



THE
REGISTERED PLAN (RETIREMENT INCOME)
EXEMPTION ACT
FOR
BRITISH COLUMBIA

A brief prepared by the
Canadian Bar Association (British Columbia) Branch

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EXECUTIVE SUMMARY

The Canadian Bar Association nationally represents over 34,000 members and the British Columbia Branch (the “CBABC”) itself has over 6,000 members. Its members practice law in many different areas and the CBABC has established 68 different sections to provide a focus for lawyers who practice in similar areas to participate in continuing legal education, research and law reform. The CBABC also establishes special committees from time to time to deal with issues of interest to the CBABC.

By resolution passed by the CBABC at its Provincial Council meeting in September 2005, the CBABC resolved that the government of British Columbia should enact the *Registered Plan (Retirement Income) Exemption Act* for British Columbia.

Since 2003, the Legislation and Law Reform Committee of the CBABC has reviewed and monitored the law and policy across Canada governing creditor enforcement of retirement savings plans (“RRSP”s), deferred profit-sharing plans (“DPSP”s), and registered retirement income funds (“RRIF”s) (collectively the “Registered Plans”).

In its review of the law and policy surrounding creditor enforcement of Registered Plans, the CBABC has found compelling and practical reasons to enact the proposed *Registered Plan (Retirement Income) Exemption Act*. First, Canadian law encourages retirement savings and the *Registered Plan (Retirement Income) Exemption Act* promotes and protects this worthy policy goal. Second, the data on retirement savings show that Registered Plans are essential for a healthy and adequate standard of living for British Columbians in retirement. Third, the data show that Registered Plans need to be protected from creditors to maintain this healthy and adequate standard of living. Fourth, the current law inflicts an unfairness on holders of Registered Plans and simple justice requires this unfairness to end now. Fifth, self-employed British Columbians need the protection from enforcement against Registered Plans. Sixth, the *Registered Plan (Retirement Income) Exemption Act* would yield many benefits, including injecting needed certainty into the law, harmonizing British Columbia law with federal law and

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encouraging growth in the British Columbia economy. In all, the benefits by enacting a *Registered Plan (Retirement Income) Exemption Act* would make British Columbia a leader across Canada.

At present in British Columbia, there is no legislation to exempt Registered Plans from creditors' remedies. The existing law governing Registered Plans is unfair, unjust and uncertain. To make the law fair, certain and just for all holders of these Registered Plans, the *Registered Plan (Retirement Income) Exemption Act* should be enacted by British Columbia.

The *Registered Plan (Retirement Income) Exemption Act* follows the provisions used in the Uniform Law Conference of Canada *Uniform Registered Plan (Retirement Income) Exemption Act* and Saskatchewan's *The Registered Plan (Retirement Income) Exemption Act*. The *Registered Plan (Retirement Income) Exemption Act* exempts from creditor enforcement 3 tax-deferral arrangements recognized under the *Income Tax Act* (Canada): RRSPs, DPSPs and RRIFs.

The *Registered Plan (Retirement Income) Exemption Act* does not apply to maintenance orders under the *Family Maintenance Enforcement Act*. This limited exemption preserves the existing law and policy that family maintenance orders are exigible: able to be enforced by creditors.

The *Registered Plan (Retirement Income) Exemption Act* does not apply to RRSP overcontributions made beyond the amount of the unused RRSP deduction room as provided by the *Income Tax Act* (Canada) that are made 1 year before judgment date and 1 year after judgement date. This limited exemption prevents a debtor from defrauding creditors by over contributing money into RRSPs in anticipation of defeating a judgement against the debtor.

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Under the *Registered Plan (Retirement Income) Exemption Act*, individual withdrawals or payments out of Registered Plans are not exempt from creditor enforcement subject to a limited exemption. This limited exemption is that payments out of Registered Plans are deemed to be employee wages under the *Court Order Enforcement Act*. As a result, these Registered Plan payments are subject to the wage amounts exempt from garnishment by creditors as set by the *Court Order Enforcement Act*. This limited exemption ensures that the subsistence living levels provided by existing legislation are preserved for the planholder. This approach is consistent with the overall policy goal which balances the rights of the planholder to have adequate retirement funds with the rights of creditors to access the assets of the debtor.

Finally, the *Registered Plan (Retirement Income) Exemption Act* would come into force on the date of Royal Assent. The *Registered Plan (Retirement Income) Exemption Act* would not apply to existing enforcement proceedings filed by creditors against debtor's Registered Plans prior to the date of Royal Assent of the Act.

BACKGROUND

At present in British Columbia, there is no legislation to exempt registered retirement savings plans (“RRSP”s), deferred profit-sharing plans (“DPSP”s), and registered retirement income funds (“RRIF”s) from creditors’ remedies. The existing law governing RRSPs, DPSPs and RRIFs (the “Registered Plans”) is unfair, unjust and uncertain. To make the law fair, certain and just for all holders of these Registered Plans, the *Registered Plan (Retirement Income) Exemption Act* should be enacted by British Columbia.

CANADIAN BAR ASSOCIATION (BRITISH COLUMBIA) BRANCH

The CBABC has reviewed the law and policy regarding RRSPs, DPSPs and RRIFs. The CBABC has concluded that law reform to the law of British Columbia is long overdue.

Since 2003, the Legislation and Law Reform Committee of the CBABC has reviewed and monitored the law and policy across Canada governing Registered Plans. The current members of the CBABC Legislation and Law Reform Committee are:

- Paul Barclay, Chair;
- Lisa C. Fong, Executive Liaison;
- Graeme Bowbrick, Q.C.;
- John-Paul Boyd;
- Katharina Byrne;
- Gloria Chao;
- Jan Christiansen;
- Gordon Comer;
- Rosario Cateno Di Bella;
- Michael R. Dunn;
- Sonny S. Parhar; and
- Angela Thiele.

Past CBABC Legislation and Law Reform Committee members who contributed were: Tim Delaney and Frederick Hansford, Q.C. The CBABC Legislation and Law Reform Committee was assisted by Stuart Rennie, Barrister and Solicitor and Legislation and Law Reform Officer.

In December 2004, after considering the work of the CBABC Legislation and Law Reform Committee, the CBABC Provincial Council passed a resolution. The resolution called for the Legislation and Law Reform Committee to prepare a brief to the government of British Columbia recommending legislation to provide that RRSP/RRIFS and like products be exempt from seizure by creditors.

In September 2005, the Legislation and Law Reform Committee tabled its brief before the CBABC Provincial Council meeting. The CBABC considered and accepted the brief of the Legislation and Law Reform Committee. The CBABC resolved that the government of British Columbia should enact the *Registered Plan (Retirement Income) Exemption Act* for British Columbia.

INTRODUCTION

This brief outlines the reasons for British Columbia to enact the *Registered Plan (Retirement Income) Exemption Act* to exempt Registered Plans from creditors' remedies. This brief further explains how the state of current British Columbian law is unfair, unjust and uncertain regarding creditor enforcement against Registered Plans. Legislation in other Canadian jurisdictions is reviewed as are other law reform proposals respecting Registered Plans. A draft of the *Registered Plan (Retirement Income) Exemption Act* is included with explanatory notes to show why this Act should be enacted for the benefit of all British Columbians.

REASONS TO ENACT THE *REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION ACT*

There are many practical reasons to enact the *Registered Plan (Retirement Income) Exemption Act*. First, Canadian law encourages retirement savings and the *Registered Plan (Retirement Income) Exemption Act* promotes and protects this worthy policy goal. Second, the data on retirement savings show that Registered Plans are essential for a healthy and adequate standard of living for British Columbians in retirement. Third, the data show that Registered Plans need to be protected from creditors to maintain this healthy and adequate standard of living. Fourth, the current law inflicts an unfairness on holders of Registered Plans and simple justice requires this unfairness to end now. Fifth, self-employed British Columbians need the protection from enforcement against Registered Plans. Sixth, the *Registered Plan (Retirement Income) Exemption Act* would yield many benefits, including injecting needed certainty into the law, harmonizing British Columbia law with federal law and encouraging growth in the British Columbia economy. In all, the benefits by enacting the *Registered Plan (Retirement Income) Exemption Act* would make British Columbia a leader across Canada.

CANADIAN LAW ENCOURAGES RETIREMENT SAVINGS

Canadian law encourages retirement savings by providing tax exemptions and legal protection from creditors. The data are clear that saving for retirement is important to British Columbians.

Both the federal and the provincial governments across Canada have attempted to provide a social safety net with a variety of pension programs for Canadians who retire. These include: the Canada Pension Plan, Old Age Security, the Spouse's Allowance, Guaranteed Income Supplement, welfare and other programs. In British Columbia,

seniors—adults age 65 and older—receive the largest share of their income from these federal government programs, even more income than from RRSPs.¹

At the same time, all governments in Canada have encouraged Canadians to save for retirement and not to expect to rely on government to maintain a reasonable and healthy lifestyle in retirement. Governments have enacted legislation to encourage savings for retirement by deferring tax on retirement savings.

RRSPs are retirement savings plans created by the taxpayer and registered by the Canada Revenue Agency (“CRA”). RRSPs are tax deductible and tax exempt as regulated by the *Income Tax Act* (Canada).² RRIFs are plans registered by the CRA and created by taxpayers by transferring property from an RRSP, a registered pension plan or another RRIF.³ RRIFs must pay to the taxpayer a minimum amount each year after the year it is set and these payments are taxable to the annuitant. DPSPs are vehicles whereby an employer can share with its employees the profits from the business.⁴

The *Income Tax Act* (Canada) places strict limits on the use made of its tax exemptions, including:

- imposing an age limit of 69 to contribute to RRSPs;
- limiting tax deductions of RRSPs;
- limiting tax exempt transfers of Registered Plans;
- limiting tax exempt RRSP withdrawals to qualified applicants under the Home Buyers' Plan and Lifelong Learning Plan;

¹ British Columbia Ministry of Health Services, *A Profile Of Seniors In British Columbia* (Victoria: Ministry of Health Services, 2004) at 38-9 (copy available at: http://www.healthservices.gov.bc.ca/seniors/publications/profile_of_seniors.pdf).

² *Income Tax Act*, (R.S.C. 1985, c. 1 (5th Supp.)). Section 146 of the *Income Tax Act* (Canada) regulates RRSPs (unofficial copy of the Act available at: <http://laws.justice.gc.ca/en/I-3.3/index.html>).

³ Section 146.3 regulates RRIFs.

⁴ Section 147.1 regulates DPSPs.

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- requiring repayment of money to an RRSP by participants of the Home Buyers' Plan and Lifelong Learning Plan;
- taxing withdrawals from RRSPs;
- taxing excess or over contributions to RRSPs; and
- requiring RRSP holders at age 69, in order to keep tax exempt status, to transfer the RRSPs to a RRIF or annuity.⁵

These restrictions governing Registered Plans under the *Income Tax Act* (Canada) practically limit Registered Plans being used by debtors as a debt evasion tool.

