

via email to: minjus@manitoba.ca
& via regular mail

June 19, 2024

The Honourable Matt Wiebe
Minister of Justice & Attorney General of Manitoba
Room 104 Legislative Building Winnipeg,
Manitoba R3C 0V8

Dear Minister,

Re: Informal Report #30: Modernizing Exclusions under s.23(1) *The Executions Act*

A. Introduction

In the past, recommendations for law reform on a discrete topic requiring less consultation than that performed in the preparation of a formal report have been provided by the Manitoba Law Reform Commission to the Minister of Justice and Attorney-General as an informal report.¹ The following is such a report and contains our comments and recommendations for reform of section 23(1) of *The Executions Act*² of Manitoba (hereafter also referred to as the “Act”), which establishes the law exempting certain property of debtors from seizure for purposes of execution of an order of the court. Our consideration of this matter was instigated by the suggestion of a former member of the judiciary.

B. Background

The Act is one of several statutes governing the enforcement of judgments in Manitoba, the process by which a successful litigant (“judgment creditor”) effects the payment of a sum of money owing to them pursuant to a court order against an unsuccessful litigant (“judgment debtor”). The Act governs the process of enforcement of judgments by seizure of a judgment debtor’s goods³

¹ Please note that in addition to being provided to your office, this informal report will be publicly available on the Commission’s website.

² *The Executions Act*, CCSM c E160 [the Act].

³ “Goods” is undefined in *The Executions Act* but is defined in *The Sale of Goods Act*, CCSM c S10 as “all chattels personal other than things in action and money; the term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”

and chattels⁴ specifically. In contrast, *The Judgments Act*⁵ governs enforcement by attachment of a judgment debtor's land⁶, and *The Garnishment Act*⁷ governs enforcement by garnishment of a judgment debtor's wages and other specified sources of income.⁸ This informal report focuses specifically on *The Executions Act* and the enforcement of judgments by seizure of a judgment debtor's goods and chattels.

This is not the first time that the Commission has considered this issue. In 1973, the Commission was asked to review provisions of *The Executions Act*⁹ relating to personal property exemptions for judgment debtors. In October 1979, the Commission published Report #34: *Enforcement of Judgments Part III: Exemptions and Procedure under "The Executions Act"*,¹⁰ which responded to concerns "about the failure in various jurisdictions to review the exemption laws" with the objective of "update[ing] [the law] to provide the protection which each jurisdiction intended to grant at an earlier time and would now grant if the legislation were re-examined."¹¹ The Commission recommended several changes both in respect of the categories and monetary values of exemptions contained in the *Act*, most of which were implemented, resulting in the current exemption provisions in s. 23(1). It has been nearly 45 years since the publication of that report and over 35 years since the recommendations were implemented. Similar concerns exist now regarding whether the current exemptions contained in the *Act* are accomplishing what was intended.

C. The Issue

The exemptions specified in section 23(1) of the *Act* are outdated. Review of the exemptions is required to keep pace with societal advancements, such as the shift from a rural to an urban society, the increased cost of living, and to ensure the policy objectives justifying the exemptions continue to be met.

⁴ "Chattel" is defined in the Merriam-Webster dictionary as an "item of tangible movable or immovable property except real estate and things (such as buildings) connected with real property."

⁵ *The Judgments Act*, CCSM c J10. [The Judgments Act]

⁶ "Land" is defined in s.1 of *The Judgments Act* to include "all real property, and every estate, right, title, and interest in land or real property, both legal and equitable, and of whatsoever nature and kind, and any contingent, executory, or future interest therein, and a possibility coupled with an interest in such land or real property, whether the object of the gift or limitation of the interest or possibility is ascertained or not, and also a right of entry, whether immediate or future, and whether vested or contingent, into and upon any land".

⁷ *The Garnishment Act*, CCSM c G20. [The Garnishment Act]

⁸ "Wages", as defined in s.1 of *The Garnishment Act*, includes "salary, commission and fees, and any other money payable by an employer to an employee in respect of work or services performed in the course of employment of the employee". Other sources of income could include debt due or accruing at s 4(1) or pensions in some circumstances at s 14(1) for example.

⁹ RSM 1970, c E160.

¹⁰ Manitoba Law Reform Commission, Report #34: *Enforcement of Judgments Part III: Exemptions and Procedure under "The Executions Act"* (22 October 1979), online (pdf): http://manitobalawreform.ca/pubs/pdf/archives/34-full_report.pdf. [1979 Report].

¹¹ *Ibid* at 2.

Section 23(1) of the *Act* provides:

Exempt property

23(1) Except as provided in this Act or any other Act, the following personal estate is declared free from seizure by all writs of execution issued by any court in the province, namely:

- (a) the furniture and household furnishings and appliances of the judgment debtor reasonably necessary for one household but not exceeding in value the aggregate sum of \$4,500.
- (b) the necessary and ordinary clothing of the judgment debtor and the members of his family;
- (c) the food and fuel necessary for the judgment debtor and the members of his family for a period of six months, or the cash equivalent thereof;
- (d) in the case of a judgment debtor who is a farmer, all animals reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months;
- (e) in the case of a judgment debtor who is a farmer,
 - (i) all farm machinery, dairy utensils and farm equipment reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months, and
 - (ii) one motor vehicle, if required for the purposes of his agricultural operations;
- (f) the tools, implements, professional books and other necessities, not exceeding in value the aggregate sum of \$7,500, used by the judgment debtor in the practice of his trade, occupation or profession or to carry on his business and, where the judgment debtor requires the use of a motor vehicle in the course of or for the purposes of his employment, trade, occupation, profession or business or for transportation to and from his place of employment or business, one motor vehicle not exceeding in value the sum of \$3,000.;
- (g) the articles and furniture necessary to the performance of religious services;
- (h) the seed sufficient to seed all the land of the judgment debtor under cultivation;
- (i) the health aids, including but without limiting the generality of the foregoing a wheelchair, an air-conditioner, an elevator, a hearing aid, eye glasses and prosthetic or orthopedic equipment, that are reasonably necessary for the health or mobility of the judgment debtor or a member of his family; and
- (j) the chattel property of The City of Winnipeg or of any municipality, local government district, school district, school division or school area in the province.

