

Debt Information/Alternative Financial Sector

Benefits of Consumer Unsecured Credit	<ul style="list-style-type: none"> - Target group: ppl with rising income expectations & peaks in need over life - drives economy - provides safety net, may tide over during short-term difficult time - accessible: not tied to assets/property - convenient: better than cash
Chawla and Uppal Household Debt in Can.	Task force on Financial Literacy defines FL as “having the knowledge, skills and confidence to make responsible financial decisions”
Alternative Financial Sector (Ian Ramsay article)	
General Principles	<ul style="list-style-type: none"> - go to AFS if can't get line of credit, small loan or credit card <ul style="list-style-type: none"> o vulnerable: low income, bankrupt, poor credit, single mothers, unattached senior citizens (women), poor education, under 25 - people access b/c: <ul style="list-style-type: none"> o no choice o convenience: hours are good, ppl friendly, not denied, access to loans right away, habit o no mainstream banks within low income area - unevenly regulated
Financial Services	pawnshops, rent to own, cheque cashing, loan brokering, sub-prime auto
Problem with AFS	<ul style="list-style-type: none"> - increase price for credit than in the mainstream - oppressive collection practices - often transaction structured to avoid consumer protection regime (better for credit granting business than client)
Rationales for regulating AFS	<ul style="list-style-type: none"> - Neoclassical Economic <ul style="list-style-type: none"> o Only intervene if market failure (i.e. monopoly) o Level playing field, rational actors o CRITIQUE: no unregulated market b/c govt intervenes - Bounded Rationality and Market Manipulation <ul style="list-style-type: none"> o Assume ppl act rationally according to interests and are manipulated o Intervene b/c market is manipulating the bounded rational interests (i.e. financial literacy, give time to change mind) o CRITIQUE: ppl learn from mistakes - Distributive Justice <ul style="list-style-type: none"> o Unfairness if some ppl paying more for credit and lack regulation o Intervene b/c need more equitable distributive justice (i.e. interest rate caps, financial exclusion from mainstream also social exclusion)
Moving Forward	<ul style="list-style-type: none"> - Vulnerable groups should have the same or more consumer protection - Detailed regulations: reduce enforcement costs & avoid lawsuits - Mainstream banks provide short-term loans - Interest rate ceilings - Legislation should focus on substance of the transaction NOT the form (b/c lenders have history of changing names of services to be outside regime)

Payday Loans

General Principles	<ul style="list-style-type: none"> - part of AFS - annualized fee of interest well above criminal interest rate <ul style="list-style-type: none"> o criminal code doesn't apply if prov has own regulation
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	<ul style="list-style-type: none"> - loans range from \$100-\$1000 - Consumer movement asking for regulation (currently regulate criminal interest rate) <ul style="list-style-type: none"> o Interest rate caps o Rollover regulations (roll over debt with higher interest in fees) o More transparency about full costs o Common proposals: license payday lenders, interest caps, prohibit rollovers, introduce cooling off periods (sign up and change mind w/ no fee) - Payday lenders want regulation <ul style="list-style-type: none"> o b/c want to legitimize business and stop class actions o say most clients are occasional users not regular shortfalls o meeting a need b/c too risky for mainstream so need higher interest rate
Criminal Code	<p>S347 – definitions; doesn't apply to payday loans less than \$1500 and 62 day term or less, the person is licensed</p> <p>S347.1 – payday loans tries to capture substance rather than name; (3) feds allow for provinces to create legislation to protect consumers and introduce caps so criminal interest rate doesn't apply</p>
BPCP	<p>S112.01 – defn payday loan</p> <p>112.02 – LG in Council may regulate total cost of credit for payday loans and any interest/charges (can't charge more than criminal interest BUT can charge more than cabinet)</p> <p>112.03 – lenders cant charge for a period that exceeds number in s197.1(1) if borrower fails to make last payment</p> <p>112.04 – prohibited fees/penalties/charges</p> <p>112.05 – cancelling ("cooling off" period) payday loans</p> <p>112.06 – loan agreement requirements</p> <p>112.08 – prohibited practices (what lender can't do!): no rollovers, no new loans to borrower who already has loan with that lender, etc.</p> <p>s165 – remedies for contravention</p>
Payday Loan Regulations	<p>Consumer protection BC licenses and ensures compliance with the regulations</p> <p>S17 – max loan 23% of principal, (2) max rate 30% per annum on default (but in two week period can charge 23% which is annualized to 600%); (2) max of \$25 dishonoured cheque</p> <p>S18 – can't lend > 50% net pay/income that will be received during pay period</p> <p>S23 – have to have longer payback period depending on how paid; i.e. 3rd agreement in 62 days need to have longer loan period; repayment of loan distributed equally over loan period</p>
Compliance Order and Admin Penalty (Cash Store) March 23 2012	<p>3 violations of act</p> <ul style="list-style-type: none"> - charging fee to get money on cash card (contrary s112.04) - charging more than 23% interest on cash card (contrary s17) - had to pay immediately to get card and no other option (contrary s19) <p>HELD: refund issuants fees, admin penalty \$25,000, pay costs \$21,000</p>
Supplemental Compliance Order (Cash Store) November 30 2012	<p>Very detailed order about how to go about issuing the refunds for fees that they are required to give under March 23 2012 order</p>