THE DATA ON RETIREMENT SAVINGS: REGISTERED PLANS ARE ESSENTIAL

The data are clear that, since being first introduced in 1957, RRSPs have become an essential part of Canada's retirement system. For example, Canadians saved \$408 billion in accumulated RRSP assets as of 1999.⁶

This \$408 billion is on par to Canadians saving in registered employer pension plans. In 1999, Canadians saved \$604 billion in these employer pension plans.⁷ RRSPs have become more popular than employer pension plans, since the percentage of the labour force contributing to RRSPs increased from 32% in 1991 to 40% in 1999.⁸

⁵ Canada Revenue Agency (CRA), *RRSPs and Other Registered Plans for Retirement Guide 2005* (T4040)(available at: <http://www.cra-arc.gc.ca/E/pub/tg/t4040/t4040-05e.pdf>). See also, CRA, *Contributions to Registered Retirement Savings Plan* (IT-124R6)(available at: <http://www.cra-arc.gc.ca/E/pub/tp/it124r6/it124r6-e.html>) and *Registered Retirement Savings Plans* (IC 72-22R9) (available at: <http://www.cra-arc.gc.ca/E/pub/tp/ic72-22r9/ic72-22r9-e.html>).

⁶ Statistics Canada, *The Assets And Debts Of Canadians: Focus On Private Pension Savings* (Ottawa: Statistics Canada, December 2001) (Catalogue no. 13-596-XIE) at 7 (available at: <http://www.statcan.ca/english/freepub/13-596-XIE/13-596-XIE2001001.pdf>).

⁷ *Ibid.*

⁸ Statistics Canada "Retirement", in *Labour Force*, Chapter on "The People" in *Canada e-Book* (available at: http://142.206.72.67/02/02e/02e_009_e.htm).

Further, compared to other assets, these private pension assets in RRSPs and employer pension plans are Canadians' second most valuable asset. Canadians' most valuable asset is the family home.⁹

Over the years, the trend is that, while Canadians are saving for retirement, many Canadians have not saved enough to meet basic living needs during retirement.¹⁰ One in three Canadians have not saved enough to provide a reasonable lifestyle to meet basic health and living needs during retirement.¹¹

More recent data show that even after Canadians contribute to RRSPs for their retirement, many of them take money out before retirement and don't pay it back.¹² The main reason for taking money out of their RRSPs is not because of creditors, insolvency or bankruptcy but because of a death of a spouse.¹³

For employer pension plans, in British Columbia, there are some 900 employment pension plans registered, including public sector plans. Over 700,000 British Columbians have pension entitlements under these pension plans.¹⁴ For many public and private employees, they have relied on employer provided pension plans, although the trend

⁹ *Assets and Debts of Canadians*, *supra* note 6 at 7.

¹⁰ *Supra* at 7.

¹¹ Statistics Canada estimates that 33% of the family units with a major income recipient aged 45 to 64 may not have saved enough money to replace 2/3 of their earnings, or to generate an income in retirement that is likely to be above the level of low income cutoff, *supra* at 8.

¹² Statistics Canada data show that 40% of middle income earners made withdrawals from their RRSPs and less than 40% have paid that money back, see Statistics Canada "Using RRSPs Before Retirement", in *Perspectives on Labour and Income* (Ottawa: Statistics Canada, December 2004) (Vol. 5 No. 12) (Catalogue no. 75-001-XIE) at 21.

¹³ Statistics Canada identified 7 major life events linked to RRSP withdrawals. In decreasing order of importance they are: (1) death of a spouse, (2) separation or divorce, (3) starting a business, (4) involuntary job loss (5) birth of a child, (6) buying a home and (7) returning to school full-time, see *supra* at 20-21.

¹⁴ Financial Institutions Commission of British Columbia, "Regulation of Pension Plans" (available at: <http://www.fic.gov.bc.ca/responsibilities/pension/pensionplan.htm#regulation>).

since 1993 has been towards fewer pensionable jobs.¹⁵ This means that many British Columbians, who have saved for retirement, will need to rely on their RRSPs instead of employer pensions.

In summary, while Registered Plans, including RRSPs, are more popular than employer pension plans, Canadians have not saved enough to meet basic health and living needs during retirement. Even more than that, many British Columbians take money out their RRSPs before retirement and don't pay it back. The data show a clear trend that protection of Registered Plans from creditors is needed to ensure British Columbians have enough money saved for retirement so they won't be a drain on the government's social safety net.

NEED FOR RETIREMENT SAVINGS

There is an increasing need for retirement savings and for those retirement savings to be exempt from enforcement by creditors. The need arises because British Columbians are living longer and will need to rely on their retirement savings longer than ever before.

For example, British Columbian live longer than other Canadians. In 2001, the life expectancy in Canada for men was 68.3 years; for women higher, at 70.8 years. In British Columbia, those data are higher: men live to 68.9 years and women live to 71.2 years.¹⁶

¹⁵ Statistics Canada has found that the percentage of paid workers covered by an employer registered pension plan has declined each year since 1993 to 2002. In 1993, 44.6% of paid workers were covered by an employer registered pension plan (chart available at: <http://www40.statcan.ca/l01/cst01/labor26b.htm>), to 2002 when that percentage was down to 39.6%, see *Retirement*, *supra* note 8 (chart available at: <http://www.statcan.ca/english/Pgdb/labor26a.htm>).

¹⁶ British Columbia, Ministry of Health Services, *Healthy British Columbia: British Columbia's Report On Nationally Comparable Performance Indicators* (Victoria: Ministry of Health Services, November 2004) at 21-22 (available at: http://www.healthservices.gov.bc.ca/cpa/publications/pirc_2004.pdf).

More importantly, in British Columbia life expectancy increases with income. In 2001, the life expectancy for men and women with increased income were as follows:

Upper third of income

Men: 70.7 years

Women: 73.4 years

Middle third of income

Men: 69.0 years

Women: 70.7 years

Lower third of income

Men: 66.9 years

Women: 69.3 years¹⁷

The chart shows that women with the most income in British Columbia, live over 4 years longer than women with the least income (73.4 years minus 69.3 years). For men with the most income in British Columbia, they live nearly 4 years longer than men with the least income (70.7 years minus 66.9 years). Four years of extra life is a long time and valuable for those that can enjoy it.

Regarding seniors earning income after retirement, in British Columbia, the vast majority of seniors don't work. Only 5% of senior men and 2% of senior women are in the paid labour force, many of whom are self-employed.¹⁸ For the minority of seniors that do work, men work more full-time work than women.¹⁹ The data show that there won't be employment income during retirement to supplement lost savings from Registered Plans. What seniors have for retirement is what they have been able to save during their working years. That means, that money from Registered Plans is even more valuable to protect.

¹⁷ *Supra* at 22.

¹⁸ *Supra* at 35-36.

¹⁹ Of the 5% of men that work, 45% work full-time compared to the 2% of women that work, 9% work full-time, see *ibid*.

The data show that the trend is that British Columbians with retirement savings will live longer and healthier than those without. Making Registered Plans exempt from enforcement is needed in order to secure retirement income to ensure that citizens in British Columbia can have a chance to live and long and healthy life.

In the future, the needs for secure retirement income will even be more intense as the population in British Columbia ages. In the future, more citizens will need retirement income to live. Currently, seniors comprise over 13 percent of the population of British Columbia. That percentage will jump dramatically in the future. In 2031, seniors are estimated to make up 24 percent of the population of British Columbia.²⁰

Enacting the *Registered Plan (Retirement Income) Exemption Act* is needed now. If nothing is done, the problem will only get worse in the future.

PENSIONS NEED TO BE PROTECTED TO MAINTAIN A REASONABLE STANDARD OF LIVING

Successive governments have encouraged British Columbians to save and plan for retirement, the earlier the better. British Columbians are told to take personal responsibility for retirement so they will be independent of government support when they retire.

It is a long-standing policy that government protects wage earners who are provided pensions from credit enforcement measures. This is in recognition that it is in the broader public interest that retiring members of our community not be left destitute and that they may continue to have a reasonable and adequate lifestyle in retirement. While it is the duty of debtors to pay their creditors, those people who are self-employed should receive the same retirement protection as those wage earners who have a registered employer pension plan.

²⁰ *A Profile Of Seniors In British Columbia*, supra note 1 at 9.

UNFAIRNESS TO RRSP HOLDERS

Currently in British Columbia, registered employer pension plans, and RRSPs issued by insurance companies are generally exempt from enforcement measures by creditors. This has created an ongoing inequity in treatment between wage earners who receive retirement pensions and those who are self-employed and who obtain their retirement funds primarily through self-directed or other RRSPs or RRIFs or DPSPs that are not exempt from creditor enforcement.

SELF-EMPLOYED NEED LEGAL PROTECTION

Self-employed British Columbians need the same legal protection from creditor enforcement as other British Columbia pension holders who are protected by the law. This is because self-employed people, entrepreneurs and small businesses owners are the driving force of growth and prosperity in the British Columbia economy. For instance, in 2003, 98 per cent of all businesses in British Columbia were small businesses. British Columbia has a great number of self-employed individuals.²¹ Just under 57 per cent of all small businesses in British Columbia were operated by the self-employed with no paid employees.²²

Levelling the playing field for the self-employed in their retirement planning with that of wage earners is simple fairness. Enacting the *Registered Plan (Retirement Income) Exemption Act* would correct this unfairness and level the playing field for all.

²¹ British Columbia, Ministry of Small Business and Economic Development, *Small Business Profile 2004: A Profile Of Small Business in British Columbia* (Victoria: Ministry of Small Business and Economic Development, 2004) at 5 (available at: <http://www.cse.gov.bc.ca/reportspublications/sbp04.pdf> (“*Profile Of Small Business in British Columbia*”)).

²² *Ibid.*

Further, for British Columbia, a strong small business sector means a strong British Columbia economy. For example, self-employed businesses have grown the most in all of Canada for over a decade.²³ Over the last decade, British Columbia has had the top rate of self-employment growth in the country. In 2003, over 971,000 people were employed by small businesses; this represents 58% of all private sector jobs in British Columbia.²⁴ In 2003, almost 30% of British Columbia's Gross Domestic Product ("GDP") was attributed to small business, making it the best in Canada.²⁵ In 2003, in the growing and important high technology sector, nearly 96% of employers in high technology were small businesses.²⁶ British Columbia has the highest proportion of small business owners in Canada that are women.²⁷ Small business owners are older, within retirement age.²⁸ Protecting Registered Plans of the self-employed, entrepreneurs and small business owners from creditors, means protecting jobs, B.C.'s economic growth, B.C.'s GDP, the high technology sector, older small business owners and women business owners.

In summary, levelling the playing field with wage earner pensions is critical since the self-employed, entrepreneurs and small business owners have been responsible for most of the wealth in the economy of British Columbia. Protecting one of their most precious assets, their retirement savings, would encourage them to continue to grow the British Columbia economy. Putting into place the *Registered Plan (Retirement Income) Exemption Act*, would accomplish these twin goals of fairness and economic security for all of British Columbia.

²³ Between 1993 and 2003, self-employment in British Columbia grew at an average annual compound rate of growth of 2.8 per cent, better than Ontario (+2.3 per cent) and Alberta (+2.2 per cent); British Columbia, Ontario and Alberta were the only other provinces to exceed the national rate of 1.8 per cent see *supra* at 10.

²⁴ *Supra* at 5.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ In British Columbia, just under 36 % cent of small businesses are owned and operated by women; the Canadian average is less than 34 per cent, see *ibid.*

²⁸ In British Columbia, 57% of small business owners are between the ages of 35 and 55, see *supra* at 10.

