property held by the judgment debtor at the time of registration, registration of the money judgment in the money judgment registry creates an enforcement charge in favour of the judgment creditor solely in respect of the specified personal property.
- (3) If the registration of a money judgment by a judgment creditor provides that the money judgment is to apply to all of the personal property held by the judgment debtor at the time of registration except for certain specified personal property, registration of the money judgment in the money judgment registry creates an enforcement charge in favour of the judgment creditor in respect of all of the personal property of the judgment debtor other than the specified personal property.

Money judgments unenforceable unless registered

- 14 A money judgment may be enforced under this Act only if it is registered in the money judgment registry.

**Invalidity of registration and absence of
enforcement charge**

- 15 (1) Subject to subsection (2), if the registration of a money judgment in the money judgment registry contains a seriously misleading error in the name of the judgment debtor in respect of whom the money judgment is registered,
- (a) the registration is invalid, and
 - (b) no enforcement charge is created on any of the judgment debtor's personal property.
- (2) Subject to subsection (3), the registration of a money judgment that contains the name of the judgment debtor as recorded on the money judgment or a non-legal name that is used by the judgment debtor and that allows a civil enforcement officer to identify the judgment debtor is sufficient to give an officer the authority to enforce the judgment.
- (3) Subsection (2) does not apply to the registration of a money judgment to which a provision of Part 4 [*Priority of Enforcement Charge*] applies.

- (4) Subject to subsection (5), if the registration of a money judgment in the money judgment registry contains a seriously misleading error in the serial number of a serial numbered good of the judgment debtor in respect of whom the money judgment is registered, no enforcement charge is created on the serial numbered good to which the seriously misleading error relates.
- (5) Subsection (4) applies in respect of only the following serial numbered goods:
 - (a) motor vehicles;
 - (b) manufactured homes;
 - (c) boats;
 - (d) outboard motors;
 - (e) trailers;
 - (f) aircraft.
- (6) Subject to subsection (7), the validity of the registration of a money judgment is not affected by a defect, irregularity, omission or error in the money judgment or in the registration of the money judgment unless the defect, irregularity, omission or error is seriously misleading.
- (7) A search of the registry using the name of a judgment debtor or the serial number of a serial numbered good of a judgment debtor that discloses a registration that is a close match with the name of the judgment debtor or the serial number of the serial numbered goods does not mean that the registration is valid or that an enforcement charge is created in respect of the judgment debtor's personal property.
- (8) For certainty, in a proceeding in which it is alleged that an error in the name of a judgment debtor is seriously misleading, it is not necessary to prove that any person was in fact misled by the error.
- (9) In this section, “**motor vehicle**” has the prescribed meaning.

No constructive notice of registration

- 16** Registration of a judgment statement in the registry does not by itself constitute express, constructive or implied notice to any person, or express, constructive or implied knowledge on the part of any person, of the judgment statement or its contents.

Amendment and discharge of registration

- 17** (1) Subject to subsection (5), an amendment or discharge of the registration of a money judgment in the money judgment registry must be made by
 - (a) submitting a change statement to the registrar, and
 - (b) paying the fee or making the arrangements referred to in section 24 *[fees]*.

- (2) A change statement referred to in subsection (1) (a) must
 - (a) be submitted in the form and manner required by the registrar,
 - (b) contain any information required by the registrar, and
 - (c) be accompanied by any document or information required by the registrar or the regulations.
- (3) A change statement that provides for the assignment or subordination of a judgment creditor's interest in a money judgment may be submitted only by the judgment creditor.
- (4) A change statement referred to in subsection (3) may be submitted before or after the assignment or subordination, as applicable, takes place.
- (5) The registrar may modify information in a registration of a money judgment or remove information from the records of the money judgment registry
 - (a) on the discharge or partial discharge of the money judgment,
 - (b) on receipt of a court order requiring the discharge or partial discharge of a money judgment, or
 - (c) if the registration no longer has any effect.

Amendment of registration

- 18**
- (1) An amendment to a valid or invalid registration of a money judgment may be made by submitting a change statement to the registrar at any time during the period that the registration is in place, and the amendment is effective from the date the change statement is submitted.
 - (2) A judgment creditor must submit a change statement to the registrar to make the necessary amendment to the registration of the judgment creditor's money judgment in the money judgment registry within 7 days after either of the following occurs:
 - (a) the amount of the money judgment is varied on appeal;
 - (b) the judgment creditor transfers the judgment creditor's interest in the money judgment to another person.
 - (3) If a judgment creditor amends the registration of a money judgment in accordance with subsection (2) (b), the amended registration must identify, in the prescribed manner, the person to whom the interest in the money judgment has been transferred.
 - (4) The transfer of an interest in a money judgment from one person to another person under subsection (2) (b) does not affect the priority of the interest.
 - (5) A judgment creditor must submit a change statement to the registrar to discharge the registration of the judgment creditor's money judgment in the money judgment registry within 7 days after any of the following occurs:
 - (a) the money judgment is set aside on appeal;

- (b) the money judgment otherwise becomes unenforceable, except if the unenforceability is temporary, including when an order has been made staying enforcement of the money judgment pending appeal;
 - (c) a court orders the judgment creditor to discharge the registration.
- (6) If a judgment creditor fails to comply with subsection (2) or (5) within the period specified, a judgment debtor in respect of whom the money judgment is registered, or any other person with an interest in the property that is subject to the enforcement charge created by the registration, may give a written demand to the judgment creditor requiring that the judgment creditor file a change statement with the registrar to discharge or amend the registration, as applicable.
- (7) On receiving a written demand under subsection (6), the judgment creditor must, as soon as practicable,
- (a) submit a change statement to the registrar to discharge or amend the registration of the money judgment in accordance with the demand, or
 - (b) apply to the court for an order to allow the judgment creditor to maintain the registration of the money judgment in its current form.
- (8) If the judgment creditor fails to submit a change statement under subsection (7) (a) within 30 days after receiving a written demand under subsection (6), the judgment debtor may, on giving the registrar proof satisfactory to the registrar that the demand has been given to the judgment creditor, file a change statement with the registrar to amend or discharge the registration of the money judgment, as applicable, unless the judgment creditor files a court order with the registrar that allows the judgment creditor to maintain the registration of the money judgment in its current form.
- (9) In order for a written demand under subsection (6) to be validly made, it must be given to the judgment creditor in accordance with section 19.

Giving written demand

- 19** (1) If the judgment creditor is an individual, a written demand under section 18 (6) must be given by leaving it with the individual or by sending it by registered mail addressed to
- (a) the individual by name at the individual's residence, or
 - (b) if the individual is the sole proprietor of a business, the individual by name at the address of the business.
- (2) If the judgment creditor is a partnership, the written demand must be given
- (a) by leaving it with one or more of the general partners or with a person who has, at the time the written demand is given, control or management of the partnership business, or

- (b) by sending it by registered mail addressed to any one of the following at the address of the partnership business:
 - (i) the partnership;
 - (ii) one or more of the general partners;
 - (iii) any person who has, at the time the demand is given, control or management of the partnership business.
- (3) If the judgment creditor is a corporation, the written demand must be given
 - (a) by leaving it with an officer or director of the corporation or a person in charge of any office or place of business of the corporation,
 - (b) by leaving it with the registered or head office of the corporation or by sending it by registered mail addressed to the office, or
 - (c) if the registered or head office of the corporation is outside British Columbia, by leaving it with, or by sending it by registered mail addressed to, the attorney for service for the corporation.
- (4) If the judgment creditor is a municipal corporation, the written demand must be given by leaving it with the municipal corporate officer or by sending it by registered mail addressed to the officer.
- (5) If the judgment creditor is an association, the written demand must be given by leaving it with an officer of the association or by sending it by registered mail addressed to an officer of the association at the address of the association.
- (6) If the judgment creditor is the government, the written demand must be given in accordance with section 8 [*service on government*] of the *Crown Proceeding Act*.
- (7) Subject to subsection (8), a written demand sent by registered mail under this section is considered to be given on the earlier of the following dates:
 - (a) the date that the addressee receives the demand;
 - (b) the date that is 10 days after the date of registration.
- (8) Subsection (7) does not apply if delivery of the registered mail containing the written demand is delayed by an interruption in postal service after registration takes place, in which case the demand is considered to be given on the date that the addressee receives the demand.

**Amendment and discharge of registration
by civil enforcement officer**

- 20** (1) A civil enforcement officer who makes a distribution under section 185 [*distribution of distributable fund*] for the purpose of making a payment in respect of a money judgment that is registered in the money judgment registry must submit a change statement to the registrar to amend or discharge the registration of the money judgment, in order to take into account the amount of the payment, within 7 days after the distribution is made.

- (2) If the civil enforcement officer fails to comply with subsection (1) of this section within the 7-day period, a judgment debtor in respect of whom the money judgment is registered, or any other person with an interest in the property that is subject to the enforcement charge created by the registration, may apply to the court for an order that the registrar amend or discharge the registration, as applicable.

Effect of amending registration

- 21** (1) On the registration of a change statement to amend the registration of a money judgment,
- (a) the registrar must assign to the change statement the date and time of the registration, and
 - (b) the registration of the money judgment is, for the purposes of this Act, considered to be amended as set out in the change statement.
- (2) An amendment to a registration of a money judgment in the money judgment registry is effective from the date and time assigned by the registrar to the change statement.

Extinguishment of enforcement charges

- 22** (1) Subject to subsection (2), an enforcement charge created by the registration of a money judgment in the money judgment registry is extinguished when the registration relating to the enforcement charge lapses or is discharged.
- (2) If the registration of a money judgment lapses because of a failure to renew the registration or the registration has been discharged without authorization or in error, and the judgment creditor identified in the registration re-registers the money judgment not later than 30 days after the lapse or discharge, the lapse or discharge does not affect the priority status of any enforcement charge created by the registration of the money judgment in relation to a competing perfected security interest that, immediately before the lapse or discharge, had a subordinate priority position, except to the extent that the competing security interest secures advances made or contracted for after the lapse or discharge and before the re-registration.

Removal of registration

- 23** (1) The registrar may remove the following from the registry if the registrar is of the opinion that one of the circumstances described in subsection (2) applies:
- (a) the registration of a money judgment;
 - (b) an amendment of the registration of a money judgment;
 - (c) a discharge of the registration of a money judgment.
- (2) For the purposes of subsection (1), the circumstances are that
- (a) the submission or registration of the money judgment was not made in compliance with the Act, or

- (b) the change statement to amend or discharge the registration of the money judgment was not made in compliance with the Act.
- (3) If the registration of a money judgment is removed under subsection (1), the registrar must, as soon as practicable, give written notice of the removal, including the registrar’s reasons for the removal, to the person who filed the judgment statement with the registrar for the purpose of registering the money judgment.
- (4) If the registration of an amendment or discharge of a money judgment is removed under subsection (1), the registrar must, as soon as practicable, give written notice of the removal, including the registrar’s reasons for the removal, to the person who filed the change statement to amend or discharge the registration of the money judgment, as applicable.

Fees

- 24** The registrar must not register a money judgment in the money judgment registry, or amend or discharge the registration of a money judgment, until one of the following occurs:
- (a) the applicable prescribed fee has been paid;
 - (b) arrangements satisfactory to the registrar have been made for the payment of any applicable prescribed fee.

Division 3 – Subsequent Dealings with Personal Property

Effect of subsequent dealings with personal property

- 25** (1) In this section:
- “**buyer**”, in relation to goods, includes a person who obtains vested rights in goods under a contract to which the person is a party as a consequence of the goods becoming a fixture or accession to property in which the person has an interest;
 - “**document of title**” means a writing issued by or addressed to a bailee
 - (a) that specifies goods, or a fungible portion of an identifiable mass of goods, in the bailee’s possession, and
 - (b) that states that the specified goods will be delivered
 - (i) to a named person, or a transferee of the named person,
 - (ii) to a bearer, or
 - (iii) to the order of a named person;
 - “**sale**” or “**lease**” means a sale or lease, as the case may be, for cash, by exchange for other property or on credit, including 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;

- “**seller**”, in relation to goods, includes a person who supplies goods that become a fixture or accession under a contract with a buyer of goods or under a contract with a person who is party to a contract with a buyer of goods.
- (2) Subject to this section, if an interest in personal property that is subject to an enforcement charge is disposed of or otherwise dealt with by a person other than a civil enforcement officer, the following rules apply:
- (a) if the property does not consist of serial numbered goods, the enforcement charge continues to apply to the property after it is disposed of or otherwise dealt with;
 - (b) if the property consists of serial numbered goods, the enforcement charge continues to apply to the property after it is disposed of or otherwise dealt with only if the serial number of the serial numbered goods is correctly identified in the registration that creates the enforcement charge.
- (3) A buyer or lessee of goods that are not fixtures, that have a purchase price or market value of less than \$1 500 and that are acquired for personal, family or household use takes the goods free of any enforcement charge applicable to the goods if the buyer or lessee bought or leased the goods
- (a) without knowledge of the enforcement charge, and
 - (b) where the goods have been seized or are subject to a court order issued in connection with receivership proceedings, without knowledge of the seizure or order.
- (4) A buyer or lessee of goods that have been purchased or leased in the ordinary course of business of a seller or lessor who is a judgment debtor takes the goods free of any enforcement charge applicable to the goods if the buyer or lessee bought or leased the goods
- (a) without knowledge of the enforcement charge, and
 - (b) where the goods have been seized or are subject to a court order issued in connection with receivership proceedings, without knowledge of the seizure or order.

Division 4 – Searches of Money Judgment Registry

Searches of money judgment registry

- 26** (1) A person may, on payment of the prescribed fee to the registrar, request a prescribed search.
- (2) On completion of a search requested under subsection (1), the registrar must issue a certified copy of the results of the search in accordance with the regulations to the person who requested the search.

- (3) A copy of a registered judgment statement or other registered document bearing the certification of the registrar is receivable in evidence as a true copy of the statement or document, without proof of the signature or official position of the registrar.

Division 5 – Registration in Land Title Office

Definition

- 27** In this Division, “**registered land**” means a parcel of land in respect of which title is registered under the *Land Title Act*.

Registration in land title office

- 28** (1) A judgment creditor may apply to register the judgment creditor’s money judgment in a land title office against registered land if
- (a) the money judgment is registered in the money judgment registry,
 - (b) the judgment debtor in respect of whom the money judgment is registered has an interest in the registered land, and
 - (c) the judgment debtor’s interest in that land is registered in the land title office.
- (2) Subsection (1) applies whether or not
- (a) the time for filing an appeal of, or an application for leave to appeal, the money judgment has expired, or
 - (b) an appeal of, or an application for leave to appeal, the money judgment has been filed.
- (3) An application referred to in subsection (1) must be made by
- (a) submitting to the registrar of the land title office a notice in the form and manner, and containing the information, required by the registrar of the land title office,
 - (b) submitting to the registrar of the land title office any other document or information required by the registrar of the land title office or the regulations, and
 - (c) paying any fee required by the registrar of the land title office.
- (4) On application by a judgment creditor, the Supreme Court may order the registrar of a land title office to register a money judgment against registered land if both of the following apply:
- (a) the money judgment is registered in the money judgment registry;
 - (b) the judgment debtor in respect of whom the money judgment is registered in the money judgment registry has an unregistered interest in land that is registered in the land title office.

- (5) The registration of a money judgment in a land title office against registered land is effective from the date and time assigned by the registrar of the land title office to the registration.

Orders under *Fraudulent Preference Act*

- 29** An order under section 10 (2) [*determination of disputed questions*] of the *Fraudulent Preference Act* may be registered against land under this Division as if it were a money judgment.

Effect of registration – enforcement charge on land

- 30** The registration in a land title office of a judgment creditor’s money judgment creates an enforcement charge in favour of the judgment creditor in respect of the following interests in registered land held by the judgment debtor in respect of whom the money judgment is registered in the land title office:
- (a) any interest that is held by the judgment debtor at the time of the registration of the money judgment;
 - (b) any interest that is acquired by the judgment debtor during the period that the money judgment is registered in the land title office.

Erroneous registration of money judgment

- 31**
- (1) If an owner of registered land determines that a money judgment has been registered against the land in a land title office without legal justification, the owner may demand, in writing, that the judgment creditor who registered the judgment in the land title office take all measures necessary to remove the registration.
 - (2) The judgment creditor who receives a demand given under subsection (1) must immediately take all measures necessary to remove the registration, unless the judgment creditor does not agree that the registration was without legal justification, in which case the judgment creditor may apply to the Supreme Court for an order that the registration be maintained.
 - (3) If a judgment creditor receives a demand under subsection (1) but fails, within 15 days after receiving the demand, to make an application under subsection (2) or to take any measures to remove the registration, the owner of the land may apply to the Supreme Court for an order that the registration be removed.
 - (4) All persons who are required to be served in accordance with the Supreme Court Civil Rules and all persons who are notified in accordance with an order made under subsection (5) (a) may appear and be heard at the hearing.
 - (5) The court may make the following orders:
 - (a) any order it considers appropriate as to the notification of other parties;
 - (b) an order that the registration of a money judgment be discharged;

- (c) an order that the registration of a money judgment be amended;
 - (d) any order that the court considers appropriate as to costs;
 - (e) any other order that the circumstances of the case require.
- (6) If a court makes an order under subsection (5) (b) to discharge the registration of a money judgment, the judgment creditor must, as soon as practicable, pay the owner of the land in question the prescribed amount as compensation.
- (7) Any compensation that is payable under subsection (6) constitutes a recoverable debt that may be registered in the money judgment registry as if it were an order or judgment of a court.
- (8) This section does not apply in respect of the registration under this Division of an order referred to in section 29.

Additional compensation

- 32** (1) Whether or not payment has been made, or is to be made, under section 31 (6), if an owner against whose land a money judgment was registered by a judgment creditor in a land title office has sustained damage or incurred costs or expenses by reason of the judgment creditor having registered the money judgment without reasonable cause, the owner may apply to the court for additional compensation.
- (2) The court may award a sum it considers just, taking into account the amount paid or to be paid under section 31 (6).
- (3) If the registration of a money judgment against the land of an owner by a judgment creditor is based on the judgment creditor's erroneous belief that the owner is a judgment debtor in respect of whom the money judgment is registered in the money judgment registry, the court may, in making an award under subsection (2) of this section, take into consideration any evidence that the judgment creditor failed to take all reasonable measures to ensure that the owner is the judgment debtor.

Notice of enforcement charge on fixtures and crops

- 33** (1) If goods that are subject to an enforcement charge become a fixture attached to land, those goods continue to be subject to the enforcement charge.
- (2) A judgment creditor who has obtained an enforcement charge on a fixture or growing crops that are attached to registered land may register a notice of the enforcement charge in the land title office against the land to which the fixture or crops are attached.
- (3) Notice of an enforcement charge described in subsection (2) is registered by filing in the land title office, in the prescribed form and manner, a notice that contains the prescribed information.

- (4) The registration of a notice of an enforcement charge under subsection (2) is effective as of the date and time assigned to the notice by the registrar of the land title office.
- (5) If a person acquires an interest in a fixture or a growing crop that is subject to an enforcement charge by acquiring an interest in the land to which the fixture or crop is attached, the person's interest in the fixture or crop is subordinate to the enforcement charge on the fixture or crop if a notice referred to in subsection (2) applicable to the fixture or crop, as the case may be, was registered against title to the land before the person acquired the interest.

Amendment and discharge of land title registration

- 34**
- (1) A judgment creditor or a civil enforcement officer, or any other person authorized by court order, may amend or discharge a registration of the judgment creditor's money judgment in a land title office by filing with the registrar of the land title office, in the prescribed form and manner, an amendment or discharge notice containing the prescribed information.
 - (2) If the amount of a judgment creditor's money judgment that is registered in a land title office is varied on appeal, the judgment creditor must, as soon as practicable, amend the registration by filing with the registrar of the land title office, in the prescribed form and manner, an amendment notice containing the prescribed information.
 - (3) If the registration of a judgment creditor's money judgment in the money judgment registry is discharged, and the money judgment is also registered in a land title office, the judgment creditor must, as soon as practicable, apply to the registrar of the land title office to discharge the registration of the money judgment in that office.
 - (4) If the registration of a judgment creditor's money judgment in the money judgment registry has been discharged as a result of the money judgment being paid and the judgment creditor fails to comply with subsection (3) within 30 days after the discharge, the judgment debtor may provide written notice of the failure to comply to a civil enforcement officer.
 - (5) A civil enforcement officer who has been notified under subsection (4) must, if able to verify the discharge of a money judgment in the money judgment registry, apply, as soon as practicable, to the registrar of the land title office to discharge the registration of the money judgment in that office.
 - (6) If the registration of a judgment creditor's money judgment in the money judgment registry has been discharged for a reason other than the money judgment being paid and the judgment creditor fails to comply with subsection (3) within 30 days after the discharge, the judgment debtor may apply to the court for an order requiring the registrar of the land title office to discharge the registration of the money judgment in that office.

- (7) If the interest of a judgment creditor in a money judgment that is registered against registered land is transferred in whole or in part to another person, the judgment creditor must, as soon as practicable, file an amendment notice setting out the particulars of the transfer with the registrar of the land title office.
- (8) If the interest of a judgment debtor in registered land that is subject to a money judgment that is registered against the land is transferred in whole or in part to another person, the judgment debtor must, as soon as practicable, file an amendment notice setting out the particulars of the transfer with the registrar of the land title office.
- (9) The filing of an amendment or discharge notice under this section is effective as of the date and time assigned to it by the registrar.

Extinguishment of enforcement charges

- 35**
- (1) An enforcement charge created by the registration of a money judgment in the land title office is extinguished
 - (a) on the discharge of the registration of the money judgment in the money judgment registry, and
 - (b) on the discharge of the registration of the money judgment in the land title office.
 - (2) For certainty, subsection (1) (b) applies, with the necessary modifications, to orders made under section 10 (2) [*determination of disputed questions*] of the *Fraudulent Preference Act* that have been registered against land under this Division.

PART 4 – PRIORITY OF ENFORCEMENT CHARGE

Priority of enforcement charge on personal property same as security interest

- 36**
- (1) For the purposes of this section, a person knows or has knowledge of an enforcement charge on personal property if, were the person to apply section 1 (2) of the *Personal Property Security Act*, the person would know or have knowledge of the enforcement charge.
 - (2) Subject to this Part, an enforcement charge on personal property has the same priority in relation to other interests in the personal property that a security interest in the property would have under the *Personal Property Security Act* if the security interest were perfected under that Act at the time the enforcement charge is created.

- (3) Subject to subsection (4), an enforcement charge on serial numbered goods that are specified in the registration has the same priority in relation to other interests in the serial numbered goods that a security interest in the serial numbered goods would have under the *Personal Property Security Act* if the security interest were perfected under that Act at the time the enforcement charge is created.
- (4) Except as provided in subsection (5), the security interest referred to in subsection (2) or (3) does not include a purchase money security interest or a security interest in inventory within the meaning of the *Personal Property Security Act*.
- (5) The security interest referred to in subsection (2) or (3) is considered to be inventory for registration purposes when the property is actually held by the judgment debtor as inventory within the meaning of the *Personal Property Security Act*.
- (6) Subject to subsection (7), a security interest has priority over an enforcement charge with respect to an advance made after the enforcement charge is created if
 - (a) the security interest is perfected under the *Personal Property Security Act* before the enforcement charge is created, and
 - (b) one or both of the following apply:
 - (i) the secured party in respect of the security interest does not know or have knowledge of the enforcement charge when the advance is made;
 - (ii) at the time the advance is made, the secured party in respect of the security interest is under a legal obligation to make the advance to a person other than the judgment debtor, unless the secured party entered into the legal obligation when the secured party knew or had knowledge of the enforcement charge.
- (7) A security interest has priority over an enforcement charge with respect to an advance made after the enforcement charge is created only to the extent of
 - (a) reasonable costs and expenses incurred by the secured party for the protection, preservation or repair of the collateral, and
 - (b) the amount of taxes paid by the secured party in accordance with section 27 (1) [*payment of taxes by others*] of the *Manufactured Home Act*.

Priority of enforcement charge on fixtures and crops

- 37** (1) Subject to this section, the effect and priority of an enforcement charge on fixtures or crops is to be determined without regard to the fact that the fixtures are attached to land or that the crops are growing on land.