[...]

Execution with respect to materials furnished for building

33 Where a mechanic, artisan, machinist, builder, contractor, or other person, has furnished or procured any materials for use in the construction, alteration, or repair, of a building or erection, the materials are not subject to execution or other process to enforce any debt, other than for the purchase thereof, due by the person furnishing or procuring the materials, and whether they are or are not, in whole or in part, worked into or made part of the building or erection.

D. Policy objectives behind exemptions & purposes of exemption statutes

Exemption from seizure is a statutorily created restriction on the right of creditors to collect what is owing to them.¹² Prior to creation of exemptions statutes, the common law permitted sheriffs to

¹² *Bank of Nova Scotia v Thibault*, 2004 SCC 29 at para 9

seize and sell all the goods of the debtor that could be found and sold, apart from the clothing being worn by the debtor¹³. Exemptions from seizure avoid the harshness of this approach by permitting the debtor to preserve sufficient assets to allow them to provide themselves and dependents a basic standard of living and to carry on as a productive member of society so their continued care doesn't fall to the state. Exemption statutes also attempt to minimize the debtor's loss through forced execution sales of items that may be of value to the debtor, such as sentimental items, yet would offer a very low return to creditors.¹⁴

Exemptions statutes vary across Canada in terms of the variety of property that is exempt from seizure but can generally be categorized as having two different types of exemptions. The exemptions can be categorized as specific lists or general categories of exemptions. Specific lists provide very detailed and lengthy lists of property that is exempt. For example, the 1902 *Act Respecting Executions* included a list of "twelve volumes of books, the books of a professional man, one axe, one saw, one gun, six traps"¹⁵ The risk with specific lists is obsolescence when the property is no longer a necessity, however, can also reflect a consensus that a certain item, such as a motor vehicle, is considered a necessity. General categories, such as "household furnishings", are less likely to become obsolete. If the general category is accompanied by a monetary value limit however, changes in the cost of living could mean the specified limit no longer allows the debtor to maintain the basic standard of living intended. General categories are often also accompanied by open ended tests of necessity of function, such as "all animals reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months". Open ended tests can lead to uncertainty and litigation. When considering inclusion of specific lists or general categories with monetary caps or open ended tests of function a balance should be struck between the certainty of fixed rules with open ended standards.

D. Other Law Reform Agencies

Statutory exceptions to property seized to satisfy a judgment have been considered by several Canadian law reform agencies in recent decades. Mostly, the recommendations specific to exemptions of personal property have been part of broader evaluations of civil enforcement statutory frameworks.

In 1981, the Ontario Law Reform Commission ("OLRC")¹⁶ reviewed the substantive law and procedural rules concerning the enforcement of judgment debts in Ontario. Of the hundreds of recommendations made by the OLRC, two are relevant: (1) that the upper threshold of certain categories of exempt property be increased, and (2) that annual amendments to the legislation

¹³ Thomas G W Telfer, "Preliminary Paper on the Law of Personal Exemptions from Seizure: A Report for the Uniform Law Conference of Canada" (Paper delivered at the Uniform Law Conference of Canada Annual Conference, Regina, 22 August 2004), online (pdf): *Western Law* <ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1264&context=lawpub> [Telfer]

¹⁴ *Ibid* at para 7

¹⁵ *An Act Respecting Executions*, Revised Statutes of Manitoba, 1902 (Winnipeg: James Hooper., 1902)

¹⁶ The Ontario Law Reform Commission is now the Law Commission of Ontario.

be made by regulation, which would adjust the monetary values “in direct proportion to fluctuations in the Consumer Price Index.”¹⁷

In 1991, the Alberta Law Reform Institute (“ALRI”) issued a report¹⁸ containing 161 recommendations to comprehensively overhaul Alberta’s money judgment enforcement system. The ALRI recommended the continued use of “general descriptions of the classes of exempt property” with either a monetary or temporal limit established “[...] to avoid obsolescence and promote currency of the descriptions of exempt property.”¹⁹ Additionally, the ALRI recommended that “[t]he lieutenant governor in council should examine the monetary limits for specific exemptions [...] at least every three years, and the limit or minimum should be adjusted accordingly if it is considered that any of them have been eroded by inflation.”²⁰

In 2001, recommendations for changes to Saskatchewan’s legislation were published in “Interim Report on the Modernization of Saskatchewan Money Judgment Enforcement Law”.²¹ The interim report recommends the adoption of a “test of functional adequacy” for exempt items of personal property that could have variable value, meaning that a judgment debtor would be entitled to retain such an item “if it is no greater in value than other items of equivalent function available in the market.”²² If greater, the report suggests that a court should be empowered to order the sale of the item, with the provision that proceeds from the sale sufficient to replace the item sold with an item of equivalent function be returned to the judgment debtor.²³

In 2004, the Uniform Law Conference of Canada (“ULCC”) published the *Uniform Civil Enforcement of Money Judgments Act* (the “Uniform Act”), which was intended to harmonize the law governing the enforcement of money judgments in Canada.²⁴ The Uniform Act exempts certain types of personal property²⁵ from seizure regardless of their value, while also allowing

¹⁷ Ontario Law Reform Commission, *Report on the Enforcement of Judgment Debts and Related Matters*, Part II (1981) at 296-297, online: <https://archive.org/details/reportonenforcem02onta/mode/2up?view=theater> Page 296 [ON Report].

¹⁸ Alberta Law Reform Institute, *Enforcement of Money Judgments*, Volume 1, Alberta Law Reform Institute, 1991 CanLII Docs 81, online: <<https://canlii.ca/t/2dlv>> [ALRI Report]. In 1994, following the release of this report, Alberta enacted the *Civil Enforcement Act*, SA 1994, c C-10.5, which adopted most of the recommendations advanced by the ALRI. See Tamara M. Buckwold, “The Reform of Judgment Enforcement Law in Canada: An Overview and Comparison of Models for Reform” (2017) 80:1 Sask L Rev 71.

¹⁹ *Ibid* at 262.

²⁰ *Ibid* at 432 (Recommendation 125).