Credit Reporting and Credit Card Regulation

<p>If information on credit report is wrong, what steps can you take?</p>	<ol style="list-style-type: none"> 1. figure out where the error is – what specific provision (given to wrong person under s108, contain wrong information under s109, no notice under s110) 2. IF Credit Reporting Agency made a mistake: <ol style="list-style-type: none"> a. S111 BPCP: individual can give explanation of info to reporting agency b. S24 PIPA: (1) can request error or omission in report about individual under control of organization be corrected; (2) if RG organization must correct info as soon as reasonably possible and send corrected info to all organizations where incorrect report sent c. S27 PIPA: individual must send written request for correction with sufficient detail for organization to make correction d. S171(1)(b) BPCP: bring action against reporting agency for damages suffered (but no punitive damages) (& can't bring if given compensation from same Δ under 192 for an offence under the act) e. Haskett v Equifax: b/c of negligence can sue for damages; credit is integral and consumers should be able to rely on credit reporting agencies to get it right – reporting agencies owe DOC to person report is about 3. What if person (i.e. bank) who receives information makes a mistake (i.e. no notice under s110(2) for why denied credit)? <ol style="list-style-type: none"> a. Sue bank for damages b/c of negligence
<p>Business Practices and Consumer Protection Act</p> <p>CREDIT REPORTING REQUIREMENTS!</p>	<p>S106: definitions</p> <p>S107: must have consent of individual to whom credit report relates</p> <p>S108: lists who credit reports can be given to (lender, landlord, employer, insurance provider, lawful purpose, business requirement, govt, police, court order, BPCP director, individual to whom credit report relates)</p> <p>S109: (f) judgment info more than 6 years old can't be in report unless still outstanding; (g) bankrupt can't be in report after 6 years of discharge UNLESS more than once; (o) catch all – nothing 6 years after event</p> <p>S110: (1) if person who receives credit report denies all or part of a benefit OR increases the cost of a benefit b/c of credit report MUST (2) give written notice no later than 30 days after decision made in person or by mail</p> <p>S111: individual can give explanation of info relating to credit report to reporting agency</p> <p>S112: cannot give false or misleading info to reporting agency</p> <p>S171(1)(b): if suffered damages or loss b/c of contravention of act/regulations can bring action against reporting agency BUT can't bring action under 171 if court already issued compensation to consumers under 192</p>
<p>Personal Information Protection Act</p>	<p>S12: allows reporting agency to collect info for future credit report without consent as long as individual consents to giving information the first time</p> <p>S24: right to request correction of personal information</p> <p>S27: procedure for how to make request</p>
<p>Credit Cards and Lines of Credit</p>	<p>BPCP s99: no liable for charges if lost or stolen UNLESS they know your pin and take money from ATM (not good for elderly, written when most ppl signing – out of date legislation)</p> <p>Credit Business Practices Regulations</p> <ul style="list-style-type: none"> - s3 (2) grace period, (4) can't charge interest on or before due date if paid bills - s4 cash advance on credit card higher interest rate than if regular purchase (higher interest rate only for cash advance, pay proportionately) - s6: need your permission to raise limit

