

---

***THE ENFORCEMENT OF MONEY  
JUDGMENTS ACT  
S.S. 2011, c. E-9.22***

---



**Professor Ronald C.C. Cuming**  
College of Law  
University of Saskatchewan

# **THE ENFORCEMENT OF MONEY JUDGMENTS ACT**

## **LEGISLATIVE GOALS**

### **MODERNIZATION OF JUDGMENT ENFORCEMENT LAW**

- **Most of prior Saskatchewan judgment enforcement law pre-dates the creation of Saskatchewan as a province.**
- **It was replete with archaic terminology and outdated concepts.**
- **There were no statutory rules affecting the rights and powers of sheriffs.**
- **There was an incomplete and inappropriate interface between judgment enforcement law and secured financing law.**
- **There was an inappropriate interface between judgment enforcement law and third party property and possessory rights.**
- **Some of it was dysfunctional and features of it were contradictory.**
- **As a consequence, it was inefficient and resulted in unfairness for both judgment creditors and judgment debtors.**

**EMJA has been designed to eliminate these deficiencies.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## A COMPLETE CODE OF JUDGMENT ENFORCEMENT LAW

- EMJA is a (almost) complete Code of (provincial) Judgment Enforcement Law (in the same pattern as the PPSA)
- The Act deals with the full range of issues that arise in the context of judgment enforcement:
  - pre-judgment asset freezing
  - obtaining disclosure of debtors' assets
  - initiating enforcement
  - procedures for seizure of ALL kinds of property
  - special part on seizure of accounts (replacing garnishment)
  - receivership
  - procedure to address third party claims to seized property
  - exemptions
  - pro rata distribution among judgment creditors
  - enhanced system under which a judgment can have the status equivalent to a security interest
  - complete set of priority rules dealing with interests in both real and personal property that compete with enforcement charges
  - rules permitting efficient disposition of seized property
  - complete set of rules dealing with transition from prior law to EMJA
  - the powers and obligations of the sheriff are set out in detail
  - extensive supervisory role given to the QB Court
- Special features of *The Enforcement of Maintenance Orders Act*, and *The Saskatchewan Farm Security Act* remain unaffected.
- EMJA does not address Fraudulent Preferences and Conveyances.

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## REPLACEMENT OF COMMON LAW REMEDIES UNIVERSAL EXIGIBILITY

- **Writs of execution against personal property and land are replaced with a single remedy: seizure (supplemented by receivership) applicable to all types of property.**
  - **Seizure does not necessarily involve the sheriff taking possession or control of seized property . Seizure can be effected by judgment creditor.**
- **Garnishment is replaced by a modern, integrated system dealing with seizure of all kinds of accounts.**
  - Seizure of “future accounts”**
  - Specific provision for “bulk seizure” and assignment of business accounts.**
  - Specific rules dealing with set-off and prior assignments of accounts.**
  - Money in court may be seized.**
  - Special rules deal with seizure of employment remuneration, including advanced notice to an employers of seizure. Exemptions are set by regulation.**
- **Special rules relating to seizure of ALL types of property and interests in property, including: goods, land, accounts, co-owned interests, licences, securities, security entitlements, security interests, mortgages, lessors’ interest, beneficial interests in trust property,**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## PRIORITY STRUCTURE

- A central feature of the Act is the separation of enforcement of a judgment from the priority status that a judgment has in relation to other interests in the judgment debtor's property acquired either before or after the judgment has been obtained. A judgment can be enforced against unregistered interests in land (e.g., buyer's interest under an agreement for sale) so long as it is registered in the judgment registry.
- Registration of a judgment in the Judgment Registry results in the creation of an "enforcement charge" affecting all exigible personal property owned by the judgment debtor at the date the charge comes into existence or acquired thereafter
- Although technically this charge is not a "security interest" to which *The Personal Property Security Act, 1993* applies, it is treated as such in the context of most priority competitions that arise in connection with the personal property charged.
- With minor exceptions an enforcement charge has the same priority status in relation to both prior and subsequent interests in the charged property as a perfected non-purchase money security interest.

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## Enforcement Charges Affecting Land

- The basic structural features (but not the terminology) of the prior system have been retained.
- Registration of a judgment creates an enforcement charge in personal property and is the basis for a potential charge on future interests in land.
- A charge affects existing interests in land only when it is specifically registered against that interest.
- Priority of a charge *vis-à-vis* other interests in land are determined on the basis of date of registration of the charge against the land. (Reversal of *Wilkie v Jellett*.)
- The Act rejects the principle that a charge against a joint interest in land disappears when the joint-tenant judgment debtor dies.

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## Enforcement Charges Affecting Land

- The basic structural features (but not the terminology) of the prior system have been retained.
- Registration of a judgment creates an enforcement charge in personal property and is the basis for a potential charge on future interests in land.
- A charge affects existing interests in land only when it is specifically registered against that interest.
- Priority of a charge *vis-à-vis* other interests in land are determined on the basis of date of registration of the charge against the land. (Reversal of *Wilkie v Jellett*.)
- The Act rejects the principle that a charge against a joint interest in land disappears when the joint-tenant judgment debtor dies.