- (2) Subject to the regulations, this section applies to the following:
 - (a) any land in respect of which a certificate of title has been issued under the *Land Title Act*;
 - (b) any prescribed land or classes of land.
- (3) Subject to subsection (5), an enforcement charge on goods that become fixtures that is created before or at the time the goods become fixtures has priority in respect of the goods over a claim to the goods that is based on an interest in the land to which the goods are attached.
- (4) Subject to subsection (5), an enforcement charge on growing crops has priority with respect to the crops over an interest in the crops that is based on an interest in the land to which the crops are attached.
- (5) An enforcement charge referred to in subsection (3) or (4) is subordinate to the interest of a person who, without fraud, does any of the following before a notice of an enforcement charge is filed under section 33 [*notice of enforcement charge on fixtures and crops*]:
 - (a) acquires for value an interest in the land after the goods become fixtures or while the crops are growing crops, as the case may be, including an assignee for value of the interest of a person with an interest in the land after the goods become fixtures or while the crops are growing crops;
 - (b) makes an advance under a registered mortgage on the land after the goods become fixtures or the crops become growing crops, as the case may be, but only with respect to the advance;
 - (c) obtains an order for sale or foreclosure under a mortgage that the person has registered on the land after the goods become fixtures or the crops become growing crops;
 - (d) obtains a vesting order with respect to the land after the goods become fixtures or the crops become growing crops.
- (6) An enforcement charge on goods that is created after the goods become fixtures is subordinate to the following:
 - (a) an interest arising under a mortgage registered in the land title office before a notice of the enforcement charge on the goods is filed in accordance with section 33 that provides for further advances contemplated by and in accordance with the mortgage if any of the following applies:
 - (i) the mortgagee is required under the terms of the mortgage to make the advances;
 - (ii) at the time the advances are made, the mortgagee does not have knowledge of the enforcement charge;

- (iii) the advances were made under a mortgage that provides for a current or running account even though there was no outstanding advance secured by the mortgage at that time;
 - (b) the interest of a person, other than the judgment debtor, who has a registered interest in the land at the time the goods become fixtures and who
 - (i) has not consented to the enforcement charge having priority over the person's interest in the land,
 - (ii) has not disclaimed an interest in the goods or fixtures,
 - (iii) has not entered into an agreement under which a person is entitled to remove the goods, or
 - (iv) is not otherwise precluded from preventing the judgment debtor from removing the goods.
- (7) If, at the time a search is made of a title to land in the land title office,
- (a) there is no notice of an enforcement charge registered against the title under section 33, and
 - (b) on the date that the search is made, an advance made under a mortgage results in an interest based on that mortgage being registered against the title,
- the advance is conclusively deemed to have been made before the registration of any notice of an enforcement charge under section 33 that was not disclosed by the search, even if the notice was registered on the same day that the search was made.

**Priority of enforcement charge on seized security,
security entitlement or futures contract**

- 38**
- (1) In this section, “**control**” has the same meaning as in Division 4 [*Control of Financial Assets*] of Part 2 of the *Securities Transfer Act*.
 - (2) For the purposes of this Act and the *Personal Property Security Act*, and without limiting section 36 (2) of this Act, if a civil enforcement officer seizes an interest in a security, security entitlement or futures contract under Division 4 [*Securities, Security Entitlements and Futures Contracts*] of Part 9 of this Act, an enforcement charge on the security, security entitlement or futures contract has the same priority as a security interest in the security, security entitlement or futures contract that is perfected by control.
 - (3) The following rules apply for the purposes of subsection (2):
 - (a) in the case of a security or a security entitlement,
 - (i) the civil enforcement officer is deemed to be a purchaser who has control of the security or security entitlement, and

- (ii) the securities intermediary is deemed to have agreed to comply with entitlement orders given by the officer without further consent of the judgment debtor;
- (b) in the case of a futures contract,
 - (i) the officer is deemed to have control of the futures contract, and
 - (ii) the futures intermediary is deemed to have agreed that the futures intermediary will apply any value distributed on account of the futures contract as directed by the officer without further consent of the judgment debtor.

**Enforcement charge not enforceable
against trustee in bankruptcy**

- 39** The trustee in bankruptcy of a judgment debtor acquires the interest of a judgment creditor under an enforcement charge that was created before the date of the bankruptcy, and the enforcement charge is not enforceable against the trustee.

Priority of enforcement charge on land

- 40** (1) An enforcement charge on an interest in land is subordinate to a mortgage registered in the land title office against the land after the enforcement charge is created if and to the extent the mortgage secures the value used to acquire the interest that is mortgaged.
- (2) Subsection (1) does not apply if the mortgage is registered more than 14 days after the registration of the transfer by which the judgment debtor acquired the interest that is mortgaged.

**Priority of enforcement charge with respect to
serial numbered goods**

- 41** A buyer or lessee of serial numbered goods takes the goods free from any enforcement charge that is applicable to the goods if
- (a) the buyer or lessee buys or leases the goods, as applicable, without knowledge of the enforcement charge or knowledge that the goods had been seized or are subject to an order under Part 8 [*General Rules Relating to Seizure of Property*], and
 - (b) at the time of the purchase or lease, the goods are not described in the registration for the enforcement charge in the manner required by this Act and the regulations.

PART 5 – CIVIL ENFORCEMENT OFFICERS

Powers of civil enforcement officer

- 42** (1) Subject to subsection (4), for any purpose related to the seizure or disposition of property of a judgment debtor, a civil enforcement officer may do any of the following:
- (a) using reasonable force, enter on land or premises that are occupied by the judgment debtor;
 - (b) using reasonable force, enter on land or premises that are occupied by a person other than the judgment debtor or that are unoccupied if the officer
 - (i) gives notice in accordance with subsection (3), and
 - (ii) in the case of personal property of the judgment debtor, has reasonable grounds to believe that the personal property is located on the land or premises;
 - (c) if the officer enters land or premises in accordance with paragraph (a) or (b),
 - (i) enter, by any means that are reasonable in the circumstances, any interior room, enclosure or container on the land or premises,
 - (ii) at or after the time of seizing personal property, take possession of and remove personal property of the judgment debtor from the land or premises, and
 - (iii) in the case of land that is owned by a judgment debtor, conduct any inspection of the land that may reasonably be required in order to dispose of the land.
- (2) If under subsection (1) a civil enforcement officer uses force to enter land or premises, the officer must make the land or premises reasonably secure before leaving.
- (3) Notice under subsection (1) (b) (i) must
- (a) contain the prescribed information, and
 - (b) be given
 - (i) to the occupant of the land or premises by leaving a copy of the notice with the occupant, or
 - (ii) if the land or premises are unoccupied, to the owner of the land or premises by leaving a copy of the notice with the owner.
- (4) The authority provided by subsection (1) (a) and (b) must not be used to enter a private dwelling except with the consent of the occupant or under the authority of a warrant issued under subsection (5).

- (5) If satisfied by evidence given under oath that entry into a private dwelling is necessary for any purpose relating to the seizure or disposition of a judgment debtor's property, a judge of the Supreme Court or a justice may issue a warrant authorizing a civil enforcement officer to enter the private dwelling.
- (6) In a warrant issued under subsection (5), the judge or the justice, as the case may be, may authorize a civil enforcement officer to do any of the following:
 - (a) enter the private dwelling at a specified time or within a specified period of time;
 - (b) enter the private dwelling by force, if necessary.
- (7) A civil enforcement officer may make an application for a warrant under subsection (5) without notice to any other person.

Civil enforcement officer's power to deal with property

- 43** (1) A civil enforcement officer who receives an enforcement instruction in relation to property of a judgment debtor may
- (a) do any act or thing with respect to the property that may be done by the judgment debtor,
 - (b) exercise any right or power that is necessarily incidental to an enforcement proceeding, including the right or power to do one or more of the following:
 - (i) dispose of property;
 - (ii) execute or endorse a document;
 - (iii) exercise a power of election;
 - (iv) exercise a right as a beneficiary under a trust;
 - (v) give a release or discharge;
 - (vi) collect an account;
 - (vii) endorse a security;
 - (viii) commence a proceeding in the name of the judgment debtor to enforce an obligation owing to the judgment debtor;
 - (ix) present an instrument for payment and receive payment;
 - (x) negotiate an instrument or security without recourse, and
 - (c) if the property is a derivative contract, give any necessary orders or instructions in respect of the contract to a depository, exchange, broker or clearing agency.
- (2) A civil enforcement officer may retain persons to provide assistance and advice in exercising a right or power or performing a duty under this Act.

**Delegation of power or duty to give notices
or other documents**

- 44** (1) If this Act authorizes or requires a civil enforcement officer to give a notice or other document to a person, the officer may delegate that power or duty to either of the following:
- (a) the judgment creditor on whose enforcement instruction the notice or other document is to be given;
 - (b) with the consent of the judgment creditor referred to in paragraph (a), a prescribed class or type of agent of the judgment creditor.
- (2) A person who accepts a delegation under subsection (1) is entitled to any fees and costs the civil enforcement officer would have received if the officer had given the notice or other document.
- (3) No proceeding lies or may be commenced or maintained against a civil enforcement officer for anything done or omitted by the officer under this Act in reliance on a written statement from the judgment creditor or the judgment creditor's agent, as the case may be, that a notice or other document has been given in accordance with a delegation under subsection (1).

PART 6 – ENFORCEMENT INSTRUCTIONS

**Giving enforcement instructions to
civil enforcement officer**

- 45** (1) A judgment creditor who has registered a money judgment in the money judgment registry or the land title office, or both, may enforce the money judgment by giving a civil enforcement officer an enforcement instruction.
- (2) An enforcement instruction must
- (a) specify every enforcement proceeding that the civil enforcement officer is requested to take or refrain from taking,
 - (b) contain any other prescribed information,
 - (c) be accompanied by any prescribed information or document, and
 - (d) be accompanied by
 - (i) the prescribed fee for giving an enforcement instruction,
 - (ii) a written proposal of an arrangement for the payment of the officer's fees and estimated expenses that is satisfactory to the officer, and
 - (iii) security in a form and amount that is satisfactory to the officer.

Civil enforcement officer to take enforcement proceedings

- 46** (1) Subject to subsection (2), a civil enforcement officer who receives an enforcement instruction under section 45 must take every enforcement proceeding specified in the enforcement instruction unless, in the opinion of the officer, the enforcement proceeding is not in accordance with
- (a) this Act or the regulations, or
 - (b) a court order made in relation to the enforcement proceeding.
- (2) Unless the court orders otherwise, a civil enforcement officer who receives an enforcement instruction is not required to take an enforcement proceeding unless the officer has received all of the items referred to in section 45 (2) (d).
- (3) A civil enforcement officer may enforce an arrangement referred to in section 45 (2) (d) (ii) as if the arrangement were a contract between the officer and the judgment creditor.

Multiple enforcement instructions

- 47** If a civil enforcement officer receives an enforcement instruction from 2 or more judgment creditors in relation to the property of the same judgment debtor, the officer may take any of the enforcement proceedings specified in the enforcement instructions that are necessary to satisfy any amounts that are recoverable.

Amendment of enforcement instructions

- 48** (1) A judgment creditor may, at any time, amend an enforcement instruction given by the judgment creditor by giving the appropriate civil enforcement officer a new enforcement instruction.
- (2) An instructing judgment creditor must, as soon as practicable after any of the following occurs, amend an enforcement instruction given by the judgment creditor by giving the appropriate civil enforcement officer a new enforcement instruction:
- (a) the judgment creditor receives a written demand from an officer to amend an enforcement instruction given by the judgment creditor;
 - (b) a portion of the judgment creditor's money judgment is discharged by court order;
 - (c) the judgment creditor becomes aware that there has been a material change in circumstances affecting the enforcement of the money judgment since the enforcement instruction was given;
 - (d) any prescribed event or circumstance.

**Withdrawal of enforcement instructions
by judgment creditor**

- 49**
- (1) A judgment creditor may, at any time, withdraw an enforcement instruction given by the judgment creditor by giving a written notice to the appropriate civil enforcement officer.
 - (2) An instructing judgment creditor must, as soon as practicable, withdraw an enforcement instruction given by the judgment creditor by giving the appropriate civil enforcement officer a written notice to that effect if the judgment creditor becomes aware that there has been a material change in circumstances affecting the enforcement of the money judgment since the enforcement instruction was given, including the following:
 - (a) the money judgment has been fully discharged by court order;
 - (b) enforcement proceedings with respect to the money judgment have been stayed by court order, by the operation of an enactment or otherwise.
 - (3) If an instructing judgment creditor withdraws an enforcement instruction,
 - (a) the civil enforcement officer must release any property that the officer has seized in accordance with the enforcement instruction, unless the officer has received an enforcement instruction from another judgment creditor to seize that property, and
 - (b) the judgment creditor must pay the officer any fees or expenses that the officer is entitled to receive for services provided in relation to the enforcement instruction.

Suspension or termination of enforcement proceedings

- 50**
- (1) A civil enforcement officer must suspend or terminate an enforcement proceeding in each of the following circumstances by giving a written notice to the instructing judgment creditor:
 - (a) the enforcement instruction contains a request that the officer take an action contrary to law;
 - (b) the officer becomes aware that enforcement proceedings in respect of the money judgment being enforced are stayed by court order, by operation of an enactment or otherwise;
 - (c) any prescribed circumstance.
 - (2) A civil enforcement officer may suspend or terminate an enforcement proceeding in any of the following circumstances by giving written notice to the instructing judgment creditor:
 - (a) all of the enforcement proceedings initiated by the enforcement instruction have been completed;
 - (b) the officer is unable to locate any property of the judgment debtor that would satisfy the money judgment in respect of which the enforcement instruction is given;

- (c) 6 months have elapsed from the most recent date on which an enforcement proceeding initiated by the enforcement instruction was completed and no other enforcement proceeding initiated by that instruction is continuing;
 - (d) any prescribed circumstance.
- (3) If a civil enforcement officer terminates an enforcement proceeding,
- (a) the officer must release any property that the officer has seized in carrying out the enforcement proceeding unless the officer has received an enforcement instruction from another judgment creditor to seize the property, and
 - (b) the judgment creditor must pay the officer any fees or expenses that the officer is entitled to receive for services provided in relation to the enforcement proceeding.

PART 7 – OBTAINING INFORMATION

Division 1 – Obtaining Information from Judgment Debtors

Definition

- 51** In this Part, “**eligible representative**”, in relation to a judgment creditor, means either of the following:
- (a) a civil enforcement officer who has received an enforcement instruction from the judgment creditor;
 - (b) a lawyer acting on behalf of the judgment creditor.

Request for identification information

- 52** (1) An eligible representative of a judgment creditor may, by written notice to a judgment debtor in respect of the judgment creditor’s money judgment, require the judgment debtor to provide one or more prescribed identification documents.
- (2) A judgment debtor who is required to provide documents under subsection (1) must provide the following to the eligible representative referred to in that subsection:
- (a) the original or a notarized copy of each document required under subsection (1);
 - (b) if the name of the judgment debtor on any of the documents provided under subsection (1) differs from the name of the judgment debtor on any of the other documents,
 - (i) an official record confirming the judgment debtor’s change of name, or

- (ii) a statutory declaration by the judgment debtor explaining the difference in names.
- (3) The judgment debtor referred to in subsection (2) must provide all documents required under subsection (1)
 - (a) within 14 days after receiving the notice referred to in subsection (1), if a date by which the documents are to be provided is not specified in the notice referred to in subsection (1) or a date is specified in the notice that is less than 14 days after the judgment debtor receives the notice, or
 - (b) if a date by which the documents are to be provided is specified in the notice and that date is more than 14 days after the judgment debtor receives the notice, on or before that date.

Requiring submission of disclosure statement

- 53** (1) An eligible representative of a judgment creditor who has a registered money judgment may, by giving written notice to a judgment debtor to whom the money judgment applies, require the judgment debtor to complete a disclosure statement that discloses the following:
- (a) all property of the judgment debtor, and the location of the property;
 - (b) any serial numbers or other information by which property of the judgment debtor can be identified;
 - (c) all names or aliases under which any property of the judgment debtor is registered in any registry, specifying the property registered under each name or alias;
 - (d) the estimated value of every item of property of the judgment debtor, including property that may be claimed as exempt referred to in section 165 (1) (a), (b), (h) and (j) [*property that may be claimed as exempt*] that has a value greater than the prescribed exemption value for that property;
 - (e) an enumeration of every item of clothing of the judgment debtor that is not reasonably required by the judgment debtor or the judgment debtor's dependants in accordance with section 165, and the estimated value of each item of clothing;
 - (f) the identity of any person who holds an interest in property of the judgment debtor;
 - (g) every obligation that the judgment debtor has in relation to each item of the judgment debtor's property;
 - (h) every obligation that the judgment debtor knows that third parties have in relation to each item of the judgment debtor's property;
 - (i) the value of any interest referred to in paragraph (g), including the outstanding balance of any mortgage, lien or other encumbrance against the property;

- (j) in relation to each account of the judgment debtor, the amount that is or will become payable, from whom the account is payable, when the account became or becomes payable and the name of the person by whom the account is to be paid;
 - (k) the judgment debtor's sources of income;
 - (l) when a payment of income is likely to be made to the judgment debtor;
 - (m) if the judgment debtor's entitlement to receive income or payment of an account is dependent on an action or election by the judgment debtor, the nature of that action or election and the date on or before which that action or election is to be performed or may be performed in order for the judgment debtor to receive the income or payment of the account;
 - (n) any other information specified by a civil enforcement officer that may reasonably assist the officer in enforcing the money judgment;
 - (o) any prescribed information or matter.
- (2) The judgment debtor must complete and submit to the eligible representative the statement referred to in subsection (1) within 14 days after the judgment debtor receives the notice referred to in subsection (1), unless the notice specifies a date for submission that is later than 14 days after the judgment debtor receives the notice, in which case the judgment debtor must submit the statement on or before the specified date.

Requiring examination of judgment debtor

- 54** (1) Subject to subsection (3), an eligible representative of a judgment creditor who has a registered money judgment may, by written notice to an individual referred to in subsection (2), require the individual to attend at a specified time and place for examination under oath to answer questions respecting any matter referred to in section 53 (1) (a) to (o).
- (2) The following individuals may be examined under subsection (1):
- (a) any judgment debtor to whom the registered money judgment applies;
 - (b) if the registered money judgment applies to a corporation, any officer or director of the corporation;
 - (c) if the registered money judgment applies to a partnership,
 - (i) any individual who is a partner in the partnership, and
 - (ii) if a corporation is a partner in the partnership, any officer or director of the corporation;
 - (d) if the registered money judgment applies to a partner in a partnership,
 - (i) any individual who is another partner in the partnership, and
 - (ii) if a corporation is a partner in the partnership, any officer or director of the corporation;
 - (e) a prescribed person or a person in a prescribed class of persons.

- (3) Notice may be given to an individual under subsection (1) only if the judgment debtor was given notice under section 53 (1) and
 - (a) the judgment debtor failed to submit a disclosure statement within the time specified in section 53 (2), or
 - (b) the judgment debtor submitted a statement within the time specified but, in the opinion of the eligible representative who required the statement, the information provided in the statement is insufficient for the purposes of the enforcement proceeding.
- (4) Before conducting an examination under this section, the eligible representative must
 - (a) if the individual to be examined is represented in the proceeding by a lawyer, ensure that, at least 7 days before the examination, an appointment in the prescribed form is served on the lawyer, and
 - (b) in any other case, ensure that, at least 7 days before the examination, an appointment in the prescribed form is served on the individual to be examined.

Division 2 – Information from Prescribed Entities

Information in custody or control of prescribed entities

- 55 (1) In this section:
- “**organization**” has the same meaning as in section 1 of the *Personal Information Protection Act*;
- “**prescribed entity**” means
- (a) a prescribed organization or public body, or
 - (b) an organization or public body that is a member of a prescribed class of organizations or public bodies;
- “**public body**” has the same meaning as in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.
- (2) Subject to subsection (3), an eligible representative of a judgment creditor who has a registered money judgment may, by written notice given to a prescribed entity, require the prescribed entity to disclose the following information that is in the entity’s custody or under its control:
- (a) the estimated value of the property subject to the enforcement charge created by the registration of the money judgment;
 - (b) the value of any interest in the property referred to in paragraph (a), including the outstanding balance of any mortgage, lien or other encumbrance against the property;
 - (c) information respecting the identity of any person who holds an interest in the property referred to in paragraph (a).

- (3) Notice may be given under subsection (2) only if
 - (a) a judgment debtor to whom the money judgment applies
 - (i) failed to submit a disclosure statement within the time specified under section 53 (2), or
 - (ii) submitted a statement that did not include all of the information referred to in subsection (2) of this section, and
 - (b) the eligible representative has reasonable grounds to believe that the prescribed entity has information referred to in subsection (2) of this section in its custody or under its control.
- (4) A prescribed entity must, within 14 days after the applicable following date, disclose to the eligible representative the information referred to in subsection (2):
 - (a) if the prescribed entity requests, in writing, that the eligible representative pay the prescribed entity's reasonable costs of complying with the written notice, the date the costs are paid;
 - (b) in any circumstance other than the circumstance described in paragraph (a), the date the prescribed entity receives the written notice.

Division 3 – Applications to Court

Application to court – disclosure of information by prescribed persons

- 56** (1) Subject to this section, a judgment creditor who has a registered money judgment, or the judgment creditor's eligible representative, may apply to the court for an order requiring a prescribed person or a person in a prescribed class of persons to disclose to the eligible representative the following information that is in the person's custody or under the person's control:
- (a) the estimated value of the property subject to the enforcement charge created by the registration of the money judgment;
 - (b) the value of any interest in the property referred to in paragraph (a), including the outstanding balance of any mortgage, lien or other encumbrance against the property;
 - (c) information respecting the identity of any person who holds an interest in the property referred to in paragraph (a).
- (2) Subject to section 62 (1) [*civil enforcement officer must disclose information to other judgment creditors who make request*], the information referred to in subsection (1) of this section may be disclosed only to an eligible representative of the judgment creditor.

- (3) An application under subsection (1) may be made only if one or more of the following apply:
 - (a) the judgment debtor to whom the money judgment applies was required to submit a disclosure statement under section 53 (1) *[requiring submission of disclosure statement]* and
 - (i) failed to submit the statement within the time specified in section 53 (2), or
 - (ii) submitted the statement within the time specified but the statement did not include all of the information referred to in subsection (1) of this section;
 - (b) a prescribed circumstance exists.
- (4) In the case of urgency, an application under subsection (1) may be made without notice in accordance with the Supreme Court Civil Rules.

**Application to court – attendance
before court or disclosure of information**

- 57
- (1) Subject to this section, on application by a judgment creditor who has a registered money judgment, or by the eligible representative of a judgment creditor, the court may do one or more of the following:
 - (a) order an individual referred to in section 54 (2) (a) to (e) *[requiring examination of judgment debtor]* to attend before the court at a specified time and place, for examination under oath to answer questions respecting any matter referred to in section 53 (1) (a) to (o) *[requiring submission of disclosure statement]*;
 - (b) order an individual, other than an individual referred to in section 54 (2) (a) to (e), to attend before the court at a specified time and place, for examination under oath to answer questions respecting any matter referred to in section 53 (1) (a) to (o);
 - (c) order a person who has custody or control of information respecting any matter referred to in section 53 (1) (a) to (o) to disclose that information to a person specified in the order;
 - (d) order a person to authorize a person specified in the order to disclose information in the specified person’s custody or control if the information is in respect of any matter referred to in section 53 (1) (a) to (o).
 - (2) An application for an order referred to in subsection (1) (a) may be made only if an individual referred to in section 54 (2) (a) to (e) received a written notice given under section 54 (1) to attend an examination described under that section and failed to attend.

- (3) An application for an order referred to in subsection (1) (b) to (d) may be made only
 - (a) if the judgment debtor in respect of the money judgment received a written notice given under section 54 (1) to attend an examination under that section and failed to attend, and
 - (b) in prescribed circumstances.

Other orders

- 58** (1) Without limiting section 56 or 57 but subject to this section, on application by a judgment creditor who has a registered money judgment, or by the eligible representative of a judgment creditor, a court may do one or more of the following:
 - (a) if a judgment debtor to whom the money judgment applies has failed to comply with the requirement set out in section 53 [*requiring submission of disclosure statement*] to provide complete and accurate information to the eligible representative of a judgment creditor by submitting a disclosure statement, order the judgment debtor to provide that information to the eligible representative;
 - (b) if an individual referred to in section 54 (2) (a) to (e) [*requiring examination of judgment debtor*] fails to attend an examination that the individual is required to attend under that section, or attends the examination but fails to provide all of the information that is necessary in order to sufficiently respond to the questions that are asked at the examination, order the individual to provide all the necessary information to the eligible representative of the judgment creditor;
 - (c) authorize a civil enforcement officer or other person, by order, to do one or both of the following:
 - (i) enter premises specified in the order for the purpose of examining any records in the premises respecting a matter referred to in section 53 (1) (a) to (o);
 - (ii) remove from the premises a record referred to in subparagraph (i) for the purpose of making copies;
 - (d) order a person to refrain from destroying, hiding or removing from the province any records respecting a matter referred to in section 53 (1) (a) to (o).
- (2) An application referred to in subsection (1) must include a description of any information respecting a matter referred to in section 53 (1) (a) to (o) that has not been adequately disclosed.