BENEFITS TO EXEMPT RRSPS

The benefits in enacting the *Registered Plan (Retirement Income) Exemption Act* for British Columbia are real and direct. The British Columbia *Registered Plan (Retirement Income) Exemption Act* is a simple statute. There are no complex rules to interpret. There is no judicial discretion to apply. There are no forms to be filled out, nothing to file at a government registry.

The British Columbia *Registered Plan (Retirement Income) Exemption Act* works within the existing legal system. It integrates and harmonizes with the long-standing rules and policies governing Registered Plans under the *Income Tax Act* (Canada). The *Registered Plan (Retirement Income) Exemption Act* incorporates the existing checks and balances currently in use under the *Income Tax Act* (Canada), so that creditors are not unfairly prejudiced. By doing so, the British Columbia *Registered Plan (Retirement Income) Exemption Act* limits potential abuse by debtors seeking to hide assets from creditors. It injects certainty into the law by treating all RRSPs the same and thus assists British Columbians in their retirement planning.

The British Columbia *Registered Plan (Retirement Income) Exemption Act* has no costs to government. It neither requires any new government bureaucracy nor any new government services. There is no tax of any kind, so there is no tax burden on taxpayers. There is no red tape.

The British Columbia *Registered Plan (Retirement Income) Exemption Act* would encourage self-employed people, entrepreneurs and small business owners--who hold a lot of RRSPs--to invest and create businesses. This increases wealth and growth in the British Columbia economy.

In its operation, the British Columbia *Registered Plan (Retirement Income) Exemption Act* would be good for business. Providing certainty at law and security for RRSPs and other Registered Plans held by self-employed persons, entrepreneurs and

small businesses will maintain and increase British Columbia's competitiveness in every sector. The *Registered Plan (Retirement Income) Exemption Act* will encourage increased investment and jobs in British Columbia since entrepreneurs will be encouraged to develop their businesses, safe in the knowledge that one of their most precious personal assets, their RRSPs, are safe from creditors. In this regard, other jurisdictions that don't protect RRSPs from creditors will thus be at a competitive disadvantage to British Columbia.

As well, there are no business costs associated with the *Registered Plan (Retirement Income) Exemption Act*. It imposes no new taxes on business and operates within the existing legal system of civil enforcement in British Columbia.

The *Registered Plan (Retirement Income) Exemption Act* adds to the business climate in British Columbia. It imposes no tax burden, no red tape and no business costs, so it enhances the business climate. This, in turn, strengthens British Columbia's economy by attracting increased business investment and attracting the world's "best and brightest" talent to come to British Columbia to live and work.

The British Columbia *Registered Plan (Retirement Income) Exemption Act* will be an investment in the future of the economy and quality of life of British Columbia. Currently, British Columbia has a high quality of life. For instance, in 2005, in an independent survey of cities all over the world, Vancouver was ranked third best city in the world to live.²⁹ Protecting the security of RRSPs from creditors is a business incentive to maintain this high quality of life for British Columbia. Maintaining a high quality of life is a competitive advantage since it enables British Columbia to attract and

²⁹ Other comparable cities in Canada scored much lower than Vancouver. Calgary, Alberta scored 25th; Toronto, Ontario was 14th, see Mercer Human Resource Consulting, "2005 World-wide Quality of Life Survey" (March 2005) (copy available at: <http://www.mercerhr.com/pressrelease/details.jhtml/dynamic/idContent/1173105>).

retain professionals, businesspeople and skilled workers to live and work and grow the economy of British Columbia.

In summary, self-employed people, entrepreneurs and small business owners are the leading drivers of British Columbia's economy and they need stability as consumers of RRSPs to plan for their personal and business lives. In this way, the British Columbia *Registered Plan (Retirement Income) Exemption Act* creates a stable future and a stable economy. It is good for business. It is reasonable, since money in Registered Plans is used for retirement and not for other purposes like debt evasion or lifestyle choices.

CURRENT LAW IN BRITISH COLUMBIA

The current British Columbia law is inconsistent, unfair and unjust in its treatment of Registered Plan holders, including RRSP holders since some RRSP holders are exempt from enforcement by creditors, while some are not. Pension plan holders, RRSPs issued by insurance companies and death benefits are exempt from enforcement by creditors. RRSPs, deferred profit-sharing plans and registered retirement income funds are not exempt from enforcement by creditors.

Under Canadian law, at present the *Bankruptcy and Insolvency Act* (the "BIA") excludes from the property which the trustee can realize on, any property which is exempt under provincial legislation³⁰. The result is that the BIA incorporates exemptions provided by British Columbia law.

Regarding these exemptions, British Columbia law does not permit creditors to enforce their claims against pension plans. Section 63(1) of the *Pension Benefits Standards Act* stipulates that pension plans are exempt from execution, seizure or

³⁰ R.S. 1985, c. B-3. Section 67(1)(b) (unofficial copy of the Act available at: <http://laws.justice.gc.ca/en/B-3/fulltoc.html>).

attachment by creditors.³¹ Section 29(7)(c) of the Pension Benefits Standards Regulation (B.C. Reg. B.C. Reg. 433/93) under the *Pension Benefits Standards Act* exempts locked-in RRSPs issued by insurance companies from execution, seizure or attachment by creditors.³²

British Columbia law does not permit creditors to enforce their claims against RRSPs in the estate of an insured person. Section 54 of the *Insurance Act* provides that an RRSP that includes a designated beneficiary other than the insured debtor, is not part of the estate of the insured and is not subject to the claims of the creditors of the insured.³³

British Columbia law does not permit creditors to enforce their claims against money payable from RRSPs as a death benefit. Sections 49 and 51 of the *Law and Equity Act* provide that money payable from RRSPs and RRIFs, which are outside the scope of the *Insurance Act*, are, after the death of the annuitant, enforceable by the beneficiary, and “the benefit is not part of the estate of the annuitant.”³⁴

Since the *Income Tax Act* (Canada) treats all RRSPs the same--whether or not they are issued by insurance companies or not--there is no rational reason to exempt insurance companies' RRSPs and not self-directed RRSPs from enforcement. The same logic applies to employer pension plans, which are exempt from enforcement, compared to Registered Plans held by the self-employed, which are not exempt from enforcement. In addition, all of these retirement vehicles registered under the *Income Tax Act* (Canada)

³¹ R.S.B.C. 1996, c. 352. Section 63(2) provides that the exemption does not apply to voluntary pension contributions and transfer of pension entitlements under: a separation agreement, *Family Relations Act* pension division, an order for dissolution of marriage or judicial separation or an order declaring a marriage void (unofficial copy of the Act available at: http://www.qp.gov.bc.ca/statreg/stat/P/96352_01.htm).

³² Unofficial copy of the regulation available at: http://www.qp.gov.bc.ca/statreg/reg/P/433_93.htm.

³³ R.S.B.C. 1996, c. 226. Unofficial copy of the Act available at: http://www.qp.gov.bc.ca/statreg/stat/L/96226_00.htm.

³⁴ R.S.B.C. 1996, c. 253. See section 51(2)(c) (unofficial copy of the Act available at: http://www.qp.gov.bc.ca/statreg/stat/L/96253_01.htm).

are subject to the same limitations, including imposing heavy tax on withdrawals from and excess contributions to RRSPs. As a consequence, these retirement vehicles cannot practically be used by debtors to evade their obligations to their creditors. As a result, it is inconsistent, unfair and unjust to exempt, some, but not all Registered Plans, when all of these retirement vehicles operate for the same purpose: to save for retirement so seniors won't be destitute and rely on the government purse for survival.

ENFORCEMENT OPTIONS BY CREDITORS AGAINST REGISTERED PLANS

Under current law in British Columbia, creditors can use three main options to take enforcement proceedings against debtors holding assets in Registered Plans. The first option is pre-judgment garnishment or writ of execution. The second option is post-judgment remedies. The third option is equitable receivers.

In the first option, in a legal action claiming judgement for a liquidated amount, the creditor can seek a pre-judgment garnishment order from the British Columbia Supreme Court as provided for by the *Court Order Enforcement Act*.³⁵ Using this extraordinary procedure, the creditor can obtain a court order requiring the debtor, known as the garnishee, to pay into court the amount claimed in the garnishment order, for the benefit of the creditor's legal action. This court order can be obtained without the debtor being aware of the creditor's court application. Registered Plans that include a designated beneficiary under section 54 of the *Insurance Act* are not subject to attachment under the *Insurance Act*. It is in its operation that the current law is uncertain, as a British Columbia legal text outlines:

³⁵ R.S.B.C. 1996, c. 78. See Part 1 (Attachment of Debts) (unofficial copy of the Act available at: http://www.qp.gov.bc.ca/statreg/stat/C/96078_01.htm).

Although doubt exists as to whether and to what extent RRSPs can be garnisheed, they generally can be reached by writs of execution and possibly through equitable receivers (*Vancouver A & W Drive-ins Ltd. v. United Food Services Ltd.* (1981), 38 B.C.L.R. 30 (S.C.)).³⁶

Enacting the British Columbia *Registered Plan (Retirement Income) Exemption Act* will infuse certainty into the law. The British Columbia *Registered Plan (Retirement Income) Exemption Act* will clarify that Registered Plans, including RRSPs, are not subject to the appointment an equitable receiver since the assets in Registered Plans are exempt from creditor enforcement.

In the second option, a creditor, who has obtained a court judgment to execute upon the assets of the judgment debtor, may do so, choosing from a variety of legal procedures. Section 58 of the *Court Order Enforcement Act* permits a creditor to execute against RRSPs held by the judgment debtor so that the sheriff can seize and sell the debtor's RRSPs.³⁷

In the third option, in special circumstances where the available legal procedures are not present, are inconvenient or impractical, a creditor may obtain a court order appointing an equitable receiver to seize and sell debtor's assets. Section 39 of the *Law and Equity Act* provides that an injunction or an order in the nature of *mandamus* may be granted or a receiver or receiver manager appointed by court order in all cases in which it appears to the court to be just or convenient that the order should be made. Therefore, an equitable receiver may liquidate an RRSP.

³⁶ *British Columbia Creditors' Remedies An Annotated Guide* (Vancouver: Continuing Legal Education Society of BC, current to March 1, 2005) at para. 6.2. "It is well settled law in British Columbia that RRSPs may not be attached by garnishment. For self-directed RRSPs, in *Vancouver A & W Drive-ins Ltd.*, *supra*, Fulton, J. held that an RRSP was not garnishable because the relationship between the debtor and the trustee was a trust relationship and not a creditor-debtor relationship." at para. 7-22.

³⁷ The British Columbia Supreme Court has interpreted "other securities for money" in section 58 to include RRSPs, see *Bank of B.C. v. 225280 British Columbia Ltd. (No. 2)* (1985), 65 B.C.L.R. 23 (S.C.). The *Bank of B.C.* case is the leading case governing the exigibility of RRSPs in British Columbia, see *British Columbia Debtor-Creditor Law and Precedents* by Lyman R. Robinson with precedents contributed by R. C. Di Bella. (Scarborough, Ont.: Carswell, current to October 2005) at para. 5.8.110 and *British Columbia Creditors' Remedies An Annotated Guide*, *supra* note 36 at para. 7-22.

