**Collecting a Non-Judgment Debt**

* BPCPA applies to any person in BC or not who is collecting or attempting to collect a debt.
* S.114: collector must not communicate or attempt to do so with a debtor, relative, neighbour, member of the household, friend, acquaintance, or employer of the debtor in a manner or with a frequency so as to constitute harassment, or debtor has a cause of action.
* S.116: collector can’t communicate with debtor at his place of employment unless collector doesn’t have his home address or phone number and the contact is just for that purpose or collector has tried and been unable to contact debtor at home or debtor consents.
* S.117: except for obtaining contact info, can’t communicate with debtor’s circle unless that person is a guarantor of the debt or debtor authorized the contact.
* S.118: debtor can stipulate that collector can’t make contact outside of writing or through debtor’s lawyer or not at all if the debtor is disputing the debt/taking it to court.
* S.118(2): no contacting debtor or his circle on stat holidays and can only contact at 1-5pm on Sunday and 7am-9pm rest of the week.
* S.171: contravention of any of these gives cause of action for damages. Must first notify the director (s.173) who may take over the action.

**Limitation Periods**

* S.6: cause of action cannot be commenced past limitation period and vanishes past that period.
* S.7: Judgment has a life of 10 years starting from the day it becomes enforceable. If it’s from another jurisdiction, it’s the earlier of the expiry of the time for enforcement in the originating jurisdiction or 10 years after the date it became enforceable there.
* S.23: It’s really 10 years PLUS any outstanding enforcement processes at the end of that period. So writs of execution are good for one year so if you get one right at the end of the 10 years, you have that one year extra, though you’d be limited to the property subject to the writ.
* S.23(b): if you registered judgement against land, it’s an extra two years to realize on that land. Equitable orders, meanwhile, take as long as they take to complete.
* S.23(2): stays of execution stop the clock and suspend the life of a judgment.
* S.24: defendant can confirm a cause of action, extending the limitation period, in writing – either through use of an enforcement process or payment to the JD, or express.
* Young: can also extend by bringing an action on the judgment to get another 10 years. A judgment debt, in itself, constitutes a new cause of action. Can’t do this if it’d be an abuse of process (where the JC made no effort to collect for the 10 years and now tries to bring this action).

**Setting Aside Default Judgments**

* BPCPA tosses them out if it was based on an unconscionable or deceptive transaction.
* Charles: default judgments are set aside as of right where there’s been a breach of natural justice. For instance, if judgment was given without notice to the defendant and/or defendant was deprived of his right to be heard. Getting set aside as of right leads to judgment being a nullity and any enforcement measures being set aside.
* Civil rules also empower courts to set aside default and summary judgments as a matter of discretion.

**Stays on Appeal**

* S.48 of COEA: if an order has been obtained for a sum of money, the sum is payable immediately unless the court orders otherwise – this may mean it provides an order for payment in installments or may suspend execution for a time it considers properly. Unless court issues a stay, JC is entitled to immediate payment.
* Robitaille: Voth order – a stay of execution due to being on appeal where the appellant JD pays the full amount into court with the JC having full access to the money on the condition that he issues a letter of credit as security for anything he withdraws.
* Morguard: getting a stay of execution due to there being an appeal isn’t automatic. It’s determined by assessing whether there’s a serious matter to be tried on appeal, whether irreparable harm will result from a refusal to stay, and the balance of convenience. The balance of convenience, what’s fair, makes Voth orders an easier sell.

**Absolute Stays of Execution**

* Lau: requesting a discretionary stay from s.48 with no appeal. The court considers what’s just, looking at the balance of convenience and the relative position of the parties.
* Does either party suffer irreparable damage from either not getting the stay or the other side’s getting the stay? Who suffers more.
* Court can impose terms and conditions on the stay.

**Stays of Conversion Proceedings**

* Light Cubes: R. 19-3(3) is such that if the foreign judgment is under appeal, the BC court will automatically grant a stay of conversion proceedings until the appeal has been determined or the time for appeal has expired.
* This stay is not unconditional: it’s for a limited time with judge assigning a date by which appeal should be determined, though this is renewable.
* conversion action still counts as commenced, so JC can use pre-judgment creditor’s remedies.

