

# BRITISH COLUMBIA'S NEW MONEY JUDGMENT ENFORCEMENT ACT: AN OVERVIEW

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The enforcement of money judgments in British Columbia will soon be substantially overhauled once the *Money Judgment Enforcement Act* (“*Enforcement Act*”) [1] comes into force. The *Enforcement Act* received Royal Assent in October 2023 and is expected to be brought into force by regulation in 2025.

Intended to make the enforcement of money judgments in British Columbia simpler and less costly, the new judgment registration and enforcement scheme under the *Enforcement Act* will also have significant impacts on lenders with changes to the priority of security interests under the *Personal Property Security Act* (“*PPSA*”) and mortgages registered in the Land Titles Office (“*LTO*”).

This bulletin provides an overview of the *Enforcement Act* and the changes to come once it is in force in 2025. Further bulletins will detail the changes to the priority of security interests and mortgages, the new judgment registry created by the *Enforcement Act* (the “*Judgment Registry*”), and the procedure for enforcing money judgments against real and personal property.

## Background

British Columbia's current judgment enforcement system primarily under the *Court Order Enforcement Act* (“*COEA*”) has long been described as archaic, costly and inefficient. The procedures under the *COEA* for enforcement measures such as garnishing a judgment debtor's wages or selling the judgment debtor's real property are prohibitively expensive and time-consuming. The protections for judgment debtors, such as the exempted value of the judgment debtor's property, do not reflect the current economic circumstances in British Columbia, particularly the Lower Mainland.

The *Enforcement Act* is based on the Uniform Civil Enforcement Money Judgments Act and intended to modernize the enforcement of money judgments in British Columbia. Similar legislation has been in force in Alberta and Saskatchewan for several years. Highlights of the key provisions and features of the *Enforcement Act* are below.

## Highlights

- Universal Exigibility

The *Enforcement Act* introduces the presumption of universal exigibility as opposed to the current, property-specific procedures under the COEA.<sup>[2]</sup> All of the property that the judgment debtor has an interest in may be subject to enforcement, regardless of the type of property. As detailed below, the *Enforcement Act* also sets out streamlined, property-specific enforcement procedures.

- Judgment Registry

One of the most significant changes is the new Judgment Registry where judgment creditors must register their money judgment in order to pursue enforcement remedies under the *Enforcement Act*.<sup>[3]</sup> At this time, it is unclear whether the Judgment Registry will be the existing Personal Property Registry or operate as a separate, parallel registry. Notably, money judgments in Alberta are registered in that province's Personal Property Registry.

The registration of the judgment in the Judgment Registry creates an "enforcement charge" against all present and after-acquired personal property of the judgment debtor in favour of the judgment creditor.<sup>[4]</sup>

Regulations under the *Enforcement Act*, which are still to come, will further develop the rules and provisions for the operation of the Judgment Registry, including the length of time a registration will be valid for. However, as detailed below, a judgment must be registered in the Judgment Registry within 2 years of the date of the money judgment.<sup>[5]</sup>

- New Limitation Period for Enforcing Judgments

Currently, judgment creditors have 10 years from the date upon which a money judgment becomes enforceable to commence a court proceeding to enforce or sue on a money judgment.<sup>[6]</sup> When the *Enforcement Act* comes into force, the 10-year limitation period will be abolished.<sup>[7]</sup>

Under the *Enforcement Act*, judgment creditors must register their money judgment in the Judgment Registry within 2 years of either: (a) the date of the judgment or (b) the latest date on which the judgment debtor acknowledges their liability in writing.<sup>[8]</sup> A court may grant an extension of the time to register the judgment in the Judgment Registry, though it is not clear at this time what grounds the court may consider in granting such an order.<sup>[9]</sup> However, an ultimate limitation period of 15 years will apply for the registration of any money judgment.<sup>[10]</sup>

- Civil Enforcement Officers

Bailiffs currently under appointed the *Sheriff Act* will become "civil enforcement officers" empowered by the