Debt Collections Practices

<p>What do you do if debtor and you think debt collection is wrong?</p>	<ol style="list-style-type: none"> 1. Figure out if there is a violation – what is the specific section <ol style="list-style-type: none"> a. Are there any other potential violations that need more info for? b. Common Violations of Collection Agencies/Creditors in BPCP: <ol style="list-style-type: none"> i. S114 – Harassment <ol style="list-style-type: none"> 1. includes: threatening language, undue/excessive pressure, threatening to publish debts, etc. 2. Total Credit v Roach: even if technically complies with act (one cease and desist letter) can go against spirit of the act; one bad call not harassment BUT calls and interaction and log notes create attitude of harassment – very bad that called at work with purpose of not confirming employment, saying urgent when not urgent is wrong, tried to collect more than due – not enough evidence on loss of reputation claim ii. S115 – did not make reasonable attempt to notify in writing, did not wait 5 days before calling <ol style="list-style-type: none"> 1. Doesn't apply to creditor collecting debt (DIC Reg) iii. S116 – made more than one attempt at work and/or conditions to meet before calling at work not met (attempt at home, consent from individual), did not communicate in writing only once asked <ol style="list-style-type: none"> 1. 116(4)(c) doesn't apply to govt (DIC Reg 2(4)) iv. S117 – communicated with ppl other than debtor v. S118 – called at wrong time (stat holiday, Sunday outside 1-5 pm, weekday outside 7 am – 9 pm) vi. S120 – collected more than owing, collect from ppl not liable, continue communication if claim not to be debtor vii. S121 – legal proceedings w/o notice <ol style="list-style-type: none"> 1. Doesn't apply to creditor collecting debt (DIC Reg) viii. Did they have a license? (required under s143 BPCP) <ol style="list-style-type: none"> 1. Canaccede: if no license, collection agency has to register for one BUT debtor still has to pay debt – for sanctions against collection agency need to go to Consumer Protection BC 2. How to remedy problem? <ol style="list-style-type: none"> a. Immediate Action: Send a Letter! <ol style="list-style-type: none"> i. S116(4)(b) BPCP: communicate to lawyer by writing only OR with debtor by writing only b. File Complaint to Consumer Protection BC <ol style="list-style-type: none"> i. Might recover some damages c. Sue for Damages <ol style="list-style-type: none"> i. S171 BPCP – if suffered loss or damage by contravention of act can bring an action against (c) collector, (d) sheriff, collection agent, debt pooler
<p>How do you collect debt as original creditor?</p>	<ol style="list-style-type: none"> 1. Immediate Action: Send Demand Letter if trying to collect <ol style="list-style-type: none"> a. LSBC CPC 7.2-6 (subject to 7.2-7): if other side has a lawyer need consent of lawyer before approaching, communicating, negotiating etc. with their client b. LSBC CPC 3.2-5: can't threaten or advise to threaten to make quasi-criminal charge or regulatory complaint to get debt paid c. <i>Might not want to send demand letter if risk debtor will leave or send</i>