- (3) An order must not be made under subsection (1) (c) unless the court is satisfied that
 - (a) there are reasonable grounds to believe that one or more records respecting any matter referred to in section 53 (1) (a) to (o) may be located on the specified premises, and
 - (b) the information, as described in the application and to which the records relate, cannot otherwise be reasonably obtained.
- (4) Any actions that are authorized by an order made under subsection (1) (c) must be carried out in accordance with section 42 [*powers of civil enforcement officer*].

Division 4 – General

Conduct of examination

- 59**
- (1) In this section, “**oath**” has the prescribed meaning.
 - (2) An examination under section 54 [*requiring examination of judgment debtor*] must be conducted before a person who is empowered to administer an oath.
 - (3) A civil enforcement officer is empowered to administer an oath.

Expenses of person being examined

- 60**
- (1) Before a person other than the judgment debtor is examined under this Part, a judgment creditor on whose behalf the person is to be examined must tender to the person an amount equal to the expenses that the person to be examined would be entitled to if that person were required to attend the Supreme Court as a witness.
 - (2) If a judgment debtor is examined under this Part, the judgment debtor is entitled to an amount equal to the expenses the judgment debtor would be entitled to if the judgment debtor were required to attend the Supreme Court as a witness.
 - (3) A judgment creditor is entitled to set off the amount described in subsection (2) against the amount recoverable under the judgment creditor’s money judgment.
 - (4) Despite subsection (3), on application by the judgment debtor, a court may order that, before the judgment debtor is examined, the judgment creditor must tender to the judgment debtor the amount described in subsection (2) if the court is satisfied that the judgment debtor would suffer hardship if those expenses were not tendered prior to the examination.

Costs of examiner

- 61** Unless the court orders otherwise, a person conducting an examination under this Part is entitled to recover the costs of the examination from the judgment debtor, and the notice of judgment may be amended to add the amount of these costs, if the examiner's costs are not paid by the judgment debtor within 30 days after the judgment debtor receives an invoice setting out the costs of conducting the examination.

Civil enforcement officer must disclose information to other judgment creditors who make request

- 62** (1) Unless the court orders otherwise, a civil enforcement officer who obtains information under this Part respecting a judgment debtor or property of a judgment debtor must, on receiving a written request to share that information, disclose the information to the following persons:
- (a) the lawyer of every judgment creditor, other than the judgment creditor on whose enforcement instruction the officer is acting, who has registered a money judgment against the judgment debtor in the money judgment registry;
 - (b) any other officer who has received an enforcement instruction that relates to the judgment debtor.
- (2) A civil enforcement officer may require a person who makes a request under subsection (1) to reimburse the officer for the reasonable costs of complying with that request.

Limitation on collection, use and disclosure of information

- 63** (1) A person must not collect information under this Part except for the purpose of enforcing a money judgment under this Act or determining whether to enforce a money judgment under this Act.
- (2) A person who obtains information under this Part must not use or disclose the information except for the purpose of enforcing a money judgment under this Act or determining whether to enforce a money judgment under this Act.

Limitation on examination

- 64** Unless the court orders otherwise, a person examined under this Part must not be examined under this Part again within the 12-month period following the examination.

Enforcing orders under this Part

- 65** If a person fails to comply with an order made under this Part, the court may make any order the court considers necessary to secure compliance with the first-mentioned order, including one of the following orders:
- (a) an order to pay another person an amount equal to the expenses reasonably and necessarily incurred by the person as a result of the failure to comply;
 - (b) an order to pay a fine in an amount that is not greater than \$5 000.

**PART 8 – GENERAL RULES RELATING TO
SEIZURE OF PROPERTY**

Division 1 – Application

Application of this Part

- 66** (1) Division 2 of this Part applies to all enforcement proceedings related to property.
- (2) Subject to subsection (3), if there is a conflict between a provision of Division 2 of this Part and a provision of any other Part, the provision of the other Part prevails.
- (3) If there is a conflict between section 67 (3) and a provision of Part 9 [*Seizure and Disposition of Specific Types of Property*], section 67 (3) prevails.

Division 2 – Seizure of Property

What property may be seized

- 67** (1) Except as otherwise provided under this Act or in an enforcement instruction, a civil enforcement officer may seize as much exigible property of a judgment debtor as is sufficient, when disposed of, to realize the total of the following amounts:
- (a) the amounts recoverable by all judgment creditors that have a registered money judgment against the judgment debtor;
 - (b) any amount that must be paid out of a distributable fund constituted under Part 14 [*Distribution*] before the amounts referred to in paragraph (a) are paid out.
- (2) To effect a seizure of property of a judgment debtor, a civil enforcement officer may, subject to this Act, do the following:
- (a) if the property is co-owned by the judgment debtor and one or more other persons, seize the property in its entirety, including the interests of all co-owners in the property;

- (b) subject to subsection (3), if the property is partnership property of a partnership in which the judgment debtor is a general partner, seize the partnership property in its entirety, including any interests of the general partners in the property.
- (3) A civil enforcement officer must not seize property that is partnership property of a partnership if the property
 - (a) is ordinarily used by the partnership,
 - (b) is necessary to generate revenue from the partnership's business, and
 - (c) has a value that is less than the prescribed value, if any.

How property may be seized

- 68** (1) Subject to subsection (5), a civil enforcement officer may seize tangible personal property as follows:
- (a) if the property is a negotiable instrument, by taking possession of the property;
 - (b) if the property is a fixture or growing crop, by seizing the property in accordance with Division 1 [*Seizure and Disposition of Fixtures and Crops*] of Part 9;
 - (c) in the case of any other form of tangible personal property,
 - (i) by taking possession of the property,
 - (ii) by giving a notice of seizure at the place where the property is located
 - (A) to the judgment debtor or an adult member of the judgment debtor's household, or
 - (B) to an adult person who is in possession or control of the property, or
 - (iii) by posting a notice of seizure in a conspicuous place on the property or in a conspicuous place in close proximity to the property;
 - (d) in any other manner that is ordered by a court.
- (2) A civil enforcement officer may seize personal property, other than tangible personal property, as follows:
- (a) if the property is an account, by seizing the property in accordance with Division 3 [*Seizure of Existing and Future Accounts and Other Debts*] of Part 9;
 - (b) if the property is a security, security entitlement or futures contract, by seizing the property in accordance with Division 4 [*Securities, Security Entitlements and Futures Contracts*] of Part 9;

- (c) if the property is a lessor's interest in property under a lease, a seller's interest in property under a contract of sale or a secured party's interest in property under a security agreement, by seizing the property in accordance with section 84 [*how interest of lessor, seller or secured party may be seized*];
 - (d) if the property is a lessee's interest in property under a lease, a buyer's interest in property under a contract of sale or a debtor's interest in property under a security agreement, by seizing the property in accordance with section 88 [*how interest of lessee, buyer or debtor may be seized*];
 - (e) if the property is a licence, by seizing the property in accordance with section 127 [*how licences may be seized*];
 - (f) if the property is intellectual property or a trade secret, by seizing the property in accordance with section 130 [*how intellectual property may be seized*] or 131 [*how trade secrets may be seized*];
 - (g) in the case of any other form of non-tangible personal property, by giving a notice of seizure to the judgment debtor or to the person whose obligation constitutes the property;
 - (h) in any other manner that is ordered by a court.
- (3) A civil enforcement officer may seize land by giving a notice of seizure to the judgment debtor.
- (4) For certainty, a civil enforcement officer is not the owner or occupier of land that the officer has seized.
- (5) A civil enforcement officer may, if authorized to do so under subsection (1), seize tangible personal property by taking possession of the property if the property is in the possession of any of the following persons:
- (a) a judgment debtor;
 - (b) a person who acquired the property, or the right to possess the property, subject to an enforcement charge;
 - (c) a person who is a gratuitous bailee or custodian of the property and who is in possession of the property with the consent of the judgment debtor;
 - (d) a trustee who is in possession of the property under the terms of a trust.
- (6) A civil enforcement officer who has, in accordance with this section, seized tangible personal property by means other than by taking possession of the property may take possession of the property after it has been seized if, immediately before the seizure, the property was in the possession of a person referred to in subsection (5) (a) to (d).

Duty to maintain land

- 69** (1) If a judgment debtor receives a notice of seizure that applies to land owned by the judgment debtor, the judgment debtor must, while the notice is in effect, maintain the land and all structures on the land in a condition that is at least as good as the condition that existed at the time the notice was received.
- (2) If a judgment debtor fails to comply with subsection (1) and the market value of the land is reduced as a result, the judgment creditor may apply to the Supreme Court to have the exemption value reduced by the amount of the reduction in the market value of the land that was caused by the failure to comply.

Notice of seizure

- 70** (1) A notice of seizure given under this Part, and any notice given in accordance with this section, must contain the prescribed information.
- (2) If a civil enforcement officer seizes personal property of a judgment debtor other than by giving a notice of seizure to the judgment debtor, the officer must, as soon as practicable after the seizure, give notice of the seizure to the judgment debtor.
- (3) If a civil enforcement officer seizes and removes personal property of a judgment debtor from the possession of a person other than the judgment debtor, the officer must, at the time of the seizure or as soon as practicable after that time, give notice of the seizure to the person in possession of the property at the time it is seized.
- (4) If a civil enforcement officer seizes personal property that is co-owned by the judgment debtor and another person or persons, the officer must, as soon as practicable after the seizure, give notice of the seizure to the judgment debtor and to any other person who is known by the officer to be a co-owner of the property.
- (5) If a civil enforcement officer seizes personal property that is partnership property of a partnership in which a judgment debtor is a partner, the officer must, as soon as practicable after the seizure, give notice of the seizure to the judgment debtor and to every other person who is known by the officer to be a partner in the partnership.
- (6) If a civil enforcement officer seizes land in which a judgment debtor has an interest, the officer must, as soon as practicable after the seizure, give notice of the seizure to the judgment debtor and to the following persons:
- (a) if the land is co-owned property, every co-owner who has a registered interest in the land;
 - (b) if the land is partnership property of a partnership, every person who is known by the officer to be a partner in the partnership;

- (c) every other person with an interest in the land who has given the officer written notice of the person's interest in the land before the date on which the notice of seizure is given to the judgment debtor;
- (d) every prescribed person or every person in a prescribed class of persons.

**Person in possession of seized
personal property deemed bailee**

- 71**
- (1) If a civil enforcement officer seizes personal property under this Part without taking possession of the property, the person in possession of the property at the time of the seizure, including the judgment debtor, is deemed to hold the property as the officer's bailee.
 - (2) A person who is deemed to hold personal property as a civil enforcement officer's bailee under subsection (1)
 - (a) subject to subsection (3), is subject to the same obligations that a bailee of property for value is subject to at common law,
 - (b) must deliver the property to the officer on demand of the officer, and
 - (c) may terminate the bailment by delivering the property to the officer at a time and place approved by the officer.
 - (3) If a partnership or any partner of a partnership, including the judgment debtor, is deemed to hold seized property as the civil enforcement officer's bailee, the obligations of the partnership or partner, as the case may be, under subsection (2) (a) are subject to any rights the partnership or partner, other than the judgment debtor, acquired in relation to the property before the property was seized.
 - (4) A person other than the judgment debtor who is deemed to hold personal property as a civil enforcement officer's bailee is entitled to reasonable costs incurred
 - (a) in preserving and protecting the property, and
 - (b) in delivering the property to the officer.
 - (5) If a person who is deemed to hold personal property as a civil enforcement officer's bailee fails to discharge the obligations referred to subsection (2) (a), a court may, on application by a judgment creditor or the officer, order that judgment be entered against the bailee in an amount equal to either of the following:
 - (a) the fair market value of the personal property;
 - (b) the loss in fair market value of the personal property resulting from the bailee's failure to discharge the obligations.

Release of seized property

- 72 (1) If, at any time, a civil enforcement officer determines that seized property is not required to satisfy the total of the amounts referred to in section 67 (1) (a) and (b) [*what property may be seized*], the officer must, as soon as practicable,
- (a) release the property from seizure and give notice of the release from seizure in accordance with any applicable regulations, and
 - (b) discharge any registration against property of the judgment debtor in accordance with any applicable regulations.
- (2) A civil enforcement officer must release all of a partnership's partnership property from seizure and refrain from taking any further enforcement proceedings against the partnership property if either of the following applies:
- (a) the officer determines that none of the partners of the partnership is a judgment debtor in relation to the money judgment that resulted in the seizure of the partnership property;
 - (b) the partnership or any partner of the partnership, other than the judgment debtor, pays to the officer an amount equal to the fair market value, as estimated by the officer, of the judgment debtor's interest in the partnership.

Seizure preserved despite irregularity

- 73 (1) Subject to subsection (2), a seizure of property by a civil enforcement officer under this Act is not invalidated by an irregularity in any of the following:
- (a) the procedure by which the seizure is carried out, including any related notice of seizure;
 - (b) the enforcement instruction related to the seizure;
 - (c) a registration of the money judgment being enforced by the seizure;
 - (d) the money judgment being enforced by the seizure.
- (2) On application, if a court is satisfied that a person is or is likely to be prejudiced by an irregularity in the procedure by which the seizure was carried out, the court may order the appropriate civil enforcement officer to release the property from seizure.

**PART 9 – SEIZURE AND DISPOSITION OF
SPECIFIC TYPES OF PROPERTY**

Division 1 – Seizure and Disposition of Fixtures and Crops

How fixtures and crops may be seized

- 74** Subject to section 76, a civil enforcement officer may seize a fixture or growing crop by giving a notice of seizure to the following persons:
- (a) the judgment debtor;
 - (b) every person who appears in the records of the land title office as having, at the time of the seizure, an interest in the land to which the fixture is attached or on which the crop is growing;
 - (c) in the case where a fixture is being seized, every person who appears in the records of the land title office as having, at the time of the seizure, an interest in the fixture.

How aquatic plants may be seized

- 75** (1) In this section, “**aquatic plants**” has the same meaning as in the *Fish and Seafood Act*.
- (2) A civil enforcement officer may seize aquatic plants that have not been harvested by giving a notice of seizure to the following persons:
- (a) every judgment debtor who has an interest in the plants;
 - (b) every person who has been granted a prescribed licence in respect of the plants;
 - (c) every person who has an interest in the bed of the body of water where the plants are growing.
- (3) If a civil enforcement officer seizes aquatic plants that have not been harvested, sections 77 to 82 [*release from seizure if security not provided*] apply to
- (a) the harvesting of the aquatic plants,
 - (b) any expenses related to that harvesting, and
 - (c) the disposition of those aquatic plants by the officer.

**When civil enforcement officer may seize
and dispose of fixtures**

- 76** (1) A civil enforcement officer may seize and dispose of a fixture only as follows:
- (a) if the seizure and disposition are authorized by a court order, the seizure and disposition must be carried out in accordance with the court order;
 - (b) in any other case, a fixture may be seized and disposed of in accordance with this Part.

- (2) Subsection (1) applies whether or not the judgment debtor in question is the beneficial owner of the land to which the fixture is attached.
- (3) Any person who has purchased a fixture may enter onto the land where the fixture is attached to sever and remove the fixture.

**Civil enforcement officer may arrange
for harvest of crops**

- 77
- (1) If a civil enforcement officer seizes a growing crop, the officer may, unless a court orders otherwise, do one or both of the following:
 - (a) subject to subsection (2), arrange for the crop to be harvested and divide the harvested crop in proportion to the interests of the judgment debtor and any other person or persons having an interest in the crop;
 - (b) dispose of the crop, or the judgment debtor's interest in the crop, in accordance with this Part and distribute the proceeds in accordance with Part 14 [*Distribution*].
 - (2) Before a civil enforcement officer arranges for the harvest of a seized crop, the officer must first provide the judgment debtor and every co-owner of the seized crop with a reasonable opportunity to harvest the crop on behalf of the officer.
 - (3) Any person who has purchased a growing crop may enter onto the land where the crop is growing to sever and remove the crop.

Notice of severance or disposition of fixtures or crops

- 78
- (1) Subject to section 79 (1), before a civil enforcement officer severs and removes a seized fixture or growing crop, or disposes of a seized fixture or growing crop, that is owned, in whole or in part, by a judgment debtor, the officer must give a notice of severance or notice of disposition, as the case may be, to the following:
 - (a) the judgment debtor;
 - (b) every person who is known by the officer to have an interest in the fixture or crop;
 - (c) if the fixture or crop is partnership property of a partnership, every person who is known by the officer to be a partner in the partnership;
 - (d) every person who appears in the records of the land title office as having, at the time the fixture or crop is seized, an interest in the land to which the fixture is attached or on which the crop is growing;
 - (e) every person who appears in the money judgment registry as having an interest in the fixture or crop.

- (2) A civil enforcement officer may not sever and remove or dispose of a seized fixture or crop until 15 days after the last notice of severance or notice of disposition is given under subsection (1) unless one of the following apply:
 - (a) every person entitled to receive a notice of severance or notice of disposition under subsection (1) consents in writing to the severance or disposition before the end of the period;
 - (b) on application of the officer, the court is satisfied that severance or disposition before the end of the period is warranted.

Dispensing with notice or postponing severance

- 79**
- (1) If, on application of a civil enforcement officer, a court is satisfied that a notice of severance or notice of disposition, as the case may be, under section 78 is not warranted, the court may make an order authorizing the officer to sever and remove or dispose of a seized fixture or crop without giving a notice of severance or notice of disposition under that section.
 - (2) A civil enforcement officer may apply to the court under subsection (1) without notice to any person.
 - (3) Without limiting section 140 [*court may intervene*], a person may apply to the court for an order postponing severance of a fixture or crop from the land to which the fixture is attached or on which the crop is growing.
 - (4) Notice of an application under subsection (3) must be given to the civil enforcement officer and each person referred to in section 78 (1).

Preventing severance or disposition of fixtures or crops

- 80**
- (1) Subject to subsection (2), a person who has an interest in land may, before a fixture or growing crop is severed from the land or disposed of, prevent the severance or disposition of the fixture or crop by paying to a civil enforcement officer an amount equal to the lesser of the following:
 - (a) the total of the amounts recoverable by all judgment creditors with an enforcement charge on the fixture or crop that has priority over the interest of the person who has the interest in the land;
 - (b) the fair market value of the judgment debtor's interest in the fixture or crop, as the case may be, if it were severed from the land.
 - (2) Payment of an amount referred to in subsection (1) extinguishes the enforcement charges referred to in subsection (1) (a) in the fixture or crop, and one of the following applies in respect of the person who paid that amount:
 - (a) if the amount paid is equal to or greater than the fair market value of the judgment debtor's interest in the fixture or crop, the person who paid the amount acquires the judgment debtor's interest in the fixture or crop;

- (b) if the amount paid is less than the fair market value of the judgment debtor's interest in the fixture or crop, the person who paid the amount is deemed to have a security interest, within the meaning of the *Personal Property Security Act*, in the judgment debtor's interest in the fixture or crop for an amount equal to the total of
 - (i) the amount paid, and
 - (ii) any interest that accrues on the amount paid at the rate set for unpaid judgments, calculated in accordance with the *Court Order Interest Act* from the date the amount is paid.
- (3) Subject to subsection (4), the *Personal Property Security Act* applies for the purpose of determining the priority of the security interest referred to in subsection (2) (b) in relation to other interests in the fixture or crop.
- (4) If the security interest referred to in subsection (2) (b) is registered under the *Personal Property Security Act* on or before the date on which an amount referred to in subsection (1) is paid, the security interest is deemed to have the same priority in relation to other interests in the fixture or crop as the enforcement charge that resulted in the seizure had immediately before its extinguishment under subsection (2).

Limitations on severance and removal

- 81**
- (1) If a civil enforcement officer, or a person who has purchased a seized fixture or crop, severs and removes the seized fixture or crop, the officer or person, as the case may be, must do so in a manner that causes
 - (a) no more damage to the land and any other property situated on the land than is necessarily incidental to the severance and removal, and
 - (b) no more inconvenience to any occupier of the land than is necessarily incidental to the severance and removal.
 - (2) A person who has an interest in land, or who is an occupier of land, at the time a seized fixture or crop is severed from the land is entitled to reimbursement for any damages caused by a failure to comply with subsection (1) during the severance and removal of the fixture or crop.
 - (3) A person referred to in subsection (2) is not entitled to reimbursement under that subsection for any diminution in the value of the person's interest in the land caused by the absence of the fixture or crop or by the need to replace the fixture or crop.
 - (4) On application, a court may determine the amount of reimbursement for damages described in subsection (2).
 - (5) Any reimbursement paid or payable by the civil enforcement officer under subsection (2) is an expense for the purposes of section 185 (1) (a) [*distribution of distributable fund*].

Release from seizure if security not provided

- 82** A civil enforcement officer may release a crop from seizure if the judgment creditor has failed to provide security as required by section 45 (2) (d) (iii) [*giving enforcement instructions to civil enforcement officer*] within the period specified by the officer.

**Division 2 – Seizure of Interests Under Lease,
Contract of Sale or Security Agreement**

Definition

- 83** In this Division, “**contract of sale**” means a contract under which the seller retains ownership of or title to the subject matter of the contract until a condition is met but does not include a security agreement.

How interest of lessor, seller or secured party may be seized

- 84** (1) Subject to subsection (3), a civil enforcement officer may seize the following interests in the manner referred to in subsection (2):
- (a) a judgment debtor’s interest, as lessor, in leased property in the possession of the lessee;
 - (b) a judgment debtor’s interest, as seller under a contract of sale, in property in the possession of the buyer;
 - (c) a judgment debtor’s interest, as a secured party, in property in the possession of a debtor under a security agreement.
- (2) A civil enforcement officer may seize an interest referred to in subsection (1) as follows:
- (a) in the case of a lessor’s interest, by giving a notice of seizure to the lessee;
 - (b) in the case of a seller’s interest, by giving a notice of seizure to the buyer;
 - (c) in the case of a secured party’s interest, by giving a notice of seizure to the debtor under the security agreement.
- (3) If the lease, contract of sale or security agreement referred to in subsection (1) is evidenced by chattel paper, a civil enforcement officer may seize the lease, contract of sale or security agreement by taking possession of the chattel paper.

Seizure includes payment obligation

- 85** A seizure under section 84 of an interest arising under a lease, contract of sale or security agreement also effects the seizure of any money payable to the judgment debtor under the lease, contract of sale or security agreement.

Obligation of lessee, buyer or debtor to make payments to civil enforcement officer

- 86** (1) If an interest arising under a lease, contract of sale or security agreement is seized under section 76 [*when civil enforcement officer may seize and dispose of fixtures*], the lessee, the buyer or the debtor under the security agreement must pay to a civil enforcement officer all amounts that are payable or that become payable to the judgment debtor under the lease, contract of sale or security agreement while the seizure is in effect.
- (2) If a civil enforcement officer assigns the officer's right to receive one or more payments referred to in subsection (1) and gives notice of that assignment to the person who is obligated to make the payments, that person must pay to the assignee the payments to which the assignment relates while the assignment is in effect.

Civil enforcement officer may exercise same rights as lessor, seller or secured party

- 87** (1) This section applies to a civil enforcement officer who seizes the interest of a judgment debtor in property as lessor under a lease, as seller under a contract of sale or as secured party under a security agreement until that interest is released from seizure.
- (2) A civil enforcement officer may exercise, in relation to
- (a) the property that is the subject matter of a lease, contract of sale or security agreement,
 - (b) the lessee, buyer or debtor, and
 - (c) any third party claiming an interest in the property,
- the rights and powers that could have been exercised by the judgment debtor had the seizure not taken place, whether the judgment debtor had those rights and powers at the time of seizure or acquired them later.

How interest of lessee, buyer or debtor may be seized

- 88** (1) A civil enforcement officer may seize the following interests in the manner referred to in subsection (2):
- (a) a judgment debtor's interest, as lessee, in leased property in the possession of the lessee;
 - (b) a judgment debtor's interest, as buyer under a contract of sale, in property in the possession of the buyer;
 - (c) a judgment debtor's interest, as debtor under a security agreement, in property in the possession of the debtor.

- (2) A civil enforcement officer may seize an interest referred to in subsection (1) as follows:
- (a) if the lease, contract of sale or security agreement is registered in the personal property registry or the officer is otherwise aware of the existence of the lease, contract of sale or security agreement,
 - (i) in the case of a lessee's interest, by giving a notice of seizure to the lessor,
 - (ii) in the case of a buyer's interest, by giving a notice of seizure to the seller, and
 - (iii) in the case of a debtor's interest, by giving a notice of seizure to the secured party;
 - (b) in any other case, by seizing the applicable person's interest in property in any manner described in section 68 (1) (c) or (d) [*how property may be seized*].