**Garnishment Process – Issuance and Service**

* issuance of the garnishing order via an ex parte application by JC, service of the garnishing order on the garnishee, payment into court by garnishee of the amount garnished, payment out to the JC of that fund in court.
* JC finds that JD is owed money by a third party and seizes that money in full or partial satisfaction of the judgment debt.
* Dabrowski: Must be a debt in existence at the moment of issuance. If there isn’t one, even if it was likely to come about later, the order is invalid.
* Central Trust: to be effective, it must be served while there is still an existing debt not yet paid out. Order isn’t invalid if there isn’t one at time of service (unlike issuance), there’s just no money to be garnished. JC is left with whatever’s left at the time of service.
* S.9: service of the order binds the debt in the garnishee’s hands at time of service – the amount owed by the garnishee can change up until moment of service. And what’s owed at time of service is the only sum caught unless there’s a continuing garnishing order.

**Garnishee’s Payment into Court**

* Form D says garnishee must pay into court “at once,” this being interpreted as a reasonable time depending on the circumstances of the debt. Garnishee just can’t ignore the order and do nothing or pay the amount to the garnishor directly instead of into court.
* S.9(2): garnishee is free of the debt after payment into court.
* Options: pay it into court, pay the money into court with a dispute note, or pay nothing but file a dispute note. Garnishing orders can be disputed on procedural grounds, substantive grounds (not a garnishable debt), or through JD or garnishee’s invoking court’s discretion to set aside.
* S.9(3): the garnishing order must be served on the JD before payment out.

**Garnishable Debts**

* s.3(1): all debts, obligations and liabilities owing, payable or accruing due or wages (7 day rule) and claims arising out of trust or contract between JD and a third party and any judgment debts owed to the JD.
* Vater: narrowest definition of garnishable debt: it must be immediately due and unconditional. Payment isn’t coming until November, issued order in August is no good – it’s not owing till November and it was conditional on the guy’s still being alive in two months.
* Second definition (most common): conditions related to the passage of time can be overlooked for garnishment purposes.
* Bel-Fran: broadest interpretation – any and all conditions on the debt are examinable by the court and conditions that are “mere matters of procedure and administration” will not bar garnishment. This will be the case where they are insignificant and don’t affect third parties.
* Garnishing bank accounts: exception to Vater – usually there is no unconditional debt until JD makes demand of the bank. Here, debt comes into existence at time of service of the garnishing order – that’s deemed equivalent by English courts to a demand by the JD on the bank.
* Future Debts?: Masri – equitable receiver was given ability to collect ANY debts owed to Masri, including future debts that are not yet due. S.3(1) says you can garnish any debts available by way of equitable execution, so…..
* RRSPs cannot be garnished.
* Joint accounts: unless both joint owners are indebted to the JC, I t’s not garnishable.

**Garnishing Wages and Rent (7 day rule) and Real Estate Conveyances**

* S.1 definition of “debt” in COEA allows you get a garnishing order issued for wages/salary and served on the garnishee employer up to 7 days before the JD employee would be paid, subject to deductions. Employer can’t fire the employee for this.
* Gets around fact that wages are paid only when they’re fully earned and thus the lack of time for an order between employer’s owing the employee and payment out.
* Can only garnish one pay period at a time without a continuing order since only one debt at a time. Can only garnish wages in post-judgment garnishing orders, NOT pre-judgment.
* Stewart: there is no 7-day rule for rent. You cannot issue and serve a valid garnishing order on a tenant garnishee for rent payments before the rent is actually due.
* Ahaus: can garnish the lawyer/notary once they have the purchase moneys in hand that they have undertaken to use to pay off the mortgage and then hand over to the JD vendor.

**Pre-Judgment Garnishing Orders**

* S.3(2): any plaintiff to an action can apply for one and often do so at the same time as they’re filing a notice of civil claim.
* Applicant must set out that an action is pending, its time of commencement, the nature of the cause of action, the actual amount of the debt, that it’s justly due and owing after making all just discounts, and that the garnishee is indebted and within the court’s jurisdiction.
* Defendant, under s.3(2)(d), can try to get it set aside by arguing improper procedure, that the plaintiff’s claim isn’t for a debt or liquidated damages, that there’s been a failure to make all just discounts, that (as with a post-J order) it’s not a garnishable debt, or invoke s.5 discretion.
* Procedural defence: Knowles requires “meticulous observance” of COEA requirements. Nature of the cause of action must be stated clearly and court won’t fill in the blanks, even if obvious. Must be correctly signed out with information filled out with sufficient particularity.
* Pybus: it’s not technical perfection but substantial compliance with the statute bearing in mind the spirit of practicality. Renders the order voidable and court still has discretion as to whether to release the funds – it usually will barring the plaintiff having special circumstances or an explanation for its procedural errors and failures.
* Liquidated Demand defence: Busnes: to get a pre-judgment garnishing order for the sum you’re claiming, that sum must be a fixed amount (eg a promissory note, liquidated damages pre-estimated under a contract) or an amount that can be ascertained as a mere matter of basic arithmetic without estimation. If some part of the sum is a fixed amount and some isn’t, the court will hive off the part that isn’t and pay it out.
* All Just Discounts defence: only some of the garnished amount will be released. Typically where the plaintiff has garnished too much due to ignoring liquidated set-offs.