The civil law enforcement options available to creditors against Registered Plans are varied and complex in operation and realizing on money in RRSPs in British Columbia can be difficult for the creditor. The British Columbia Law Institute has reviewed the law and procedure in the civil law enforcement system in British Columbia and concluded that “the system is fragmentary, uncoordinated, and out of date.”³⁸ The British Columbia Law Institute cites with approval the assessment of the system by Prof. Dunlop, a leading scholar in the field, who argues that:

it is undeniable that the present system of creditors’ remedies law in Canada is in urgent need of reform. In most provinces, the law governing debtor–creditor relations is a patchwork of English and Canadian legislation and judge-made rules which do not fit together into a comprehensible or workable pattern. Much of the law is out of date, particularly when viewed against the backdrop of the economic and social changes which have occurred in recent years. The creditors’ remedies system is thus perceived as operating unsatisfactorily by both creditors and debtors, one result being that creditors will do everything possible to collect their debts without resort to law. The system of judicial creditors’ remedies often fails to accomplish much more than to create hardship for low-income debtors without doing much to satisfy the claims of their creditors.³⁹

Enacting the British Columbia *Registered Plan (Retirement Income) Exemption Act* will modernize the law of creditors’ remedies since this Act accounts for recent economic and social changes, especially the growth of RRSP saving by Canadians and the increasing need for retirement funds, by exempting Registered Plans from enforcement by creditors.

³⁸ *Report on the Uniform Civil Enforcement of Money Judgments Act* (Vancouver: British Columbia Law Institute, March 2005) (Report No. 37) at 9 (copy available at: http://www.bcli.org/pages/projects/UCEMJA/Unif_Civil_Enf_Money_Judgments_Act_Rep.pdf).

³⁹ *Ibid.* The British Columbia Law Institute cites Charles R.B. Dunlop, *Creditor–Debtor Law in Canada*, 2d ed. (Toronto: Carswell, 1995) at 9.

INJUSTICE OF ENFORCEMENT AGAINST RRSPS

Under the current law, the injustices of enforcement against Registered Plans are real. These injustices harm thousands of British Columbians who use RRSPs for their retirement planning.

First, the current law is unfair, unjust and uncertain. Unfair, since the RRSPs held by holders exempt from creditor enforcement are the same RRSPs as those held by holders who's RRSPs are subject to creditor enforcement. Unjust, since both Canadian and British Columbia law and policy protect retirement savings but exempt some retirement savings from enforcement but exposes other retirement savings to enforcement. Uncertain, since creditors may use the courts to attach or seize some retirement savings and not others.

Second, since retirees cannot replace pensions once seized because it takes decades to accumulate the necessary RRSPs to fund retirement, these retirees may be left destitute. These destitute retirees will likely rely on government welfare. This harms all taxpayers who have to contribute taxes to support those on welfare. Poor people rely on the health care system more than others. So there is a real risk of a greater use of the health care system by destitute seniors, this will, in turn, put further pressure on a health care system that already is under great pressure.

Third, as a matter of legal principle, the law of creditors' remedies has traditionally afforded property exemptions to debtors in order to ensure basic human survival. This long-standing legal principle should be applied to Registered Plans to guard against retirees being left destitute.

Fourth, the trend is that small businesses are the engine for the British Columbia economy. Since new businesses created by the self-employed and entrepreneurs have a high failure rate, taking Registered Plans from the self-employed and entrepreneurs will lessen creation of new businesses and harm growth and health of the British Columbia economy.

LEGISLATION IN OTHER CANADIAN JURISDICTIONS

Currently, while most Canadian jurisdictions have legislation exempting insurance RRSPs and employer pension plans from enforcement by creditors, few jurisdictions exempt other retirement vehicles, like Registered Plans. Comparable jurisdictions like Ontario and Alberta, have no legislation at all exempting Registered Plans from enforcement by creditors. While Alberta has no current legislation, the Alberta Law Reform Institute has recently released a report, recommending that Registered Plans and other future income vehicles be exempt from all prejudgment and postjudgment creditors' remedies.⁴⁰ Currently, only Prince Edward Island, and Quebec have limited exemption from enforcement for Registered Plans. Only Saskatchewan has comprehensive protection of Registered Plans from creditor enforcement.

PRINCE EDWARD ISLAND

Prince Edward Island has limited exemptions. The *Designation of Beneficiaries under Benefit Plans Act* provides that money from a plan that forms part of an estate is not subject to creditors.⁴¹ Further, this statute provides that assets from a plan to designate specified family members are exempt from execution and seizure. "Plan" is defined to include RRSPs and RRIFs as defined by the *Income Tax Act* (Canada).⁴²

QUEBEC

Like Prince Edward Island, Quebec has limited exemptions. Section 178 of the *Quebec Trust Companies and Savings Companies Act* provides that "moneys constituting fixed-term annuities are unseizable in the hands of the trust company as fixed-term annuities transacted by insurers."⁴³

⁴⁰ *Exemption Of Future Income Plans* (Edmonton: Alberta Law Reform Institute, May 2004) (Final Report No. 91) (available at: http://www.law.ualberta.ca/alri/pdfs/final_rprts/rep91.pdf).

⁴¹ R.S.P.E.I. 1988, c. D-9.

⁴² *Supra*, see sections 9 and 10. Unofficial copy of the Act available at: <http://www.canlii.org/pe/laws/sta/d-9/20050211/whole.html>.

⁴³ R.S.Q., c. S-29.01. Unofficial copy of the Act available at: <http://www.canlii.org/qc/laws/sta/s-29.01/20050211/whole.html>.

SASKATCHEWAN

Saskatchewan is the only jurisdiction in Canada to enact a statute to exempt Registered Plans from enforcement. The *Registered Plan (Retirement Income) Exemption Act* exempts all rights, property and interests of a planholder in a registered plan from any enforcement process, except for limited exceptions.⁴⁴ “Planholder”, under the Act, means Registered Plans as defined by the *Income Tax Act* (Canada). This Saskatchewan statute is based on the Uniform Law Conference of Canada model statute and will be discussed in more detail below.

⁴⁴ S.S. 2002, c. R-13.01. Unofficial copy of the Act available at: <http://www.canlii.org/sk/laws/sta/r-13.01/20050211/whole.html>.

OPTIONS, IMPLICATIONS AND RECOMMENDATIONS FROM OTHER JURISDICTIONS

Relevant law reform recommendations have been offered from jurisdictions other than British Columbia regarding exempting Registered Plans from enforcement by creditors. These recommendations come from the: Alberta Law Reform Institute, Canadian Personal Insolvency Task Force, Canadian Senate Committee Report, Canadian Bar Association (“CBA”) National Bankruptcy and Insolvency Law Section, Bill C-55, the Uniform Law Conference Of Canada National Model Statute and the British Columbia Law Institute. These recommendations vary in scope. So varies their usefulness for application to British Columbia law. These recommendations are analyzed below.

ALBERTA LAW REFORM INSTITUTE

The Alberta Law Reform Institute (the “ALRI”) has conducted a comprehensive analysis of Alberta and Canadian law and policy regarding enforcement proceedings against Registered Plans. In 2004, the ALRI released a report concluding, among other things, that Alberta law in this regard is inconsistent and unjust.⁴⁵

In that report, the ALRI found that Alberta law does not permit creditors to enforce their claims or judgments against pensions, or annuities and RRSPs issued by insurance companies. But non-insurance RRSPs can be seized by creditors under a writ of enforcement. When pensions, insurance annuities, RRSPs and RRIFs start to make payments to the holder, some exemptions apply but they depend on who sells the retirement savings plan. In Alberta, pension and insurance legislation will generally exempt obligations to pay out of a pension, RRSP or a RRIF but money obligations payable out of a non-insurance RRSP or RRIF will be fully garnishable. The ALRI has concluded that these legal distinctions are not based on principle and that they operate an

⁴⁵ ALRI *Exemption Of Future Income Plans*, *supra* note 40 at paras. 98-103 (43-44).

unfairness for those RRSP holders who do not have a government pension or insurance RRSP.

The ALRI, argues that, as a matter of principle, insurance and non-insurance RRSPs, DPSPs and RRIFs should be exempt from creditors' remedies since:

[n]o distinction should be drawn among remedies nor should the exemption be different between insurance and noninsurance products. Put simply, these assets, like pensions, are so similar and so essential to the survival of individuals that they should be completely protected from creditors.⁴⁶

The ALRI has proposed a statute for Alberta to enact in order to exempt Registered Plans and other future income products from enforcement by creditors. To date, the government of Alberta has not enacted the ALRI proposed statute.

CANADIAN PERSONAL INSOLVENCY TASK FORCE

In 2002, the Canadian Personal Insolvency Task Force (the "Task Force") released its report. This report made recommendations for reforms to the personal insolvency provisions of the Canadian *Bankruptcy and Insolvency Act* (the "BIA").⁴⁷

The Task Force recommended that RRPS, not DPSPs or RRIFs, be given limited exemptions from creditors as follows:

1. An RRSP exemption will be available to bankrupts only if they convert the RRSP, shortly following the date of bankruptcy, into a locked-in RRSP or annuity that will be accessible only after their retirement.

⁴⁶ *Supra* at para. 95 (41).

⁴⁷ Personal Insolvency Task Force, *Final Report* (Ottawa: Industry Canada, 2002) (copy available at: [http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/vwapj/pitf.pdf/\\$FILE/pitf.pdf](http://strategis.ic.gc.ca/epic/internet/inbsf-osb.nsf/vwapj/pitf.pdf/$FILE/pitf.pdf)).

2. All RRSP contributions made by the debtor within three years of the date of the initial bankruptcy event, will “clawback” to the trustee as property divisible among creditors.

3. The income or proceeds from the locked-in RRSP when it is being paid out following retirement, will be treated as income that is subject to the surplus income standards in section 68 of the BIA. Section 68 of the BIA sets out the standards for determining the portion of the total income of an individual bankrupt that exceeds that which is necessary to enable the bankrupt to maintain a reasonable standard of living. Section 68 permits the trustee to enforce the surplus income obligation against such income.⁴⁸

The Task Force has stated its rationale to provide a limited exemption is threefold. First, pensions are mandatory and used solely for retirement, while RRSPs are tax-deferred savings vehicles and are not intended exclusively, or even primarily, for retirement.⁴⁹ Second, public policy ought to support and encourage prudent retirement planning to exempt RRSP savings from creditors’ status through this prudent retirement planning prior to insolvency. At the same time, the RRSP should not be used to shelter their assets from the reach of creditors, since to provide overly generous exemptions for RRSPs would invite abuse.⁵⁰ Third, the integrity of the bankruptcy system would suffer if debtors succeeded in preserving their RRSPs through the bankruptcy process.⁵¹

⁴⁸ *Supra* at 19.