Civil enforcement officer may exercise same rights as lessee, buyer or debtor

- 89** (1) This section applies to a civil enforcement officer who seizes the interest of a judgment debtor in property as lessee under a lease, as buyer under a contract of sale or as debtor under a security agreement until that interest is released from seizure.
- (2) A civil enforcement officer may exercise, in relation to
- (a) the property that is the subject matter of the lease, contract of sale or security agreement,
 - (b) the lessor, seller or secured party, and
 - (c) any third party claiming an interest in the property,
- the rights and powers that could have been exercised by the judgment debtor had the seizure not taken place, whether the judgment debtor had those rights and powers at the time of the seizure or acquired them later.

Effect of contractual provisions on seizure

- 90** (1) A civil enforcement officer may seize and maintain a seizure of an interest referred to in section 88 (1) despite any term or provision of the lease, contract of sale or security agreement to the effect
- (a) that the lease, contract of sale or security agreement, or
 - (b) that the judgment debtor's interest in the property that is the subject matter of the lease, contract of sale or security agreement
- is to be terminated by reason of a seizure of the property or interest.

- (2) If, after the seizure of an interest referred to in section 88 (1), the lessor, seller or secured party seeks to exercise any rights under a term or provision referred to in subsection (1) of this section or to otherwise terminate the judgment debtor's interest in, or take possession of, the property, the civil enforcement officer may do one or more of the following:
 - (a) release the judgment debtor's interest in the property from seizure, with or without conditions;
 - (b) apply to the court for an order preventing termination of the judgment debtor's interest in the property as lessee, buyer or debtor;
 - (c) in the case of a seizure of the judgment debtor's interest in property
 - (i) as lessee, apply to the court for an order directing disposition of the lessee's interest by the officer, and
 - (ii) as buyer or debtor, apply to the court for an order directing disposition of the property by the officer.
- (3) The court may not make an order for disposition under subsection (2) (c) unless the court is satisfied that the proceeds of the disposition will exceed the total of
 - (a) the present value of the amount owing to the lessor, seller or secured party under the lease, contract of sale or security agreement, and
 - (b) any fees, taxable court costs and expenses the civil enforcement officer incurs with respect to the disposition.
- (4) Subsections (2) and (3) do not apply if the enforcement charge of any instructing judgment creditor has priority over the interest of the lessor, seller or secured party as provided in Part 4 [*Priority of Enforcement Charge*].

Division 3 – Seizure of Existing and Future Accounts and Other Debts

Definition

- 91** In this Division, “**benefit**”, in relation to a judgment debtor, means a benefit, good or service that the judgment debtor is entitled to receive under a contract of employment.

Interpretation

- 92** In this Division,
- (a) unless the context requires otherwise, a reference to an account, other than a deposit account, is to be read to include a future account, and
 - (b) a reference to a civil enforcement officer, in relation to an account, is to be read to include a reference to the assignee of an officer if the officer has assigned the officer's rights to an account and has given notice of that assignment to the account debtor.

Deemed election – future account

- 93** For the purposes of this Division, a judgment debtor is deemed to have elected to receive a payment in relation to a future account if the judgment debtor is, at any time after either of the following dates, entitled to make an election to receive the payment:
- (a) the date on which a notice of seizure is given under this Division to an account debtor of the judgment debtor;
 - (b) the date on which a demand for payment is made to an account debtor of the judgment debtor by a receiver appointed under Part 12 [*Receivers*].

Deemed election – employment remuneration

- 94** (1) For the purposes of this Division, a judgment debtor is deemed to have elected to receive, in relation to a payment period, the fair market value of a benefit in the form of money if, at any time after either of the following dates, the judgment debtor is entitled to make an election to receive money instead of the benefit:
- (a) the date that a notice of seizure is given under this Division to an account debtor of the judgment debtor;
 - (b) the date that a demand for payment is made to an account debtor of the judgment debtor by a receiver appointed under Part 12 [*Receivers*].
- (2) Subsection (1) does not apply to a health care benefit unless it is prescribed as a benefit for the purposes of this section.

Location of accounts

- 95** An account is subject to enforcement under this Act if, at the time the account becomes due, the account debtor
- (a) in the case of an individual, resides in British Columbia,
 - (b) carries on business in British Columbia, or
 - (c) is otherwise subject to the jurisdiction of the Supreme Court.

Seizure of accounts

- 96** (1) Subject to this Division, a civil enforcement officer may seize an account, other than an account that is partnership property of a partnership, by giving a notice of seizure to the account debtor.
- (2) For the purposes of subsection (1), an account is seized if
- (a) the account becomes due at any time within 12 months after a notice of seizure has been served, or
 - (b) the account is one of a series of periodic recurring payments arising from a legal relationship between the account debtor and a judgment debtor existing when a notice of seizure is served, regardless of the period over which the periodic recurring payment obligations become due.

- (3) An account that is partnership property of a partnership may be seized only by appointing a receiver under section 157 [*appointment of receiver – partnerships*].
- (4) A future account may be seized by a civil enforcement officer from a person only if the officer has reasonable grounds to believe that one of the following applies:
 - (a) there exists between the judgment debtor and the person a legal relationship that gives rise to an account or that is likely to give rise to an account;
 - (b) the legal relationship described in paragraph (a) is likely to come into existence within a reasonable period after the notice of seizure is given.

Seizure of amounts payable under trusts

- 97
- (1) For the purposes of this Division, if a judgment debtor is entitled to receive payment of an amount by a trustee, or to demand payment of an amount from a trustee, the amount is deemed to be an account to the extent that, under the law of trusts, the trustee is deemed to be an account debtor in relation to the amount.
 - (2) If a trustee referred to in subsection (1) is given a notice of seizure by a civil enforcement officer, while the seizure is in effect,
 - (a) must not transfer any of the assets of the trust that are located in British Columbia outside British Columbia, or otherwise transfer any property of the trust out of the trustee's direct control, and
 - (b) unless a court orders otherwise, must not appoint as a replacement trustee a person who is not resident in British Columbia.
 - (3) Unless a court orders otherwise, if a trustee referred to in subsection (1) is given a notice of seizure by a civil enforcement officer, each provision of the relevant trust is, while the seizure is in effect, of no force or effect to the extent the provision
 - (a) is inconsistent with the requirements and prohibitions applicable to the trustee under this Division, or
 - (b) purports to discharge the trustee or otherwise transfer control of the trust from the trustee.
 - (4) A trustee referred to in subsection (1) is deemed to have received from a judgment debtor a demand for payment of money to discharge a trust obligation if
 - (a) the trustee receives a notice of seizure by a civil enforcement officer, and
 - (b) at any time after the notice of seizure is received, the judgment debtor referred to in subsection (1) is entitled under the law of trusts or otherwise to demand payment of money to discharge the trust obligation in whole or in part.

- (5) For the purposes of this Division, subject to subsection (6) of this section, any term of a trust that could be used to frustrate the seizure of trust property is of no force and effect.
- (6) Subsection (5) does not apply if a court, on application, determines that the operation of the term in question would not frustrate the seizure of trust property.
- (7) For certainty, the terms of a trust referred to in subsections (5) and (6) include terms that relate to the following matters:
 - (a) the power to approve modifications to the trust;
 - (b) the removal of a trustee;
 - (c) the termination of the trust;
 - (d) an adjustment of a beneficiary's entitlement under the trust;
 - (e) adjustments to distributions;
 - (f) the addition or removal of beneficiaries.

Obligations of account debtor on seizure

- 98**
- (1) Subject to this Division, an account debtor who receives a notice of seizure under section 96 (1) in relation to an account or a future account must pay to a civil enforcement officer the following amount within 15 days after the amount becomes payable unless a payment period has been prescribed, in which case, the payment must be made within the prescribed period:
 - (a) in the case of an account,
 - (i) any amount that is payable to the judgment debtor at the time the notice of seizure is given, and
 - (ii) unless the account is a deposit account, any amount that becomes payable to the judgment debtor after the notice of seizure is given;
 - (b) in the case of a future account, any amount that becomes payable to the judgment debtor after the notice of seizure is given.
 - (2) An account debtor's obligation under subsection (1) applies
 - (a) as if the account debtor had received from the judgment debtor a demand to immediately discharge the account or, in the case of a future account, a demand to discharge the future account when the future account becomes payable, and
 - (b) in the case of a deposit account, even if the agreement between the deposit-taking institution and the depositor requires the depositor to give notice of a withdrawal or present a passbook or a record, other than a negotiable instrument, as a condition of the depositor's entitlement to enforce the obligation.

- (3) An account debtor must, as soon as practicable after receiving a notice of seizure in relation to an account, notify a civil enforcement officer of the following, as applicable:
 - (a) every person known by the account debtor to be a co-owner of the account;
 - (b) in the case of an account that is not yet payable, the date or event on which the account will become payable;
 - (c) in the case of a future account, the dates or events on which the future account will become due and payable.
- (4) A person who receives a notice of seizure under subsection (1) may, by giving written notice to a civil enforcement officer, dispute the requirement to comply with that subsection on any of the following grounds:
 - (a) the person is not an account debtor;
 - (b) the account in question has been assigned, discharged or paid into court;
 - (c) the person is an account debtor but is not legally obligated to make payments to the officer.
- (5) The written notice referred to in subsection (4) must
 - (a) specify all of the applicable grounds referred to in paragraphs (a) to (c) of that subsection on which the dispute is based,
 - (b) set out the basis for asserting any of the specified grounds, and
 - (c) be given to a civil enforcement officer within 15 days after the person receives the notice of seizure.

Seizure of income

- 99**
- (1) To be effective in relation to a payment of income to a judgment debtor, a notice of seizure under section 96 (1) [*seizure of accounts*] must be given to the account debtor as follows:
 - (a) if the payment period to which the payment relates is 14 days or less, at least 5 days before the end of the payment period;
 - (b) if the payment period to which the payment relates is greater than 14 days, at least 14 days before the end of the payment period.
 - (2) A notice of seizure given to the account debtor under section 96 (1) applies to the following:
 - (a) the first payment in relation to which the notice of seizure is effective under subsection (1) of this section;
 - (b) all subsequent payments of income made before the date on which the civil enforcement officer notifies the account debtor that the notice of seizure is withdrawn.

- (3) An account debtor who has received a notice of seizure under section 96 (1) in relation to income must pay to the civil enforcement officer each payment of income to which the notice of seizure applies as specified in subsection (2) of this section, within 7 days after that payment becomes payable, unless a payment period is prescribed, in which case the payment must be made within the prescribed payment period, and after deducting from that payment each of the following amounts, as applicable:
 - (a) an amount the account debtor is required by law or contract to deduct from the payment for
 - (i) income tax,
 - (ii) employment insurance,
 - (iii) Canada Pension Plan contributions,
 - (iv) compulsory union or professional fees,
 - (v) registered pension plan contributions,
 - (vi) health, disability and life insurance premiums, and
 - (vii) any other prescribed deductions;
 - (b) an amount in respect of which the judgment debtor is entitled to make an exemption claim under section 162 (3) [*exemption claims in relation to income*];
 - (c) an amount the account debtor is entitled to retain as a right of set-off or compensation under sections 102 [*set-off permitted*] and 103 [*deduction of set-off and compensation amounts*].
- (4) If, in relation to a payment period, an account debtor is obligated to make a payment of income in the form of a good or service, on application, the court may, by order, do one or both of the following:
 - (a) for the purposes of subsection (3), determine the amount of income in the form of money that would be payable to the judgment debtor by the account debtor instead of providing the good or service in relation to that payment period;
 - (b) determine the amount that the account debtor must pay to the civil enforcement officer under subsection (3) in relation to that payment period.
- (5) An applicant under subsection (4) must give notice of the application to the civil enforcement officer, the account debtor, the judgment debtor and all judgment creditors that have an enforcement charge that is applicable to the income to which the notice of seizure applies.

- (6) An account debtor who has received a notice of seizure under section 96 (1) in relation to income must give the civil enforcement officer a written statement containing the prescribed information
 - (a) with the first payment made to the officer under subsection (2) of this section in relation to a payment period,
 - (b) with any other payment made to the officer under subsection (2) of this section in relation to a subsequent payment period, and
 - (c) when requested to do so by the officer.

Seizure of accounts owed by government to public servants

- 100** (1) In this section, “**public servant**” has the prescribed meaning.
- (2) Before any person may seize an account owed by the government to a public servant, the person must serve a notice of seizure on the government in accordance with the regulations.

Seizure of income not to affect employment

- 101** (1) An employer must not do any of the following in relation to an employee of the employer solely because the employer has received a notice of seizure under section 96 (1) [*seizure of accounts*] in relation to the employee’s income or otherwise becomes aware that the employee is a judgment debtor:
 - (a) dismiss, suspend, demote, discipline, harass or otherwise disadvantage the employee;
 - (b) terminate the employee’s contract of employment;
 - (c) deny the employee any benefit.
- (2) An employer who contravenes subsection (1) commits an offence.
- (3) An individual who commits an offence under subsection (2) is liable to
 - (a) a fine of not more than \$1 500,
 - (b) imprisonment for not more than 3 months, or
 - (c) both the fine and imprisonment referred to in paragraphs (a) and (b) of this subsection.
- (4) A corporation that commits an offence under subsection (2) is liable to a fine of not more than \$10 000.
- (5) If an employer is convicted of an offence under subsection (2), in addition to any penalty imposed under subsection (3) or (4),
 - (a) if an employee’s employment was terminated or suspended, the employer must, as soon as practicable after the conviction, reinstate the employee’s employment on the terms and conditions that were in effect immediately before the date of the offence,

- (b) the employee is entitled to wages and benefits from the date of the offence to the date of the employee's reinstatement, and
- (c) the court may make any order in favour of the employee that the court considers just, including an order for restitution.

Set-off permitted

- 102** (1) Subject to subsection (2), an account debtor may exercise a right of set-off against any amount the account debtor is required to pay to the civil enforcement officer under section 98 [*obligations of account debtor on seizure*] or 99 [*seizure of income*] to the same extent that the account debtor could exercise a right of set-off against any amount the account debtor is required to pay to the judgment debtor.
- (2) An account debtor is not entitled to set off against an account seized by the civil enforcement officer an amount in respect of a claim or obligation that arises after the notice of seizure is given to the account debtor unless the claim or obligation could have been set off against an assignee of the account.

Deduction of set-off and compensation amounts

- 103** An account debtor who has received a notice of seizure in relation to an account may deduct from the amount the account debtor is required to pay to a civil enforcement officer under section 98 [*obligations of account debtor on seizure*] or 99 [*seizure of income*], as applicable, and retain
- (a) an amount in respect of which the account debtor is entitled to exercise a right of set-off under section 102, and
 - (b) the amount prescribed as the compensation to which the account debtor is entitled for complying with the notice of seizure.

Application to court

- 104** (1) In addition to any other orders a court may make, on application, a court may, by order, do any of the following:
- (a) determine
 - (i) whether a person is an account debtor,
 - (ii) whether an account debtor is legally obligated to make payments to a civil enforcement officer,
 - (iii) whether an account debtor is entitled to set off a claim or obligation against a seized account,
 - (iv) the amount payable by an account debtor under this Division and specify the time that, or the period within which, the amount must be paid, or

- (v) the fair market value of a benefit that a judgment debtor is, under section 94 [*deemed election – employment remuneration*], deemed to have elected to receive;
 - (b) require the account debtor to pay to the officer one or both of the following:
 - (i) the amount that the account debtor is obligated to pay to the officer under this Division in relation to the seizure;
 - (ii) an amount equal to the fees, taxable court costs and expenses paid or payable by the officer in relation to the account;
 - (c) require the account debtor to pay to the judgment creditor an amount equal to the judgment creditor’s costs of the proceedings under this section.
- (2) A person who has received a notice of seizure under this Division must not bring an application under this section unless the person has given written notice to the civil enforcement officer under section 98 (4) [*obligations of account debtor on seizure*] to dispute the requirement to comply with section 96 (2) [*seizure of accounts*] or 99 (3) [*seizure of income*], as applicable.
- (3) An account debtor is not liable for a failure to comply with section 96 or 99 if the account debtor made a reasonable effort to comply.

Payment discharges account debtor’s obligation

- 105** (1) In this section, “**required amount**” means the amount the account debtor is required to pay under section 96 [*seizure of accounts*] or 99 [*seizure of income*] in relation to an account before any deduction is made under section 103.
- (2) Payment by an account debtor of an amount the account debtor is required to pay under section 96 or 99 in relation to an account discharges the account debtor’s obligation to the judgment debtor to the extent of the amount paid.
- (3) If an account is a co-owned account, payment by an account debtor under this Division of an amount the account debtor is required to pay under section 96 or 99 in relation to the account discharges both of the following:
- (a) the account debtor’s obligation to the judgment debtor for the required amount;
 - (b) the account debtor’s obligation to a co-owner of the account in respect of the amount by which the required amount exceeds the amount of the account that the judgment debtor is entitled to receive.

**Seizure of money in possession
of civil enforcement officer**

- 106** (1) A civil enforcement officer may seize money in the officer's possession or control that is payable to a judgment creditor under this Act if both of the following apply:
- (a) the judgment creditor is also a judgment debtor;
 - (b) the officer has received an enforcement instruction in relation to a money judgment against the judgment creditor.
- (2) A civil enforcement officer may seize money under subsection (1) by giving a notice of seizure to the judgment creditor to whom the money is payable.
- (3) If a civil enforcement officer seizes money under subsection (1) that is payable to a judgment creditor under this Act, the officer's obligation to pay to the judgment creditor the amount seized is discharged.
- (4) A civil enforcement officer may seize money in the officer's possession or control that is payable to a judgment debtor under this Act if the officer has received an enforcement instruction in relation to a money judgment against the judgment debtor.
- (5) If a civil enforcement officer, under subsection (4), seizes money in a distributable fund that is payable to a judgment debtor, the officer's obligation to pay to the judgment debtor the amount seized is discharged.
- (6) Subject to subsections (1) and (4), this Division, other than section 108, does not apply to the seizure of money in a civil enforcement officer's possession or control that is payable to a judgment creditor or a judgment debtor.

Seizure of money in court

- 107** (1) In this section, "**registrar**" means a registrar or district registrar appointed under section 13 [*registrars*] of the *Supreme Court Act*.
- (2) A civil enforcement officer may seize money held in court in a proceeding by giving a notice of seizure to the registrar of the court if either of the following applies:
- (a) the money is payable to a judgment debtor at the time the notice of seizure is given;
 - (b) the money becomes payable to a judgment debtor after the notice of seizure is given and before the notice of seizure is withdrawn.
- (3) A registrar who receives a notice of seizure under subsection (2) must pay the following to the civil enforcement officer:
- (a) any money held in court that is payable to the judgment debtor at the time of seizure;

- (b) any money held in court that becomes payable to the judgment debtor after the notice of seizure is given and before the notice of seizure is withdrawn.
- (4) If a registrar pays money held in court to a civil enforcement officer under subsection (3), the registrar's obligation to the judgment debtor for the amount paid is discharged.
- (5) This Division, other than section 108, does not apply to the seizure of money held in court as referred to in subsection (2).

**Assigned accounts and accounts
subject to security interests**

- 108** (1) In this section:
- “**account**” includes money held in court that is subject to seizure under section 107;
 - “**account debtor**” includes a registrar obligated under section 107 to pay money out of court.
- (2) If an account that is payable to a judgment debtor has been assigned by the judgment debtor or is subject to a security interest, an account debtor who receives a notice of seizure in respect of the account must do both of the following:
 - (a) in relation to the account, comply with an obligation under section 98 [*obligations of account debtor on seizure*], 99 [*seizure of income*] or 107, as applicable, to pay an amount;
 - (b) within 20 days after making a payment referred to in paragraph (a) of this subsection, give notice of the payment to the judgment debtor's assignee or the secured party, as the case may be, at the last known address of that person, if the identity of that person is known to the account debtor.
 - (3) The payment by the account debtor of an amount referred to in subsection (2) (a) discharges the account debtor's obligation to the judgment debtor's assignee to the extent of the amount paid.
 - (4) An amount referred to in subsection (2) (a) that has been paid to a civil enforcement officer in relation to an account that is subject to a security interest may be paid by the officer to the secured party that holds the security interest, if both of the following apply:
 - (a) the officer has received written notice from the secured party of a third person claim under Part 15 [*Third Person Claims*] in respect of that amount and no other person has submitted a written notice of a claim in respect of that amount under that Part;

- (b) the secured party provides a written undertaking to the officer to indemnify the officer if the officer is required to pay compensation to a person with an interest that is superior to that of the secured party.

Release of portion of seized account

- 109** A civil enforcement officer who has seized an account under this Division may, if requested to do so by the judgment debtor, and must, if ordered to do so by the court, release from seizure the amount of an account sufficient to permit the judgment debtor to do one or both of the following:
- (a) maintain property leased to the account debtor by the judgment debtor;
 - (b) perform a contract with the account debtor if the account became payable or will become payable under that contract.

**Division 4 – Securities, Security Entitlements
and Futures Contracts**

Interpretation

- 110** (1) In this Division, the following words and expressions have the same meaning as in section 1 (1) of the *Securities Transfer Act*:
- (a) appropriate person;
 - (b) certificated security;
 - (c) corporation;
 - (d) endorsement;
 - (e) financial asset;
 - (f) instruction;
 - (g) issuer.
- (2) In this Division, “**corporate instrument**”, in relation to the security of an issuer, means
- (a) the bylaws, charter, articles or internal rules of the issuer of the security,
 - (b) except in sections 121 [*procedure for disposition*] and 122 [*disposition at predetermined price or formula*], a shareholders’ agreement relating to the security of the issuer, and
 - (c) for the purposes of sections 121 and 122, a unanimous shareholders’ agreement relating to the security of the issuer.
- (3) Sections 121 to 126 [*person purchasing security under this Division*] apply to the security of an issuer, other than an issuer that is a public company as defined in the *Business Corporations Act*.

Application of Division 2 of Part 8 and Part 10 to this Division

- 111** (1) Subject to subsection (2), Division 2 [*Seizure of Property*] of Part 8 and Part 10 [*General Rules Relating to Disposition of Property*] do not apply to an enforcement proceeding to which this Division applies.
- (2) The following provisions apply to an enforcement proceeding to which this Division applies:
- (a) section 67 [*what property may be seized*];
 - (b) section 68 (2) (f) [*how property may be seized*];
 - (c) section 72 [*release of seized property*];
 - (d) section 136 [*manner of disposition*];
 - (e) section 141 [*redemption of seized property and discharge of registration*];
 - (f) section 143 [*purchaser of seized property takes free of subordinate interests*].

Court order

- 112** On application, the court may make any order by way of injunction or otherwise against a judgment debtor, issuer, securities intermediary, futures intermediary, secured party or other person referred to in this Division as may be required to facilitate the seizure and disposition of a security, security entitlement or futures contract in accordance with this Act.

How securities, security entitlements and futures contracts may be seized

- 113** (1) In this section, “**futures account**” means an account maintained by a futures intermediary in which a futures contract is carried for a futures customer.
- (2) A civil enforcement officer may seize a certificated security as follows:
- (a) if the security certificate representing the certificated security has been surrendered to the issuer, by giving a notice of seizure to the issuer at the issuer’s chief executive office;
 - (b) if the security certificate representing the certificated security is in the possession of a person who is a secured party in relation to the certificated security, by giving a notice of seizure to the secured party;
 - (c) in any other case, by taking possession of the security certificate representing the certificated security.
- (3) A civil enforcement officer may seize an uncertificated security as follows:
- (a) if the uncertificated security is registered in the name of a person who is a secured party in relation to the uncertificated security, by giving a notice of seizure to the secured party;

- (b) in any other case, by giving a notice of seizure to the issuer at the issuer's chief executive office.
- (4) A civil enforcement officer may seize a security entitlement as follows:
 - (a) if the security entitlement is held in the name of a person who is a secured party in relation to the security entitlement, by giving a notice of seizure to the secured party;
 - (b) in any other case, by giving a notice of seizure to the securities intermediary who maintains the judgment debtor's securities account.
- (5) A civil enforcement officer may seize a futures contract held in a futures account as follows:
 - (a) if the futures contract is carried in the name of a person who is a secured party in relation to the futures contract, by giving a notice of seizure to the secured party;
 - (b) in any other case, by giving a notice of seizure to the futures intermediary who maintains the judgment debtor's futures account.

Effect of seizure – general

- 114** If a civil enforcement officer seizes a security, security entitlement or futures contract,
- (a) the judgment debtor loses all of the rights and powers to request a transfer or otherwise deal with the security, security entitlement or futures contract, as the case may be,
 - (b) the officer acquires all of the rights and powers of the judgment debtor in relation to the security, security entitlement or futures contract, as the case may be, and may take any action that the judgment debtor would otherwise have been entitled to take with respect to the interest,
 - (c) the judgment debtor is not, for the purposes of the *Securities Transfer Act*, an appropriate person in relation to the security or security entitlement, and
 - (d) the officer is, for the purposes of the *Securities Transfer Act*, an appropriate person in relation to the security or security entitlement.