**Judicial Discretion to Set Aside Pre-Judgment Garnishing Orders**

* Typically exercised to protect the garnishee where the garnishing would subject it, as an innocent third party, to a massive inconvenience. Inherent in s.3’s “may issue” and s.5.
* S.5 also gives discretion to exercise on behalf of the JD to prevent him from losing all assets and starving.
* S.5 allows the court to release the entire amount in pre-judgment garnishing orders. For post-judgment orders, they can only replace an order of payment in full into court with an order for payment in installments.
* S.5(2): discretion is only exercised where it’s just in all circumstances. Redekopp Mills: example is where it’d destroy the JD’s business and hence screw his other creditors.
* Redekopp Mills: factors for pre-judgment discretion – strength of the plaintiff’s case, hardship to the defendant in the action and whether it’s undue, and necessity (does plaintiff really need it). Court may also choose to release some, but not all of the funds.

**Locating a Debt – Jurisdiction for Garnishment**

* COEA makes clear that a debt is where the garnishee is located. Garnishee must be in BC.
* Bank Act s.462 is the exception to this: bank accounts are located where the branch holding that account is located. Under Bank of Nova Scotia, be aware that if the bank is being garnished in its capacity as employer and NOT as JD’s bank, then location of the specific branch is irrelevant – the bank’s having a presence at all in BC is enough.
* Univar: s.462 is merely procedural – the bank’s being located in BC at all is enough provided the garnishing order is served here and served ex juris on the branch.

**Interests Created by Garnishing Orders for Priority Purposes**

* BC Millwork: pre-judgment garnishing orders only create a personal right against the garnishee for it to pay the amount into court. Post-judgment garnishing orders create an equitable charge giving a proprietary interest in the actual money. Result is that claims to the money under a post-judgment garnishing order take priority over pre-judgment.
* Pre-judgment garnishing orders can have their personal right ripen into an equitable charge if judgment is obtained after service of the pre-judgment garnishing order.
* This also means that funds in court via pre-judgment garnishing orders are vulnerable to being snatched up by other JCs using equitable charging orders – it’s a personal right versus proprietary interest.

**Orders Absolute – Remedy Against Non-Compliant Garnishees**

* S.11 (Evans) – where the garnishee fails to pay into court or dispute the debt, judge can make order for garnishee to pay into court the amount appearing due from the garnishee OR as much as may satisfy the judgment debt plus the costs of garnishing proceedings.
* S.11 counts as producing a judgment against the garnishee, with s.14 stating that execution or other proceedings may be taken to enforce it.
* S.11 means that you are no longer limited to garnishing the amount in the JD’s account/what the JD actually had to be garnished. Instead, you can go after garnishee for the whole judgment.
* S.11(b): gives the court discretion in making a s.11 order. As in Evans, a s.11 order is ex parte so a lack of full and frank disclosure may lead to court using discretion to not issue a s.11 order.

**Writ of Seizure and Sale**

* Issuance of the writ by the JC (Form 50 of the Civil Rules), then delivery of the writ to the sheriff who can act upon delivery unless JC says otherwise, then sheriff enters JD’s premises or third party premises where his stuff is and searches, seizes property, sells it, pays JC proceeds.
* Writ is good for one year.
* S.31 of L&E Act: time of seizure is the point of time in which JD’s goods are bound by the writ.
* Cybulski: JC or JC’s lawyer can give the sheriff information but giving him precise directions on what to seize can lead to sheriff becoming an agent leaving JC liable for his screw-ups.
* Sheriff cannot enter a residential/family dwelling nor its curtilage without express homeowner permission or implied by leaving the door open, either of which can be revoked at any time. Once in the building, he can break into anything in the house (cupboards, private rooms, etc) (Boyce). This protection doesn’t extend to commercial buildings.
* Re Boyce: If you go onto premise of a third party searching for JD’s assets and find nothing, you’re liable for trespass. This is unlikely unless the sheriff does damage in the search, as it’s otherwise nominal damages. Case finds that this trespass doesn’t apply to third party commercial premises, th ough it’s possible to extend this to all third part premises (not clear).
* Cybulski: crown property, even if it’s only leased to Crown or in Crown’s possession, is immune from seizure. JC is at risk personally if directinig sheriff to seize.