⁴⁹ *Supra* at 18.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

CANADIAN SENATE COMMITTEE REPORT

In 2003, the Canadian Senate Committee on Banking, Trade and Commerce released a report recommending reform to the BIA (the “Senate Committee Report”).⁵² Adopting the vein of reform suggested by the Task Force, the Senate Committee Report recommended that the BIA be amended to exempt RRSPs from seizure in bankruptcy, if:

1. the RRSP is a Savings Plan that is locked in;
2. contributions made to the RRSP in the one-year period prior to bankruptcy are paid to the trustee for distribution to creditors; and
3. the exempt amount is no greater than a maximum amount to be set by regulation and increased annually in accordance with increases in the cost of living as measured by the Consumer Price Index.⁵³

CBA NATIONAL BANKRUPTCY AND INSOLVENCY LAW SECTION

In February 2005, the CBA National Bankruptcy and Insolvency Law Section responded to the Canadian Senate Committee Report. The CBA National Bankruptcy and Insolvency Law Section submitted that only recent RRSP contributions--up to two years--be available to creditors upon bankruptcy.⁵⁴ The CBA National Bankruptcy and Insolvency Law Section position is not binding on the CBABC.

⁵² Canada, Report of the Standing Senate Committee on Banking, Trade and Commerce *Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act*. (Ottawa: Standing Senate Committee on Banking, Trade and Commerce, November 2003) (copy available at: <http://www.parl.gc.ca/37/2/parlbus/commbus/senate/com-e/bank-e/rep-e/bankruptcy-e.pdf>).

⁵³ *Supra* at 29.

⁵⁴ Canadian Bar Association, National Bankruptcy And Insolvency Section, *Insolvency Law Reform: Submission to Industry Canada* (Ottawa: CBA February 2005) (copy available at: <http://www.cba.org/CBA/submissions/pdf/05-10-eng.pdf>) at 51-53.

BILL C-55: PROPOSED CANADIAN RRSP EXEMPTION LEGISLATION

In June 2005, the Canadian government introduced Bill C-55.⁵⁵ Bill C-55 contains provisions similar to those recommended by the Senate Committee Report and the Task Force. Bill C-55 provides that all RRSPs and RRIFs, as defined in the *Income Tax Act* (Canada), will be exempt from seizure subject to conditions to be prescribed by regulation. These conditions include that RRSP contributions made in the last 12 months prior to bankruptcy will not be exempt from seizure, the seizure exemption only applies if the individual locks in their RRSPs and the total amount exempt will be subject to a maximum cap.⁵⁶ The policy reason submitted by the Canadian government is that these conditions are necessary to ensure fairness and to curb potential for abuse so that bankrupts cannot hide assets from creditors.⁵⁷ To date, Bill C-55 is being considered by the Canadian House of Commons and has passed Second Reading and is in Committee.

In its analysis of both the Task Force and Senate Committee Reports, the ALRI has observed that both proposals rely on the differences between future income plans--Registered Plans--and pensions. The ALRI finds these proposals unacceptable since:

[F]undamentally, however, pensions and future income plans are primarily intended to be vehicles for retirement saving. This common purpose should dictate similar exemptions from creditors' remedies.⁵⁸

⁵⁵ Parliament of Canada, "An Act to establish the *Wage Earner Protection Program Act*, to amend the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* and to make consequential amendments to other Acts" (Bill C-55) (First Reading June 3, 2005)(Second Reading October 5, 2005 and then referred to Standing Committee on Industry, Natural Resources, Science and Technology on October 5, 2005)(copy available at: http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-55/C-55_1/C-55_cover-E.html).

⁵⁶ *Supra* at section 57(1) of Bill C-55. Section 57(1) amends paragraphs 67(1)(b) and (b.1) of the BIA and adds a new paragraph 67(1)(b.3) to the BIA. Section 57(1) comes into force by future regulation (section 141 of Bill C-55).

⁵⁷ Industry Canada, *Background: Government Announces Reform of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (June 3, 2005) (copy available at: <http://ic.gc.ca/cmb/welcomeic.nsf/NewsRelByDate>, search "June 3, 2005").

⁵⁸ ALRI *Exemption Of Future Income Plans*, *supra* note 40 at para. 159 (65).

The available statistical data support the ALRI findings and negate the proposals made by the Task Force, the Senate Committee Report and Bill C-55. The data show that Canadians use pensions and future income plans for retirement savings, not for other purposes, such as evading creditors. Canadians have invested billions of dollars in both RRSPs and employer pension plans. RRSPs are more popular than employer pension plans. Even though Canadians have not saved enough for their retirement, recent data show that they take their RRSP money out before retirement and don't pay it back. The main reason for taking money out of their RRSPs is not because of creditors, insolvency or bankruptcy but because of a death of a spouse. In addition, the *Income Tax Act* (Canada) treats pensions and future income plans similarly, including the strict use of limited tax exemptions and penalties for misuse; this is reasonable and workable and serves to protect creditors, so there is no abuse that would threaten the integrity of the bankruptcy system. For these reasons, pensions and future income plans, like Registered Plans, should be treated the same and be exempt from creditors' enforcement.

UNIFORM LAW CONFERENCE OF CANADA NATIONAL MODEL STATUTE

Since 1918, the Uniform Law Conference of Canada (the "ULCC") has made recommendations for changes to legislation across Canada based on gaps or defects in existing law or on problems created by judicial interpretation of existing law. In order to have uniform and harmonious laws, the ULCC creates model statutes for enactment by governments across Canada.

In 1999, the ULCC adopted the uniform *Registered Plan (Retirement Income) Exemption Act*.⁵⁹ This Act provides for the implementation of an exemption from enforcement measures by creditors for certain retirement income plans. To date, Saskatchewan is the only jurisdiction in Canada to enact this model statute. If British

⁵⁹ Copy available at: <http://www.ulcc.ca/en/us/>.

Columbia adopts the *Registered Plan (Retirement Income) Exemption Act*, British Columbia could become a leader in Canada in law reform in this area.

BRITISH COLUMBIA LAW INSTITUTE

In 2005, the British Columbia Law Institute released a detailed report analyzing the problems in the civil enforcement system in British Columbia.⁶⁰ The British Columbia Law Institute proposed fundamental reform for the civil enforcement system in British Columbia by offering the *Uniform Civil Enforcement of Money Judgments Act*. The *Uniform Civil Enforcement of Money Judgments Act* is a model statute adopted for use across Canada by the ULCC. The British Columbia Law Institute submits that the *Uniform Civil Enforcement of Money Judgments Act* will “realign British Columbia’s civil enforcement system on a foundation that is coherent, streamlined, and unified.”⁶¹

Specifically, Part 12 of the *Uniform Civil Enforcement of Money Judgments Act* gives effect to the ULCC Model *Uniform Registered Plan (Retirement Income) Exemption Act*. This model statute provides that registered retirement savings plans, deferred profit sharing plans, and registered retirement income funds are exempt from enforcement proceedings. If British Columbia adopts the *Registered Plan (Retirement Income) Exemption Act*, this Act would neatly, and seamlessly integrate with the British Columbia Law Institute’s proposed *Uniform Civil Enforcement of Money Judgments Act*, should, in the future, the British Columbia Law Institute’s proposed *Uniform Civil Enforcement of Money Judgments Act* becomes law.

⁶⁰*Uniform Civil Enforcement of Money Judgments Act* note 38.

⁶¹ *Supra*, “Introductory Note”.

EXEMPTION LEGISLATION IN FORCE: SASKATCHEWAN

Currently, Saskatchewan is the only jurisdiction in Canada with legislation to exempt Registered Plans from enforcement by creditors. Since March 4, 2003, the *Registered Plan (Retirement Income) Exemption Act*, has been in force in Saskatchewan. This Act provides an exemption from enforcement measures by creditors for the following registered retirement income plans: Registered Retirement Savings Plans, Registered Retirement Income Funds and Deferred Profit Sharing Plans.

In passing the *Registered Plan (Retirement Income) Exemption Act*, Saskatchewan corrected the inequity in Saskatchewan law whereby wage earners who received pensions for retirement, that were exempt from enforcement by creditors, were given preferential treatment over self-employed persons, whose retirement planning occurs primarily through the use of RRSPs, and who were not exempt from creditor enforcement.

Saskatchewan based its statute on the ULCC Model *Uniform Registered Plan (Retirement Income) Exemption Act*. Saskatchewan added features to the model statute in order to permit creditors to enforce against specific assets held by debtors. In doing so, Saskatchewan narrowed the exemption. The Saskatchewan legislation does not apply to family enforcement orders or wages or salary. That means that Registered Plans are still subject to enforcement under family maintenance orders for children and spouses. That also means that payments out of Registered Plans are deemed to be debts due regarding a person's wages or salary and subject to attachment by creditors. Further, Saskatchewan added a clarification to the model statute, to provide that a transfer of property held in one registered plan to another registered plan does not constitute a fraudulent or preferential transfer under the *Fraudulent Preferences Act*. The *Fraudulent Preferences Act* provides that specified transfers to defeat creditors are void and the assets contained in these transfer are subject to enforcement by creditors.⁶²

⁶² *Fraudulent Preferences Act*, R.S.S. 1978, c. F-21 (an unofficial copy of the Act is available at: <http://www.canlii.org/sk/laws/sta/f-21/20050211/whole.html>).

CBABC Brief to Enact the British Columbia Registered Plan (Retirement Income) Exemption Act

In 2004, Saskatchewan further extended exemptions from enforcement by creditors for RRSPs by enacting the *Pension Benefit Amendment Act, 2004* (Bill 47).⁶³ Bill 47 amends the *Pension Benefits Act* to provide that additional voluntary contributions to retirement plans that are registered pursuant to the *Income Tax Act* (Canada) are exempt from execution, seizure or attachment by creditors. By operation of the *Registered Plan (Retirement Income) Exemption Act*, these additional voluntary contributions for RRSPs, RRIFs and DPSPs are further exempt from creditor enforcement. Bill 47 came into force on June 1, 2005.⁶⁴

British Columbia's legal regime mirrors that of Saskatchewan regarding exemption of Registered Plans from creditor enforcement before Saskatchewan enacted the *Registered Plan (Retirement Income) Exemption Act*. The family law and debt legislation in Saskatchewan contains similar wording to that legislation in British Columbia.

The wording in the Saskatchewan *Enforcement of Maintenance Orders Act, 1997*, cited in Saskatchewan's *Registered Plan (Retirement Income) Exemption Act*, is similar to that of the corresponding parts of the *Family Maintenance Enforcement Act* of British Columbia.⁶⁵ Similarly, the wording of the *Attachment of Debts Act* cited in Saskatchewan's *Registered Plan (Retirement Income) Exemption Act* is similar to that of

⁶³ An unofficial copy of the Act is available at: <http://www.legassembly.sk.ca/bills/PDFs/bill-47.pdf>. Section 12 of Bill 47 amends section 63 of the *Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001 (unofficial copy of the *Pension Benefits Act, 1992* available at: <http://www.canlii.org/sk/laws/sta/p-6.001/20050211/whole.html> (version available as of February 11, 2005).

⁶⁴ Saskatchewan, Financial Services Commission Pensions Division, "Update Concerning The Pension Benefits Amendment Act, 2004" (2005) (copy available at: <http://www.sfsc.gov.sk.ca/pensions/docs/UpdatePBAA2004.pdf>).

