



June 19, 2020

Policy and Legislation Division  
Justice Services Branch  
Ministry of Attorney General  
PO Box 9222 Stn Prov Govt  
Victoria, British Columbia V8W 9J1  
E-mail: [PLD@gov.bc.ca](mailto:PLD@gov.bc.ca)

To Whom It May Concern;

**RE: Uniform Civil Enforcement Money Judgments Act**

I write to you as co-chair of the Insolvency Section of the Canadian Bar Association, BC Branch (CBABC); the CBABC represents more than 7000 members, the bulk of whom are practicing lawyers in British Columbia. In our Agenda for Justice published in 2018, CBABC raised concerns that money judgments often go uncollected due to the fact that the enforcement process in British Columbia is outdated and inefficient, resulting in further frustration in obtaining a payment following a successful outcome. CBABC supports the recommendation of the 2005 report of the British Columbia Law Institute (“Report”) to adopt the *Uniform Civil Enforcement of Money Judgements Act* to modernize, harmonize and consolidate the law governing enforcement of money judgements.

I have had discussions with members of the CBABC in regards to the new proposed legislation resulting from the (the “Report”). Please note that we have not had the opportunity to complete our review as the opportunity for feedback and deadlines coincided with the provincial State of Emergency, which resulted in a suspension of our in-person section meetings and activities. Understandably, this has greatly impaired our ability to review and analyze the proposed legislation and provide a formal submission in the short timeframe allotted.

Although we have not had an opportunity to complete our review, we did want to present some serious preliminary concerns in regards to the proposed changes, summarized below:

- a) Although there is no question that streamlining certain aspects of the enforcement of judgments against debtors need to be considered in order to make it easier for judgment creditors to recover their monies, the proposed changes will also have the effect of potentially re-ordering priorities between secured creditors and judgment creditors;
- b) There is a possibility that once lawyers for lenders have had a chance to more carefully review the potential re-ordering of priorities, it could cause lenders to



restrict or delay lending, or to decline new requests for financing altogether. As the provincial and federal government are trying to encourage lending to businesses during this pandemic, we suggest that this is not the right time to raise a concern about the underlying security for loans, in the minds of lenders, borrowers or guarantors.

With respect to the concern we have about the potential re-ordering of priorities, we have the following additional comments:

- a) The Report proposes to create an enforcement charge ( the “Charge”) in favour of a judgment creditor which will then create a security interest capable of being registered in the Personal Property Registry (the “PPR”);
- b) Once the Charge is registered in the PPR the previously unsecured judgment creditor will become a secured creditor. Any existing secured creditor will have to carefully consider the effect of the charge on their own existing security, and with respect to any future advances on credit facilities to borrowers;
- c) Debts owed to various provincial and federal agencies are at present capable of being registered in the PPR and thereafter become secured claims in any subsequent bankruptcy of the borrower. At the same time, these same government agencies realize that as soon as they register their charge in the PPR it may result in restrictions or cancellation of existing credit facilities with lenders and accordingly, the agencies will carefully consider whether it is in the best interest of the government to register the charge. If, on the other hand, unsecured creditors (judgment creditors) could become secured creditors, it may force the government agencies to remove such discretionary decision-making power from their managers, and simply adopt a policy of instantly registering every government agency debt in the PPR. The unintended consequences to lenders and borrowers is obvious and unfortunate;
- d) The proposed changes appear to create a fact pattern where an unsecured judgment creditor that obtains a garnishing order after judgment and serves it on a financial institution that holds the bank account of the debtor could potentially take priority (with respect to future loan advances on a business credit line facility, for example) over an existing secured creditor that holds a General Security Agreement ( a “GSA” ) over all personal property of the borrower.

Recently, my own law firm had to litigate this issue on behalf of a lender in British Columbia and the court confirmed that the law is that the lender that holds the GSA does not lose priority for future advances on the credit facility after the garnishing order is served on the bank. If a garnishing order could potentially gain priority over future



advances on credit facility lines of credit, there could be serious unintended consequences for lenders, borrowers, guarantors, businesses and the employees and suppliers of the businesses that are depending on the borrower's financial institution continuing to clear cheques by advances on the credit facilities after service of a garnishing order.

In summary:

- 1) there is no question that some changes are needed to make it easier for judgment creditors to recover monies, however the timing for review and consideration of such significant changes during a pandemic is unfortunate; and
- 2) the proposed changes with potential re-ordering of priorities between secured creditors and judgment creditors are significant and require much more careful review and consideration in order that the full potential impact can be considered.

Thank you,

Jef Poulsen, Co-Chair Insolvency Section of the CBA BC Branch  
Poulsen & Company  
Barristers & Solicitors  
1800 - 999 West Hastings Street  
Vancouver, B.C.  
V6C 2W2  
Tel: 604-681-0123  
Fax: 604-683-1375  
Email: [contact@poulsenlaw.com](mailto:contact@poulsenlaw.com)

cc. Tyler Nyvall, Legal Counsel