**Maintaining a Seizure – Walking Possession Agreements and JD’s transferring of goods**

* Sheriff does not need to take physical possession of the goods or maintain continuous physical presence on the premises to maintain seizure. It’s enough to indicate seizure and leave.
* Lloyd’s: JD cannot defeat a seizure by refusing to sign the walking possession agreement – it’s enough that the sheriff has indicated the seizure and has not abandoned the seizure, which will be determined by evidence as to sheriff’s state of mind.
* Goods are bound at the time of seizure: this means between issuance and seizure, JD can still transfer good title to his goods to bona fide purchasers unaware of the writ. If JD transfers goods after seizure (due to walking possession), sheriff can seize it from bona fide purchaser.

**Sale of the Goods**

* Sheriff has responsibility to get best available price or is vulnerable to a claim by JC or JD. Will often use public auction as a result, with no obligation to take the highest bid.
* Payment out of the proceeds will be to JCs in the order in which their writs were delivered to him, as modified by the CAA.

**What Can be Seized?**

* S.55: all tangible personal property of the JD (goods, chattels, and effects)
* S.56: interest in land can’t be seized/sold under writ.
* S.57: various intangible interests related to licenses/titles/permits to natural resources.
* S.62: both legal AND equitable interests in good and chattels can be seized. Unclear if this authorizes the seizure of jointly owned tangible personal property
* Vancouver A&W: court reads s.55’s “effects” as sufficiently broad to cover an intangible like the assets and shares an RRSP is invested in (RRSP is immune by statute). S.55 is read very liberally.
* Bank of BC: reads s.55 as a codification of the common law, which was limited to legal interests in tangible personal property. Morton confirms this: IP is not tangible personal property so is not subject to seizure and chattels with associated IP rights can only be sold encumbered.

**Seizing Money and Securities for Money**

* S.58: sheriff can seize intangibles evidenced by something tangible (paper) – lists money, banknotes, cheques, bills of exchange promissory notes, bonds, “other securities for money”
* Sheriff can’t search the JD: it must be voluntarily handed over.
* Seizing cheques is difficult since they only become the recipient’s property upon delivery and disappear once mixed with other funds in an account. Emptying a cash register is also hard since sales tax mean the JD business’ funds are mixed with govn’t property.
* Canadian Mutual Loans: a fully paid up life insurance policy fits in that “other securities” residual clause, but only if it’s fully paid up and not waiting on future payments. Patmore case also includes shares in bearer form under s.58.
* 1838 Judgments Act say there must be physical seizure of the paper by the sheriff. Under ss.58-61, the sheriff can then either hand the intangibles over to the JC, hold it and wait for payment, receive payment, or sue for payment (ie sheriff has seized promissory note). Unclear whether these options are exclusive or if the s.58 intangibles may be sold.

**Seizing Shares – Securities Transfer Act**

* If you can trade it and it’s regulated, it’s exigible: certificated shares, uncertificated shares, shares with transfer restrictions, and security entitlements. Still requires writ of seizure/sale.
* S.48: seizure of interest in certificated security requires sheriff to seize the paper certificate.
* S.49: seizure of interest in uncertificated securities require sheriff to serve notice of the seizure on the issuer’s chief, executive office.
* S.50: seizure of security entitlements to financial assets require serving notice on JD’s broker. Or, s.51, if that entitelement has been pledged to a third party, notice to them.
* S.63.1(3): if the STA seizure is by notice to issuer or broker, it’s effective when that party has had a reasonable opportunity to act on the seizure with regard to time/manner of the notice.
* Shares with transfer restrictions are valuated by sheriff making his best guess. S.65.1(5): if on application by sheriff or interested person, BCSC believes the transfer restrictions on the seized securities were with the intent to defeat/hinder/delay creditors and others, court may make appropriate orders, including dissolving the issuer and distributing the proceeds.

**Charging Orders**

* Judgments Act 1838: can apply for charging orders on shares in BC companies and, as per Consumer Imagenet: on federally incorporated companies with clear connections to BC. This is akin to an in personam remedy, so may be able to charge foreign shares too.
* The shares stand charged with the payment of the judgment debt as though the JD had voluntarily charged them with the amount owing. JC becomes like a secured creditor with a security interest in the shares and when they’re sold, the JC is entitled to the entire proceeds of their sale without neding to share with other JCs.
* Initiated by an ex parte application by the JC, then a “show cause hearing” within 6 months where JD can apply for a discharge of the order, after which the order will either be discharged or made absolute. JC then can apply for an order for sale.

