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

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

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## **SPECIFIC FEATURES**

- 1. SEIZURE OF ACCOUNTS - DEBTS OWING TO A JUDGMENT DEBTOR**
- 2. THE PRIORITY STRUCTURE: STATUS OF ENFORCEMENT CHARGES IN RELATION TO OTHER INTERESTS IN THE CHARGED REAL AND PERSONAL PROPERTY**
- 3. THE EXEMPTION SYSTEM**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## PART VII

### SEIZURE OF EXISTING AND FUTURE ACCOUNTS

- **Garnishment is no longer a feature of Saskatchewan law except in the context of The Enforcement of Maintenance Orders Act.**
- **Pre-judgment garnishment has been replaced with Preservation Orders, Part II. It is possible to get a preservation order affecting accounts.**

#### ➤ **Definitions:**

**account – a debt owing to the judgment debtor;**

**future account - a debt that will become due to the judgment debtor within a 12 month period following seizure;**

**account debtor - the person indebted to or who will become indebted to the judgment debtor.**

- **Accounts are treated as personal property subject to seizure by the sheriff. The account debtor must pay to the sheriff (not into court) the amount seized that is otherwise payable to the judgment debtor.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## PART VII

### SEIZURE OF EXISTING AND FUTURE ACCOUNTS

- **Seizure of an account is effected by service of a seizure notice on the account debtor (or judgment debtor)**
- **The sheriff has the power to authorize the judgment creditor to serve the seizure notice.**
- **Seizure affects:**
  - accounts due and payable
  - accounts due but not payable
  - accounts that become due within a 12 month period following seizure
  - amounts in bank accounts at the date of seizure (no reach forward)
  - both Crown employee remuneration and debts due for commercial goods or services.
- **“Bulk Seizure” is possible where a large number of small (business) accounts are involved.**

**This involves seizure of all accounts due to become due within a 12 months period to the judgment debtor.**

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## PART VII

### SEIZURE OF EXISTING AND FUTURE ACCOUNTS

#### Seizure of Employment Remuneration

- Seizure is effective for a 12 month period after date of seizure.
- Seizure notice is effective with respect to employment remuneration payable at the end of a pay period:
  - if served 5 days before end of two-week pay period
  - if served 10 days before end of greater than two-week pay period.

If pre-seizure notice is out of time, seizure is effective for 12 months starting the end or the next pay period.

- Employment remuneration exemptions:  
The greater of 70% of employment remuneration and \$1500 plus \$300 for each dependent.

Amount seized each pay period is calculated as follows:

**Gross employment remuneration less exemption less legally mandated deductions from gross employment remuneration.**

The court has power to increase or decrease the exemption

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## PART VII

### SEIZURE OF EXISTING AND FUTURE ACCOUNTS

- **Payments under Leases or Security Agreements**  
Seizure of a lessor's ownership or secured party's security interest automatically involved seizure of the payments of the lessee's or debtor's payments.
- **Obligations of account debtor:**
  - if account is payable at date of seizure – pay amount to the sheriff
  - if account is due but not payable – inform sheriff of date of payment and remit payment on that date
  - if account is a future account – inform sheriff of the due date and date of payment and remit payment on that date if it is within 12 months of the date of seizure.

### **Assigned Accounts**

Account debtor need not determine priority but must pay to sheriff. Priority is determined under Part IV [assignment is a deemed security interest under PPSA].

### **Set-off**

Regular rules of set-off apply

### **Discretionary Release of Seizure**

Sheriff may release seizure of lease or contract payments to allow judgment debtor to use money to maintain premises or perform a contract.

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## **PRIORITY STRUCTURE (Personal Property)**

### **Structure**

- **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 by the judgment debtor 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. The charge has the status of a non-pmsi security interest in non-inventory collateral.**
- **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 Act expressly or implicitly provides a priority rule applicable to**
  - Security interests (under the PPSA or otherwise)**
  - Commercial Liens**
  - Buyers of property**
  - Landlords exercising distress**
- **The Act precludes “priority flips” when judgment debtor becomes a bankrupt.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## PRIORITY STRUCTURE

### Features

- **Except where a pmsi is involved, generally priority is based on a first to register rule found in section 35 of the PPSA.**
- **A charge cannot be registered (and does not have priority) until a judgment has been obtained. By comparison, effecting registration with respect to a future security interest gives priority even though the secured interest attaches after a charge is registered.**
- **Description of personal property charged is general with the exception of serial numbered goods.**
- **A prior charge is subject to a subsequent perfected purchase money security interest.**
- **A charge is subject to future advances made under a prior registered security interest other than those made with knowledge of the charge.**
- **There is no priority among charges on the same property.**
- **Registrations relating to charge are subject to essentially the same rules as registrations relating to security interests with respect to forced discharge.**

# THE ENFORCEMENT OF MONEY JUDGMENTS ACT

## THE PRIORITY STRUCTURE (Land)

- The Act separates enforcement from priority – an interest in land can be seized and sold even though no charge affects it.
- The basic structural features (but not the terminology) of the prior system have been retained.
- Registration of a judgment in the judgment registry 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.
- A charge registered in the judgment registry automatically attaches to an interest in the land acquired by the judgment debtor and registered in his or her in exactly the same form as the name appears in the judgment registry.
- Priority of a charge *vis-à-vis* other interests in land are determined on the basis of date of registration of competing interests. (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

## EXEMPTIONS

### Tangible Personal and Real Property

- 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:
  - Motor vehicle with value not exceeding \$10,000 (Sheriff can seize and sell if value of the vehicle exceeds this amount and give \$10,000 to judgment debtor)
  - Household furnishing, equipment and appliances (equivalent value limitation determined by court)

# 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 as a residence),**
  - 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 – the greater of 70% of earnings plus \$1500 and \$300 for each dependant ,**
  - Other Income exemption from non-employment sources equivalent to employment exemption.**
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- **Rules applicable when exempt tangible property is damaged, destroyed or sold by the judgment debtor.**
  - **Statutory dollar limitations related to the debtor's interest in the exempt property, not the market value of the property.**