*Enforcement Act* to seize and dispose of the judgment debtor's property. The *Enforcement Act* specifically authorizes civil enforcement officers to, among other things, do any act or thing that the judgment debtor may do with its property, including commencing a proceeding in the name of the judgment debtor to enforce an obligation owing to the judgment debtor, and use reasonable force to enter onto land or premises occupied by the judgment debtor or where the civil enforcement officer has reasonable grounds to believe the judgment debtor's property is located.<sup>[11]</sup>

- Priority of Enforcement Charges

The *Enforcement Act* introduces significant changes to the relative priorities of money judgments, security interests registered in the Personal Property Registry and charges on real property registered in the Land Title Office.

Generally, the enforcement charge created by the registration of a money judgment in the Judgment Registry will have the same priority as a security interest registered in the Personal Property Registry. Accordingly, an enforcement charge registered in the Judgment Registry will rank ahead of a security interest subsequently registered in the Personal Property Registry.<sup>[12]</sup> There are exceptions for purchase money security interests and inventory.<sup>[13]</sup>

The *Enforcement Act* creates special priority rules for advances made to judgment debtors after the registration of an enforcement charge in the Judgment Registry. A previously registered security interest will only have priority for advances made after the enforcement charge is created where either the secured party does not know about the enforcement charge when the advance is made or the secured party is legal obligated to make the advance to a third party, unless the secured party entered into such legal obligation when it knew about the enforcement charge.<sup>[14]</sup> In any event, the extent of the priority for the enforcement charge is limited to the reasonable costs and expenses incurred by the secured party for the protection, preservation or repair of the collateral.<sup>[15]</sup>

Enforcement charges registered against interests in land in the Land Title Office will generally have priority based on time of registration under the *Land Title Act*.<sup>[16]</sup> However, the *Enforcement Act* provides a special exception for mortgages registered after an enforcement charge where the mortgage secures the value used to acquire the interest in land, as long as the mortgage is registered within 14 days of the transfer of land.<sup>[17]</sup>

Finally, the enforcement charge is not enforceable against a trustee in bankruptcy, thus generally preserving judgment creditors' status as unsecured creditors for the purpose of the *Bankruptcy and Insolvency Act*.<sup>[18]</sup>

- Streamlined Enforcement Mechanisms

Long awaited by practitioners and judgment creditors, the *Enforcement Act* will significantly streamline the enforcement of money judgments and include modernized, property-specific enforcement procedures.

The old “Three-Step Dance” for the enforcement of judgments against real property under the *COEA*, involving at least three separate court applications, will be replaced by instructing a civil enforcement officer to seize and sell the judgment debtor’s real property – no court application required.<sup>[19]</sup> Notice of the seizure will then be given to the judgment debtor and any co-owner.<sup>[20]</sup> In the case of land occupied by the judgment debtor or used for farming, the civil enforcement officer must wait six months before disposing of the property.<sup>[21]</sup> However, no court application will be required to sell the judgment debtor’s property, though at least 20 days’ notice must be given to the judgment debtor, any co-owner and any person with an interest in land subordinate to the enforcement charge.<sup>[22]</sup>

Currently, the seizure and sale of property co-owned by the judgment debtor involves a complex and inefficient process often involving the *Partition of Property Act*. The *Enforcement Act* will do away by permitting enforcement against co-owned property based on the rebuttable presumption that the judgment debtor has equal co-ownership of any co-owned property.<sup>[23]</sup> A co-owner will have a right to purchase the judgement debtor’s interest in the co-owned property for fair market value at least 10 days before the civil enforcement officer disposes of or sells the property.<sup>[24]</sup>

As with real property, the judgment debtor’s personal property may be seized and sold by a civil enforcement officer upon being instructed to do so by a judgment creditor. The *Enforcement Act* also includes modernized property-specific procedures for seizing and selling: fixtures, crops, leased property, licenses, intellectual property or trade secrets, and securities or security entitlements.