	<p>assets out of country (creditor lawyer and original creditor exempt from s115 and s121 per s2 DCI Regs)</p> <ol style="list-style-type: none"> 2. Following actions: make calls BUT don't violate act, try to informally get debt paid 3. Send debt to collection agency for collection 4. Start proceedings to get judgment, garnish wages, execute against land/pers. prop <ol style="list-style-type: none"> a. Don't need to give notice under s121 BPCP b/c 2(2) DIC Regs
Prohibited Collection Practices	
BPCP More potential violations of the act!	<p>113 – broad definition of “collector”: person (in BC or not) collecting or attempting to collect debt</p> <p>114 – Harassment (non-exhaustive list)</p> <ul style="list-style-type: none"> - (1) can't contact family, employer etc in harassing manner - (2) includes: threatening/profane language, undue/excessive pressure, threatening to publish debts, etc. - Total Credit Recovery v Roach: discusses harassment, sometimes complying with act still goes against spirit [can't say urgent when not urgent!] <p>115 - Disclosure to debtor</p> <ul style="list-style-type: none"> - before can call need to make reasonable attempt to notify in writing (name of creditor, amount and authority of collector) ← VIOLATED in Canaccede - (2) once letter is sent have to wait 5 days before can call - * b/c DIC Regulation 2(2) doesn't apply to creditor collecting debt <p>116 – communication to debtor</p> <ul style="list-style-type: none"> - (2) can only make one attempt to call at work (AND only if don't have home address/telephone OR attempts at home not working OR debtor says ok) - (4) have to communicate in writing only if debtor notifies collector to communicate in writing only and gives address <ul style="list-style-type: none"> o * b/c DIC Regulation 2(4) doesn't apply to govt <p>117 – cant communicate with people other than debtor</p> <ul style="list-style-type: none"> - (2) exception: can communicate w/ employer to confirm D's employment or if authorized by D <p>118 – time of communication restricted to particular times/days</p> <p>119 - can't make collect calls</p> <p>120 – can't collect from person not liable for debt or in excess of amount of debt or continue communication if person claims not to be debtor</p> <p>121 – prohibits collection agency from starting legal proceedings w/o giving notice</p> <ul style="list-style-type: none"> - * b/c DIC Regulation 2(2) doesn't apply to creditor collecting debt <p>122 – (a) collector can't remove, seize, repossess or levy distress from inside home in absence of Δ (or their agent), (b) can't take things don't have an order for, (c) can't take during prohibited time</p> <p>123 – collector can't use false or misleading information and misrepresentation to attempt to collect payment – (1) can't supply false or misleading info, (b) can't misrepresent purpose of communication, (c) can't misrepresent identity of collector, (d) can't use court-like documents that imply connection with court if not lawful</p>
Debt Collection Industry Regulation	<p>2(2) – s115 and 121 don't apply to original creditor</p> <p>2(4) – s116(4) doesn't apply to govt</p>
Law Society of BC, Code of Professional Conduct	<p>7.2-6 (subject to 7.2-7) – if person has a lawyer need consent of lawyer before approaching, communicating, negotiating etc. with client</p> <p>3.2- 5 – lawyer can't threaten quasi-criminal charges or regulatory complaints or advise client to do so</p>
Credit Business Practices Regulations	<p>7(11) – costs to institution in collecting a debt are not considered part of the amount owing by Δ and can't be recovered</p>
Licensing	
BPCP	<p>143 – can't engage in designated activity (defn s142 means “business, industry, trade profession etc) unless licensed to engage in activity or exempt by regulation from license</p>
Debt Collection	<p>1.1(b) – collection agent [s.125 of BCPC in course of business attempts to collect payment</p>

Industry Regulation	of debts] counts as a designated activity in s142 that requires license in s143 3 - exemption from license: lawyers (a), banks (b), credit unions (e), sheriffs (i), govt employees collecting debts (h)
Privacy	
Personal Information and Protection Act *allows collecting info for specific purpose w/o consent	12(1)(j) – can collect info about person w/o consent if necessary to facilitate collection of debt owed to organization (i), payment of debt owed by organization (ii) 15(1)(j) – can use personal info w/o consent if necessary to facilitate collection of debt owed to organization (i), payment of debt owed by organization (ii)

Pre-judgment execution - Extraordinary measures!