Effect of seizure of security

- 115** (1) Subject to this Division, if a civil enforcement officer seizes a security, the officer
- (a) may dispose of the security or otherwise realize on its value,
 - (b) is entitled to receive any information that the judgment debtor would otherwise be entitled to receive in relation to the security, and

- (c) may apply under section 227 [*complaints by shareholder*] of the *Business Corporations Act* as if the officer were a shareholder under that section, whether or not an application is brought under section 122 (2) [*disposition at predetermined price or formula*] of this Act.
- (2) A civil enforcement officer who has seized a certificated security is entitled to present the security to the issuer with a request to register a transfer of the security.
- (3) A civil enforcement officer who has seized an uncertificated security is entitled to give any instruction to the issuer that the judgment debtor would otherwise be entitled to give in relation to a transfer of the security.
- (4) If it appears that a security certificate representing a certificated security has been lost, destroyed or wrongfully taken, and a dealing with the security requires presentation of the certificate to the issuer, on application by a civil enforcement officer or a judgment creditor, the court may, by order, require the issuer to acknowledge a transfer or other disposition of the security without presentation of the security certificate if satisfactory provision is made for indemnification of the issuer against any liability the issuer may incur with respect to the security.
- (5) If a civil enforcement officer seizes a security,
 - (a) the issuer must comply with any instruction, direction, request or consent given by the officer in relation to the security if the issuer would be required to comply with the instruction, direction, request or consent had it been given by the judgment debtor immediately before the security was seized,
 - (b) the issuer must not act on or comply with any instruction, direction, request or consent given by the judgment debtor while the seizure is in effect,
 - (c) in the case of an uncertificated security, if the issuer is or becomes obligated to make any payment or distribution with respect to the uncertificated security that the issuer would otherwise be obligated to make to the judgment debtor, the issuer must make the payment or distribution to the officer, and
 - (d) if a duty imposed on the issuer by any other enactment or law is, in substance, similar to a duty imposed on the issuer under this Division, compliance with this Division by the issuer satisfies the duty imposed by that other Act or law.

**Effect of seizure of security entitlement
or futures contract**

- 116** (1) If a civil enforcement officer seizes a security entitlement or futures contract, the officer
- (a) is entitled to receive any information that the judgment debtor would otherwise be entitled to receive in relation to the security entitlement or futures contract, and
 - (b) may give any entitlement order, direction, request or consent to the person who is the securities intermediary or futures intermediary in relation to the entitlement or futures contract, as the case may be, that the judgment debtor would otherwise be entitled to give.
- (2) Subject to this Division, if a civil enforcement officer seizes a security entitlement or futures contract,
- (a) the person who is the securities intermediary or futures intermediary in relation to the security entitlement or futures contract, as the case may be, must comply with any entitlement order, direction, request or consent given by the officer if the securities intermediary or futures intermediary would be required to comply with the order, direction, request or consent had it been given by the judgment debtor immediately before the judgment debtor's interest in the security entitlement or futures contract was seized,
 - (b) the securities intermediary or futures intermediary must not act on or comply with any entitlement order, direction, request or consent given by the judgment debtor while the seizure is in effect,
 - (c) if the securities intermediary or futures intermediary is obligated or becomes obligated to make any payment or distribution with respect to the security entitlement or futures contract that the securities intermediary or futures intermediary would otherwise be obligated to make to the judgment debtor, the securities intermediary or futures intermediary must make the payment or distribution to the officer, and
 - (d) if a duty imposed on an issuer by any other enactment or law is, in substance, similar to a duty imposed on the securities intermediary or futures intermediary under this Division, compliance with this Division by the securities intermediary or futures intermediary satisfies the duty imposed by that other Act or law.

Transfer or redemption of security entitlement or futures contract to or by third party

- 117** (1) A securities intermediary may, in relation to a security entitlement that has been seized by a civil enforcement officer, implement an entitlement order to transfer or redeem a financial asset to which the security entitlement relates as if the security entitlement had not been seized if both of the following apply:
- (a) the securities intermediary received notice of the seizure after the entitlement order was given;
 - (b) the securities intermediary had, when notice of the seizure was received, entered into a commitment with a third party to implement the entitlement order.
- (2) A futures intermediary may, in relation to a futures contract that has been seized by a civil enforcement officer, implement a direction to transfer or redeem the futures contract as if the futures contract had not been seized if both of the following apply:
- (a) the futures intermediary received notice of the seizure after the direction was given;
 - (b) the futures intermediary had, when notice of the seizure was received, entered into a commitment with a third party to implement the direction.
- (3) In the circumstances described in subsection (1) or (2), as applicable, the securities intermediary or futures intermediary must, as soon as practicable, pay any proceeds of the transfer or redemption to the civil enforcement officer if the entitlement order or direction referred to in the applicable subsection requires either of the following:
- (a) that the proceeds be paid to the judgment debtor;
 - (b) that the proceeds be credited to the judgment debtor's securities account or other account that the judgment debtor has with the intermediary.

Effect of transfer prohibitions or restrictions in corporate instrument

- 118** Subject to this Division, a civil enforcement officer who seizes a security is not bound by any prohibition or restriction on the disposition of or other dealing with the security, including a preferential right of another shareholder to acquire the security, that is contained within a corporate instrument of the issuer of the security.

Civil enforcement officer may request information

- 119** (1) A civil enforcement officer who seizes a security may, in writing, do the following:
- (a) demand that the issuer provide the officer with the names and addresses of all registered holders of securities of the issuer;

- (b) demand that the issuer or judgment debtor, or both, disclose to the officer any prohibitions or restrictions applicable to the disposition of, or other dealing with, the security.
- (2) A person who receives a demand under subsection (1) must comply with that demand within 15 days after receiving it.

Notice of disposition

- 120**
- (1) Subject to section 139 [*notice of disposition not required*], before disposing of a security, a civil enforcement officer must give a notice of disposition that contains the prescribed information to the following:
 - (a) the issuer;
 - (b) every person identified by the issuer under section 119 (1) (a) as being a registered holder of a security of the issuer.
 - (2) Without limiting any other way in which a civil enforcement officer may comply with subsection (1) (b), if an issuer has provided a name and address for a person that the issuer identifies as being a registered holder of a security of the issuer, the officer may give a notice of disposition to the person at the address provided for that person.
 - (3) If a civil enforcement officer gives a notice of disposition to every person identified by the issuer as being a registered holder of a security of the issuer, the officer is deemed to have given the notice of disposition to all holders of securities of the issuer.
 - (4) A civil enforcement officer must not take any further actions to dispose of the security until 14 days after the last notice of disposition was given under subsection (1).

Procedure for disposition

- 121**
- (1) Subject to this section and section 122, if a corporate instrument of the issuer of a security sets out a procedure for the disposition of securities, the civil enforcement officer must dispose of the security in a manner that follows the procedure as closely as practicable if the judgment debtor would be required to follow that procedure if the judgment debtor were disposing of the security.
 - (2) On application by a person who is entitled by a corporate instrument of the issuer of a security to acquire the security or to otherwise receive a benefit under a prohibition or restriction set out in a corporate instrument of the issuer, the court may order the civil enforcement officer to do either of the following in disposing of the security:
 - (a) comply with the prohibition or restriction;
 - (b) proceed in accordance with the terms specified by the court.

- (3) The court may not make an order referred to in subsection (2) unless satisfied that one of the following applies:
 - (a) the money judgment to which the seizure of the security relates was obtained because of collusion between the judgment creditor and the judgment debtor in respect of the money judgment for the purpose of circumventing a prohibition or restriction referred to in subsection (2);
 - (b) the applicant made a substantial contribution to the operation of the issuer that has materially enhanced the value of the security of the issuer and disposition of the security, as proposed by the civil enforcement officer, would unfairly deprive the applicant of an entitlement to acquire the security or receive a benefit granted or acquired in recognition of that contribution.

Disposition at predetermined price or formula

- 122**
- (1) Subject to this section, a person may purchase a security for a predetermined price, or at a price fixed by reference to a predetermined formula, as set out in a corporate instrument of the issuer of the security, if the instrument entitles the person to do so.
 - (2) On application by a judgment creditor, the court may set the price at which the person referred to in subsection (1) may purchase or redeem the security at an amount different from, or by reference to a formula different from, that referred to in subsection (1), if both of the following apply:
 - (a) the court is satisfied that the price at which the security may be purchased or redeemed under subsection (1) is substantially less than the realizable value of the security;
 - (b) the court is satisfied that permitting a person to purchase or redeem the security at the price referred to in subsection (1) would have the effect of preventing the applicant from recovering the amount recoverable under the applicant's money judgment because the judgment debtor does not have enough other non-exempt property from which the applicant's money judgment may be satisfied.
 - (3) An application under subsection (2) may be joined with an application under section 227 [*complaints by shareholder*] of the *Business Corporations Act*.

Discharge of enforcement charge on security

- 123**
- (1) Without limiting section 141 [*redemption of seized property and discharge of registration*] but subject to this section, at any time before a civil enforcement officer disposes of a security under this Division, the issuer or a registered holder of a security of the issuer, other than the judgment debtor, may release the security from the enforcement charge by paying to the officer an amount equal to the lesser of the following:
 - (a) the release amount in relation to the security;

- (b) the realizable value of the security.
- (2) Subject to subsection (3), if an issuer or a registered holder of securities of the issuer pays to the civil enforcement officer the amount referred to in subsection (1),
 - (a) the officer must
 - (i) release the seized security from seizure,
 - (ii) notify the issuer of the release from seizure, and
 - (iii) amend or discharge the registration of a money judgment, if the registration created an enforcement charge on the judgment debtor's interest in the security,
 - (b) if the amount paid is equal to or greater than the realizable value of the security, the person who paid the amount is entitled to be recorded by the issuer as the registered owner of the security, and
 - (c) if the amount paid is less than the realizable value of the security, the person who paid the amount is deemed to have a security interest, within the meaning of the *Personal Property Security Act*, in the security to the extent of
 - (i) the amount paid, and
 - (ii) the interest that accrues on the amount referred to in subparagraph (i) at the rate set for unpaid judgments, calculated in accordance with the *Court Order Interest Act* from the date the amount is paid.
- (3) Subject to subsection (4), the *Personal Property Security Act* applies for the purpose of determining the priority of the security interest referred to in subsection (2) (c) of this section in relation to other interests in the security.
- (4) If the security interest referred to in subsection (2) (c) is registered under the *Personal Property Security Act* on or before the date on which the amount referred to in subsection (1) of this section is paid, the security interest is deemed to have the same priority in relation to other interests in the security as the enforcement charge that resulted in the seizure had immediately before the amendment or discharge of the registration of the money judgment under subsection (2) (a) (iii) of this section.
- (5) Subsection (2) does not apply if more than one registered owner of a security of the issuer pays, before the end of the period referred to in section 120 (4) [*notice of disposition*], the amount referred to in subsection (1) of this section or gives written notice to the civil enforcement officer of the person's intention to pay that amount.

- (6) This section does not apply if the judgment debtor,
 - (a) before the end of the period referred to in section 120 (4), gives written notice to the civil enforcement officer of the judgment debtor's intention to redeem the security under section 141, and
 - (b) within 14 days of giving notice, pays an amount equal to the release amount in relation to the security.

Disposition of additional securities

- 124** (1) If a security of an issuer is not purchased or redeemed under section 122, 123 or 141 [*redemption of seized property and discharge of registration*] before the end of the period referred to in section 120 (4) [*notice of disposition*], a holder of another security of the issuer may request that a civil enforcement officer dispose of all of the securities of the issuer that are owned by the holder
- (a) along with the first-mentioned security, and
 - (b) on terms identical to those applicable to the disposition of the first-mentioned security.
- (2) The holder of another security referred to in subsection (1) must, as part of any request made under that subsection, give to the civil enforcement officer
- (a) executed transfer records in respect of all of the securities of the issuer that are owned by the holder, and
 - (b) proof, satisfactory to the officer, that the requested disposition of the holder's securities complies with any term contained in a corporate instrument in relation to the securities that relates to the requested disposition.
- (3) Nothing in subsection (1) or (2)
- (a) requires a civil enforcement officer to comply with a request made under subsection (1), or
 - (b) permits an officer to dispose of fewer than the total number of securities of the holder referred to in subsection (1), except with the consent of that holder.

Disposition of seized security

- 125** A civil enforcement officer may dispose of a security if one of the following applies:
- (a) no person has, before the end of the period referred to in section 120 (4) [*notice of disposition*], given written notice to the officer of the person's intention to exercise the person's right under section 122 [*disposition at predetermined price or formula*], 123 or 141 [*redemption of seized property and discharge of registration*] to purchase or redeem the security;

- (b) only one person has, before the end of the period referred to in section 120 (4), given the written notice described in paragraph (a) of this section and that person has not, within 14 days after giving the notice, exercised a right referred to in paragraph (a) of this section;
- (c) more than one person has, before the end of the period referred to in section 120 (4), given the written notice described in paragraph (a) of this section.

Person purchasing security under this Division

126 Without limiting section 143 [*purchaser of seized property takes free of subordinate interests*], a person who purchases a security from a civil enforcement officer under this Division

- (a) acquires all of the rights and obligations the judgment debtor had in or under the security immediately before the security was seized by the officer, including any right to be treated as a party to a shareholder’s agreement relating to the management of the affairs of the issuer,
- (b) is entitled to be registered as an owner of the seized security in the records of the issuer in place of the judgment debtor, and
- (c) despite paragraph (a) of this section, is not bound or affected by a prohibition or restriction on the disposition of or dealing with the seized security referred to in section 118 [*effect of transfer prohibitions or restrictions in corporate instrument*] if, contrary to section 119 [*civil enforcement officer may request information*], the prohibition or restriction was not disclosed by the issuer or judgment debtor, as the case may be.

Division 5 – Seizure and Disposition of Other Property

How licences may be seized

127 Subject to section 137 [*what property may be disposed of*], a civil enforcement officer may seize a licence as follows:

- (a) in the case of an intellectual property licence, by giving a notice of seizure to the following:
 - (i) the judgment debtor;
 - (ii) the licensor;
 - (iii) any office in which the intellectual property is registered, if the office also registers intellectual property licences in relation to that intellectual property;
- (b) in the case of any other licence, by giving a notice of seizure to the judgment debtor and the licensor.

Effect of terms and conditions of licence on seizure

- 128** (1) A term or condition of a licence that would, but for this section, be effective solely on seizure of the licence is not effective if the licence is seized by a civil enforcement officer.
- (2) Without limiting subsection (1), a term of a licence providing that the licence is or may be terminated if the licence is seized is not effective and the civil enforcement officer is entitled to maintain a seizure of the licence despite that term.

How licences may be disposed of

- 129** (1) A seized licence may be disposed of only in accordance with the express or implied terms and conditions, including statutory terms and conditions, under which the licence was granted or that otherwise apply to the licence.
- (2) Subject to section 128, if the terms of a licence provide that the licensor must consent to the disposition of the licence, the licensor must not unreasonably withhold consent to a proposed disposition of the licence by a civil enforcement officer.
- (3) If a licensor referred to in subsection (2) refuses to consent to a proposed disposition of the licence by the civil enforcement officer, the officer may do either of the following:
- (a) release the licence from seizure;
 - (b) apply to the court for an order authorizing the disposition of the licence without the licensor's consent.
- (4) On an application made under subsection (3) (b), the court may authorize the civil enforcement officer to dispose of the licence without the licensor's consent after considering the following:
- (a) the licensor's reasons for refusing consent;
 - (b) the interests of any instructing judgment creditor, including whether or not the judgment debtor has other property from which the release amount may be satisfied.

How intellectual property may be seized

- 130** A civil enforcement officer may seize intellectual property by giving a notice of seizure to
- (a) the judgment debtor,
 - (b) if the officer determines that the judgment debtor is not the owner of the intellectual property, the owner of the intellectual property, if it is practicable to give notice to that person,
 - (c) if the intellectual property is registered, any office in which the intellectual property is registered, and

- (d) any person who holds an intellectual property licence in respect of the intellectual property and who can reasonably be expected to be affected by the seizure, if it is practicable to give notice to that person.

How trade secrets may be seized

- 131** (1) A civil enforcement officer may seize a trade secret by giving a notice of seizure to
- (a) the judgment debtor, and
 - (b) the owner of the trade secret, if it is practicable to give notice to that person.
- (2) If a civil enforcement officer seizes a trade secret,
- (a) the seizure of the trade secret, including taking possession of the medium on which the trade secret is recorded, is not to be considered a waiver or breach of any obligation of the judgment debtor in relation to the confidentiality or non-disclosure of the trade secret, and
 - (b) the officer is subject to the same obligations in relation to the confidentiality and non-disclosure of the trade secret to which the judgment debtor is subject, to the extent that those obligations are practicable and necessary to protect the confidentiality and non-disclosure of the trade secret.

How trade secrets may be disposed of

- 132** (1) A civil enforcement officer may dispose of a seized trade secret only in accordance with the express or implied terms and conditions of any contract the judgment debtor entered into in relation to the trade secret.
- (2) If it is a term of the contract that a disposition of the trade secret requires the consent or agreement of the owner of the trade secret, the owner of the trade secret must not unreasonably withhold consent to a proposed disposition of the trade secret by a civil enforcement officer.
- (3) If the owner of a trade secret referred to in subsection (2) refuses to consent to a proposed disposition of the trade secret by the civil enforcement officer, the officer may do either of the following:
- (a) release the trade secret from seizure;
 - (b) apply to the court for an order authorizing the disposition of the trade secret without the owner's consent.
- (4) On an application made under subsection (3) (b), the court may authorize the civil enforcement officer to dispose of the trade secret without the consent of the owner of the trade secret after considering the following:
- (a) the owner's reasons for refusing consent, including the present and future loss in value of the trade secret as a result of the proposed disposition;

- (b) the interests of any instructing judgment creditor, including whether or not the judgment debtor has other property from which the release amount may be satisfied.

Effect of seizure – intellectual property

- 133** (1) If a civil enforcement officer seizes intellectual property from a judgment debtor,
- (a) the judgment debtor loses all rights and powers in respect of the intellectual property, except those rights referred to in subsection (2) (a), and
 - (b) the officer acquires all of the rights and powers of the judgment debtor in relation to the intellectual property and may take any action that the judgment debtor would otherwise have been entitled to take with respect to the intellectual property.
- (2) Despite the fact that a civil enforcement officer has seized intellectual property from a judgment debtor, the judgment debtor must
- (a) continue to assert any rights that the judgment debtor has against third parties with respect to the seized intellectual property, and
 - (b) inform the officer if the judgment debtor becomes aware that a third party is infringing any rights that the judgment debtor holds in the seized intellectual property.

Disposition of intellectual property

- 134** If a civil enforcement officer disposes of seized intellectual property,
- (a) the officer is deemed to be an agent of the owner of the intellectual property for the purpose of the disposition, and
 - (b) the disposition is not effective until any statutory requirements for a valid assignment or grant of the intellectual property have been met.

**PART 10 – GENERAL RULES RELATING TO
DISPOSITION OF PROPERTY**

Division 1 – Application

Application of this Part

- 135** (1) Divisions 2 and 3 of this Part apply to all enforcement proceedings related to property.
- (2) If there is a conflict between a provision of this Part and a provision of any other Part, the provision of the other Part prevails.

Division 2 – Manner of Disposition

Manner of disposition

- 136** (1) Except as otherwise provided under this Act or unless a court orders otherwise, a civil enforcement officer must dispose of seized property in the manner that the officer considers will maximize the proceeds that may be realized from the disposition of the property.
- (2) Unless a court orders otherwise, a civil enforcement officer may dispose of seized property to a judgment creditor.

Division 3 – Disposition of Property

What property may be disposed of

- 137** (1) Except as otherwise provided under this Act or in an enforcement instruction, a civil enforcement officer may dispose of seized property of the judgment debtor sufficient to satisfy the release amount.
- (2) If a civil enforcement officer seizes co-owned property in its entirety, the officer may, subject to an order made under section 149 [*application to court respecting co-owned property*], dispose of the co-owned property in its entirety.
- (3) A civil enforcement officer may dispose of a judgment debtor's interest in Crown land only if
- (a) any applicable requirements or restrictions set out in an enactment are complied with, and
 - (b) the government gives written consent to the disposition.
- (4) The government must not unreasonably withhold consent to the disposition described in subsection (3).

Notice of disposition

- 138** (1) Subject to this section and section 139, a civil enforcement officer must, at least 20 days before disposing of seized property, give a notice of disposition containing any prescribed information to
- (a) the judgment debtor,
 - (b) in the case of co-owned property, every person who is known by the officer to be a co-owner of the property,
 - (c) in the case of partnership property of a partnership, every person who is known by the officer to be a partner in the partnership,

- (d) in the case of personal property, every person with a security interest in the property, if the security interest was perfected
 - (i) by registration under the *Personal Property Security Act* before the date on which the notice of disposition is given to the judgment debtor, or
 - (ii) by possession before the property was seized by the officer,
 - (e) in the case of personal property, every other person with an interest in the property if, before the date on which the notice of disposition is given to the judgment debtor, the person has given written notice to the officer of the person's interest,
 - (f) in the case of land, every other person with an interest in the land that is subordinate to an enforcement charge on the land if
 - (i) the interest is registered, or
 - (ii) the person has, before the date on which the notice of disposition is given to the judgment debtor, given written notice to the officer of the person's interest,
 - (g) every judgment creditor who has an enforcement charge in the property, and
 - (h) every prescribed person or every person in a prescribed class of persons.
- (2) A civil enforcement officer may not, in any of the following circumstances, dispose of seized land within 6 months after the notice of seizure is given in accordance with section 70 (6) [*notice of seizure*]:
- (a) the judgment debtor is an individual and the judgment debtor or a dependant of the judgment debtor occupies a private dwelling on the land;
 - (b) the judgment debtor is a corporation, the primary business of which is farming, and an officer or director of the corporation, or a dependant of an officer or director, occupies a private dwelling on the land;
 - (c) the court orders the officer to refrain from disposing of the land for that 6-month period.
- (3) Despite subsection (2), a court may, on an application brought within the waiting period referred to in that subsection, extend or shorten the waiting period.

Notice of disposition not required

- 139** A civil enforcement officer may dispose of seized personal property without giving a notice of disposition if one or more of the following apply:
- (a) the officer believes on reasonable grounds that
 - (i) the property is perishable, unsanitary or hazardous to health,

- (ii) the property's value will decline substantially if it is not disposed of immediately after seizure, or
 - (iii) the cost of caring for and storing the property pending its disposition will be disproportionately large in relation to the property's realizable value;
- (b) the property is of a type that is to be disposed of by sale on an organized market that handles large volumes of transactions between many different sellers and many different buyers;
- (c) the property is unique or designed for a special purpose and all of the following apply:
 - (i) the officer has received an offer to purchase the property at a reasonable price;
 - (ii) it is not probable that another reasonable offer will be received;
 - (iii) interested persons have been given as much notice of the proposed sale as is practicable in the circumstances;
- (d) each person entitled to receive a notice of disposition consents in writing to the proposed disposition;
- (e) on application by the officer, with or without notice to any person, the court is satisfied that a notice of disposition is not warranted.

Court may intervene

- 140**
- (1) Within 10 days after receiving a notice of disposition, a person may apply to the court for one or more of the following orders in relation to a disposition of seized property:
 - (a) an order modifying the time, place or manner of disposition proposed in the notice of disposition;
 - (b) an order requiring the civil enforcement officer to release the property from seizure and prohibiting the disposition if the court is, for any reason, satisfied that the disposition should not occur.
 - (2) Notice of an application under subsection (1) must be given to the civil enforcement officer and to each person to whom a notice of disposition is required to be given under section 138.
 - (3) If, before the end of the period referred to in subsection (1), a civil enforcement officer receives a notice of an application in accordance with subsection (2), the officer must not proceed with the disposition of the property unless authorized by the court to do so.

Redemption of seized property and discharge of registration

- 141** (1) Except as otherwise provided under this Act, if at any time before disposing of seized property a civil enforcement officer receives payment of an amount equal to the release amount in relation to the seized property, the officer must, as soon as practicable after distributing under Part 14 [*Distribution*] the distributable fund established on receipt of the payment,
- (a) release the property from seizure,
 - (b) discharge the registration in the money judgment registry of any money judgment relating to an enforcement charge on the property, and
 - (c) if the seized property is land, discharge the registration in the land title office of any money judgment relating to an enforcement charge on the land.
- (2) Subsection (1) does not apply if the release amount was less than the fair market value of the property and,
- (a) after distributing the distributable fund, the civil enforcement officer becomes aware that the amount of a registered money judgment against the judgment debtor remains unsatisfied, or
 - (b) before releasing property from seizure, the officer becomes aware of the registration of another money judgment in relation to the same judgment debtor.
- (3) In the circumstances referred to in subsection (2) (a) or (b), the civil enforcement officer may retain the property to satisfy the registered money judgment.