**Registration of Judgment Against Land**

* S.81: includes any legal or equitable or future interest in land, expressly including interests of mortgagors, vendors, purchasers, joint tenants, and tenants in common, but not lien claimants.
* S.86: the minute you get judgment, it can be registered immediately.
* Re Schiava: there is no requirement that the JC first exhaust remedies against personal property.
* S.86(2): must register against specified land and, 86(5), if the nature of the interest changes in that real property, the registered judgment captures those after acquired interests insofar as they relate to the same land.
* S.88: register and deliver a signed and sealed copy of the judgment to the registrar who, under s.89, sends out notices to the property owner who can then dispute the debt/judgment, at which point, the registrar must do an inquiry.
* S.86(3): registration immediately creates a lien and charge on the land.
* Bank of Montreal: voluntary sale of the land by the JD to a third party does not extinguish the judgments: they run with the land. JD must deal with the JC before voluntarily selling the land and if not, the third party purchaser is liable for the judgments if he was aware.
* S.83(1): must renew registration every two years unless it’s a non-expiring Family judgment. If not, it evaporates and while it can be re-registered, it’ll be dated at the date of re-registration, not registration. Also, filing a CPL does not remove need to renew (Butler Lafarge).
* Can’t re-register or renew if the judgment is past it’s 10 year lifespan. Can get another 2 yrs tho. (Shipowick).
* Fulthorp: can’t register against land that the JD has already transferred, even if he’s still the registered owner and the transfer remains unregistered.
* Muntain: while you can’t seize or garnish joint stuff, you can register against jointly owned land. If the JD dies, this means you’d get nothing, but you’d get it all if the other person dies.

**Getting Sale of Land**

* S.92: first step is a show-cause hearing: JD is called to show why it should not be sold in a Chambers application. Any reason in law or discretion – debt’s been paid, judgment has expired, there’s other exigible property, there’s no equity in the land worth selling, ask for payment in installments, or invoke discretion in some way peculiar to this JD/property.
* S.94(1): if fails to show cause, judge must order an inquiry by the district registrar who will define what land is liable to be sold, what interest in that land the JD has, what judgments/charges/liens are on title and in what priority, and how proceeds of the sale should be distributed. Registrar sends this report to the court and every interested party.
* S.94(5): report is confirmed by the court in another hearing, varied, or sent back to registrar.
* S.96: after confirming the report in that hearing, there’s another show-cause like s.92, then court can issue an order for sale with, under (2), general discretion to impose terms and conditions on the order for sale with even greater discretion for JD’s home.
* S.96(1): order must declare what land and what interest is liable to be sold, directing sheriff to sell. S.100: redemption period – sheriff must not offer the land for sale until one month after he got the order, in which time JD can still save the land by paying the judgment.
* Toupouzis: one term is to ask it be sold by real estate agent instead or, as here, that the sale be suspended because the land will be worth much more in the near future (development).
* S.104: sheriff can adjourn the sale if highest bid is too low, at which point he can ask for court direction or judicial supervision of the sale

**Distribution of Proceeds**

* S.106: sheriff’s expenses are deducted before distribution, then proceeds go to court registrar.
* S.110: money realized by sale of land is money levied for CAA purposes – JCs are paid out under CAA.
* Wardel: in show-cause hearing, if they don’t have enough to set aside the order, they can still get court supervision of the sale. Not required, but special circumstances (it’s JD’s home) help.
* CAA does not apply in foreclosure sales. Also, the charges on title transfer to the proceeds and don’t evaporate upon sale (Roadberg).

**Mareva Injunctions**

* It’s an in personam order so requires court has jurisdiction over defendant to an action.
* Ex parte application by plaintiff with full and frank disclosure with order liable to be set aside if shown that this was not done.
* Aetna Financial: without it being shown that there’s an intention to render a judgment dry, you can’t get one. Hard to show this where a federally incorporated company is just moving assets between provinces.
* Mooney No. 1 Requirements: must show a good arguable casemust show that there’s a real risk of a dry judgment – either the defendant is moving/disposing assets or threatening to do so or, as in Mooney, a risk can be demonstrated based on his character and general behaviour. Then consider whether it’d be just and convenient to issue the order.
* Ancillary order for disclosure generally accompanies marevas.
* Discretion is motivated by justice and fairness of the order: the good arguable case standard isn’t a fixed formula.
* Hickman: post-judgment mareva orders can be issued in BC. Marevas are also typically limited in value or to particular assets so that the defendant can continue living and carrying on business. No open-ended marevas (Tracey) – must be limited in time as well and usually requires undertaking by applicant to compensate defendant and third parties for damages that result from the freezing order.
* Value of the assets that would be subject to the mareva is examined relative to the value of the claim: justice and convenience may lead to court reducing value of assets subject to mareva.
* Justice and convenience will usually result in mareva getting tossed where there are serious and adverse effects on third parties, though there is no strict requirement of zero impact of fraudulent intent (Silver Standard).