Injunctions	<p>39(1) Law and Equity Act: court may grant where “just and convenient”, broad jurisdiction</p> <p>Procedural Requirements SCCR 10-4: application for pre-trial injunction, (2) can apply before other side knows litigation pending</p> <p>Ex. Of when granted (exception to lister v stubbs rule: where Δ can do whatever wants with \$)</p> <ul style="list-style-type: none"> - SCCR Rule 10-1: preservation order - uphold integrity of the court (prevent fraud) - preserve assets where there is a real threat of removal or spending or converting to something harder to access <p>Policy: affects Δ's property before trial and this matters because concern that any pre-judgment remedies are used as leverage by π to force a settlement</p>
Mareva Injunctions *key	<p>Option: BCSC evidence Δ wasting or moving assets beyond courts jurisdiction</p> <p>Prevents: Δ from dealing with asset except as permitted by order (no selling, conveyancing, encumbering etc)</p> <p>Two Part Test for Obtaining Mareva Injunction (Mooney v Orr in Tracy v Instalogs)</p> <ol style="list-style-type: none"> 1. strong prima facie or good arguable case for a judgment <ol style="list-style-type: none"> a. more than just arguable, needs to be convincing b. doesn't have to reach high threshold of “bound to succeed” 2. Balance Interests <ol style="list-style-type: none"> a. Of both parties to reach a just and convenient result because it is an extraordinary measure (Aetna) b. Factors that can be shown: existence of assets, genuine risk of disposal, irreparable harm, past conduct <ul style="list-style-type: none"> - T v I: good arguable case that Instalogs charging criminal interest rate, genuine risk that assets would dissipate and cause irreparable harm to class members - Other aspects of case <ul style="list-style-type: none"> o Court will usually require π undertake to pay any damages suffered by the mareva injunction to the Δ if the π is not successful in receiving a judgment [court didn't require that in this case b/c class action and representative π, also will waive if poorer π and wealthier Δ]

Obtaining Judgment/Debtor Examinations

<p>What to think about before getting a judgment?</p>	<p>Assess ability to pay</p> <ul style="list-style-type: none"> - find out about assets: Personal Property and Security Act, Land Title Office search for property, bank accounts <ul style="list-style-type: none"> o once get judgment can access motor vehicle registry about licensed vehicles and ship registry - other judgments: search court registry for judgments against them or for them against others - if debtor is business could garnish accounts receivable - <i>time consuming and costly BUT could continually do these searches to monitor creditors ability to pay</i> <p>Other potential people to go after?</p> <ul style="list-style-type: none"> - if business, other partners responsible to go after? <p>Within limitation period?</p> <ul style="list-style-type: none"> - figure out last possible date to bring an action <p>Is there a more simplified option rather than trial?</p>
<p>Limitation Periods</p>	<p>Claims before June 1, 2013 will be the old act</p> <ul style="list-style-type: none"> - used to have 6 years <p>Latest Date to Begin Proceedings</p> <ul style="list-style-type: none"> - General Rule: LA s6(1): 2 years from date of discovery <ul style="list-style-type: none"> o LA S8: discover when: known or reasonably out to know: injury/loss damage occurred; injury/loss/damage caused/contributed by act or omission; act or omission by Δ; b/c of nature of injury/loss/damage court proceeding is appropriate means for a remedy - Special π? <ul style="list-style-type: none"> o If govt have 6 years b/c Financial Administration Act s86.1(2)(b) - If Acknowledgment THEN limitation date extended LA s24(1) <ul style="list-style-type: none"> o LA S24(6): terms of acknowledgement <ul style="list-style-type: none"> ▪ (6)(a) in writing; (b) signed; (c) made by person making acknowledgement or agent; (d) made to person with claim, person's agent, official receiver or trustee ▪ (7): part payment is acknowledgment ▪ (10): acknowledgement of claim for payment/sum even if the person acknowledging refuses or doesn't promise to pay (just bringing it up that you know of it counts!) o LA s21: ultimate limitation date 15 years from date act/omission took place <ul style="list-style-type: none"> ▪ NOTE: 15 years from the date act/omission took place would be restarted if acknowledged within limitation period [SO if acknowledge before 2 years over the 15 years are restarted!] - Interpretation Act s25 <ul style="list-style-type: none"> o Include the first day and exclude last day so it ends up on the anniversary of the date! (i.e. 1st to 1st in following year) <p>Latest Date to Enforce Judgment</p> <ul style="list-style-type: none"> - LA s7: (a) 10 years to enforce local money judgment from the date it became enforceable (i.e. date judgment issued) <ul style="list-style-type: none"> o (b) earlier of (i) home jurisdiction time limit for enforcement or (ii) 10 years for enforcing extra-provincial judgments - LA s1: definition of judgment includes local and extra-provincial - LA s23: completion of enforcement process