⁶⁵ See use of similar wording of "maintenance" in section 1 of the Saskatchewan *Enforcement of Maintenance Orders Act, 1997*, S.S. 1997, c. F-6.2 (unofficial copy of the Act available at: <http://www.canlii.org/sk/laws/sta/f-6.2/20050211/whole.html>) compared to "maintenance" and "maintenance order" as defined in section 1 of the British Columbia *Family Maintenance Enforcement Act*, R.S.B.C. 1996, c. 127 ((unofficial copy available at: http://www.qp.gov.bc.ca/statreg/stat/F/96127_01.htm).

the *Court Order Enforcement Act* of British Columbia.⁶⁶ Finally, the wording of the *Fraudulent Preferences Act*, cited in Saskatchewan's *Registered Plan (Retirement Income) Exemption Act*, is similar to that of the *Fraudulent Preference Act* of British Columbia.⁶⁷

⁶⁶ See use of similar wording of in section 22 of the Saskatchewan *Attachment of Debts Act*, R.S.S. 1978, c. A-32 (unofficial copy of the Act available at: <http://www.canlii.org/sk/laws/sta/a-32/index.html>) compared to section 3 of the British Columbia *Court Order Enforcement Act*.

⁶⁷ See use of similar wording in the Saskatchewan *Fraudulent Preferences Act* (unofficial copy of the Act available at: <http://www.canlii.org/sk/laws/sta/f-21/index.html>) compared to that of the British Columbia *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164 (unofficial copy of the Act available at: http://www.qp.gov.bc.ca/statreg/stat/F/96164_01.htm).

CONCLUSION AND RECOMMENDATION: ENACT THE BRITISH COLUMBIA REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION ACT

In order to correct the current injustice in British Columbia law and, as a result of these similarities with Saskatchewan in both policy and legislation, British Columbia should enact the *Registered Plan (Retirement Income) Exemption Act* (the “Act”). The Act is based on the ULCC and Saskatchewan statutes. Explanatory notes are provided for each section noted below.

***THE REGISTERED PLAN (RETIREMENT INCOME)
EXEMPTION ACT***

Contents

Section

- 1 Short title
- 2 Interpretation
- 3 Exemption from enforcement processes
- 4 Payments out of registered plans
- 5 Enforcement against payments out
- 6 Coming into force

Short title

- 1. This Act may be cited as *The Registered Plan (Retirement Income) Exemption Act*.**

EXPLANATION:

Unless otherwise provided in the explanation to this Act, this Act follows the provisions used in the Uniform Law Conference of Canada *Uniform Registered Plan (Retirement Income) Exemption Act* (the “ULCC Uniform Act”) and Saskatchewan’s *The Registered Plan (Retirement Income) Exemption Act* (the “Saskatchewan Act”).

British Columbia legislation does not use short titles, so when enacted, section 1 of the Act will not be required.

Interpretation

2. In this Act:

“DPSP” means a deferred profit sharing plan as defined in section 147 of the federal Act;

“enforcement process” means attachment, garnishment, execution, seizure or other legal process for the enforcement of a debt;

“federal Act” means the *Income Tax Act* (Canada);

“planholder” means:

(a) with respect to a DPSP, a beneficiary within the meaning of section 147 of the federal Act;

(b) with respect to an RRIF, an annuitant as defined in section 146.3 of the federal Act; and

(c) with respect to an RRSP, an annuitant as defined in section 146 of the federal Act;

“registered plan” means a DPSP, an RRIF or an RRSP;

“RRIF” means a registered retirement income fund as defined in section 146.3 of the federal Act;

“RRSP” means a registered retirement savings plan as defined in section 146 of the federal Act.

EXPLANATION:

Section 2 provides the definitions for the Act. These definitions are the same ones used in the ULCC Uniform Act and the Saskatchewan Act.

Enforcement Process

The Act employs a defined term “enforcement process”. “Enforcement process” means attachment, garnishment, execution, seizure or other legal process for the enforcement of a debt. Currently in British Columbia, no statute or regulation employs the defined term “enforcement process”.

Income Tax Act (Canada)

The definition “federal Act” means the *Income Tax Act (Canada)*. The *Income Tax Act (Canada)* is used to link the relevant definitions of the Act to the *Income Tax Act (Canada)* to ensure uniformity. Following the ULCC Uniform Act, the words “as amended from time to time” are not needed to be added to the definition of “federal Act” because of the operation of section 32 of the British Columbia *Interpretation Act*.⁶⁸

Section 32 of the *Interpretation Act* provides that references to provincial or Canadian legislation include amendments.

Section 32 of the *Interpretation Act* reads:

Citation includes amendments

32 In an enactment a reference to another enactment of the Province or of Canada is a reference to the other enactment as amended, whether amended before or after the commencement of the enactment in which the reference occurs.

Registered Plans

The Act limits “registered plan” to only 3 tax-deferral arrangements recognized under the *Income Tax Act (Canada)*. These 3 tax-deferral arrangements are:

- deferred profit sharing plans, “DPSP”s;
- registered retirement income funds , “RRIF”s; and
- registered retirement savings plan “RRSP”s.

⁶⁸ R.S.B.C. 1996, c. 238.

CBABC Brief to Enact the British Columbia Registered Plan (Retirement Income) Exemption Act

Other tax-deferral plans not included under the Act include those plans that permit RRSP holders to withdraw funds from their RRSPs tax free: the Home Buyers' Plan for first-time home buyers and the Lifelong Learning Plan for finance training or education. Other tax-deferral arrangement not included under the Act include: Registered Education Saving Plans, locked-in retirement accounts, life income funds and locked-in retirement income funds. The intent of the Act is to limit the exemption from enforcement by creditors to these three specified retirement plans: DPSPs, RRIFs, and RRSPs.

Exemption from enforcement processes

3(1) Subject to subsection (3) or (4) but notwithstanding any other Act or law, all rights, property and interests of a planholder in a registered plan are exempt from any enforcement process.

(2) Subsection (1) applies notwithstanding any provision in any other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Subsection (1) does not apply with respect to the enforcement of a maintenance order as defined in the *Family Maintenance Enforcement Act*.

(4) Subsection (1) does not apply with respect to RRSP overcontributions made beyond the amount of the unused RRSP deduction room as provided by the *Income Tax Act (Canada)* that are made 1 year before judgment date and 1 year after judgement date.

EXPLANATION:

Section 3(1) sets out the main law and policy of the Act that the “planholder”’s “registered plan” is exempt from any legal process subject to the specific exemption in section 3(3) or (4).

Section 3(2) is added to ensure clarity of interpretation with other statutes and regulations. Section 3(2) provides that section 3(1) applies notwithstanding other Acts or regulations.

Section 3(3) does not apply to maintenance orders under the *Family Maintenance Enforcement Act*. This limited exemption preserves the existing law and policy that family maintenance orders are exigible: able to be enforced by creditors.

The use of the phrase “maintenance order” in the Act, parallels the language used in section 1 of the *Family Maintenance Enforcement Act*, where “maintenance order” is a defined term.

Section 1(1) definition of "maintenance order" under the *Family Maintenance Enforcement Act* reads:

Definitions and interpretation

1 (1) In this Act:

...

"maintenance order" means a provision for the payment of maintenance in an order or judgment that is enforceable in British Columbia and includes

- (a) an interim order made under Part 8 of the *Family Relations Act*,
- (b) an order made under section 21,

(c) an agreement deemed to be a maintenance order under subsection (2),
and

(d) an order that is a support order under the *Interjurisdictional Support Orders Act*,

but does not include a provisional order or a provisional variation order, as defined in section 1 (1) of the *Interjurisdictional Support Orders Act*;

A scenario shows how section 3(3) of the Act would apply in a given factual situation.

SCENARIO A: Family Maintenance Orders

A Debtor has RRSP and DPSP investments of \$1 million, accumulated over many years of savings. The Debtor is married with minor children. The Debtor's marriage ends and the parties live separate and apart. Prior to the divorce, the Debtor's spouse obtains a court order for the custody, access and support of the Debtor's children. Section 3(3) of the Act provides that the Act does not apply to maintenance orders under the *Family Maintenance Enforcement Act*. As a result, the Debtor's \$1 million of RRSP and DPSP investments are subject to enforcement by the Debtor's spouse to satisfy the child support order.

Section 3(4) does not apply with respect to RRSP overcontributions made beyond the amount of the unused RRSP deduction room as provided by the *Income Tax Act* (Canada) that are made 1 year before judgment date and 1 year after judgement date. Section 3(4) is not found in either the ULCC Uniform Act or the Saskatchewan Act. The intent of section 3(4) is to prevent a debtor from defrauding creditors by over contributing money into RRSPs in anticipation of defeating a judgement against the debtor.

A scenario shows how section 3(4) of the Act would apply in a given factual situation.

SCENARIO B: RRSP Overcontributions

A Debtor has \$100,000 in assets. The Debtor is sued by a creditor in 2003. The Debtor seeks to evade the creditor and the Debtor liquidates the \$100,000 in assets. In 2004, the Debtor then makes a \$100,000 overcontribution to the Debtor's RRSP above what is permitted as unused RRSP deduction room under the *Income Tax Act* (Canada). Penalties under *Income Tax Act* (Canada) for this overcontribution apply. The Creditor pays these penalties. In 2005, the creditor obtains a judgement against the Debtor. Section 3(4) provides that the Act does not apply to RRSP overcontributions made beyond the amount of the unused RRSP deduction room as provided by the *Income Tax Act* (Canada) that are made 1 year before judgment date and 1 year after judgment date. As a result, the Debtor's \$100,000 RRSP overcontribution is subject to enforcement by the creditor.

Payments out of registered plans

4(1) Subject to section 5 but notwithstanding any other Act or law, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process.

(2) For the purposes of subsection (1), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.

(3) A transfer of property held in one registered plan to another registered plan does not constitute a fraudulent or preferential transfer under the *Fraudulent Preference Act*.

EXPLANATION:

Sections 4(1) to (3) are similar to the wording in the Saskatchewan Act.

Section 4(1) establishes that individual withdrawals or payments out of a registered plan are not exempt subject to the provisions in section 5.

Section 4(2) clarifies that a transfer from one registered plan to another does not constitute a payment out of the registered plan. Payments out of registered plans are not exempt from enforcement and, as such, would trigger enforcement proceedings against these payments.

Section 4(3) clarifies that a transfer of property held in one registered plan to another registered plan does not constitute a fraudulent or preferential transfer under the *Fraudulent Preference Act*.

Enforcement against payments out

5. For the purposes of enforcing a creditor's rights against payments out of a registered plan to a debtor planholder:

(a) the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person's wages or salary within the meaning of the *Court Order Enforcement Act*; and

(b) the exemptions set out in section 3 of the *Court Order Enforcement Act* apply, with any necessary modification.

EXPLANATION:

Section 5 ties into civil law enforcement processes currently in force regarding wages or salary under the *Court Order Enforcement Act*. For the purposes of the discussion below, reference to “wages” refers to “wages and “salary”, as the case may be.

Section 5(a) deems a payment out of a registered plan to be subject to garnishment proceedings under the *Court Order Enforcement Act*.

Section 5(a) of the Act uses the words “debt due”. Section 3(1) of the *Court Order Enforcement Act* contains a defined term “debt due”. This use of “debt due” in the Act links to this defined term in the *Court Order Enforcement Act*. As a result, this approach ensures clarity and consistency between the Act and the *Court Order Enforcement Act*.

Section 5(b) provides that the limits to garnishment proceedings under section 3 of the *Court Order Enforcement Act* apply to the Act.