**Enforcement of Mareva Injunctions**

* Only remedy against defendant who goes about moving assets anyway is contempt (fines, imprisonment) which if pre-judgment, can result in struck pleadings.
* If they have notice of the mareva, a third party in possession of the assets who disobeys the injunction (eg: bank) can also be liable for contempt.

**Equitable Receivers**

* Can be pre or post judgment and anyone is eligible to be appointed as receiver.
* Requirements: the property must be exigible at common law. Can be interpreted three ways: class of property is exigible (Vancouver A&W Drive-Ins), THIS asset in particular is exigible, or this asset right at this moment is exigible (Peterson Livestock).
* Second requirement: is there a legal or practical impediment to execution at common law and, if not, are there special circumstances. Legal impediments are rare since equitable interests are now exigible. Practical impediments may include JD’s having lots of small debts and having tons of garnishing orders would be impractical
* Special circumstances: NEC Corporation establishes that fraud by JD will generally work, as is showing some difficulty in using common law execution. No assets in BC isn’t (Interclaim). A worldwide equitable receiver may be possible, or may have been a judicial error (NEC).
* Third requirement: is it just and convenient in the circumstances to appoint a receiver? Parties can argue anything here including cost/benefit and exhaustion of other remedies. The more assets that would be subject to the receivership, the harder it is to get.
* Klyne: if a statute makes a payment immune to all forms of execution, you can’t get a receiver for it. But court doesn’t consider that a payment is a debt, so as a class of asset it’s exigible, and statutory immunity may just be an impediment.
* Equitable receivers are useful for joint interests – debts are exigible, joint is the impediment, equitable receivers can execute against joint accounts if they can figure out how much is JD’s.

**Masri – a Possible Route to Equitable Receiver**

* Court appoints a worldwide equitable receiver for future debts, something not usually exigible.
* Justice and convenience is made the overriding consideration, over and above exigibility and the showing of an impediment. No m ore three hard conditions. Being no longer bound by current rules of exigibility makes it possible to appoint receiver for future debts, allowing a receiver to be appointed to collect debts as they become due instead of repeated garnishing orders.
* First argue Masri, failing that, go for broadest rule on exigibility: the class is exigible.

**Equitable Charging Orders**

* Used by a creditor to take money out of court without being in contempt.
* The fund must be in custodial egis, it must be shown that the JD is presently entitled to it, and then consider whether the JC is the only creditor/claimant of the JD who owns the fund.
* Cheema: if there are no other JCs of the JD, pay-out is immediate.
* Rennison: if JD can show the existence of other creditors, the court will hold onto the money for another 6 months during which other creditors can come forward and claim a share. At the end of 6 months, court will determine the allocation.
* If there are other creditors, s.26 of the CAA may be better than equitable charging order: get the sheriff to seize the fund in court. You will have to share, but the sheriff only has to hold the assets for one month, not six.
* Miller: clean hands doctrine may apply to equitable charging order.

**Crown Priority – Federal Court Judgments**

* BC Deputy Sheriff: FC judgments are governed by federal common law and NOT provincial statutes. This means the Crown using the FC system to enforce an FC judgment isn’t bound by the CAA and won’t have to share with other creditors. If it uses the prov system, CAA applies.
* Hong Kong Bank of Canada: if the Crown uses any portion of the COEA to facilitate it’s case, including referring to definitions under the COEA, the CAA will apply to them.