	<ul style="list-style-type: none"> - COEA s29(1) if limitation date hasn't expired (within the 10 years or extra-provincial) can apply to register the judgment - Enforcement of Canadian Judgments and Decrees Act s5(1) if limitation date hasn't expired (within 10 year or foreign) can apply to register the judgment - Interpretation Act s25 <ul style="list-style-type: none"> o Include the first day and exclude last day so it ends up on the anniversary of the date! (i.e. 1st to 1st in following year)
<p>Can you use a simplified option to get a judgment, which one to pick?</p>	<p>Default Judgment (SCCR 3-8): (1) if Δ doesn't reply, [have proof of service (2)] & (3) must be debt obligation for a specified or ascertainable amount ← no trial!</p> <p>Summary Judgment (SCCR 9-6): on reading application & reply w/o having a trial, the court can give a judgment if no issue (5)(a) OR order a trial only on this issue of how much entitled (5)(b) OR order trial only on a question of law (5)(c) ← this limits what the trial can focus on!</p> <p>Summary Trial (SCCR 9-7): (5) scope of evidence restricted to primarily writing, court can give judgment according to (15)</p> <p><i>Fast Track Litigation: small claims and under \$100,000, examination for discovery limited to 2 hrs and other procedure/evidence rules relaxed</i></p> <p>Simplified trials (Small Claims 9.1(2)): Vancouver or Richmond, claims and counterclaims up to \$5000</p> <p>Summary trial for debt (Small Claims 9.2): Robson Square proceedings limited to commercial lender complainants, **judge doesn't have to comply with formal rules of evidence or procedure</p>
<p>Default Judgment</p>	<p>Liquidated damages count as an ascertainable amount: claim for money that court doesn't have to assess damages (i.e. money ascertainable, rate of pay x hours worked)</p> <p><i>Miracle Feeds: court will set aside or vary default judgment (SCCR 3-8(11)) if clearly unfair to Δ [i.e. filed response as soon as possible (or good reason not to), meritorious defence]</i></p>
<p><i>ONCE you get a judgment you can enforce it and the claimant becomes the judgment creditor and the defendant is the judgment debtor</i></p>	
<p>Registration and Action on Foreign Judgments</p> <p>**What to do if foreign judgment?!</p>	<p>[will often want to register judgment in a different area if this is where the other person is OR if this is where they have property and want to seize property]</p> <p>Option 1: Common Law Action</p> <ul style="list-style-type: none"> - commence a court action where take foreign money judgment and commence action in BC to enforce it [now use this if non-recip or can't have reg. under ECJDA] - AVOID this, b/c costly and time consuming! <p>Option 2: [out side Canada!!!] Court Order Enforcement Act – Registration Proceedings for reciprocal jurisdictions</p> <ul style="list-style-type: none"> - Figure out if it is a recip juris? (lots of states [Cali, Washington, Oregon], and other countries (UK) but NOT Nevada where Las Vegas is) <ul style="list-style-type: none"> o 2008: not acceptable in BC to undermine legislative purpose by taking Nevada judgment and registering in California so then it is reciprocal with BC