²¹ Tamara M Buckwold & Ronald CC Cuming, *Interim Report on Modernization of Saskatchewan Money Judgment Enforcement Law* (Saskatoon: Saskatchewan Queen's Printer, 2001) [Saskatchewan Interim Report], online: Saskatchewan Queen's Printer <<http://www.qp.gov.sk.ca/orphan/reporta.pdf>>, archived: <<https://perma.cc/7W2ZZWE7>> [SK Interim Report]. The report was produced with the “administrative assistance” of the Law Reform Commission of Saskatchewan. The final report containing the ultimate recommendations and draft legislation for Saskatchewan was published in 2005 and was largely consistent with this interim report. See Tamara M. Buckwold, “The Reform of Judgment Enforcement Law in Canada: An Overview and Comparison of Models for Reform” (2017) 80:1 Sask L Rev 71 at 72-73 [SK Final Report].

²² See SK Interim Report, *supra* note 19 at xvii-xviii.

²³ *Ibid*.

²⁴ ULCC Act, *supra* note 11.

²⁵ In addition to the exemptions currently contained in *The Executions Act* of Manitoba, the ULCC Act also includes exemptions for a house or residence, money received by a judgment debtor pursuant to a legal entitlement to compensation for personal physical injury, domesticated pets, burial plots, prepaid funeral and cemetery costs, etc. See ULCC Act, *supra* note 11 at 121.

provinces and territories to prescribe maximum values of property that may be claimed as exempt if they believe it to be necessary. If a province or territory chooses to prescribe a maximum value, the ULCC recommends that accompanying regulations include a mechanism allowing for the regular adjustment of the values to reflect increases in the cost of living.²⁶

In 2005 and 2014, the British Columbia Law Institute (“BCLI”) and the Law Reform Commission of Nova Scotia,²⁷ each published reports recommending the adoption of the Uniform Act, subject to certain modifications. The BCLI report²⁸ recommended that British Columbia adopt a “dollar value approach” establishing a maximum dollar value for exempt property which should be prescribed by regulation and regularly reviewed in order to ensure that the exemption is not eroded by inflation.²⁹ This approach was favored as it was viewed as more equitable given that the value of certain property varied greatly and some debtors were benefiting from much more expensive excluded property.

In its 2014 report, Nova Scotia went further, recommending that where exemptions are restricted to a certain value, “[the maximum value of the exemption] ought to be brought up to date through a process of systematic consultation, and then subject to an annual, automatic cost of living adjustment.”³⁰ Further, the report recommends that Nova Scotia adopt additional exemptions recommended in the Uniform Act.³¹

E. Categories of Personal Property Exemptions Across Canada

By and large, the categories of personal property exemptions contained in the *Act* are consistent with similar legislation across Canada.³² Like Manitoba, a majority of these jurisdictions provide exemptions for furniture and household furnishings and appliances,³³ clothing,³⁴ food and fuel,³⁵

²⁶ *Ibid.*

²⁷ The Law Reform Commission of Nova Scotia has since been replaced by the Access to Justice & Law Reform Institute of Nova Scotia.

²⁸ British Columbia Law Institute, *Report on the Uniform Civil Enforcement of Money Judgments Act* (2005) [BCLI Report].

²⁹ *Ibid* at 210-211.

³⁰ Nova Scotia Law Reform Commission, *Enforcement of Civil Judgments*, Final Report (August 2014), online (pdf): <<https://lawreform.ns.ca/wp-content/uploads/2020/04/enforcement-of-civil-judgments-final-report.pdf>> [NS Report] at 54.

³¹ Recommended additions include: exemptions for burial plots and prepaid funeral and cemetery expenses, a principal residence of a minimally reasonable size, farmlands and equipment, fishing equipment, damages for personal injuries, and pets.

³² See Appendix A for list of analogous execution statutes and regulations in other Canadian jurisdictions. Full citations for each statute and regulation footnoted herein can be found in Appendix A.

³³ See BC Act, s 71(1)(b); AB Act, s 88(c); Saskatchewan’s *EMJA*, s 93(1)(c) and *SFSA*, s 66(b); ON Act, s 2(1)2; QC Code, s 694; NB Act, s 85(a); Nova Scotia’s *JA*, s 45(1)(a), *PPSA*, s 59(3)(a), and *CRA*, s 2D(2); PEI Act, s 24(b); NL Act, s 131(1)(c); YT Act, s 2(a); NWT Act, s 2(1)(a); and NU Act, s 2(1)(a).

³⁴ See BC Act, s 71(1)(a); AB Act, s 88(b); Saskatchewan’s *EMJA*, s 93(1)(a) and *SFSA*, s 66(a); ON Act, s 2(1)1; QC Code, s 694; NB Act, s 85(b); Nova Scotia’s *JA*, s 45(1)(a); PEI Act, s 24(a); NL Act, s 131(1)(b); YT Act, s 2(b); NWT Act, s 2(1)(b); and NU Act, s 2(1)(b).

³⁵ See AB Act, s 88(a); Saskatchewan’s *SFSA*, s 66(c); QC Code, s 694; NB Act, s 85(b); Nova Scotia’s *JA*, s 45(1)(b); PEI Act, s 24(b); NL Act, s 131(1)(a); YT Act, s 2(c); NWT Act, s 2(1)(c); and NU Act, s 2(1)(c). This exemption does not exist in the British Columbia or Ontario.

personal property used by a debtor in their occupation,³⁶ personal property used by a farmer debtor in their agricultural or farming operations,³⁷ and health aids.³⁸ There seems to be a general consensus on the categories of basic necessities of life that should be exempt from seizure, but there is variation across Canada in the measure of property in each category needed to maintain a basic standard of living. Other Canadian legislation contains several exemptions of personal property and assets found elsewhere but *not* included in s.23(1) of the *Act*, which may involve considerations relating to the cost of seizure outweighing the value of seizure or to reflect geographical considerations. These include a general exemption for motor vehicles,³⁹ exemptions for domestic animals kept as pets,⁴⁰ low value property,⁴¹ property required for hunting, fishing and trapping,⁴² works of art and other historical items intended for public exhibit,⁴³ burial plots for judgment debtors, their dependents, or their family members;⁴⁴ consumer goods of a judgment debtor which, if lost, would cause serious hardship to a judgment debtor or their dependents;⁴⁵ items of sentimental value;⁴⁶ and personal property ordinarily used by and necessary for a judgment debtor whose primary occupation is fishing or aquaculture.⁴⁷