**Fraudulent Conveyance Act**

* S.1: components: a disposition of property with an intent to delay/hinder/defraud creditors and others. A disposition is perfectly valid until it is attacked under the FCA.
* S.2: gives an exception where the disposition of property is to bona fide purchaser for value provided that the purchaser, at time of transfer, had no notice/knowledge of the fraud.
* Burden of proof in showing both elements is on the plaintiff invoking the FCA unless the disposition is to a near relative.
* Must establish staten of mind and intent of the transferor and, if it’s a s.2 transfer for good consideration, the intent of the transferee too. This can be shown through admission, the effect of the disposition, and through the badges of fraud.
* Protects creditors and “others”: creditors who came into existence AFTER the disposition. Maudsley tries to limit this to persons who have debts owing to them by the transferor who just haven’t yet brought their claims to fruition by legal process – so there’s some just claim and relationship between the parties; other cases just say future creditors.
* S.2 exception’s isn’t market value, just good consideration, reduced for natural love for relatives.
* Maudsley: intent must be established; showing that the EFFECT of the disposition was to hinder isn’t enough.
* Boukalis: doesn’t matter that a secured creditor at time of disposition becomes unsecured later.
* Solomon: a disposition for good consideration to a bona fide purchaser who knew nothing about the circumstances will be protected. To reverse the onus, plaintiff must bring evidence of a non-arms-length, near-relative relationship.
* Solomon’s badges of fraud: gift was general (“here’s all I have”), donor continued in possession using them like they were still his, transaction was in secret or for cash, transfer was made pending a writ/after an action is commenced, deed is self serving with unusual provisions like declaring that it’s bona fide or giving conveyor a power to revoke, the consideration is grossly inadequate (must be FMV or FMV reduced for natural love), unusual haste in making the transaction, and a close relationship between the parties to the conveyance.
* FCA actions can pierce the corporate veil: if the disposition was to a corporation for good consideration (s.2) in establishing double-intent, court can see if JD had sole control of the corp/shares. If so, JD’s intention is also the transferee corp’s intention (Chan).
* Remedies: disposition is set aside to the extent needed to satisfy the claimant: either tracing is used to get the proceeds or a pecuniary judgment against the transferee. Plaintiff won’t get the property, it just gets returned to JD so JC can use enforcement procedures against it. Sheriff can also seize a property if he correct believes it’s been fraudulently conveyed; then it goes to JC.

**Exemptions**

* S.71: only natural persons can claim them, not corporate debtors.
* S.71: household furnishing and appliances not exceeding a value of $5000. One motor vehicle not exceeding $5000 or $2000 for family debtors. Tools and other personal property of the debtor not exceeding $10K used by debtor to earn income in his occupation. All medical and dental aids.
* S.71.1: principle residence of the debtor is exempt from seizure/sale if the value of his equity in it doesn’t exceed $12K in a capital area (Vancouver or Victoria) or $9000 anywhere else. If it exceeds that, it can be seized/sold, but the debtor gets that $12K back (s.71.2)
* S.71.3: RRSPS are exempt other than payments made into it within 12 months of debt coming due. Works of art brought into BC for temporary public exhibit are exempt too (s.72).
* S.73(1): in implementing execution, sheriff must allow debtor to pick out assets among what’s seized based on exemptions. He has no statutory obligation to inform the JD of his right to an exemption, though it’s often a contractual obligation to do so.
* Lee: JD or his family must claim exemption within 2 days of the seizure. This is strict.
* Disagreements as to the value of an asset for purposes of an exemption results in a complex valuation process with appraisers. Before ordering this, COEA gives parties 1 more day to think.
* Nguyen: s.71.1 assumes a COEA sale and excludes parties selling pursuant to a mortgage. This is interpreted liberally: a sale isn’t really voluntary if the JD only sold to get a better priced and would’ve been faced with a COEA sale if he hadn’t.
* Atwal: the s.71.1( c) car exemption is such that if the car is over $5K, it can be sold, but JD gets $5K still.
* Crown is immune to execution processes, wages are completely exempt from pre-judgment garnishment and only a percentage is vulnerable to post. Govn’t benefit payments often have statutory immunities, as do life insurance policies.
* S.87: real or personal property of an Indian or band situate on a reserve is exempt from execution at instance of any person other than another indian or Band. Bastian Estate gives two step test for locating property here: identify relevant factors tending to connect the property to a location then determine the weight of these facts in light of the purpose of the exemption and the ty pe of property.
* Physical property is located according to something similar to real and substantial connection.

**Family Creditors**

* People owed maintenance arrears. Can bring it to director and have him pursue it.
* FMEa gives family creditors and director access to databanks and records.
* S.15: director, tho not family creditors, can issue continuing garnishing orders for 12 months.
* S.17: director can attach joint bank accounts.
* S.25: crown immunity is waived against family creditors.
* S.26: family judgments are non-expiring and don’t need to be continually re-registered.
* S.28: maintenance orders take priority for arrears of up to a year. Other arrears share pro-rata.
* S.29.1: can appoint a very broad equitable receiver for ANY property of the debtor, regardless of special circumstances or if it’s exigible at law.

**Employment Standards Priority**

* S.52 of COEA: unpaid employees can complain to director to pursue wages in arrears with a priority given to three months’ wages.
* BLA gives t hem priority for 6 weeks’ wages.