Transfer following disposition of land

- 142** (1) After the civil enforcement officer disposes of seized land under this Part or Part 11 [*Special Rules for Co-Owned Property and Partnership Property*], the officer must, whether the judgment debtor's interest in the land is registered or not registered, comply with any requirements for transferring the interest in the land.
- (2) A transfer executed by a civil enforcement officer under subsection (1) is proof of the officer's authority to transfer the land of the judgment debtor.
- (3) After land is registered in the name of the transferee, all interests that had charged the land of the judgment debtor and that were subordinate to an enforcement charge that resulted in the seizure of the land are cancelled.
- (4) If the court makes an order referred to in section 140 (1), the registrar of land titles may not register the transfer until the civil enforcement officer certifies that one of the following has occurred:
- (a) the time for filing an appeal of the order has expired and no appeal has been filed;

- (b) a person who has a right to appeal the order has given a written undertaking not to appeal the order;
- (c) if the order was appealed, the appeal was dismissed or withdrawn, and the order is no longer subject to a further appeal.

Division 4 – Effect of Disposition

Purchaser of seized property takes free of subordinate interests

- 143** (1) Except as otherwise provided under this Act, or under any other enactment or law, a person who acquires an interest in property in good faith as a result of a disposition by a civil enforcement officer takes the property free from the following, whether or not the requirements of this Act have been complied with by the officer:
- (a) the interest of the judgment debtor;
 - (b) an interest that is subordinate to that of the judgment debtor;
 - (c) an enforcement charge affecting the property;
 - (d) an interest that is subordinate to any enforcement charge.
- (2) If the seized property referred to in subsection (1) is land, the registrar of land titles must discharge a subordinate interest referred to in subsection (1) (b) or (d).

Division 5 – Irregularities

Disposition preserved despite irregularity

- 144** (1) A disposition of property by a civil enforcement officer is not invalidated by an irregularity in
- (a) the procedure by which the disposition is carried out, including a related notice of disposition,
 - (b) the enforcement instruction related to the disposition,
 - (c) a registration of the money judgment being enforced by the disposition,
or
 - (d) the money judgment being enforced by the disposition.
- (2) If, on application, a court is satisfied that a person is prejudiced or is likely to be prejudiced by an irregularity in the procedure by which a disposition is proposed to be carried out, the court may do either of the following:
- (a) prohibit the disposition;
 - (b) give directions to the civil enforcement officer with regard to the proposed disposition.

**PART 11 – SPECIAL RULES FOR CO-OWNED PROPERTY AND
PARTNERSHIP PROPERTY**

Division 1 – Application

Application of this Part

145 Unless otherwise provided in this Act, this Part applies to enforcement proceedings under Parts 8 [*General Rules Relating to Seizure of Property*], 9 [*Seizure and Disposition of Specific Types of Property*] and 10 [*General Rules Relating to Disposition of Property*] that are related to co-owned property or partnership property.

Division 2 – Joint Tenancy

Severance of joint tenancy

- 146** (1) A joint tenancy in property is not converted into a tenancy in common if
- (a) a money judgment is registered in accordance with Part 3 [*Registration of Money Judgments and Creation of Enforcement Charges*], or
 - (b) subject to subsection (2) of this section, an enforcement proceeding is taken under this Act.
- (2) A joint tenancy in property is converted into a tenancy in common when a civil enforcement officer enters into an agreement to dispose of the property.
- (3) If property owned by a judgment debtor as a joint tenant is subject to an enforcement charge at the time of the judgment debtor's death, the enforcement charge continues to charge the interest in the property that was owned by the judgment debtor immediately before the judgment debtor's death but only to the extent provided in subsection (4).
- (4) An enforcement charge referred to in subsection (3) continues to charge the property in an amount equal to the lesser of the following:
- (a) the amount recoverable by every judgment creditor who has an enforcement charge on the property;
 - (b) the fair market value of the judgment debtor's interest in the property determined as if the joint tenancy were severed immediately before the judgment debtor's death.

Division 3 – Co-Owned Property

Presumption of equal interests in co-owned property

- 147** A judgment debtor and every co-owner of co-owned property that is subject to an enforcement charge is considered to have an equal interest in the property unless one of the following applies:
- (a) a court has ordered otherwise under section 149;
 - (b) an instrument that is evidence of ownership specifies that the owner has a greater or lesser interest.

Right of co-owner to purchase interest of judgment debtor

- 148** (1) Subject to this section, a co-owner of co-owned property may exercise a right to purchase a judgment debtor's interest in the co-owned property at any time before
- (a) the date of disposition proposed in a notice of disposition given in relation to the co-owned property, or
 - (b) in the case of co-owned property that is a fixture or crop, the date of severance proposed in a notice of severance given in relation to the co-owned property.
- (2) To exercise the right referred to in subsection (1), the co-owner must, at least 10 days before the proposed date of disposition or severance, give to the civil enforcement officer both of the following:
- (a) written notice of the co-owner's intention to purchase the interest;
 - (b) security in the form prescribed by regulation and in an amount that is satisfactory to the officer.
- (3) Unless subsection (7) applies or a court has ordered otherwise, a civil enforcement officer who has received notice and security in accordance with subsection (2) must not, within a prescribed period after the date on which the security is received,
- (a) dispose of the judgment debtor's interest in the co-owned property to a person other than a co-owner from whom the notice and security is received, or
 - (b) in the case of co-owned property that is a fixture or crop, sever and remove the co-owned property.
- (4) A co-owner may, within the period of time prescribed for the purposes of subsection (3), purchase the judgment debtor's interest in the co-owned property by paying to the civil enforcement officer an amount that is at least equal to the fair market value of the judgment debtor's interest in the co-owned property.

- (5) For the purposes of subsection (4), the fair market value of the judgment debtor's interest in co-owned property is one of the following:
 - (a) unless paragraph (b) of this subsection applies, the fair market value estimated by the civil enforcement officer;
 - (b) the fair market value determined by the court under section 149 (c).
- (6) If more than one co-owner gives notice and security under subsection (2), unless subsection (7) applies, the civil enforcement officer must dispose of the judgment debtor's interest to the co-owner who offers to pay the greatest amount for the judgment debtor's interest.
- (7) On application by a person, other than the judgment debtor, who has or claims to have an interest in the co-owned property as a partner in a partnership, a court may, by order, do one or more of the following if the court is satisfied that the co-owned property, but for this Act, would be partnership property:
 - (a) permit the applicant to purchase the judgment debtor's interest in the co-owned property in accordance with Division 4 [*Partnership Property*] of this Part;
 - (b) permit a co-owner who has given notice and security in accordance with subsection (2) of this section to purchase the judgment debtor's interest in the property in accordance with this section;
 - (c) require the civil enforcement officer to return to a co-owner any security given under subsection (2) of this section.

Application to court respecting co-owned property

- 149** On application by a civil enforcement officer, an instructing judgment creditor, a judgment debtor or another person who is or claims to be a co-owner of property, the court may, by order, do one or more of the following:
- (a) determine whether a person does or does not have an interest in co-owned property as a joint tenant or tenant in common;
 - (b) determine whether a judgment debtor's interest in co-owned property as a tenant in common is greater or less than that specified in section 147;
 - (c) determine the fair market value of a judgment debtor's interest for the purposes of section 148.

Division 4 – Partnership Property

Presumption of equal interests in partnership property

- 150** Every partner in a partnership is considered to have an equal interest in the partnership's partnership property that is subject to an enforcement charge unless one of the following applies:
- (a) a court has ordered otherwise under section 154 [*application to court respecting partnership property*];

- (b) an applicable partnership agreement specifies that a partner has a greater or lesser interest than that of another partner.

Effect of partnership agreement on enforcement proceedings

- 151** In taking enforcement proceedings against partnership property, a civil enforcement officer is not bound by
- (a) any restrictions, limitations or other terms of a partnership agreement relating to the judgment debtor's interest in assets of the partnership, or
 - (b) the effect of the enforcement proceedings against those assets.

When judgment debtor ceases to be partner

- 152**
- (1) If a judgment debtor ceases to be a partner in a partnership after the civil enforcement officer has taken enforcement proceedings against partnership property of the partnership, the partnership must promptly notify the officer of an amount that is payable or may become payable to the judgment debtor by the partnership.
 - (2) After the partnership notifies the civil enforcement officer under subsection (1),
 - (a) the officer, the judgment debtor, an instructing judgment creditor, the partnership or a partner in the partnership may apply to the court for a determination of the amount to which the judgment debtor is entitled from the partnership, and
 - (b) the court may, based on whatever evidence the court considers appropriate, determine the amount to which the judgment debtor is entitled from the partnership.
 - (3) The partnership is not required to pay the amount referred to in subsection (1) or the amount determined under subsection (2), as applicable, to the judgment debtor.
 - (4) Division 3 [*Seizure of Existing and Future Accounts and Other Debts*] of Part 9 applies in respect of the amount referred to in subsection (1) or the amount determined under subsection (2) of this section, as applicable, and, for the purposes of that Division,
 - (a) the applicable amount is deemed to be an account in relation to which the civil enforcement officer has given a notice of seizure to the partnership, and
 - (b) the partnership is deemed to be an account debtor in relation to that amount.

Right of partner to purchase interest of judgment debtor

- 153**
- (1) Subject to this section, a partner in the partnership, other than the judgment debtor in respect of the money judgment that resulted in the seizure of the partnership property, may exercise a right to purchase the judgment debtor's interest in the property at any time before
 - (a) the date of disposition proposed in a notice of disposition given in relation to a partnership's partnership property, or
 - (b) in the case of partnership property that is a fixture or crop, the date of severance proposed in a notice of severance given in relation to the property.
 - (2) To exercise the right referred to in subsection (1), the partner must, at least 10 days before the proposed date of disposition or severance, give to the civil enforcement officer both of the following:
 - (a) written notice of the partner's intention to purchase the interest;
 - (b) security in the form prescribed and in an amount that is satisfactory to the officer.
 - (3) Unless a court has ordered otherwise, a civil enforcement officer who has received notice and security in accordance with subsection (2) must not, within a prescribed period after the date on which the security is received,
 - (a) dispose of the judgment debtor's interest in the partnership property to a person other than a partner from whom the notice and security is received, or
 - (b) in the case of partnership property that is a fixture or crop, sever and remove the property.
 - (4) A partner may, within the period described in subsection (3), purchase the judgment debtor's interest in the partnership property by paying to the civil enforcement officer an amount that is at least equal to the fair market value of the judgment debtor's interest in the property.
 - (5) For the purposes of subsection (4), the fair market value of the judgment debtor's interest in the partnership property is the following, as applicable:
 - (a) the fair market value determined by the court under section 154 (1) (f);
 - (b) in any other case, the fair market value estimated by the civil enforcement officer.
 - (6) If more than one partner gives notice and security under subsection (2), unless a court orders otherwise, the civil enforcement officer must dispose of the judgment debtor's interest to the partner who offers to pay the greatest amount for the judgment debtor's interest.

Application to court respecting partnership property

- 154** (1) On application by a civil enforcement officer, an instructing judgment creditor, a judgment debtor or a person who has or claims to have an interest in partnership property as a partner of a partnership, the court may, by order, do one or more of the following:
- (a) subject to subsection (2), permit a partner in the partnership, other than the judgment debtor with respect to the money judgment that resulted in seizure of the partnership property, to purchase the judgment debtor's interest in the partnership's partnership property for a predetermined price or a price fixed by reference to a predetermined formula if all of the following apply:
 - (i) a partnership agreement entitles the partner to purchase the judgment debtor's interest for a predetermined price or a price fixed by reference to a predetermined formula;
 - (ii) the term of the partnership agreement that confers the right referred to in subparagraph (i) was included in the partnership agreement at least 5 years before the date on which the enforcement charge of the judgment creditor whose enforcement instruction resulted in the seizure of the partnership property was created;
 - (iii) the court is satisfied that the price to be paid by the partner is not substantially less than the fair market value of the judgment debtor's interest;
 - (b) permit a purchase price contemplated by this Division to be paid in installments over the period of time specified in the order;
 - (c) order that an enforcement charge is extinguished in respect of some or all of a partnership's property;
 - (d) determine that a person is not a partner in the partnership or that a person does not have an interest in partnership property;
 - (e) determine that a judgment debtor's interest in partnership property is greater or less than that specified in section 150 [*presumption of equal interests in partnership property*];
 - (f) determine the fair market value of a judgment debtor's interest for the purposes of section 153.

- (2) On application by an instructing judgment creditor, the court may fix the price for a judgment debtor's interest in the partnership or establish the formula by reference to which the price for the interest will be fixed if all of the following apply:
 - (a) the court concludes that the predetermined price or the price fixed by reference to the predetermined formula referred to in subsection (1) (a) is substantially less than the fair market value of the judgment debtor's interest;
 - (b) the price fixed by the court or determined by reference to the formula established by the court bears a reasonable relationship to the realizable value of the interest;
 - (c) permitting a partner to purchase the judgment debtor's interest at the predetermined price or at the price fixed by reference to the predetermined formula referred to in subsection (1) (a) would have the effect of preventing the applicant from recovering the amount recoverable in relation to the applicant's money judgment because the judgment debtor does not have enough other non-exempt property from which the applicant's money judgment may be satisfied.
- (3) If an order is made under subsection (1) (c), both of the following apply:
 - (a) the partner who is given the right to purchase the judgment debtor's interest does not acquire the interest until the full purchase price is paid;
 - (b) unless the court orders otherwise, the right to purchase the interest terminates if the purchaser defaults in making any payment of the purchase price as required by the order.
- (4) On application, the court may terminate or modify an order made under subsection (1).

PART 12 – RECEIVERS

Appointment of receiver

- 155**
- (1) On application by an instructing judgment creditor, a court may appoint a person as a receiver of any of the following property of a judgment debtor:
 - (a) a specified item of property;
 - (b) a specified kind of property;
 - (c) all property.
 - (2) The court may appoint a receiver under subsection (1) only if the court is satisfied that the property cannot otherwise be conveniently realized.

- (3) Unless the court orders otherwise, an order made under subsection (1) applies to
 - (a) the property owned by a judgment debtor at the time the receiver is appointed, and
 - (b) the property acquired by the judgment debtor during the period of the receiver's appointment.

Remittance by receiver

- 156** (1) When making an order appointing a receiver, the court must also designate a civil enforcement officer to whom the receiver must remit the net amount realized through the receivership.
- (2) The net amount referred to in subsection (1) is the amount realized after the deduction of the receiver's expenses and remuneration.

Appointment of receiver – partnerships

- 157** On application by an instructing judgment creditor, the court may appoint a person as a receiver of
- (a) the judgment debtor's share, as a partner in a partnership, of the profits of the partnership, whether already accrued or accruing,
 - (b) any money that, while the order is in effect, will become due and payable to the judgment debtor in respect of the partnership, and
 - (c) any property of the partnership to be transferred to the judgment debtor in respect of the partnership.

PART 13 – EXEMPTIONS

Division 1 – Interpretation and Application

Definitions

- 158** In this Part:
- “**child**” has the same meaning as in section 146 [*definitions*] of the *Family Law Act*;
 - “**deferred profit sharing plan**” has the same meaning as in section 147 of the *Income Tax Act (Canada)*;
 - “**dependant**”, in relation to an individual, means a child or spouse of the individual;
 - “**eligible income**” means income from
 - (a) employment remuneration,
 - (b) a contract for personal services providing for a series of periodic payments,

- (c) a retirement pension,
- (d) an annuity,
- (e) a registered plan,
- (f) the investment of money received by the judgment debtor under a legal entitlement to compensate for loss of future income, or
- (g) a prescribed source;

“eligible individual”, in relation to a corporation, means an officer or director of the corporation;

“exempt income” means

- (a) income in respect of which an exemption claim has been determined to be valid under this Part, or
- (b) income that is declared by a court to be exempt income under section 163 (2) [*court orders in relation to income*];

“exempt property” means

- (a) property, other than income, in respect of which an exemption claim has been determined to be valid under this Part, or
- (b) an account that is declared by a court to be exempt property under section 167 [*court may declare account to be exempt*];

“exemption claim” means a claim made under this Part that specified property is not subject to enforcement proceedings;

“maximum net income”, in relation to a reference period, means

- (a) the amount prescribed in relation to the reference period, or
- (b) if another amount is determined to be the maximum net income for the reference period by an order made under section 163 (1) (c), that other amount;

“minimum net income”, in relation to a reference period, means

- (a) the amount prescribed in relation to the reference period, or
- (b) if another amount is determined to be the minimum net income for the reference period by an order made under section 163 (1) (c), that other amount;

“net income” means the sum of the following amounts:

- (a) the judgment debtor’s employment remuneration less any amount required by law or contract to be deducted from that employment remuneration for the following:
 - (i) income tax;
 - (ii) employment insurance;
 - (iii) Canada Pension Plan contributions;
 - (iv) compulsory union or professional fees;

- (v) registered pension plan contributions;
- (vi) health, disability and life insurance premiums;
- (vii) any other prescribed deductions;
- (b) the judgment debtor’s eligible income other than the following:
 - (i) the employment remuneration described in paragraph (a);
 - (ii) any other exemption prescribed by regulation;

“planholder” means,

- (a) with respect to a deferred profit sharing plan, a beneficiary under the plan,
- (b) with respect to a registered disability savings plan, a beneficiary under the plan,
- (c) with respect to a registered retirement savings plan, an annuitant as defined in paragraph (a) of the definition of “annuitant” in section 146 (1) of the *Income Tax Act* (Canada);
- (d) with respect to a registered education savings plan, a beneficiary as defined in section 146.1 (1) of the *Income Tax Act* (Canada), and
- (e) with respect to a registered retirement income fund, an annuitant as described in paragraph (a) of the definition of “annuitant” in section 146.3 (1) of the *Income Tax Act* (Canada);

“reference period”, in relation to a judgment debtor, means the period that is prescribed as being applicable to

- (a) the judgment debtor, or
- (b) the class of judgment debtors of which the judgment debtor is a member;

“registered disability savings plan” has the same meaning as in section 146.4 of the *Income Tax Act* (Canada);

“registered education savings plan” has the same meaning as in section 146.1 of the *Income Tax Act* (Canada);

“registered pension plan” has the same meaning as in section 248 (1) of the *Income Tax Act* (Canada);

“registered plan” means a deferred profit sharing plan, registered disability savings plan, registered education savings plan, registered retirement income fund or registered retirement savings plan;

“registered retirement income fund” has the same meaning as in section 146.3 of the *Income Tax Act* (Canada);

“registered retirement savings plan” has the same meaning as in section 146 of the *Income Tax Act* (Canada);

“spouse” has the same meaning as in section 1 of the *Family Law Act*.

Interpretation

- 159** In this Part, a reference to a “judgment debtor” includes the following, as applicable:
- (a) in the case of a judgment debtor who is an individual, a dependant of the judgment debtor;
 - (b) in the case of a judgment debtor that is a corporation, a person who is an eligible individual in relation to the corporation.

Who may make exemption claim

- 160** (1) Subject to subsection (2), an exemption claim under this Part may be made only by an individual.
- (2) An exemption claim made under this Part by a judgment debtor may be made by an eligible individual on behalf of a judgment debtor that is a corporation if all of the following apply:
- (a) the claim is made in relation to tangible personal property of the corporation;
 - (b) the property is used by the eligible individual, directly or indirectly, to earn income for the corporation;
 - (c) either
 - (i) the majority of the gross income earned by the corporation is or will be paid to the eligible individual as employment remuneration, or
 - (ii) the majority of the net income earned by the corporation is or will be paid to the eligible individual by way of dividends;
 - (d) the employment remuneration or dividends referred to in paragraph (c) (i) or (ii) of this subsection, as applicable, constitute the eligible individual’s primary source of income;
 - (e) the eligible individual does not own tangible personal property of the same type as the property in relation to which the claim is made;
 - (f) the eligible individual does not have the use of tangible personal property that is owned by a person other than the corporation and of the same type as the property in relation to which the claim is made.
- (3) An exemption claim made under this Part by a judgment debtor may be made by a dependant of the judgment debtor as follows:
- (a) on behalf of the judgment debtor’s estate if the judgment debtor is deceased;
 - (b) on behalf of the judgment debtor if, for any other reason, the judgment debtor does not make the claim.
- (4) If an exemption claim is made both
- (a) in respect of property by a judgment debtor, and

(b) in respect of other property by a dependant of the judgment debtor, the quantity and value of the property must not, collectively, exceed the quantity and value of the property that the judgment debtor or the dependant of the judgment debtor, alone, may make as an exemption claim.

Division 2 – Exemptions for Income

Interpretation

161 For the purposes of this Division, if the eligible income that a judgment debtor receives or has the right to receive is attributable to a period that is shorter or longer than the reference period, the minimum net income and the maximum net income applicable to that eligible income for the period is to be determined in accordance with the regulations.

Exemption claims in relation to income

- 162** (1) Without limiting any other right a person may have under this or any other enactment to claim that property is not subject to enforcement proceedings, a judgment debtor is entitled to make an exemption claim in relation to the judgment debtor's net income for a reference period as follows:
- (a) if the judgment debtor's net income for the reference period is greater than the minimum net income for that period, the sum of the following amounts, up to the maximum net income for that period:
 - (i) the minimum net income for that period;
 - (ii) an amount equal to a prescribed percentage of the amount by which the judgment debtor's net income for the reference period exceeds the minimum net income for that period;
 - (b) in any other case, the judgment debtor's net income for the reference period up to the minimum net income for that period.
- (2) Subsection (3) applies if a judgment debtor's net income for a reference period is seized in accordance with any of the following:
- (a) a court order for support, alimony or maintenance;
 - (b) a duly executed separation agreement;
 - (c) an order made under section 18 (2) [*garnishment*] of the *Family Maintenance Enforcement Act*.
- (3) If this subsection applies, despite any other provision of this Act but subject to subsection (4) of this section, the judgment debtor is entitled to make an exemption claim in relation to the sum of the following amounts:
- (a) an amount equal to 50% of the portion of the judgment debtor's net income for the reference period that is not greater than the amount prescribed for the purposes of this paragraph;

- (b) an amount equal to 33 1/3% of the portion, if any, of the judgment debtor's net income for the reference period in excess of the amount prescribed for the purposes of paragraph (a) of this subsection.
- (4) An exemption claim made under subsection (3) must be in relation to an amount that is equal to at least a prescribed percentage of the portion of the judgment debtor's net income for the reference period.
- (5) If, at any time after the date that is 12 months before the date on which the cause of action that resulted in the money judgment being enforced under this Act arose, a judgment debtor elected to exercise an optional, contractual right to contribute a portion of the judgment debtor's employment remuneration to a registered pension plan, the amount in relation to which the judgment debtor is entitled, under subsection (1) (a) (ii), to make an exemption claim is reduced by an amount prescribed for the purposes of this subsection.
- (6) A judgment debtor is entitled to make an exemption claim in relation to all income the judgment debtor has received or is entitled to receive as payment from the investment of money received by the judgment debtor under a legal entitlement to compensation for a personal injury other than compensation for loss of future income.

Court orders in relation to income

- 163** (1) On application by a judgment debtor, judgment creditor, civil enforcement officer or receiver, a court may, by order, do one or more of the following in relation to a particular judgment debtor:
- (a) increase the amount of income in relation to which the judgment debtor is entitled to make an exemption claim to account for special circumstances of the judgment debtor or dependant of the judgment debtor;
 - (b) reduce the amount of income in relation to which the judgment debtor is entitled to make an exemption claim to account for money or other property, other than income, received by or available to the judgment debtor;
 - (c) determine the minimum net income and the maximum net income if any of the following apply:
 - (i) eligible income is received by the judgment debtor at irregular intervals;
 - (ii) the amount of eligible income received by the judgment debtor varies from period to period;
 - (iii) the circumstances of the judgment debtor warrant an amount for the minimum net income and an amount for the maximum net income that differ from the prescribed amounts;

- (d) if the judgment debtor is entitled to receive eligible income from more than one source, declare that the eligible income received from a particular payor is exempt or that an amount of the eligible income received from one or more of the payors is exempt;
 - (e) confirm or vary an order made under this section.
- (2) On application by a judgment debtor, the court may declare income, other than eligible income, that the judgment debtor is entitled to receive for a reference period to be exempt if the court is satisfied that the sum of the following amounts is likely to be equal to or less than the judgment debtor's maximum net income for the reference period:
- (a) the amount of the income;
 - (b) the amount of the judgment debtor's net income in relation to which the judgment debtor is entitled to make an exemption claim for the reference period.
- (3) If a judgment debtor fails to comply with section 53 *[requiring submission of disclosure statement]*, on application by the civil enforcement officer or the judgment debtor, a court may, by order, vary or cancel an exemption claim that the judgment debtor would otherwise be entitled to make under section 162.