F. Recommendations Regarding Exemption Categories

Generally, language in the *Act* and consideration of what constitutes a family is gendered and antiquated. Section 23(1) uses male pronouns to describe debtors in many subsections. The word “family” is defined as “includes a person who, not being married to a debtor or a judgment debtor, is cohabiting with him or her in a conjugal relationship of some permanence”⁴⁸. Other law reform agencies have recommended “family” be replaced with the word “dependant” to recognize that

³⁶ See BC Act, s 71(1)(d); AB Act, s 88(h); Saskatchewan’s *EMJA*, s 93(1)(f); ON Act, s 2(1)3; QC Code, s 694; NB Act, s 85(d); Nova Scotia’s *JA*, s 45(1)(e); PEI Act, s 24(c); NL Act, s 131(1)(i)(i); YT Act, s 2(d); NWT Act, s 2(1)(d); and NU Act, s 2(1)(d).

³⁷ See AB Act, s 88(i); Saskatchewan’s *SFSA*, s 66(d)-(g); ON Act, s 2(1)3 and ON Reg, s 1(1)2(i); Nova Scotia’s *JA*, s 45(1)(e); PEI Act, s 24(d)(i); NL Act, s 131(1)(i)(ii). This exemption does not exist in British Columbia, Quebec, New Brunswick, the Yukon, the Northwest Territories, or Nunavut.

³⁸ See BC Act, s 71(1)(e); AB Act, s 88(e); Saskatchewan’s *EMJA*, s 93(1)(b) and *SFSA*, s 66(a.1); ON Act, s 2(4); QC Code, s 694; NB Act, s 85(e); Nova Scotia’s *JA*, s 45(1)(d), *PPSA*, s 59(3)(c), and *CRA*, s 2D(2); NL Act, s 131(1)(e); NWT Act, s 2(1)(g); and NU Act, s 2(1)(g). This exemption does not exist in Prince Edward Island or the Yukon.

³⁹ See BC Act, s 71(1)(c); AB Act, s 88(d); ON Act, s 2(1)4; NB Act, s 85(c); PEI Act, s 24(a.1); NL Act, s 131(1)(d); NWT Act, s 2(1)(h); Saskatchewan’s *EMJA*, s 93(1)(e); and Nova Scotia’s *JA*, s 45(1)(f).

⁴⁰ SK *EMJA*, s 93(1)(d) and *SFSA*, s 66(b.1); QC Code, s 694; NB Act, s 85(f); and NL Act, s 131(1)(g).

⁴¹ SK *EMJA*, s 93(1)(j) and *SFSA*, s 66(l.1), as well as NS *PPSA*, s 59(3)(d). Each of these provisions create exemptions for property of a debtor that is of such a low value that it is determined that the costs of seizing and selling it would be disproportionate to the value that would be realized from doing so.

⁴² Section 2(1)(e) the NWT Act provides an exemption for tools, instruments, all-terrain vehicles, watercraft and other personal property, other than a motor vehicle, ordinarily used and needed by a debtor in hunting, trapping or fishing for food. Section 2(1)(e) of the NU Act provides for a nearly identical exemption, but it also allows for motor vehicles and snowmobiles, and it accounts only for chattels used and needed by the debtor for fishing and hunting, but not trapping.

⁴³ BC Act, s 72; and QC Code, s 697.

⁴⁴ SK *EMJA* and *SFSA*. Note that *The Prearranged Funeral Services Act*, CCSM c F200 already exempts any moneys standing to the credit of any person in respect of a prearranged funeral plan from seizure or garnishment in Manitoba.

⁴⁵ Nova Scotia *PPSA* and *CRA*.

⁴⁶ NL Act.

⁴⁷ *Ibid.*

⁴⁸ *The Act*, s 1(1)

the section is intended to include those who may be reliant on the debtor for maintenance and support⁴⁹, such as in kinship care arrangements or other extended family relationships for example. Alberta, a jurisdiction which includes the word “dependant” in equivalent legislation has defined the term in regulations and includes specific categories of people along with flexibility for the Court to determine financial dependence.⁵⁰

RECOMMENDATION #1

The Act be amended to include gender inclusive language and to replace the word “family” with “dependant” and to provide a definition for the term “dependant” in regulations.

(i) Food and fuel exemptions

Current wording

(c) the food and fuel necessary for the judgment debtor and the members of his family for a period of six months, or the cash equivalent thereof;

The exemptions in this section were originally crafted at a time when farmers lived off the produce of their land. It is suspected that the specified 6-month time period was designed to permit the debtor to have enough food until the next harvest. The fuel exemption was drafted at a time when a person would purchase a supply of fuel, usually in the form of coal.⁵¹ Times have changed and much of the population of Manitoba likely no longer lives off produce from their land, maintains a 6 month supply of food on hand, nor relies on coal for fuel. Adding to the impracticality of this section is the requirement for the sheriff to give at least 8 days of public notice of the sale of property seized⁵². This notice requirement alone makes the seizure of certain perishable food items unreasonable. Seizure of fuel, such as gasoline, comes along with safety hazards in relation to transportation, and depending on the quantity seized may need to meet requirements for transportation of dangerous goods⁵³. Sheriff’s Office management reports that food and fuel are not items of property that are seized in recent history of the office. Any changes to this exemption should be considered in conjunction with *The Garnishment Act*, which exempts a portion of the debtor’s income from seizure. Assessment should consider whether the exemptions have the intended effect of permitting debtors to meet a basic standard of living and to account for individuals who may be exempt from wage garnishment and those who do not have sufficient funds at hand to provide food and a temperate home for a period of time.

RECOMMENDATION #2

This section may no longer be meeting the intended objective of providing all debtors in society a way to feed themselves and their families and a home fit to live in, and more extensive review is required.