**Creditor’s Assistance Act**

* S.46: no priorities between execution creditors with judgments from BCSC or BCPC.
* S.2: when a sheriff levies m oney on execution, it is entered promptly in his book detailing that a levy has been made, amount and date.
* S.3: amounts entered under s.2 must be distributed rateably among creditors and other creditors with writs or certificates in sheriff’s hands at time of levy or within 1 month of the entry of notice.
* A levy is essentially whenever money ends up in the sheriff’s hands, either through his having done a sale or having received a part or full forced payment from the JD. The 30 day period starts ticking and the levy has occurred once the sheriff receives the money and NOT when the first writ is issued (Benjamin Moore).
* Sheriff holds that money for 30 days, during which he can receive more writs and continue to seize and sell, adding it to the pot, and at end of period, pot is distributed pro-rata. The Crown may also show up at any time in this period with an FC judgment and claim the pot.
* “Other creditors” are eligible under s.6 to apply for a certificate 20 days after seizure or 2 days before sale. Debtor than has 10 days to object, then creditor has 10 days to refute. S.13 gives certificates a life of 3 years plus renewal and s.18 allows them to issue other writs like they had a judgment. Certificate-holders share with the other JCs under CAA.
* If the JD makes a forced payment, part or full, to the sheriff and when he does (NOT 30 days after he does) there are no other writs or certificates delivered or they’ve been withdrawn or paid and there are no pending applications for certificates, the forced payment is not a levy and is not entered at time of payment under s.2.
* S.34: Sheriff can garnish and this would be a levy, but only where there are insufficient funds to pay outstanding writs (Tan).
* Amounts paid via rules of court go straight to JC and are not caught by CAA.
* Sale of land (Hankin Furniture): if not pursuant to COEA, it’s in order of registration as in Roadberg, but if it’s under COEA, CAA kicks in where there are more claims than proceeds. Court decided that all judgments are satisfied first, then the mortgage.
* Hong Kong Bank of BC: after COEA sale of land, fund in court is held for 30 days after which pro-rata distribution to all JCs and certificate holders. Family creditors or ESA director will get priority to the pot.

**Builder’s Lien Act**

* Contracting owner must hold back 10% of the value of the head contractor’s contract or, if doing his own contract, 10% of the value of each of those contracts. Head contractor must hold back 10% on each of his sub contracts, and subs do same for their sub subs.
* Contractors, subs, workers, anyone who supplies materials for the improvement will get a lien for price of work and material to extent it remains unpaid. This lien arises by operation of law.
* S.20: you have 45 days to file this claim from the date of certificate of completion’s issuance or, if none, from date head contract has been completed/abandoned/terminated or, if none, from date at which improvement is completed or abandoned.
* S.21: once perfected by filing, registration is back-dated to the date on which work began or material was supplied, giving priority over charges registered after work began but before filing.
* S.33: an action to enforce the lien against the land must be commenced within 1 year from date of filing. At any time in that year, owner can serve notice demanding a speedy trial which will require the claimant to file a CPL and start an action within 21 days of notice.
* S.19: can be liable for wrongful filing of liens, but only where it amounts to an abuse of process.
* S.5: owners must make a separate account for holdback to prevent mixing and this cannot be gotten at by outside creditors. It must be held back for at least 55 days – if no lien claims are filed in those 55 days, owner can pay it over to the contractor.
* S.23: if liens are filed, owner can pay the holdback into court if the value of the liens don’t exceed it, and this quickly gets the liens removed.
* S.24: if liens exceed the hold back, owner can instead post security to get the liens off title. This security may be equivalent to total value of all liens, but court will account for factors that would go into a trial and set a lower amount.
* S.4(9): there is a separate lien that arises on the holdback amount itself. Shimco states that this lien claim can be pursued even if the lien against the land is lost by virtue of the 45 day period expiring without filing. That said, there actually has to be a holdback still in existence and not yet paid out (Wah Fai Plumbing). But there is no time limit to bring this claim.
* S.31: court can order a sale of the land if that’s the only way to satisfy claimants.

**Construction Money as Trust Money**

* S.10: money received (construction money) becomes trust money with the corporate construction firms acting as contractor being the trustee. Their directors too.
* Any expenditure of the trust money on something that is not for the improvement is a breach of trust that can result in the firm and the director getting sued by the lien claimants.
* S.14: Trust claims have the one year limitation period, but can be pursued even if the 45 day filing window is expired.
* Banks may also be sued for breach of trust where they know the client is in construction, this is construction account, and know exactly what’s going on (Bank of Nova Scotia).