Division 3 – Exemptions for Property Other Than Income

Registered plans exempt

- 164** (1) In this section, “**enforcement process**” means
- (a) attachment,
 - (b) garnishment,
 - (c) seizure, or
 - (d) any other remedy or process to enforce payment of a debt, including a non-judicial remedy as defined in section 27 (1) *[non-judicial remedies]* of the *Limitation Act*.
- (2) Subject to subsection (3), all property in a registered plan is exempt from any enforcement process.
- (3) Subsection (2) does not apply to the following:
- (a) property contributed to a registered plan after the date that is 12 months before the date on which the cause of action giving rise to the enforcement process arose;
 - (b) property that has been or is being paid out of a registered plan;
 - (c) an enforcement process that is being effected in support of the enforcement of a maintenance order as defined in section 1 (1) of the *Family Maintenance Enforcement Act*;

- (d) an enforcement process relating to the satisfaction of a debt owed by the judgment debtor to the government;
 - (e) an enforcement process provided for in another enactment in respect of property in a registered plan;
 - (f) a prescribed enforcement process;
 - (g) prescribed property.
- (4) For the purposes of subsection (3) (b), a transfer of property from a registered plan of the planholder does not constitute a payment of that property out of a registered plan if the transfer
- (a) is to another registered plan of the planholder, or
 - (b) is made after the death of the planholder to a person
 - (i) who is the planholder's spouse, or common-law partner as defined in section 248 (1) of the *Income Tax Act* (Canada), and
 - (ii) who, under the terms of the registered plan, is entitled to receive the property on the planholder's death.

Property that may be claimed as exempt

- 165** (1) A judgment debtor is entitled to make an exemption claim in relation to the following property:
- (a) a supply of food that could reasonably be expected to be consumed by the judgment debtor and the judgment debtor's dependants within the 12-month period following the notice of seizure;
 - (b) assistive devices that are required or ordinarily used by the judgment debtor or the judgment debtor's dependants because of a physical or mental disability;
 - (c) clothing reasonably required by the judgment debtor or the judgment debtor's dependants;
 - (d) household furnishings, utensils, equipment and appliances that collectively have a realizable value not greater than the exemption value prescribed for that type of property;
 - (e) the judgment debtor's interest in the judgment debtor's principal residence, including a house, condominium, manufactured home or houseboat, up to the exemption value prescribed for that type of property;
 - (f) the judgment debtor's interest in one motor vehicle within the meaning of the *Motor Vehicle Act* up to the exemption value prescribed for that type of property;
 - (g) items of personal property that
 - (i) are regularly used by the judgment debtor for the purpose of earning income, and

- (ii) collectively have a realizable value not greater than the exemption value prescribed for that type of property or as may be otherwise determined in accordance with the regulations;
 - (h) money received by the judgment debtor under a legal entitlement to compensation for a personal injury, including compensation for
 - (i) loss of future income, and
 - (ii) future medical or personal care expenses;
 - (i) any property, other than income, acquired through the investment of money referred to in paragraph (h);
 - (j) a domestic animal that is kept by the judgment debtor
 - (i) as a guide dog or service dog within the meaning of the *Guide Dog and Service Dog Act*,
 - (ii) as a service animal other than a guide dog or service dog, or
 - (iii) solely for the purpose of companionship;
 - (k) a burial plot intended for the interment of the judgment debtor and the judgment debtor's dependants and former dependants;
 - (l) any prescribed property.
- (2) Nothing in this section limits a person's right under this Act or any other enactment to claim that property is not subject to an enforcement process.

Property that may not be claimed as exempt

- 166**
- (1) Despite any other provision of this Part, a judgment debtor who carries on a business is not entitled to make an exemption claim in relation to the inventory of the business.
 - (2) Despite any other provision of this Part, unless the court orders otherwise, a judgment debtor is not entitled to make an exemption claim in relation to the following:
 - (a) tangible property abandoned by the judgment debtor and not reclaimed before the date the property is seized by a civil enforcement officer under this Act;
 - (b) tangible property of which possession or control was voluntarily surrendered by the judgment debtor, other than for repair or short-term storage or use, to a person other than a dependant of the judgment debtor.

Court may declare account to be exempt

- 167**
- On application by a judgment debtor or an account debtor, a court may declare an account to be exempt if the court is satisfied that the sum of the following is likely to exceed the amount payable to the civil enforcement officer under a notice of seizure in relation to the account:
- (a) the costs to the account debtor of complying with the notice of seizure;

- (b) the fees, taxable court costs and expenses paid or payable by the officer.

Division 4 – Exemption-Related Restrictions on Civil Enforcement Officers

Civil enforcement officer must not take possession of property if likely exempt

- 168** (1) This section applies to personal property of a judgment debtor, other than employment remuneration, if
- (a) the judgment debtor is entitled to make an exemption claim in relation to the personal property,
 - (b) the realizable value of the judgment debtor’s interest in the personal property is less than or equal to the exemption value prescribed for that type of property, and
 - (c) the civil enforcement officer reasonably believes that an exemption claim in relation to the property would be determined to be valid.
- (2) Despite Parts 8 [*General Rules Relating to Seizure of Property*] and 9 [*Seizure and Disposition of Specific Types of Property*], a civil enforcement officer must not take possession of personal property to which this section applies
- (a) when effecting a seizure of the property, or
 - (b) at any time after seizing the property.

Civil enforcement officer must not seize eligible income if likely exempt

- 169** Despite Parts 8 [*General Rules Relating to Seizure of Property*] and 9 [*Seizure and Disposition of Specific Types of Property*], a civil enforcement officer must not seize eligible income of a judgment debtor if the officer reasonably believes that an exemption claim in relation to the eligible income would be determined to be valid.

Division 5 – Exemption Procedure

Requirement to provide judgment debtor with written information on exemptions

- 170** (1) If a civil enforcement officer seizes property of a judgment debtor that is of a type that may be the subject of an exemption claim, the officer must give a notice, to the judgment debtor of the judgment debtor’s right to make an exemption claim, as follows:
- (a) in the case of land that is seized by the officer, at the time that any notice of disposition is given in relation to the seized land;
 - (b) in the case of an account that is seized by the officer, as soon as practicable after the seizure;

- (c) in any other case,
 - (i) at the time of the seizure, or
 - (ii) in a circumstance in which it is not practicable to give the notice at the time of the seizure, as soon as practicable after the seizure.
- (2) A notice of the right to make an exemption claim under subsection (1) must contain the prescribed information.

Giving notice of exemption claim to civil enforcement officer

- 171**
- (1) A person may make an exemption claim under this Part by giving a notice of exemption claim to the civil enforcement officer.
 - (2) A notice of exemption claim must contain the prescribed information.
 - (3) An exemption claim in relation to property is of no force or effect if the civil enforcement officer receives the notice of exemption claim after the property, in the case of money, or after the proceeds from a disposition of the property, in any other case, are distributed under Part 14 [*Distribution*].

Procedure in relation to property other than income

- 172**
- (1) This section applies to property other than income.
 - (2) If a civil enforcement officer gives a notice of the judgment debtor's right to make an exemption claim under section 170 in relation to property, the officer must not, for a period of 15 days after giving that notice, take actions to dispose of the property or, in the case of money, to distribute the money under Part 14 [*Distribution*].
 - (3) If a civil enforcement officer receives a notice of exemption claim in relation to a type of property before the officer enters into an agreement to dispose of the property, the officer must not enter into the agreement unless
 - (a) the exemption claim has been determined to be invalid under this Division, or
 - (b) the value of the judgment debtor's interest in the property is greater than the exemption value prescribed for that type of property.
 - (4) If a civil enforcement officer receives a notice of exemption claim in relation to a type of property other than money, the officer must not distribute the proceeds of a disposition of that property under Part 14 unless
 - (a) the exemption claim has been determined to be invalid under this Division, or
 - (b) the amount of the proceeds realized from the disposition is greater than the exemption value prescribed for that type of property.

- (5) In the circumstance described in subsection (4) (b), the civil enforcement officer must not distribute the portion of the proceeds equal to the exemption value prescribed for that type of property unless the exemption claim has been determined to be invalid under this Division.
- (6) If a civil enforcement officer receives a notice of exemption claim in relation to money before the officer distributes the money under Part 14, the officer must not distribute the money under Part 14 unless the exemption claim has been determined to be invalid under this Division.

Procedure in relation to income

- 173**
- (1) In this section, “**eligible portion**” means the portion of a judgment debtor’s eligible income that is not greater than an amount equal to the difference between
 - (a) the maximum amount of eligible income in relation to which the judgment debtor is entitled to make an exemption claim, and
 - (b) the amount described in subsection (3) (a) (ii) (B).
 - (2) This section applies to seized income that has been paid to a civil enforcement officer under section 99 [*seizure of income*].
 - (3) If, before a civil enforcement officer distributes income under Part 14 [*Distribution*], the officer receives a notice of exemption claim in relation to the income,
 - (a) the officer may distribute the income under Part 14 only if
 - (i) the exemption claim is determined to be invalid under this Division, or
 - (ii) the total of the following amounts is greater than the amount of income in respect of which a judgment debtor is entitled to make an exemption claim:
 - (A) the amount of the income to be distributed;
 - (B) the amount of eligible income, if any, that was not seized by the officer under section 160 [*who may make exemption claim*] or 162 [*exemption claims in relation to income*], or that was paid to the judgment debtor under section 177 (5) [*exemption claims determined to be valid*], and
 - (b) if paragraph (a) (ii) applies, the officer may distribute the eligible portion only if the exemption claim has been determined to be invalid under this Division.

Division 6 – Validity of Exemption Claims

Determination of validity of exemption claim by civil enforcement officer

- 174** Within 10 days after receiving a notice of exemption claim, a civil enforcement officer must
- (a) determine the validity of the exemption claim, and
 - (b) give notice of the determination to
 - (i) the person who gave the notice of exemption claim,
 - (ii) the judgment debtor, if a person other than the judgment debtor gave the notice of exemption claim, and
 - (iii) every judgment creditor who has registered a money judgment in the money judgment registry with respect to the judgment debtor.

Application to court to determine validity of exemption claim

- 175** (1) Within 10 days after receiving notice of a determination, any of the following persons may apply to the court for a determination of the validity of the whole or any part of the exemption claim:
- (a) the person who gave the notice of exemption claim;
 - (b) the judgment debtor, if a person other than the judgment debtor gave the notice of exemption claim;
 - (c) every judgment creditor who has registered a money judgment in the money judgment registry with respect to the judgment debtor.
- (2) Notice of an application under subsection (1) must be given to the civil enforcement officer and to each person referred to in that subsection.
- (3) On an application made under subsection (1), the court
- (a) must determine the validity of the whole or any part of the exemption claim, and
 - (b) is not limited to the evidence and the issues that were before the civil enforcement officer at the time of the determination under section 174.

Recovery of amounts owing to government and distress for rent

- 176** Nothing in this Part, other than section 164 (2) [*registered plans exempt*], is to be construed as exempting property from
- (a) an enforcement process to enforce payment of an amount owing to the government except enforcement proceedings under this Act, or
 - (b) distress for rent.

Exemption claims determined to be valid

- 177
- (1) If an exemption claim in relation to seized property, other than money or income, is determined to be valid before the civil enforcement officer enters into an agreement to dispose of the property, the officer must release the property from seizure unless the realizable value of the judgment debtor's interest in the property is greater than the exemption value prescribed for that type of property.
 - (2) Without limiting subsection (1) and subject to subsection (3), if an exemption claim in relation to seized property, other than money or income, is determined to be valid after the civil enforcement officer has disposed of the property, the officer must pay to the judgment debtor the proceeds of the disposition of the property, up to the exemption value prescribed for that type of property.
 - (3) A civil enforcement officer may deduct the fees, taxable court costs and expenses paid or payable by the officer in relation to the property, including the disposition of the property and the collection of the proceeds of that disposition, subject to any exceptions that may be prescribed, from the amount to be paid under subsection (2).
 - (4) If an exemption claim in relation to seized money, other than income, is determined to be valid, the civil enforcement officer must, subject to any exceptions that may be prescribed,
 - (a) release the money from seizure, and
 - (b) if the money has been paid to the officer, pay to the judgment debtor the difference between
 - (i) the money, and
 - (ii) the fees, taxable court costs and expenses paid or payable by the officer in relation to the money.
 - (5) If an exemption claim in relation to seized income that has been paid to the civil enforcement officer is determined to be valid under Division 4 [*Exemption-Related Restrictions on Civil Enforcement Officers*] of this Part, the officer must pay to the judgment debtor the income up to an amount equal to the difference between
 - (a) the total amount of income in respect of which the judgment debtor is entitled to make an exemption claim, and
 - (b) the amount of eligible income, if any, referred to in section 173 (3) (a) (ii) (B) [*procedure in relation to income*].

Exception for subordinate secured creditors

- 178** Despite any obligation to return property to a judgment debtor under section 177, if the civil enforcement officer is made aware that seized property that is required to be returned under that section is subject to a subordinate security interest or subordinate encumbrance, or there is a judgment creditor against whom the exemption claim does not apply, the officer may pay the amount payable to the judgment debtor under that section to the secured creditor, encumbrancer or judgment creditor, as the case may be, up to the amount owed to that secured creditor, encumbrancer or judgment creditor.

Payment discharges obligation of civil enforcement officer

- 179** Payment by civil enforcement officer to a secured creditor, encumbrancer or judgment creditor of an amount the account debtor would otherwise have paid to the judgment debtor discharges the officer's obligation to the judgment debtor to the extent of the amount paid.

Proceeds of exempt property and exempt income

- 180** (1) If a judgment debtor receives proceeds realized from the disposition of exempt property, those proceeds constitute exempt property only if the proceeds
- (a) remain identifiable or traceable, and
 - (b) in the case of money, remain separate from other funds of the judgment debtor.
- (2) Subsection (1) applies to all proceeds realized from the disposition of exempt property, including
- (a) proceeds from the disposition of the exempt property by a civil enforcement officer,
 - (b) proceeds that are paid to the judgment debtor in a foreclosure or similar proceeding relating to exempt property, and
 - (c) proceeds of insurance relating to the exempt property.
- (3) If a judgment debtor receives exempt income, that income remains exempt income only if the income remains identifiable, traceable and separate from other income of the judgment debtor that is not exempt income.
- (4) An exemption for money under this section applies for a period of 6 months after the date on which the money from the disposition of exempt property is received by the judgment debtor.

PART 14 – DISTRIBUTION

Division 1 – Interpretation and Application

Definitions and interpretation

- 181** (1) In this Part:
- “**distributable fund**” means a distributable fund established under section 183;
 - “**eligible claim**”, in relation to a distributable fund, means the amount recoverable in relation to a registered money judgment of a judgment creditor at the time the distributable fund is established.
- (2) At the time a distributable fund is established, a civil enforcement officer must identify the judgment creditors who have an eligible claim in relation to the distributable fund.

Application of this Part

- 182** (1) Nothing in this Part affects any right to money in a distributable fund or the property from which that money was derived that is subject to an interest, including a security interest or a lien, with priority over the enforcement charges being enforced under this Act.
- (2) Distribution under this Part is not affected by the priority of the enforcement charges being enforced under this Act relative to any other interest in property of the judgment debtor, including a mortgage, security interest, lien or charge.

Division 2 – Distributable Fund

Establishment of distributable fund

- 183** (1) A distributable fund is established in respect of a judgment debtor when a civil enforcement officer receives any of the following toward satisfaction of a registered money judgment:
- (a) money received by the officer in relation to the registered money judgment, whether or not the money is received as a result of an enforcement proceeding in respect of the judgment debtor’s property;
 - (b) money that is otherwise identified in this Act or another enactment as distributable or allocated to an amount recoverable from the judgment debtor, or any portion of that money;
 - (c) money received by the officer in respect of fees, taxable court costs and expenses the officer incurred in relation to an enforcement proceeding;

- (d) money received by the officer in relation to a judgment or order
 - (i) issued in favour of a judgment creditor against a person other than the judgment debtor by reason of that person's failure to comply with a requirement of this Act with respect to the enforcement of a money judgment, or
 - (ii) issued under section 193 (d) (ii) [*court order in respect of validity of objection*],
other than a judgment or order made in relation to a cause of action under section 207 [*failure to comply with Act*].
- (2) A judgment creditor who receives any of the following payments after registering a money judgment under Part 3 [*Registration of Money Judgments and Creation of Enforcement Charges*] must deliver any money received to the civil enforcement officer:
 - (a) a payment from any source of part or all of the amount recoverable by the judgment creditor;
 - (b) a payment under a judgment or order described in subsection (1) (d) (i) of this section other than a judgment or order made in relation to a cause of action under section 207.
- (3) If a distributable fund is established under subsection (1) due to a civil enforcement officer receiving money as a result of an order under section 104 [*application to court*], the distributable fund is deemed to be established
 - (a) in relation to the judgment debtor named in the notice of seizure referred to in section 104 (2), and
 - (b) on the date that the notice of seizure was given to the account debtor referred to in that section.

Civil enforcement officer may request information

- 184** (1) A civil enforcement officer holding a distributable fund may, by written notice, require a judgment creditor who has an eligible claim in relation to the distributable fund, or any other person who may have a claim to the distributable fund, to provide a written statement that,
- (a) in the case of a judgment creditor,
 - (i) sets out the unsatisfied amount of the judgment creditor's registered money judgment as of the date of the statement, and
 - (ii) asserts any claim to a priority in the distribution of the distributable fund to which the judgment creditor is entitled, and
 - (b) in the case of any other person who may have a claim in relation to the distributable fund,
 - (i) sets out the outstanding amount of the claim as of the date of the statement, and

- (ii) asserts any claim to a priority in the distribution of the distributable fund to which the person is entitled.
- (2) If a person to whom a written notice is given under subsection (1) does not, within 10 days after receipt of the notice, provide the civil enforcement officer with the written statement containing the information referred to in subsection (1), the person is deemed to have waived the following, as applicable:
 - (a) any right to share in the distribution of the distributable fund, in the case of information referred to in subsection (1) (a) (i) or (b) (i);
 - (b) any right to a priority in the distribution of the distributable fund, in the case of information referred to in subsection (1) (a) (ii) or (b) (ii).

Distribution of distributable fund

- 185** (1) A civil enforcement officer must distribute a distributable fund in the following order:
- (a) first, if and to the extent that money in the distributable fund can be attributed to enforcement proceedings of an officer, the fees, taxable court costs and expenses paid or payable by the officer in relation to those proceedings are to be paid to the officer;
 - (b) second, if and to the extent that money in the distributable fund can be attributed to
 - (i) a proceeding to obtain a Mareva order or pre-judgment garnishment,
 - (ii) a third person claim or interpleader proceeding under Part 15 [*Third Person Claims*], or
 - (iii) an application to the court,the taxable court costs that a judgment creditor or other person is entitled to recover in relation to the proceeding or application, as the case may be, are to be paid to the judgment creditor or other person;
 - (c) third, if the distributable fund includes income of the judgment debtor, or proceeds realized from the disposition of seized property of the judgment debtor, in respect of which income or proceeds, as the case may be, an exemption claim is determined to be valid under Division 4 [*Exemption-Related Restrictions on Civil Enforcement Officers*] of Part 13, the amount determined to be exempt must be paid to the judgment debtor;
 - (d) fourth, if money in the distributable fund can be directly attributed to the enforcement instruction of a judgment creditor, an amount equal to the least of the following amounts is to be paid to the judgment creditor:
 - (i) the amount of the judgment creditor’s eligible claim;

- (ii) the amount of money in the distributable fund that can be directly attributed to the judgment creditor's enforcement instruction;
 - (iii) the amount prescribed by regulation, including any amount determined by an applicable prescribed formula with respect to the distributable fund balance and the prescribed amount, unless, on application, one of the following amounts is ordered by the court:
 - (A) a greater or lesser amount than the prescribed amount, on the court being satisfied that the greater or lesser amount is warranted in relation to the contribution of the judgment creditor to the seizure and disposition of the asset, the proceeds of which comprise the distributable fund;
 - (B) any other amount, if the court considers that amount appropriate;
 - (e) fifth, the amounts that, as a result of any other enactment, are entitled to priority over the eligible claims of judgment creditors generally are to be paid to the persons entitled to those amounts;
 - (f) sixth, if and to the extent that money in the distributable fund can be attributed to an interpleader proceeding under Part 15, the eligible claims of judgment creditors who were parties to, or made a proportional contribution to the cost of, the interpleader proceeding are to be paid;
 - (g) seventh, the taxable court costs, other than those referred to in paragraphs (a) and (b), payable under a court order are to be paid to the persons entitled to those costs;
 - (h) eighth, the eligible claims of judgment creditors that, after any payments made under paragraphs (a) to (g), remain outstanding are to be paid to those judgment creditors;
 - (i) ninth, the amount payable to any other person entitled to share in the distributable fund is to be paid to that person;
 - (j) tenth, the remaining balance of the distributable fund, if any, is to be paid to the judgment debtor unless it has been seized by an officer.
- (2) If, in relation to payments to be made under any one of paragraphs (a) to (j) of subsection (1), there is less money in the distributable fund than is required to satisfy the full amount of the claims that are to be paid under that paragraph, the remaining balance in the distributable fund is to be paid to each of the claimants claiming in the relevant paragraph in the proportion that the claimant's claim bears to the total amount of the claims that are to be paid under that paragraph.
- (3) For the purposes of subsection (1) (d), if
- (a) money in the distributable fund resulted from an enforcement proceeding, and

- (b) the civil enforcement officer is not able to determine which of 2 or more enforcement instructions the money can be directly attributed to, the money is deemed to be directly attributable to the enforcement instruction received earliest in time by the officer.
- (4) The priority of an interest in a judgment debtor's property is not affected by the order of distribution of the distributable fund under this section.

Timing of distribution

- 186** (1) A civil enforcement officer must not make a distribution from a distributable fund until at least 20 days after the officer received the money or the proceeds from the disposition of the property.
- (2) Subject to section 195 [*payments out of distributable fund*], a civil enforcement officer must distribute a distributable fund before the latest of the following:
- (a) 90 days after the date the distributable fund is established;
 - (b) a date agreed to in writing by all persons entitled to distribution from the distributable fund.

Consolidation of distributable funds

- 187** Subject to the regulations, a civil enforcement officer may consolidate 2 or more distributable funds.

Division 3 – Distribution Scheme

Notice of distribution scheme

- 188** Before distributing a distributable fund, a civil enforcement officer must
- (a) establish a scheme for distributing the distributable fund in accordance with this Act, and
 - (b) give written notice of the distribution scheme containing any information required by regulation, to the following persons:
 - (i) the judgment debtor;
 - (ii) each judgment creditor with an eligible claim;
 - (iii) each person known to the officer who may have a claim to the distributable fund, including
 - (A) every person with an interest, including a security interest or a lien, that has priority over the enforcement charges being enforced under this Act,

- (B) if the distributable fund consists of proceeds from a disposition of personal property, every person who had a security interest in the personal property immediately before its disposition that was subordinate to the highest-ranking enforcement charge in the property, and
- (C) if the distributable fund consists of proceeds from a disposition of land, every person who had a registered interest in the land immediately before its disposition that was subordinate to the highest-ranking enforcement charge in the property.

Objection to distribution scheme

- 189**
- (1) A person who receives a notice of a distribution scheme under section 188 (b) may object to the whole or any part of the distribution scheme by giving, within 10 days after receiving the notice, a written notice of objection to the civil enforcement officer stating the reason for the objection.
 - (2) If the notice of objection does not, in the opinion of the civil enforcement officer, adequately state the reason for the objection, the officer may disregard the objection and distribute the distributable fund.

Amendment of distribution scheme

- 190**
- (1) A civil enforcement officer may amend a distribution scheme in response to a notice of objection without the need for a court order under section 191 if the basis for the objection is
 - (a) a calculation error, or
 - (b) a grammatical or typographical error.
 - (2) If a civil enforcement officer amends a distribution scheme under subsection (1), a person may object to the amended distribution scheme in accordance with section 189 and, for that purpose, the reference in section 189 (1) to the notice of distribution scheme is to be read as a reference to the notice of the amended distribution scheme.

Application to court in respect of distribution scheme

- 191**
- (1) A person who gives a notice of objection under section 189 may, within 10 days after giving the notice, apply to the court for an order determining the validity of the person's objection.
 - (2) Notice of an application under subsection (1) must be given to the civil enforcement officer and, unless the court orders otherwise, to each person referred to in section 188 (b) [*notice of distribution scheme*].

Application to court by civil enforcement officer

- 192** (1) A civil enforcement officer may, within 10 days after receiving a notice of objection given under section 189 [*objection to distribution scheme*], apply to the court for an order determining the validity of the person's objection.
- (2) Notice of an application under subsection (1) must be given to each person referred to in section 188 (b) [*notice of distribution scheme*] unless the court orders otherwise.