⁴⁹ ALRI Report at page 264

⁵⁰ AB Reg, s 36(a)

⁵¹ 1979 Report at page 12

⁵² *The Act* s 16(2)

⁵³ *The Dangerous Goods Handling and Transportation Act*, C.C.S.M c. D12

(ii) Property required for the Debtor's self-sufficiency

Current wording

(d) in the case of a judgment debtor who is a farmer, all animals reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months;

(e) in the case of a judgment debtor who is a farmer,

(i) all farm machinery, dairy utensils and farm equipment reasonably necessary for the proper and efficient conduct of his agricultural operations for the next ensuing 12 months, and

(ii) one motor vehicle, if required for the purposes of his agricultural operations;

(f) the tools, implements, professional books and other necessities, not exceeding in value the aggregate sum of \$7,500, used by the judgment debtor in the practice of his trade, occupation or profession or to carry on his business and, where the judgment debtor requires the use of a motor vehicle in the course of or for the purposes of his employment, trade, occupation, profession or business or for transportation to and from his place of employment or business, one motor vehicle not exceeding in value the sum of \$3,000.;

(h) the seed sufficient to seed all the land of the judgment debtor under cultivation;

There is some thought that these exemption categories may reflect a province's economic or cultural history, with early Alberta legislation including a "cross plough...one horse rake...and one seed drill", Nova Scotia legislation including "fishing nets"⁵⁴, and current Northwest Territories legislation including exemptions for "tools, instruments, all-terrain vehicles... watercraft, and other personal property...used and needed by the debtor in hunting, trapping or fishing for food"⁵⁵. An important consideration is whether these exemptions specifically related to farming continue to reflect the importance of agriculture to Manitoba's economy, or whether they are a historic reflection of the times in which the provisions were first included.

In addition to the changing significance of agriculture in Manitoban society, there are multiple pieces of provincial and federal legislation⁵⁶ that may impact a creditor's ability to collect from a debtor involved in the agricultural industry. A comprehensive review of such legislation is beyond the scope of this Informal Report but is an example of the complex and confusing nature of the law impacting debtors involved in the agricultural industry, which alone, the Commission suggests, is a reason for review.

The Uniform Law Conference of Canada considered exemptions relating to personal property used to earn income and recommended general wording to encompass a variety of means of self sufficiency. The recommendation was to create an exemption for debtors earning an income from an occupation or actively engaged in earning income from carrying on a trade, business or calling for personal property that is ordinarily used by the debtor and is necessary for earning an income, in a value not to exceed an amount prescribed by regulations. In relation to farmers, the exemption

⁵⁴ Telfer at para 44

⁵⁵ *Exemptions Act*, SNWT 2010, c 4, s 2(1)(e)

⁵⁶ *The Family Farm Protection Act*, CCSM cF15 in relation to farmland, *The Farm Machinery and Equipment Act*, CCSM c F40 in relation to repossession of farm machinery and equipment under the jurisdiction of the act; *The Personal Property Security Act* CCSM c P35, s 37 in relation to growing crops, *The Farm Debt Mediation Act*, SC 1997, c 21 which creates a right to stay proceedings, including execution proceedings on certain conditions being met, and *The Judgments Act* which creates exemptions for a specified amount of land, and stables, barns and fences on the land.

would apply when farming is the debtor's primary occupation and would include both an area of land ordinarily used for farming and personal property including property ordinarily used by the debtor for farming that is necessary for the proper and efficient conduct of the debtor's farming operation for a 12-month period following the commencement of enforcement proceedings.⁵⁷ It is also worthy to note that corporations engaged in farming are able to benefit from the exemptions in section 23(1) of the *Act*, while other corporations are not.

RECOMMENDATION #3:

This section may reflect historical times, and revision presents an opportunity to consider what methods of economic self sufficiency or culture should be recognized, and so that proper consideration can be given to the interplay between the Act and other legislation that may impact a creditor's ability to collect debts from those involved in agriculture.

(iii) Motor Vehicles

Current wording

(e) in the case of a judgment debtor who is a farmer...

(ii) one motor vehicle, if required for the purposes of his agricultural operations;

(f) the tools, implements, professional books and other necessities, not exceeding in value the aggregate sum of \$7,500, used by the judgment debtor in the practice of his trade, occupation or profession or to carry on his business and, where the judgment debtor requires the use of a motor vehicle in the course of or for the purposes of his employment, trade, occupation, profession or business or for transportation to and from his place of employment or business, one motor vehicle not exceeding in value the sum of \$3,000.;

Our next recommendation pertains to Manitoba's exemptions for motor vehicles. Currently, there are two distinct exemptions under the *Act* for motor vehicles: one uncapped exemption for a judgment debtor who is a farmer and requires a motor vehicle for their agricultural operations (s. 23(1)(e)(ii)); and one exemption capped at a value of \$3,000 for any other judgment debtor who requires the use of a motor vehicle for purposes of their employment, trade, occupation, profession or business, or for transportation to and from their place of employment or business (s. 23(1)(f)). Manitoba is one of a small handful of provinces⁵⁸ that requires that a motor vehicle serve a certain purpose⁵⁹ in order to be exempt. Most Canadian jurisdictions⁶⁰ contain general exemptions for motor vehicles which do not exceed a set value, regardless of if the motor vehicle serves any particular purpose.

⁵⁷ Uniform Law Conference of Canada, *Uniform Civil Enforcement of Money Judgments Act* online (pdf): <https://ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Civil-Enforcement-of-Money-Judgments-Act.pdf>, section 159(1)(g)(ii) [ULCC Act]

⁵⁸ See QC Code, s 695; SK *SFSA*, s 66(e); and NS *PPSA*, s 59(3)(b).

⁵⁹ Purposes for motor vehicles include facilitating the debtor's employment, trade or occupation (including, for farmer debtors, their agricultural operations), obtaining employment, pursuing education, or meeting the basic needs of the debtor and their dependents.

⁶⁰ BC Act, s 71(1)(c); AB Act, s 88(d); ON Act, s 2(1)4; NB Act, s 85(c); PEI Act, s 24(a.1); NL Act, s 131(1)(d); NWT Act, s 2(1)(h); Saskatchewan's *EMJA*, s 93(1)(e); and Nova Scotia's *JA*, s 45(1)(f).