With any type of property, the civil enforcement officer must sell the property in a commercially reasonable manner.<sup>[25]</sup>

The costly and inefficient post-judgment garnishment process under the *COEA*, particularly in respect of a judgment debtor’s wages, will be replaced under the *Enforcement Act* by the civil enforcement officer giving the requisite notice of seizure of income to the judgment debtor’s employer. The judgment debtor’s employer will then have to pay the seized income, less standard deductions and exemptions to be prescribed by regulations, to the civil enforcement officer for each pay period until the civil enforcement officer withdraws the notice.<sup>[26]</sup>

However, pre-judgment garnishment will not be affected by the implementation of the *Enforcement Act* and will continue to operate as it currently does under the *COEA*.<sup>[27]</sup>

- New Distribution Scheme

The *Enforcement Act's* distribution scheme will apply to any funds received by the civil enforcement officer in relation to a registered money judgment, as well as any payment received by the judgment creditor from any source towards the amount recoverable by the judgment creditor.<sup>[28]</sup>

The new distribution scheme under the *Enforcement Act* will give some priority of recovery to the instructing judgment creditor where the money in the distributable fund can be directly attributed to such enforcement instruction. The extent of the priority in favour of the instructing judgment creditor will be determined by regulations not yet published.<sup>[29]</sup> While the *Enforcement Act's* distribution scheme will preserve the pro-rate distribution among judgment creditors from the *Creditor Assistance Act*, it will not affect the priority of a secured creditor's interest in the judgment debtor's property.<sup>[30]</sup>

- Receiverships

The *Enforcement Act* also permits a judgment creditor to apply to court to appoint a receiver over the judgment debtor's property where the court is satisfied the property cannot otherwise be conveniently realized.<sup>[31]</sup>

## Conclusion

Once in force, the *Enforcement Act* will be a long overdue modernization of the money judgment enforcement process in British Columbia. The substantial changes to existing law and procedures will present new challenges and opportunities for judgment creditors, judgment debtors and practitioners. The *Enforcement Act* is expected to come into force by regulation in 2025.

[1] Bill 27, *Money Judgment Enforcement Act*, 4th Session, 42nd Parliament (2023).

[2] *Enforcement Act*, s. 5.

[3] *Enforcement Act*, s. 14.

[4] *Enforcement Act*, s. 13.

[5] *Enforcement Act*, s. 12(2).

[6] *Limitation Act*, SBC, 2012, c. 13, s. 7.

[7] Bill 43, *Money Judgment Enforcement Consequential Amendments and Transitional Provisions Act*, 4th Session, 42nd Parliament (2023), s. 29.

[8] *Enforcement Act*, s. 12(2).

[9] *Enforcement Act*, s. 12(3).

[10] *Enforcement Act*, s. 12(5).

[11] *Enforcement Act*, s. 42 – 43.

[12] *Enforcement Act*, s. 36(2).



[13] *Enforcement Act*, s. 36(4).

[14] *Enforcement Act*, s. 36(6).

[15] *Enforcement Act*, s. 36(7).

[16] *Land Title Act*, s. 28.

[17] *Enforcement Act*, s. 40.

[18] *Enforcement Act*, s. 39.

[19] *Enforcement Act*, s. 45.

[20] *Enforcement Act*, s. 70(6).

[21] *Enforcement Act*, s. 138(2).

[22] *Enforcement Act*, s. 138.

[23] *Enforcement Act*, s. 147.

[24] *Enforcement Act*, s. 148.

[25] *Enforcement Act*, s. 206(3).

[26] *Enforcement Act*, s. 99.

[27] Bill 43, *Money Judgment Enforcement Consequential Amendments and Transitional Provisions Act*, 4th Session, 42nd Parliament (2023), s. 7-12.

[28] *Enforcement Act*, s. 183.

[29] *Enforcement Act*, s. 185.

[30] *Enforcement Act*, s. 185(2) and s.185(4).

[31] *Enforcement Act*, s. 155.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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