



SUMMARY OF RECOMMENDATIONS

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

The following list provides a summary of recommendations included in Informal Report #30. The proposed recommendations are followed by the current wording of the related sections of *The Executions Act* ("*The Act*"), where applicable.

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.

Current wording

1(1) In this Act,

"family" 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;

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.

Current wording

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:

(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;

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.

Current Wording

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:

(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;

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.

Current Wording

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:

(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.;

RECOMMENDATION #5:

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

Current Wording

26(1) Subject to subsection (2), the property and interest of an annuitant, or of a person interested or entitled in or to a contract for an annuity, or an annuity itself, under the Government Annuities Act (Canada), or in or to any moneys payable or paid under or by reason of any such contract or annuity, is exempt from seizure, levy, or attachment, by or under the process of any court, and is not affected by any trust, charge, or lien.

26(2) Nothing in this Act is intended to conflict, or be inconsistent, with any enactment or provision of the Government Annuities Act (Canada).

RECOMMENDATION #6:

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

Current Wording

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.

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.

Current Wording

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

(g) the articles and furniture necessary to the performance of religious services;

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.

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

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.

RECOMMENDATION #11:

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