As noted by the Commission in its 1979 Report, a vehicle may be the highest valued asset available to satisfy a judgment and seizure and sale of a vehicle offers a creditor an opportunity to be made whole.

RECOMMENDATION #4:

The motor vehicle exemption should remain. The value cap should be adjusted to better reflect the current value of a vehicle and be placed in the regulations. The connection of the specific use exemption to employment should be reviewed with consideration given to availability of public transit and other specific uses that may be worthy of exemption such as reasonable health or educational needs of the debtor or dependants and for inclusion of a provision to allow courts discretion to consider exceeding the value cap on individual cases.

(iv) Other Exemptions

The *Act* includes several exemptions that are either unique to Manitoba or are uncommon elsewhere in Canada, namely:

- articles and furniture necessary for the performance of religious services (ss.23(1)(g)),⁶¹
- annuities and related property and interests under the federal *Government Annuities Act* (ss.26(1)&(2)),⁶²
- chattel property of the City of Winnipeg or of any municipality, local government district, school district, school division or school area in the province (s. 23(1)(j)), and
- materials furnished by a mechanic, artisan, machinist, builder, contractor, or other person in the construction, alteration, or repair, of a building or erection (s. 33).

ss 26(1)&(2) annuities and related property and interests under the federal *Government Annuities Act*

It is curious that annuities are included in the list of exempt property in the *Act* given that they are neither goods nor chattels. Furthermore, the federal *Government Annuities Act*⁶³ already directs that annuities and all moneys paid or payable and all rights under the annuity are exempt from seizure under a process of the court.⁶⁴ Section 26 of *The Executions Act* is therefore both redundant and poorly suited to the *Act* and should be removed.

RECOMMENDATION #5:

Section 26(1) and (2) of the Act pertaining to annuities should be removed.

s 23(1)(j) chattel property of the City of Winnipeg or of any municipality, local government district, school district, school division or school area in the province

Also curious is the exemption for chattel property of the City of Winnipeg, municipalities, and other local government entities. This provision dates to the 1910s and similar provisions are not found in the legislation of other Canadian jurisdictions. At the time the provision was first included, it

⁶¹ QC Code, s 696.

⁶² SK *SFSA*, s 75(1) and the QC Code, s 696 also exempt annuities from seizure. Section 696 of the QC Code provides that the capital accumulated for the payment of an annuity is exempt from seizure, although it does not specify that the annuity be made under the *Government Annuities Act (Canada)*.

⁶³ RSC 1970, c G-6.

⁶⁴ *Ibid*, s 11.

appears corporations were able to benefit from exemptions found in the legislation. In 1987 the ability for corporations, other than those engaged in farming, to benefit from the exemptions was removed. Although it is purely speculative, it is possible that the chattel property held by the listed entities was exempt from seizure as it would likely be used for the benefit of the general public, such as school textbooks or construction equipment used to maintain public roads, and seizure of such goods would negatively impact the general public. The Act currently in force restricts corporate debtors from claiming the exemptions⁶⁵. Given that the City of Winnipeg, other municipalities, school boards, divisions and districts are corporate entities⁶⁶, this section is likely redundant as well and may be considered for removal. It is also unlikely that a creditor would need to resort to seizure of chattel goods to enforce a judgment against such a debtor adding to the impracticality of this section. Given the uncertainty behind this exemption though, rather than making a formal recommendation for removal, we flag it for the consideration of the Minister's office.

Execution with respect to materials furnished for building

33 Where a mechanic, artisan, machinist, builder, contractor, or other person, has furnished or procured any materials for use in the construction, alteration, or repair, of a building or erection, the materials are not subject to execution or other process to enforce any debt, other than for the purchase thereof, due by the person furnishing or procuring the materials, and whether they are or are not, in whole or in part, worked into or made part of the building or erection.

We note that in the Commission's 1979 report, concerns were raised that the exemption for the materials furnished by a mechanic, builder, etc. could be misused by debtors who purposely purchase materials to avoid seizure of the assets. The Commission was also concerned that the exemption for articles necessary for religious services may be abused in a similar manner. Concerns regarding misuse have since been addressed, however, with the addition of s. 31(2), providing that "nothing herein exempts from seizure any goods or chattels purchased for the purpose of defeating claims of creditors."

RECOMMENDATION #6:

The Commission recommends that the exemption under section 33 be considered for elimination.

ss.23(1)(g) articles and furniture necessary for the performance of religious services

Section 23(1)(g) dealing with such articles remains largely unchanged from the 1892 Act, with the difference being a marginal note suggesting that the exemption was originally intended to apply to churches and not to individuals. The meaning of the term "religious services" was considered by the courts most recently in a 1905 decision. The term was interpreted to mean the "celebration of Divine service or otherwise officiating in any church, chapel, etc."⁶⁷ The term "religious services" is dated, not reflective of a multicultural society and may not encompass Indigenous cultural practices and articles associated with participation in those activities.

⁶⁵ *The Act* s 28

⁶⁶ *The City of Winnipeg Charter*, SM 2002, c 39 s 8, *Municipal Act*, CCSM c M225 s 250(1); *The Public Schools Act*, CCSM c P250, s 3(1), 10

⁶⁷ *R v Wasyk Kapij* (1905) Man. R.110 as cited in the 1979 Report

Exemption for low value goods

Both Saskatchewan and Nova Scotia include exemptions for low value property where the cost of seizing and selling the property would be disproportionate to the value realized from doing so. Currently in Manitoba, with respect to low value property, the Sheriff's Office considers the context and uses discretion in assessing whether a specific good or chattel is sufficiently valuable to warrant seizure. For example, the costs associated with the seizure and sale of a chattel outside of a major centre will be much higher than for an asset seized in a city due to the costs associated with transporting the asset for the sale to take place. Sheriffs may use their discretion to refuse to seize an asset despite it having a higher value when the costs of disposing of it will be greater.⁶⁸ The Commission speculated in the 1979 report that items necessary for performance of religious services would have little resale value and would not be seized by enforcement officers whether exempt or not.