# **THE ENFORCEMENT OF MONEY JUDGMENTS ACT**

## **INITIATION OF ENFORCEMENT MEASURES**

**A sheriff draws his or her power to enforce a money judgment from the judgment of the court ordering the payment of money and the EMJA and not, as was the case under prior law, from a writ of execution.**

- A sheriff is not required to invoke an enforcement measure until he or she receives an enforcement instruction.**
- An enforcement instruction:**
  - signals the desire of a judgment creditor to have his or her judgment enforced,**
  - provides the sheriff with the factual information he or she will require before taking an enforcement measure, and**
  - engages the judgment creditor in the enforcement process.**
- A judgment creditor who does not deliver an enforcement instruction does not share in the distribution of the fund created by enforcement.**
- An enforcement instruction has a 2-year duration. The judgment creditor must provide a supplementary enforcement instruction which updates information relevant to enforcement if the sheriff is to treat as current a request for enforcement contained in an earlier enforcement instruction.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## EXEMPTIONS

- The Act provides a structured approach to exemptions. It has been designed to remove much of the uncertainty, unfairness and arbitrariness experienced by both judgment creditors and judgment debtors under prior law.
- A procedure is provided under which judgment debtors are notified of their exemptions rights and given an opportunity to assert those rights. However, failure to assert exemptions does not result in their loss.
- The onus of proof of an exemption right is on the claimant.
- Judgment debtors are entitled to specific item exemptions but, in some cases, subject to dollar maximum amounts:
  - Clothing and jewelery to maximum value of \$7500,
  - Household furnishing, equipment and appliances,
  - Motor vehicle with value not exceeding \$10,000),
- Exemptions cannot be asserted:
  - Enforcement of a judgment for damages for personal injury intentionally inflicted on the judgment debtor by the judgment creditor, or
  - Enforcement of a restitution order under the *Criminal Code*.

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## Exemptions (*continued*)

- Interest in a house or equivalent facility and land on which it is situated of a value not exceeding \$50,000 (but exempt in any amount so long as it is occupied),
  - Money and income from money received as compensation for physical and mental injury used for living expenses,
  - Money or an account equal to employment remuneration exemption,
  - Employment Remuneration exemption – 70% of earnings plus \$1500 and \$300 for each dependant ,
  - Income from non-employment sources equivalent to employment exemption.
- 
- Rules determining the extent of an exemption where exempt property is:
    - seized and sold or otherwise subject to a security interest;
    - damaged, destroyed or expropriated; or
    - sold by the judgment debtor.

# **THE ENFORCEMENT OF MONEY JUDGMENTS ACT**

## **SALE OF SEIZED PROPERTY**

- **The primary objective underlying this Part is to permit much more flexibility with respect to the procedures and methods of sale of the property than was permitted under prior law.**
  - The sheriff is required to dispose of the property in the manner most likely to realize the maximum proceed recoverable.**
  - Confirmation by the court of a sale of personal property or land is not required.**
- **Judgment debtor is given right to “redeem” the seized property.**
- **The sheriff is given power to transfer interests in land to buyer without court involvement.**
- **Much of the risk in buying from a sheriff is removed.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## DISTRIBUTION AMONG JUDGMENT CREDITORS AND OTHERS

- Part XII of the *Act* implements the policy of *The Creditors' Relief Act*, R.S.S. 1978, c. C-46 but does so in a much clearer, integrated and rational manner.
- The Fund that must be distributed in accordance with this Part includes:
  - money received by the sheriff from disposition of exigible property,
  - money paid to a judgment creditor by the judgment debtor or anyone else after the creditor has issued an enforcement instruction.
- The Fund is distributed on a *pro rata* bases in accordance with the following priorities:
  - fees and costs.
  - amounts obtained in interpleader proceedings paid to participating creditors
  - amount payable to each judgment creditor who gave an enforcement instruction that led directly to receipt of the fund.

judgment \$1000	\$200
judgment \$1000-\$10,000	\$500
judgment \$10,000+	\$1,000
  - judgment creditors who filed enforcement instructions.

# **THE ENFORCEMENT OF MONEY JUDGMENTS ACT**

## **MATTERS OF GENERAL APPLICATION**

**This Part addresses matter of general application including:**

- Plenary power of the court to supervise enforcement.**
- Summary procedure for determining priority rights (parallel to subsection 66(1) of the PPSA).**
- The standard of conduction required of a sheriff and receiver (good faith and commercial reasonableness).**
- Liability in damages for failure to comply with the Act.**
- Summary conviction penalty for specific offences (e.g., failure to provide discovery information or interfere with exercise of sheriff's role).**
- Extent to which the Crown is bound.**
- Crown and sheriff immunity.**