Court order in respect of validity of objection

- 193** On an application under section 191 or 192, the court may make one or more of the following orders:
- (a) an order confirming the distribution scheme established by the civil enforcement officer;
 - (b) an order directing the officer to amend the distribution scheme;
 - (c) if an application is successful, an order that the costs of the application be paid to the applicant out of the distributable fund;
 - (d) if an application is not successful, an order that the applicant pay
 - (i) the taxable court costs of the proceedings to the officer and any other person specified by the court, and
 - (ii) any other amounts ordered by the court to persons specified by the court to compensate those persons for any costs incurred or loss suffered as a result of any delay, caused by the application to the court, in distributing the distributable fund;
 - (e) any other order the court considers appropriate.

Notice of amended distribution scheme

- 194** If a civil enforcement officer amends a distribution scheme under section 190 [*amendment of distribution scheme*] or as a result of an order under section 193 (b), the officer must give written notice of the amended distribution scheme to each person referred to in section 188 (b) [*notice of distribution scheme*].

Division 4 – Distribution

Payments out of distributable fund

- 195** (1) Subject to subsection (2), the civil enforcement officer must, as soon as practicable, distribute the distributable fund in accordance with the distribution scheme or, if applicable, the amended distribution scheme.

- (2) If there are any applications under section 191 [*application to court in respect of distribution scheme*] or 192 [*application to court by civil enforcement officer*] in respect of which the court has not made a court order under section 193, the civil enforcement officer may, unless otherwise ordered by the court, distribute the distributable fund to the extent that the distribution does not prejudice the claim of the person who made a notice of objection under section 189 [*objection to distribution scheme*].

Reporting and correcting errors in distribution

- 196** (1) If a person receives, as a distribution from a distributable fund under this Part, a payment that is greater than the amount to which the person is entitled, the person must, as soon as practicable after receiving the payment,
- (a) notify the civil enforcement officer, and
 - (b) pay to the officer the amount by which the payment received exceeds the amount to which the person is entitled.
- (2) If a person referred to in subsection (1) does not comply with the requirement in subsection (1) (b), the court may, on application, grant judgment in favour of the civil enforcement officer against the person.
- (3) If a civil enforcement officer receives money under subsection (1) (b) or as a result of a judgment granted under subsection (2),
- (a) a new distributable fund is not established under section 183 [*establishment of distributable fund*] in relation to the money, and
 - (b) the officer must distribute the money in accordance with the distribution scheme for the distributable fund referred to in subsection (1) of this section.

PART 15 – THIRD PERSON CLAIMS

Division 1 – Interpretation

Definition

- 197** In this Part, “**third person claim**”, in respect of property that is subject to an enforcement proceeding, means
- (a) a claim to the property that, if valid, would result in the property not being property of the judgment debtor, or
 - (b) a claim to a right to possess the property that, if valid, would permit the right to possess to be asserted against the judgment debtor.

Division 2 – Third Person Claims Procedures

Third person claim notice

- 198** (1) A person who asserts a third person claim must give a third person claim notice
- (a) to the civil enforcement officer who has conduct of the enforcement proceeding, or
 - (b) if the enforcement proceeding is appointing a receiver under section 155 (1) [*appointment of receiver*], to the receiver.
- (2) A receiver who receives a third person claim notice under subsection (1) (b) must, as soon as practicable, give a copy of the notice to the civil enforcement officer designated under section 156 (1) [*remittance by receiver*] in the court order appointing the receiver.

Limitations if third person claim not made in timely fashion

- 199** (1) If a person gives a third person claim notice after the property has been disposed of, whether or not the proceeds of disposition have been distributed in accordance with Part 14 [*Distribution*], the person may not assert the claim in respect of the property against any of the following:
- (a) the civil enforcement officer or receiver;
 - (b) a person who acquires the property from the officer or receiver;
 - (c) a successor in interest of the person who acquires the property from the officer or receiver.
- (2) If a person gives a third person claim notice after the property has been disposed of but before the proceeds of disposition have been distributed in accordance with Part 14, the claim is a claim in respect of the portion of proceeds of disposition remaining after deducting the fees earned, and taxable costs and expenses incurred by, the civil enforcement officer or receiver in relation to the disposition of the property.
- (3) A person is not entitled to assert a third person claim if the only basis for the claim is that the person has an interest in the property as a joint tenant or tenant in common with the judgment debtor.

Stay of disposition or stay of distribution of proceeds

- 200** If a civil enforcement officer or receiver, as applicable, receives a third person claim notice before the property has been disposed of, or after the property has been disposed of but before the proceeds of disposition have been distributed in accordance with Part 14 [*Distribution*], the officer or receiver may not, subject to section 201, dispose of the property or distribute the proceeds, as applicable, unless one of the following occurs:
- (a) the third person claim is withdrawn by the person who asserted the third person claim;
 - (b) the court makes an order that the third person claim is invalid;
 - (c) the court orders otherwise.

Procedure relating to third person claims

- 201** (1) Within 7 days after receiving a third person claim notice, a civil enforcement officer or receiver, as applicable, must
- (a) give a judgment creditor who has an enforcement charge against property of the judgment debtor written notice of the following:
 - (i) the judgment creditor's right to dispute the third person claim;
 - (ii) the consequences of failing to dispute the third person claim, and
 - (b) include a copy of the third person claim notice with the written notice.
- (2) A judgment creditor may dispute the third person claim by giving a notice of dispute to the civil enforcement officer within 10 days after receiving the third person claim notice referred to in subsection (1).
- (3) A judgment creditor who does not give a notice of dispute to the civil enforcement officer within the time period required by subsection (2) is deemed to have accepted the validity of the third person claim.
- (4) Nothing in subsection (3) affects the right of a judgment creditor in any proceedings other than as referred to in this Part.

Discontinuance of enforcement proceedings

- 202** (1) If the civil enforcement officer or receiver, as applicable, does not receive a notice of dispute from the judgment creditor within the time period required under section 201 (2), the officer or receiver must do the following:
- (a) release from seizure the property that is the subject of the third person claim;
 - (b) discontinue any enforcement proceedings in respect of the property that is the subject of the third person claim.

- (2) On application of the civil enforcement officer or receiver who releases property as provided in subsection (1) (a), the court may, if the enforcement officer acted in accordance with this Act, make one or both of the following orders:
- (a) an order relieving the officer from liability in respect of the seizure;
 - (b) an order dismissing an action brought against the officer in respect of the seizure.

Division 3 – Interpleader Procedures

Application for interpleader order

- 203** If a judgment creditor gives a civil enforcement officer or receiver, as applicable, a notice of dispute within the time period required under section 201 (2), the officer or receiver must, within 15 days after receiving the notice of dispute, apply for an interpleader order and give notice of the application to
- (a) the person asserting the third person claim, and
 - (b) the judgment creditor.

Possession of disputed property during interpleader proceedings

- 204** (1) Pending the outcome of an interpleader proceeding, a civil enforcement officer or receiver, as applicable, who has applied under section 203 for an interpleader order in relation to property may allow to have possession or control of the property that is the subject of the interpleader proceeding either of the following persons:
- (a) a person asserting a third person claim;
 - (b) any other person the officer or receiver considers appropriate.
- (2) The person allowed, under subsection (1), to have possession or control of the property that is the subject of the interpleader proceeding must provide to the civil enforcement officer or receiver an amount of security that the officer or receiver considers appropriate.
- (3) If the civil enforcement officer or receiver allows a person to have possession or control of property under subsection (1),
- (a) the person is deemed to be the bailee of the officer or receiver, as applicable,
 - (b) the officer or receiver is deemed to remain in possession or control of the property while the security is held by the officer or receiver, and
 - (c) the person must deliver possession or control of the property to the officer or receiver on demand.

**Disposition of specified property pending
outcome of interpleader proceedings**

- 205** (1) A court may authorize a civil enforcement officer or receiver, as applicable, to dispose of property before the hearing or completion of interpleader proceedings if
- (a) a third person claim notice in respect of the property is received by an officer or receiver before the property has been disposed of,
 - (b) the officer has applied under section 203 for an interpleader order in relation to the property, and
 - (c) one or more of the following applies in respect of the property:
 - (i) the property is perishable, unsanitary or hazardous to health;
 - (ii) the officer or receiver believes on reasonable grounds that the value of the property will decline substantially if it is not disposed of before an interpleader order is made;
 - (iii) the cost to care for and store the property until its disposition is likely to equal or exceed the amount that might reasonably be obtained by the officer or receiver on a disposition of the property.
- (2) If the court authorizes a civil enforcement officer or receiver to dispose of property under subsection (1), the court may declare that a third person claim continues in respect of the proceeds of disposition that remain, after deducting an amount that is equal to the following fees, costs and expenses in relation to the disposition of the property:
- (a) the fees earned by the officer or receiver;
 - (b) the taxable costs and expenses incurred by the officer or receiver.

PART 16 – GENERAL PROVISIONS

Division 1 – General Matters

Standard of conduct

- 206** (1) A person who exercises a right or power or performs a duty under this Act must not act dishonestly, maliciously or in bad faith.
- (2) A person does not act in bad faith only because the person acts with knowledge of the interest of another person.
- (3) A person who exercises a right or power or performs a duty under this Act must act in a commercially reasonable manner.

Failure to comply with Act

- 207** (1) A person who suffers loss as a result of another person’s failure to comply with this Act has a cause of action against that other person for damages in
- (a) an amount equal to the loss, or
 - (b) if the person who failed to comply with the Act engaged in wilful or reckless acts or neglect on the part of the judgment debtor, a greater amount than the amount equal to the loss.
- (2) A person is not liable under this section if, at the time the person failed to comply with this Act, the person reasonably believed that the person had a lawful excuse.

Interference with civil enforcement officer or receiver

- 208** (1) A person must not interfere with or delay the exercise of a function, right or power or the performance of a duty under this Act by a civil enforcement officer or receiver.
- (2) A judgment creditor, civil enforcement officer or receiver may apply to the court for an order that a person who has contravened subsection (1) pay to the officer or receiver, as the case may be, an amount not greater than the sum of the following:
- (a) any additional costs incurred as a result of the interference or delay;
 - (b) the value of any property that, but for the interference or delay, would have been available for seizure and disposition under this Act;
 - (c) any decrease in value, resulting from the interference or delay, of property seized and disposed of under this Act.
- (3) A person is not liable under subsection (2) if, at the time the person contravened subsection (1), the person reasonably believed that the person had a lawful excuse.
- (4) Any money received by a civil enforcement officer or receiver under subsection (2) constitutes a distributable fund.

Recovery of loss caused by error in money judgment registry

- 209** (1) The government is not liable directly or vicariously for loss or damage suffered by a person because of
- (a) verbal advice given by an agent or employee of the government respecting this Act, regulations made under this Act or the operation of the money judgment registry,
 - (b) failure to register, or register correctly, a judgment statement in the money judgment registry if the failure is due to an error in an electronic data transmission,

- (c) failure to register a judgment statement because the applicant did not pay the fee or make the arrangements referred to in section 24 [fees], or
 - (d) the exercise of a power of the registrar of the money judgment registry to refuse to register a judgment statement.
- (2) Subsection (1) (a) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.
 - (3) Nothing in this section limits any defences that would be available to the government in the absence of this section.

Claimant under *Crown Proceeding Act*

- 210**
- (1) If a claim is paid to a claimant under the *Crown Proceeding Act*, the government is subrogated to the rights of the claimant against any person indebted to the claimant whose debt to the claimant was the basis of the loss or damage in respect of which the claim was paid.
 - (2) If the claimant recovers an amount less than the value of the interest the claimant would have had if the loss or damage had not occurred, the right of subrogation under subsection (1) does not prejudice the ability of the claimant to recover in priority to the government an amount equal to the difference between the amount paid to the claimant and the value of the interest the claimant would have had if the loss or damage had not occurred.
 - (3) No action for damages may be brought against the government unless the action is commenced not later than one year after the person entitled to bring the action became aware of the loss or damage.
 - (4) No action may be brought against the government to recover loss or damage caused by reliance on a printed search result or the failure of the registrar to register a money judgment submitted for registration after the earlier of the following dates:
 - (a) the last date of the period of time referred to in subsection (3);
 - (b) that date that is 6 years from the date that the search result was issued or the money judgment was submitted for registration.
 - (5) Despite any other provision of this Act, agents and employees of the government are not liable in their personal or official capacity for loss or damage suffered by a person because of anything done or omitted in the exercise or purported exercise of a power or duty under this Act unless the claimant proves that the agent or employee was not acting in good faith.
 - (6) Subsection (5) does not absolve the government from vicarious liability arising out of an act or omission by an agent or employee of the government for which act or omission the government would be liable if this section were not in force.

Immunity – civil enforcement officer

- 211** (1) If a civil enforcement officer seizes or disposes of more property than is necessary to satisfy the release amount, the officer is not liable for damages resulting from the seizure or disposition of that excess property if,
- (a) at the time of the seizure or disposition, as the case may be, the officer had reasonable grounds to believe that the property
 - (i) was exigible property, and
 - (ii) was required, in whole or in part, to satisfy the release amount, and
 - (b) as soon as practicable after the officer determines that the value of the property or the proceeds from its disposition exceed the release amount, the officer releases the excess property from seizure or pays the excess proceeds of disposition to the judgment debtor or the person who is, in accordance with Part 14 [*Distribution*], otherwise entitled to them.
- (2) Subject to section 168 [*civil enforcement officer must not take possession of property if likely exempt*], a civil enforcement officer is not liable for any damages resulting from the seizure or disposition, in accordance with this Act, of property if it is subsequently determined that the property should not have been disposed of and is exempt property under Part 13 [*Exemptions*].
- (3) A civil enforcement officer is not liable for any damages resulting from the seizure or disposition, in accordance with this Act, of exigible property of a judgment debtor if it is determined that the registration of the money judgment that created the enforcement charge on the property was invalid.
- (4) In respect of information provided in response to a demand under section 184 (1) [*civil enforcement officer may request information*], a civil enforcement officer
- (a) may rely on the information for a distribution, and
 - (b) subject to subsection (5) of this section, the officer is not liable for making a distribution in reliance on the information.
- (5) Subsections (1), (2), (3) and (4) do not apply to a civil enforcement officer referred to in those subsections in relation to anything done or omitted in bad faith.

Division 2 – Applications to Court

Applications to court

- 212** (1) In this section, “**police officer**” means
- (a) a person who is a provincial constable or municipal constable under the *Police Act* or who has the powers of a provincial constable or municipal constable, or

(b) a person who is a constable other than a constable referred to in paragraph (a) of this subsection and who is within a prescribed class of constables.

(2) Without limiting section 4 [*orders respecting payment of money judgments*], the court may make any order it considers appropriate in respect of an enforcement proceeding in relation to a money judgment, including an order doing any of the following:

- (a) granting injunctive or declarative relief to ensure compliance with this Act;
- (b) granting injunctive or declarative relief to ensure the protection of the interest of a person in property that is subject to an enforcement charge;
- (c) directing a person regarding the exercise or performance of the person's rights, powers or duties under this Act;
- (d) requiring a person in possession or control of property to give possession or control of the property to a civil enforcement officer or another person;
- (e) prohibiting a person in possession or control of property from disposing of, destroying or otherwise dealing with the property;
- (f) directing a person respecting the carrying out of an enforcement proceeding;
- (g) staying one or more enforcement proceedings in relation to property;
- (h) requiring a person to execute an assignment, transfer, document or record required to complete the disposition of property by a civil enforcement officer;
- (i) requiring a civil enforcement officer to dispose of property that has been seized;
- (j) extending or reducing a period of time provided for under this Act and, if the period of time has expired before a person applies for the extension or the court orders the extension, the period of time may be extended if the court is satisfied that special circumstances apply and an injustice would result if the extension were not granted;
- (k) prohibiting a person from interfering with a civil enforcement officer;
- (l) if the court is satisfied that the safety and security of a civil enforcement officer is or is likely at risk, directing a police officer to attend at a location to prevent a breach of the peace and to provide protection to the civil enforcement officer while the civil enforcement officer is carrying out an enforcement proceeding;
- (m) providing for a method of giving a notice or other document under this Act in substitution for a method authorized or required under this Act;

- (n) directing the judgment creditor, civil enforcement officer or registrar of the money judgment registry to amend or discharge the registration of a money judgment statement;
 - (o) directing the registrar of the land title office to amend or discharge the registration of a money judgment against land;
 - (p) respecting costs, including special costs.
- (3) On application, the court may rescind or vary an order under subsection (2) (g) staying an enforcement proceeding if the application is based on new information or a change in circumstances.
- (4) If the court makes an order referred to in subsection (2) (n) or (o), the court may make an order requiring a person to pay to the applicable registrar any fees associated with the amendment or discharge, as the case may be.

Division 3 – Power to Make Regulations

General power to make regulations

- 213** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations respecting any matter for which regulations are contemplated by this Act.
- (3) The authority to make regulations under another provision of this Act does not limit subsection (1) or (2) of this section.
- (4) In making a regulation under this Act, the Lieutenant Governor in Council may do one or more of the following:
- (a) delegate a matter to a person;
 - (b) confer a discretion on a person;
 - (c) make different regulations for
 - (i) different persons, places, circumstances, transactions and interests in property or other things, or
 - (ii) different classes of persons, places, circumstances, transactions and interests in property or other things;
 - (d) establish or define classes of persons, places, circumstances, transactions and interests in property or other things.

Specific power to make regulations

- 214** (1) The Lieutenant Governor in Council may make regulations as follows:
- (a) respecting the form, content and manner of the use of money judgment statements and other writings, including information that may be prescribed;

- (b) respecting the form, content and manner of the use of notices and certificates referred to in this Act, including information that may be prescribed;
 - (c) respecting the manner in which security or collateral, including proceeds collateral, is described in money judgment statements and prescribing what kinds of goods may be or must be described in part by serial number;
 - (d) respecting the manner in which a registration may be made under this Act;
 - (e) respecting a notice, demand, document or record required or allowed to be given or served on a person under this Act, including the following:
 - (i) how the notice, demand, document or record may be given or served;
 - (ii) the authorization of alternative service;
 - (iii) when a document or record is conclusively deemed to be received;
 - (f) respecting the minimum period of time within which property of a judgment debtor must not be disposed to a person other than a partner in a partnership for the purposes of section 153 (3) [*right of partner to purchase interest of judgment debtor*].
- (2) The Lieutenant Governor in Council may make regulations
- (a) for the purposes of Part 1 [*Interpretation*],
 - (i) in respect of paragraph (e) of the definition of “amount recoverable” in section 1, prescribing amounts,
 - (ii) in respect of paragraph (b) of the definition of “intellectual property” in section 1, prescribing a type of proprietary right or interest, and
 - (iii) in respect of paragraphs (c) and (d), as applicable, of the definition of “money judgment” in section 1,
 - (A) prescribing a class or type of order or judgment, and
 - (B) prescribing a class or type of instrument,
 - (b) for the purposes of Part 3 [*Registration of Money Judgments and Creation of Enforcement Charges*],
 - (i) in respect of section 9 [*definitions for Part 3*], prescribing the meaning for the definition of “serial numbered goods”,
 - (ii) in respect of section 11 (3) [*registration in money judgment registry*], establishing requirements for the form and manner of the submission of judgment statements and prescribing documents or information,

- (iii) in respect of section 15 (9) [*invalidity of registration and absence of enforcement charge*], prescribing the meaning for the definition of “motor vehicle”,
- (iv) in respect of section 18 (3) [*amendment of registration*], prescribing the manner of identification of the transferee of an interest,
- (v) in respect of section 24 [*fees*], prescribing the applicable fee in relation to the registration, amendment or discharge of money judgments in the money judgment registry,
- (vi) in respect of section 26 (1) [*searches of money judgment registry*], prescribing the fee and searches of the money judgment registry, and
- (vii) in respect of section 31 (6) [*erroneous registration of money judgment*], prescribing the compensation amount,
- (c) for the purposes of Part 4 [*Priority of Enforcement Charge*], in respect of section 37 (2) (b) [*priority of enforcement charge on fixtures and crops*], prescribing land or classes of land,
- (d) for the purposes of Part 5 [*Civil Enforcement Officers*], in respect of section 44 (1) (b) [*delegation of power or duty to give notices or other documents*], prescribing a class or type of agent of a judgment creditor,
- (e) for the purposes of Part 6 [*Enforcement Instructions*],
 - (i) in respect of section 45 (2) (d) [*giving enforcement instructions to civil enforcement officer*], prescribing the fee for giving an enforcement instruction,
 - (ii) in respect of section 48 (2) (d) [*amendment of enforcement instructions*], prescribing an event or circumstance in relation to the amendment of enforcement instructions, and
 - (iii) in respect of section 50 (1) (c) and (2) (d) [*suspension or termination of enforcement proceedings*], prescribing a circumstance in relation to the suspension or termination of enforcement proceedings,
- (f) for the purposes of Part 7 [*Obtaining Information*],
 - (i) in respect of section 52 (1) [*request for identification information*], prescribing identification documents,
 - (ii) in respect of section 53 (1) [*requiring submission of disclosure statement*],
 - (A) prescribing an exemption value in relation to property, and
 - (B) prescribing a matter,
 - (iii) in respect of section 54 (2) (e) [*requiring examination of judgment debtor*], prescribing a person or class of persons,

- (iv) in respect of the definition of “prescribed entity” in section 55 (1) [*information in custody or control of prescribed entities*], prescribing an organization or public body or a class of organizations or public bodies,
- (v) in respect of section 56 [*application to court – disclosure of information by prescribed persons*],
 - (A) prescribing a person or a class of persons, and
 - (B) prescribing a circumstance,
- (vi) in respect of section 57 (3) (b) [*application to court – attendance before court or disclosure of information*], prescribing a circumstance, and
- (vii) in respect of section 59 (1) [*conduct of examination*], prescribing the meaning for the definition of “oath”,
- (g) for the purposes of Part 8 [*General Rules Relating to Seizure of Property*],
 - (i) in respect of section 67 (3) (c) [*what property may be seized*], prescribing a value of partnership property, and
 - (ii) in respect of section 70 (6) (d) [*notice of seizure*], prescribing a person or class of persons,
- (h) for the purposes of Part 9 [*Seizure and Disposition of Specific Types of Property*],
 - (i) in respect of section 75 (2) (b) [*how aquatic plants may be seized*], prescribing a licence in respect of aquatic plants,
 - (ii) in respect of section 94 (2) [*deemed election – employment remuneration*], prescribing a health care benefit,
 - (iii) in respect of section 98 (1) [*obligations of account debtor on seizure*], prescribing periods of time,
 - (iv) in respect of section 99 (3) [*seizure of income*],
 - (A) prescribing payment periods, and
 - (B) prescribing deductions,
 - (v) in respect of section 100 (1) [*seizure of accounts owed by government to public servants*], prescribing the meaning for the definition of “public servant”, and
 - (vi) in respect of section 103 (b) [*deduction of set-off and compensation amounts*], prescribing the compensation amount,
- (i) for the purposes of Part 10 [*General Rules Relating to Disposition of Property*], in respect of section 138 (1) (h) [*notice of disposition*], prescribing a person or class of persons,

- (j) for the purposes of Part 11 [*Special Rules for Co-Owned Property and Partnership Property*], in respect of sections 148 (3) [*right of co-owner to purchase interest of judgment debtor*] and 153 [*right of partner to purchase interest of judgment debtor*], prescribing periods of time,
- (k) for the purposes of Part 13 [*Exemptions*],
 - (i) in respect of section 158 [*definitions*],
 - (A) for paragraph (a) of the definition of “maximum net income”, prescribing a maximum net income applicable to a reference period,
 - (B) for paragraph (a) of the definition of “minimum net income”, prescribing a minimum net income applicable to a reference period, and
 - (C) for the definition of “reference period”, prescribing a period applicable to one or more judgment debtors or classes of judgment debtors,
 - (ii) in respect of section 162 (1) (a) (ii) and (4) [*exemption claims in relation to income*], prescribing percentages,
 - (iii) in respect of section 162 (3) (a) and (5), prescribing amounts,
 - (iv) in respect of section 164 (3) (f) and (g) [*registered plans exempt*], prescribing an enforcement process or property,
 - (v) in respect of section 165 (1) (l) [*property that may be claimed as exempt*],
 - (A) prescribing property, and
 - (B) specifying an amount as the exemption value applicable to a particular class or type of property, including a class or type of property prescribed in accordance with subparagraph (i), and
 - (vi) in respect of section 177 (4) [*exemption claims determined to be valid*], prescribing exceptions,
- (l) for the purposes of Part 14 [*Distribution*], in respect of section 185 [*distribution of distributable fund*], prescribing an amount and applicable formula, and
- (m) for the purposes of Part 16 [*General Provisions*], in respect of paragraph (b) of the definition of “police officer” in section 212 [*applications to court*], prescribing a class of constables.

Commencement

215 This Act comes into force by regulation of the Lieutenant Governor in Council.