RECOMMENDATION #7:

The exemption for articles and furniture necessary for the performance of religious services, should be reviewed. Consideration should be given to whether this specific exemption should remain or whether it could be incorporated within a general exemption for goods not exceeding a certain value, where the cost of disposition of the asset would outweigh the amount likely to be realized from disposing the property. If the desire is to include a specific exemption, consideration should be given to whether the exemption is reflective of religious and cultural practices of today's society.

RECOMMENDATION #8

Add to the Act a general exemption for goods not exceeding an amount to be specified by regulation, including goods, the value of which exceeds the specified amount, but where in the opinion of the enforcement officer, the costs of seizure and disposition of the property are likely to exceed or equal the amount likely to be realized from disposing of the property.

G. Recommendations Regarding Upper Monetary Limits

(i) Upper Monetary Limits for Personal Property Exemptions Across Canada

Establishing upper monetary limits to exempt assets ensures that a judgment debtor retains only the value of the asset essential to maintain themselves and their dependants with the necessities of life, while not unnecessarily diminishing a judgment creditor's opportunity to realize on a judgment of the court. The majority of Canadian enforcement statutes prescribe these upper limits in accompanying regulations,⁶⁹ while some, including the *Act*, set the limit directly in the statute.⁷⁰

⁶⁸ Based on conversations with Sheriff's Office management.

⁶⁹ For example, see the legislation and regulations of British Columbia, Alberta, Saskatchewan, Ontario, the Northwest Territories, Nunavut, and the *JA* of Nova Scotia.

⁷⁰ See e.g. the legislation of Manitoba, Quebec, Prince Edward Island, the Yukon, and the *PPSA* and *CRA* of Nova Scotia. New Brunswick's *EMJA* is an outlier in this regard, in that it is the only statute that provides no upper limits for exempt assets. Instead, it simply indicates that the listed assets are exempt from realization "to the extent that the

Currently, the Ontario *Execution Act*⁷¹ is the only Canadian enforcement statute that provides for regular adjustment of the maximum monetary value of exemptions to reflect inflation and increases in the cost of living. In 2010, ss. 35(1) and (3) of Ontario's *Execution Act* were repealed and updated⁷² to allow the Lieutenant Governor in Council to make regulations prescribing exemption limits, provided that such regulations may be reconsidered every 5 years and, in determining the new limit, consider the percentage change in the Consumer Price Index.⁷³ Accordingly, in 2015⁷⁴ and again in 2020,⁷⁵ the Ontario regulation was amended to update the upper monetary limits of exemptions in the Act.

(ii) Recommendations Regarding Upper Monetary Limits

The Commission has not considered the reasonableness of the current exemption values themselves but instead focuses on the mechanism by which these values should be adjusted to account for inflation and increases in the cost of living.⁷⁶

Currently, the upper monetary limits for exemptions are set out directly in the text of the legislation. Revisions to the upper monetary limits can only be made by amending the legislation, requiring the introduction of a bill in the legislature and its passage from first reading through to royal assent.

In British Columbia, Alberta, Saskatchewan, Ontario, Nova Scotia, the Northwest Territories, and Nunavut, upper monetary limits are prescribed in regulations, not in the statute itself. The enactment and amendment of regulations, as “delegated legislation” may be made by a person or body under the authority of an Act passed by the Legislature. It is often an administrative process of government requiring only the sign-off of the Lieutenant Governor in Council, a member of Executive Council or a tribunal or commission of government. All jurisdictions are recognizing the benefits of enacting thresholds and limits that necessarily require frequent updates to respond to economic conditions in regulations instead of in the text of statutes themselves.

RECOMMENDATION #9:

The Executions Act should be amended to remove the upper monetary limits for personal property exemptions from the body of the statute and instead, prescribe upper monetary limits in regulation under the Act. The Lieutenant Governor in Council should be empowered under s. 45 of The Executions Act to make regulations

property is necessary to meet the reasonable needs of the judgment debtor and his or her dependants.” See NB Act, s 85.

⁷¹ RSO 1990, c E.24 [ON Act]

⁷² *An Act to promote Ontario as open for business by amending or repealing certain Acts*, SO 2010, c 16, Sched 2, ss. 3(5)-(7).

⁷³ On Act *supra* note 61, s. 35.

⁷⁴ OR 289/15.

⁷⁵ OR 758/20.

⁷⁶ While we do not comment on the limit values themselves in this report, it should be noted that the Commission was advised by the Sheriff's Office that an increase in these limits is necessary if the exemptions are to serve their purpose, particularly the limit on the value of vehicles, furnishings and those required in the practice of the debtor's trade, occupation or profession or to carry on his business.

prescribing and governing the determination of the value of property that is exempt under the Act.

Further, the Commission recommends that the exemption values prescribed by regulation be subject to regular review and adjustments to reflect increases in the Canadian cost of living and to ensure that they are not eroded by inflation. As outlined earlier, the various law reform agencies in Canada have recommended different approaches to legislating the review and adjustments, whether it be a statutory requirement that the values be adjusted regularly, annually, or over a set number of years.⁷⁷ In Ontario, the only jurisdiction with legislation that explicitly provides direction on periodic adjustments to maximum monetary exemption values, the adjustment may take place every five years, although it is not mandatory.⁷⁸

RECOMMENDATION #10:

The Executions Act should require the Lieutenant Governor in Council to review and adjust regulations prescribing and governing the determination of the value of property that is exempt under the Act every five years.

While the recommended time periods for review varied amongst the law reform agencies, each was consistent in recommending that these adjustments be made to reflect inflation and increases in the Canadian cost of living.⁷⁹ These recommendations are reflected in s. 35(3) of Ontario's *Executions Act*, which requires Ontario's Lieutenant Governor in Council to consider "the percentage change that has taken place in the Consumer Price Index for Canada for prices of all items since the last time [exemption] amounts were prescribed."⁸⁰

H. Need for Broader Review of Enforcement Legislation in Manitoba

As previously discussed, Manitoba's main enforcement provisions are spread amongst three separate statutes, each applying to the attachment of a judgment to a different subject matter. This contrasts with the legislative enforcement schemes of other jurisdictions which are contained in a single Act. This alone necessitates considering law reform in this area.