Section 3 of the *Court Order Enforcement Act* sets out the rules for exemptions for wages due from employers and wages subject to family law enforcement processes.

Section 3(5) of the *Court Order Enforcement Act* provides that 70% of any wages due by an employer to an employee is exempt from seizure or attachment under a garnishing order issued by court but that the amount of the exemption allowed must not be less than:

- in the case of a person without dependants, \$100 per month, or proportionately for a shorter period, and
- in the case of a person with one or more dependants, \$200 per month, or proportionately for a shorter period.

A scenario shows how section 5 of the Act would apply in a given factual situation.

SCENARIO C: Payments out of Registered Plans

A Debtor has retired. The Debtor has a \$2,000 monthly payment from the Debtor's RRSP. The Debtor has no dependants. The Debtor is not subject to a family law support agreement or court order. Under section 4(1) of the Act, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process, subject to section 5. Under section 5 of the Act, the Debtor's monthly RRSP payment is deemed to be an employee wage within the meaning of the *Court Order Enforcement Act*. Under section 3(5) of the *Court Order Enforcement Act*, 70% of any employee wages is exempt from seizure or attachment under a garnishing order issued by a court. So, 70% of the \$2,000 or \$1,400 of the Debtor's monthly payment from the RRSP is exempt from creditor enforcement. That means that \$600 of the Debtor's RRSP payment each month is available for creditor enforcement.

Section 3(7) of the *Court Order Enforcement Act* requires that despite any other provision of this Part (Attachment of Debts), if the wages of a person are seized or attached under a specified family law enforcement process, the exemptions are more limited than provided for wages due from an employer.

Section 3(7) of the *Court Order Enforcement Act* defines these family law enforcement processes to be:

- a court order for alimony or maintenance,
- a duly executed separation agreement, or
- an order under section 18 (2) of the *Family Maintenance Enforcement Act*.

Section 3(7) of the *Court Order Enforcement Act* provides that, for these family law enforcement processes, the exemption allowed to that person is:

- 50% of any wages due if the wages due do not exceed \$600 per month, and
- 33 1/3% for wages in excess of \$600 per month but the amount of the exemption allowed under this subsection must not be less than \$100 per month, or proportionately for a shorter period.

A scenario shows how section 5 of the Act regarding a family law enforcement process situation would apply.

SCENARIO D: Payments out of Registered Plans and Family Law Enforcement

A Debtor has retired. The Debtor has a monthly payment from the Debtor's RRIF of \$2,000. The Debtor is required to pay child and spousal support under a court order. Under section 4(1) of the Act, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process, subject to section 5. Under section 5 of the Act, the Debtor's monthly RRIF payment is deemed to be an employee wage within the meaning of the *Court Order Enforcement Act*. Under section 3(7) of the *Court Order Enforcement Act*, for family law enforcement processes, 33 1/3% of any employee wages (for wages in excess of \$600 per month) is exempt from seizure or attachment under a garnishing order issued by a court. So, 33 1/3% of the \$2,000 or \$666 of the Debtor's monthly payment from the RRIF is exempt from creditor enforcement. That means that \$1,334 of the Debtor's RRIF payment each month is available for creditor enforcement.

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Section 4 of the *Court Order Enforcement Act* permits a creditor (who has used section 3) or a debtor (affected by enforcement proceedings) to apply to the court for an increase or reduction, as the case may be, of the amount of exemption allowed under section 3.

Section 3 and 4 of the *Court Order Enforcement Act* are attached as an appendix to the Act.

While section 4 of the Act provides that payments out of registered plans are individually exigible and section 5(a) permits these payments to be accessed by garnishment proceedings, section 5(b) ensures that the subsistence living levels provided by existing legislation are preserved for the planholder. This approach is consistent with the overall policy goal which balances the rights of the planholder to have adequate retirement funds with the rights of creditors to access the assets of the debtor.

Coming into force

6. This Act comes into force on the date of Royal Assent.

EXPLANATION:

Section 6 provides that the Act comes into force on the date of Royal Assent. The Act would not apply to existing enforcement proceedings filed by creditors against debtor's DPSPs, RRIFs, and RRSPs prior to the date of Royal Assent of the Act.

**APPENDIX TO THE PROPOSED BRITISH COLUMBIA
REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION ACT**

COURT ORDER ENFORCEMENT ACT, R.S.B.C. 1996, C. 78

SELECTED EXTRACT

SECTIONS 3 AND 4

...

Attachment procedures and exemptions

3 (1) In this section:

"debt due" and "debts due" include debts, obligations and liabilities owing, payable or accruing due and wages that would in the ordinary course of employment become owing, payable or due within 7 days after the date on which an affidavit has been sworn under subsection (2) or subsection (3);

"debts, obligations and liabilities", subject to this Act, does not include an obligation or liability not arising out of trust or contract, unless judgment has been recovered on it against the garnishee but does include, without limitation, all claims and demands of the defendant, judgment debtor, or person liable under the order for payment of money against the garnishee arising out of trusts or contract if the claims and demands could be made available under equitable execution.

(2) A judge or a registrar may, on an application made without notice to any person by

(a) a plaintiff in an action, or

(b) a judgment creditor or person entitled to enforce a judgment or order for the payment of money,

on affidavit by himself or herself or his or her solicitor or some other person aware of the facts, stating,

(c) if a judgment has been recovered or an order made,

(i) that it has been recovered or made, and

(ii) the amount unsatisfied, or

(d) if a judgment has not been recovered,

(i) that an action is pending,

(ii) the time of its commencement,

(iii) the nature of the cause of action,

(iv) the actual amount of the debt, claim or demand, and

(v) that it is justly due and owing, after making all just discounts,

and stating in either case

(e) that any other person, hereafter called the garnishee, is indebted or liable to the defendant, judgment debtor or person liable to satisfy the judgment or order, and is in the jurisdiction of the court, and

(f) with reasonable certainty, the place of residence of the garnishee,

order that all debts due from the garnishee to the defendant, judgment debtor or person liable to satisfy the judgment or order, as the case may be, is attached to the extent necessary to answer the judgment recovered or to be recovered, or the order made, as the case may be.

(3) A similar order for the attachment of debts due from a garnishee to a defendant may be made by a judge or registrar on application by or on behalf of a plaintiff who has

(a) filed an affidavit in or to the effect of Form A in Schedule 1, and

(b) issued a writ or a summons, as the case may be, for the amount of his or her claim against the defendant.

(4) An order must not be made under this Part for the attachment of a debt due to an employee for the employee's salary or wages before a judgment or order for the payment of money has been obtained against the employee in the proceeding.

(5) Except as otherwise provided in this Part, 70% of any wages due by an employer to an employee is exempt from seizure or attachment under a

garnishing order issued by a judge or registrar, but the amount of the exemption allowed under this subsection must not be less than

(a) in the case of a person without dependants, \$100 per month, or proportionately for a shorter period, and

(b) in the case of a person with one or more dependants, \$200 per month, or proportionately for a shorter period.

(6) Subsection (5) (a) does not apply if the debt is contracted for board or lodging and subsection (5) (b) does not apply if

(a) the debt is contracted for board or lodging, and

(b) in the opinion of the judge or registrar, the exemption set out in subsection (5) (b) is not necessary for the support and maintenance of the debtor's dependants.

(7) Despite any other provision of this Part, if the wages of a person are seized or attached under

(a) a court order for alimony or maintenance,

(b) a duly executed separation agreement, or

(c) an order under section 18 (2) of the *Family Maintenance Enforcement Act*,

the exemption allowed to that person is 50% of any wages due if the wages due do not exceed \$600 per month and 33 1/3% for wages in excess of \$600 per month but the amount of the exemption allowed under this subsection must not be less than \$100 per month, or proportionately for a shorter period.

(8) The definition of "debts, obligations and liabilities" in subsection (1) applies to the use of that expression or the use of any of the words composing it in an order made under this section.

Variation of exemptions

4 (1) A creditor who has proceeded by way of seizure or attachment of wages of a person under section 3, or under any other Act, or a debtor affected by the proceedings, may apply in writing verified under oath to the registrar or, if the proceedings are in the Provincial Court, to a judge of that court, for an increase or reduction, as the case may be, of the amount of exemption allowed under section 3.

(2) The registrar or the judge must, within 3 days after receiving the application under subsection (1), notify the persons affected by the application of the date on which he or she will consider the matter, and the date must not be later than 7 days after the receipt of the application.

(3) On the date set by the registrar or judge, he or she must hear the matter and, after considering all the evidence before him or her and having regard to the circumstances relating to the matter, may make an order

- (a) confirming,
- (b) increasing, or
- (c) reducing,

the exemption allowed under this Part.

(4) An order must not be made by a registrar or a judge under this section if the order

- (a) has the effect of increasing the exemption allowed under section 3 to more than 90% of the wages due, or
- (b) reduces the wages of an employee,
 - (i) in the case of a person without dependants or in the case of an order under section 3 (7), to an amount less than \$100 per month, or proportionately for a shorter period, and
 - (ii) in the case of a person with one or more dependants, to an amount less than \$200 per month, or proportionately for a shorter period.

(5) A person affected by an order made under subsection (3) may, not later than 14 days from the date of the order, by notice of appeal filed with the appropriate court, appeal the order

- (a) in the case of an order of the registrar, to that court, and
- (b) in the case of an order of the Provincial Court, to the Supreme Court.

(6) The notice of appeal referred to in subsection (5) must be served by the appellant at least 3 days before the date set for hearing the appeal.

(7) The judge hearing the appeal may confirm or, subject to subsection (4), vary the order appealed from.

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A variety of sources were consulted in the preparation of this brief.

These sources are:

- reports, texts and statistics; and
- legislation from British Columbia, Canada and other selected jurisdictions.

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APPENDICES

Appendix A: Uniform Law Conference Of Canada Model *Registered Plan (Retirement Income) Exemption Act*

Appendix B: Saskatchewan *Registered Plan (Retirement Income) Exemption Act*

END

**APPENDIX A:
Uniform Law Conference Of Canada
Model *Registered Plan (Retirement Income) Exemption Act***

Act reproduced from the Uniform Law Conference of Canada Website (available at: <http://www.ulcc.ca/en/us/>) (last accessed November 15, 2005)

**Uniform Law
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Proceedings of Annual Meetings - 1999 Winnipeg, MB

**THE UNIFORM REGISTERED PLAN (RETIREMENT INCOME) EXEMPTION
ACT**

(1999 Proceedings at page 44)

Short title

1. This Act may be cited as *The Uniform Registered Plan (Retirement Income) Exemption Act*.

Interpretation

2. In this Act:

“DPSP” means a deferred profit sharing plan as defined in section 147 of the federal Act;

“enforcement process” means attachment, garnishment, execution, seizure or other legal process for the enforcement of a debt;

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“federal Act” means the *Income Tax Act* (Canada);

“planholder” means:

- (a) with respect to a DPSP, a beneficiary within the meaning of section 147 of the federal Act;
- (b) with respect to an RRIF, an annuitant as defined in section 146.3 of the federal Act; and
- (c) with respect to an RRSP, an annuitant as defined in section 146 of the federal Act;

“registered plan” means a DPSP, an RRIF or an RRSP.

“RRIF” means a registered retirement income fund as defined in section 146.3 of the federal Act;

“RRSP” means a registered retirement savings plan as defined in section 146 of the federal Act.