Additionally, a review of the civil enforcement legislation of other jurisdictions shows that certain jurisdictions exclude different property from enforcement proceedings for policy reasons, including property that would not properly fall under the jurisdiction of any of Manitoba's three separate enforcement Acts. Examples include exemptions of pension benefits and money received pursuant to a legal entitlement to compensation for physical or mental injury. Although there are additional pieces of legislation, such as *The City of Winnipeg Charter*⁸¹, and *The*

⁷⁷ The ULCC and BCLI simply recommended *regular* adjustments; the former Ontario Law Reform Commission and former Law Reform Commission of Nova Scotia recommended *annual* adjustments to exemption values; and the ALRI recommended that the Lieutenant Governor in Council should examine the monetary limits for exemptions at least *every three years*.

⁷⁸ ON Act, s 35(2).

⁷⁹ The former Ontario Law Reform Commission recommended that adjustment should be made "in direct proportion to fluctuations in the Consumer Price Index"; the ALRI recommended that monetary limits be adjusted if "any of them have been eroded by inflation"; the ULCC recommended that maximum values be regularly adjusted "to reflect increases in the cost of living; the BCLI recommended that maximum dollar values be regularly reviewed to ensure they are "not eroded by inflation"; and the former Law Reform Commission of Nova Scotia recommended an "automatic cost of living adjustment."

⁸⁰ ON Act, s 35(3).

⁸¹ *The City of Winnipeg Charter*, SM 2002, c 39 s 91(3)

*Manitoba Public Insurance Corporation Act*⁸² for example, that do include exemptions for such property, the inclusion of exemptions in several different statutes adds to the complexity of enforcement proceedings. It is time for Manitoba to consider whether enforcement legislation should be reformed with a view to consolidation and modernization. Given that the consideration of what standard of living a debtor should not fall below and which items of property are needed to achieve that standard involves public policy considerations, widespread consultation beyond the scope of the current resources of the Manitoba Law Reform Commission should be conducted to guide future reform in this area.

RECOMMENDATION #11:

The Government of Manitoba ought to consider conducting a comprehensive review of Manitoba’s civil enforcement system, including the relevant Acts.

This is informal report #30 prepared and provided pursuant to section 15 of *The Law Reform Commission Act*, CCSM c. L96, signed this 19th day of June 2024.

“Original Signed By”

Grant Driedger, K.C., Commission
President

“Original Signed by”

Marc E. Marion, Commissioner

“Original Signed by”

The Honourable Madam Justice Shawn D.
Greenberg, Commissioner

“Original Signed by”

Dr. Laura Reimer, Commissioner

“Original Signed by”

The Honourable Madam Justice Jennifer A.
Pfuetzner, Commissioner

“Original Signed by”

Dr. Mary J. Shariff, Commissioner

“Original Signed by”

Janesca Kydd, Commissioner

⁸² *The Manitoba Public Insurance Corporation Act*, CCSM c P215 s 159(1)

APPENDIX A: ANALOGOUS CANADIAN EXECUTION LEGISLATION

BC	<ul style="list-style-type: none"> • <i>Court Order Enforcement Act</i>, RSBC 1996, c 78 (“BC Act”) • <i>Court Order Enforcement Exemption Regulation</i>, B.C. Reg. 28/98 (“BC Reg”)
AB	<ul style="list-style-type: none"> • <i>Civil Enforcement Act</i>, RSA 2000, c C-15 (“AB Act”) • <i>Civil Enforcement Regulation</i>, Alta Reg 276/1995 (“AB Reg”)
SK	<ul style="list-style-type: none"> • <i>Enforcement of Money Judgments Act</i>, SS 2010, c E-9.22 (“SK EMJA”) • <i>The Enforcement of Money Judgments Regulations</i>, RRS c E-9.22 Reg 1 (“SK EMJA Reg”) • <i>Saskatchewan Farm Security Act</i>, SS 1988-89, c S-17.1, Part V (“SK SFSA”) • <i>Saskatchewan Farm Security Regulations</i>, RRS c S-17.1 Reg 1 (“SK SFSA Reg”)
ON	<ul style="list-style-type: none"> • <i>Executions Act</i>, RSO 1990, c E.24 (“ON Act”) • Regulation 657/05, OR 657/05 (“ON Reg”)
QC	<ul style="list-style-type: none"> • <i>Code of Civil Procedure</i>, CQLR, c. C-25.01, Book VIII, Division VI (“QC Code”)
NB	<ul style="list-style-type: none"> • <i>Enforcement of Money Judgments Act</i>, SNB 2013, c 23 (“NB Act”)
NS	<ul style="list-style-type: none"> • <i>Judicature Act</i>, RSNS 1989, c 240, s 45 (“NS JA”) • <i>Value of Chattels Exempt from Seizure Regulations</i>, NS Reg 162/2019 (“NS Reg”) • <i>Personal Property Security Act</i>, SNS 1995-96, c 13 (“NS PPSA”) • <i>Creditors’ Relief Act</i>, RSNS 1989, c 112⁸³ (“NS CRA”)
PEI	<ul style="list-style-type: none"> • <i>Judgment and Execution Act</i>, RSPEI 1988, c J-2 (“PEI Act”)
NL	<ul style="list-style-type: none"> • <i>Judgment Enforcement Act</i>, SNL 1996, c J-1.1 (“NL Act”) • <i>Judgment Enforcement Regulations</i>, 1999, NLR 102/99 (“NL Reg”)
YT	<ul style="list-style-type: none"> • <i>Exemptions Act</i>, RSY 2002, c 80 (“YT Act”)
NWT	<ul style="list-style-type: none"> • <i>Exemptions Act</i>, SNWT 2010, c 4 (“NWT Act”) • <i>Exemptions Regulation</i>, NWT Reg. 051-2010 (“NWT Reg”)
NU	<ul style="list-style-type: none"> • <i>Exemptions Act</i>, RSNWT (Nu.) 1988, c E-9 (“NU Act”) • <i>Exemptions Regulation</i>, Nu Reg.006-2006 (“NU Reg”)

⁸³ Section 2D(2) of this Act indicates that property that is exempt from seizure under s. 59 of the *Personal Property Security Act* is property exempt from an enforcement proceeding under the *Creditors’ Relief Act*.