Comment: Section 2 contains the definitions for the Act. The *Income Tax Act* (Canada) is used as the key for the various definitions to ensure ongoing consistency with that legislation. Some jurisdictions may need to add “as amended from time to time” to the definition “federal Act” if this is not covered by their *Interpretation Act*.

Exemption from enforcement processes

- 3. Notwithstanding any other Act or regulation, all rights, property and interest of a planholder in a registered plan are exempt from any enforcement process.**

Comment: Section 3 provides the central legal statement of this Act setting out that the contents of a “planholder’s” “registered plan” are exempt from any legal process. This wording is absolute in its scope and subject only to the express exceptions set out within the Act itself. To the extent that individual jurisdictions wish to create further exceptions to this exemption, such as allowing exigibility to enforce maintenance orders, such exceptions would need to be added to this draft.

Payments out of registered plans

4. (1) **Subject to section 5 but notwithstanding any other Act or regulation, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process.**

- (2) **For the purposes of subsection (1), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.**

Comment: Subsection 4(1) sets out that while the contents of the registered plan are exempt, individual withdrawals or payments out of such a plan are not exempt subject to the provisions in section 5. Subsection 4(2) is intended to clarify that a simple transfer from one registered plan to another does not constitute a “payment out” which would expose such transferred funds to enforcement proceedings. It should be noted that the extension of protection in subsection (2) is limited only to other “registered plans” and does not include other tax deferral instruments such as education or home purchase plans. This is intended to reflect the overall policy direction that this exemption from exigibility be targeted solely for retirement funds and not for other tax deferral or lifestyle choices.

Enforcement against payments out

5. **For the purposes of enforcing a creditor’s rights against payments out of a registered plan to a debtor planholder:**
 - (a) **the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person’s wages or salary within the meaning of *[insert name of relevant statute]*; and**

 - (b) **the exemptions set out in *[insert section number(s) of that Act]* apply, with any necessary modification.**

Comment: Section 5 is intended to provide a link to existing enforcement procedures in the implementing jurisdiction. Clause (a) deems a payment out of a registered plan to be subject to

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garnishment proceedings under the appropriate provincial legislation (in Saskatchewan for example, the appropriate reference is to *The Attachment of Debts Act*). Clause (b) creates limits on such proceedings by expressly providing that the provincial limits on the amount which can be garnisheed in a given situation should also apply in this situation (For example, see section 22 of *The Attachment of Debts Act*). Thus while section 4 provides that these payments are individually exigible, and clause 5(a) allows the payments to be accessed by garnishment proceedings, clause 5(b) is intended to ensure that subsistence levels are maintained for the planholder and that only the amount in excess of such provincial limits are exigible. This is viewed as consistent with the overall policy goal of ensuring adequate retirement funds for a plan holder but not protecting funds from legitimate creditors with respect to the portion of those funds that are in excess of this policy goal.

Coming into force

6. This Act comes into force on proclamation.

Comment: Section 6 provides that the Act comes into force on proclamation. It could also provide for [or on a specified future date]. The preference would of course be to have a uniform proclamation date across Canada in order to best reflect a new national approach to this issue. Consultations reflect that a period of approximately one year prior between passage of the Bill and proclamation would be sufficient time to allow affected parties to adjust to the proposed new regime.

Section 22 of that Act provides as follows:

ATTACHMENT OF WAGES OR SALARY

Exemption from attachment

22. (1) **Subject to the other provisions of this section, no debt due or accruing due to an employee, for or in respect of wages or salary, is liable to attachment unless the debt exceeds the sum mentioned in subsection (2), and then only to the extent of the excess.**
- (2) **The amount of an employee's wages or salary exempt from attachment in any month is \$500 plus \$100 for each of his dependants that he supports.**

- (3) (3) For the purpose of subsection (2), “dependant” means:
- (a) (a) a wife, husband, brother, sister, parent or grandparent; or
 - (b) a person under the age of sixteen years; or
 - (c) a person being sixteen years of age or more who:
 - (i) is in regular attendance at a school; or
 - (ii) by reason of mental or physical disability is unable to earn a livelihood.
- (4) An employer who has been served with a garnishee summons to attach wages due or accruing due to his employee may retain the amount of the wages of the employee that is exempt from attachment and pay that amount to the employee.
- (5) If the plaintiff or judgment creditor claims that an employee, in addition to a fixed money wage or salary is given board or lodging or the use of a house, or any other thing of value, in part payment or compensation for his services, the plaintiff or judgment creditor may apply, on not less than five days' notice, to the judge for an order appraising the money value of the board or lodging, use of house or other thing, and the value thus ascertained shall be deducted from the amount of the exemption to which the defendant or judgment debtor would otherwise be entitled.
- (6) In case of an attachment of wages or salary, the defendant or judgment debtor or plaintiff or judgment creditor may without awaiting the regular sittings of the court, apply to a judge, upon at least five days' notice in writing to the other party or his solicitor, for an order fixing the amount of exemption and finally disposing of the matter, and the judge may order accordingly.
- (7) Where the debt due or accruing due is wages or salary for a period of less than one month, the part thereof exempt from attachment is that sum that bears the same proportion to the amount of the exemption allowed by subsections (2) and (5) as the period for which the wages or salary is due or accruing due bears to one month of four weeks.
- (8) Nothing in this section applies to a garnishee summons issued under:

- (a) Repealed. 1984-85-86, c.77, s.2.
 - (b) (b) a judgment or order respecting:
 - (i) an action founded upon a separation agreement;
 - (ii) a debt contracted for board or lodging; or
 - (iii) hospital expenses payable to a hospital or recoverable by a municipality or by the Minister of Municipal Affairs under *The Local Improvement Districts Act* or *The Local Improvement Districts Relief Act*.
- (9) If the amount of the exemption to which the defendant or judgment debtor is entitled, or a portion thereof, is paid into court, it is not necessary for him to claim the amount or the portion, but he is entitled, in the absence of notice of an application under subsection (5) or subsection (6), to have it paid out to him at any time on application to the local registrar accompanied by an affidavit showing such facts as so entitle him.
- (10) Where a defendant or a judgment debtor does not make an application under subsection (9) for payment out to him of the amount to which he is entitled and that has been paid into court, prior to the expiration of two months after the date:
- (a) the amount is paid into court;
 - (b) judgment is recovered against the debtor;

whichever date is the later, the judgment creditor may, either *ex parte* or on such notice as the court or judge directs, apply to the court or a judge to have the amount, or so much of the amount as is sufficient to satisfy his judgment, paid out to him, and where an application is made the court or judge may make such order as is deemed advisable in the circumstances.

Historical Note: R.S.S. 1965, c.101, s.22; 1966, c.93, s.4; 1973, c.5, s.1; 1979, c.4, s.3; 1979-80, c.2, s.4; 1984-85-86, c.77, s.2.

APPENDIX B:
Saskatchewan
Registered Plan (Retirement Income) Exemption Act

Act reproduced from the Canadian Legal Information Institute (CanLII) website
(available at: [http:// www.canlii.org/sk/laws/sta/r-13.01/20050211/whole.html](http://www.canlii.org/sk/laws/sta/r-13.01/20050211/whole.html)) (last
accessed November 15, 2005)



Saskatchewan >> Statutes and Regulations >> S.S. 2002, c. R-13.01 >> Complete text

Citation: Registered Plan (Retirement Income) Exemption Act, S.S. 2002, c. R-13.01

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URL: <http://www.canlii.org/sk/laws/sta/r-13.01/20050211/whole.html>

Information about this text

An Act exempting Registered Retirement Plans from certain Enforcement Processes
Chapter R-13.01 of The Statutes of Saskatchewan, 2002 (effective March 4, 2003). Last
update posted: 5 Mar 2003

REGISTERED PLAN (RETIREMENT INCOME)
EXEMPTION

1
c. R-13.01

The
Registered Plan
(Retirement Income)
Exemption Act

being

Chapter R-13.01 of The Statutes of Saskatchewan, 2002
(effective March 4, 2003).

NOTE:

This consolidation is not official. Amendments have been
incorporated for convenience of reference and the original statutes
and regulations should be consulted for all purposes of interpretation
and application of the law. In order to preserve the integrity of the
original statutes and regulations, errors that may have appeared are
reproduced in this consolidation.

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REGISTERED PLAN (RETIREMENT INCOME)
c. R-13.01 EXEMPTION

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REGISTERED PLAN (RETIREMENT INCOME)
EXEMPTION

c. R-13.01

CHAPTER R-13.01

An Act exempting Registered Retirement Plans from certain
Enforcement Processes

Short title

1 This Act may be cited as The Registered Plan (Retirement Income) Exemption Act.

Interpretation

2 In this Act:

"DPSP" means a deferred profit sharing plan as defined in section 147 of the federal Act; (« RPDB »)

"enforcement process" means attachment, garnishment, execution, seizure or other legal process for the enforcement of a debt; (« exécution forcée »)

"federal Act" means the Income Tax Act (Canada); (« loi fédérale »)

"planholder" means:

(a) with respect to a DPSP, a beneficiary within the meaning of section 147 of the federal Act;

(b) with respect to an RRIF, an annuitant as defined in section 146.3 of the federal Act; and

(c) with respect to an RRSP, an annuitant as defined in section 146 of the federal Act; (« participant »)

"registered plan" means a DPSP, an RRIF or an RRSP; (« régime enregistré »)

"RRIF" means a registered retirement income fund as defined in section 146.3 of the federal Act; (« FERR »)

"RRSP" means a registered retirement savings plan as defined in section 146 of the federal Act. (« REER »)

2002, c.R-13.01, s.2.

Exemption from enforcement processes

3(1) Subject to subsection (3) but notwithstanding any other Act or law, all rights, property and interests of a planholder in a registered plan are exempt from any enforcement process.

(2) Subsection (1) applies notwithstanding any provision in any other Act or regulation that states that the provision is to apply notwithstanding any other Act or law.

(3) Subsection (1) does not apply with respect to the enforcement of a maintenance order as defined in The Enforcement of Maintenance Orders Act, 1997.

2002, c.R-13.01, s.3.

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c. R-13.01 REGISTERED PLAN (RETIREMENT INCOME)
EXEMPTION

Payments out of registered plans

4(1) Subject to section 5 but notwithstanding any other Act or law, a payment out of a registered plan to a planholder or the legal representative of a planholder is not exempt from any enforcement process.

2) For the purposes of subsection (1), a transfer of property held in one registered plan to another registered plan does not constitute a payment out of a registered plan.

3) A transfer of property held in one registered plan to another registered plan does not constitute a fraudulent or preferential transfer under The Fraudulent Preferences Act.

2002, c.R-13.01, s.4.

Enforcement against payments out

5 For the purposes of enforcing a creditor's rights against payments out of a registered plan to a debtor planholder:

(a) the amount of a payment out of the registered plan is deemed to be a debt due or accruing due to the person for or with respect to the person's wages or salary within the meaning of The Attachment of Debts Act; and

(b) the exemptions set out in section 22 of The Attachment of Debts Act apply, with any necessary modification.

2002, c.R-13.01, s.5.

Coming into force

6 This Act comes into force on proclamation.

2002, c.R-13.01, s.6.

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