	<ul style="list-style-type: none"> - S29 COEA ← Application for registration of judgment - S33(a): once judgment registered it takes affect UNLESS made under an order made without notice <p>Option 3: Enforcement of Canadian Judgments and Decrees Act [BEST OPTION!]</p> <ul style="list-style-type: none"> - simplified filing and registration [likely can register interim orders BUT can only enforce a money order if it is a final order/judgment] - s3: procedures for registering (copy of judgment and have it certified as true) - SCCR 19-2: if in french need to translate it and file certified copy of foreign - s4: once registered it can be enforced - s5(1): can't be registered or enforced after time for enforcement has expired in another province or 10 years since registered
<p>Judgments Against Lawyers</p> <p>Division 6: Financial Responsibility, Law Society Rules</p>	<p>3-43.1: must satisfy money judgment against a lawyer within 7 days after date of entry otherwise fail to meet minimum standard of financial responsibility</p> <p>3-44(1): if do not satisfy money judgment within 7 days lawyer must immediately notify the Executive Director in writing of circumstances of judgment, incl. whether the judgment creditor is a client or formal client & proposal for satisfying the judgment</p> <p>3-43: applies to lawyers, non-practising member of law society, retired member, articled student, practitioner of foreign law, visiting lawyer, law corp</p>
Debtor Examinations	
<p>What type of examination to pick?</p> <p>[scope of Q's, when is it not available, who can be questioned, which ones permit orders for payment]</p>	<p>**payment order for subpoena to debtor OR small claims payment hearing: advantage of payment order is that it is simpler than garnishment, only one proceeding to go through and MUCH better option if only \$ is income</p> <p><u>Subpeona to Debtor:</u> [SCCR 13-3]</p> <ul style="list-style-type: none"> - Scope of Q's (4): income and property, debts owed to and by debtor, disposal of property, means to pay [only ask about prior ability to pay] - Can't have it if writ of execution outstanding - Authority to make payment order - **debtor prefers this b/c reasonable payment schedule, less info given to creditor and as long as payments made creditor can't do anything else <p><u>Examination in Aid of Execution:</u> [SCCR 13-4]</p> <ul style="list-style-type: none"> - Scope of Q's (2): any matter pertinent to enforcement (very broad!) - Can use concurrent to other proceedings - (5): can examine anyone with pertinent info to the proceedings (incl. 13-4(3) officer/director of corporate debtor) <p><u>Small Claims Payment Hearing:</u> [Small Claims Rules 12]</p> <ul style="list-style-type: none"> - Scope of Q's (12): income and assets, debts owed to and by debtor, assets disposed of, means to pay - Can order payment in installments or the full amount
Examination in Aid of Execution	13-4(8): findings from an examination in aid of execution can be evidence in any proceeding [helpful for enforcement proceedings!]
Subpeona to Debtor	13-3(8)(f): court can order committal hearing against debtor who doesn't come to hearing
Small Claims Court	<p>difference btwn a payment hearing and a default hearing:</p> <ul style="list-style-type: none"> - 12: payment hearing – order payment in installments or in the full amount - 13: default hearing – either confirm the payment order/schedule or vary it

Garnishment

<p>General Principles</p> <p>Get order in either BCPC or BCSC</p> <p>**if set aside pre-judgment get nothing, if post-judgment they turn into payment schedule</p>	<p>Common things garnished: bank accounts, defined term deposits to be paid when matures s15, accounts receivable</p> <ul style="list-style-type: none"> - once garnished gets paid into court and then goes to judgment creditor <p>Key issue: Is it a debt due or is it conditional? [if need to wait for it to be a debt due then can get garnishment order, if it is like an amount you get b/c disability then cant get it]</p> <p>Why to avoid garnishing wages if judgment creditor?</p> <ul style="list-style-type: none"> - every pay period have to renew, costly application <ul style="list-style-type: none"> o might be better to get continuing payment order for payments by installments THEN if payment order isn't working get garnish. order - b/c of exemptions might not get very much \$, see s3(5) COEA re: wages <p>aside: can get continuing garnishment orders for FMEA s18, ESA s89</p>
<p>Garnishment Exemptions Broadly</p>	<ul style="list-style-type: none"> - Garnishment, Attachment and Pension Diversion Act s5: anything exempt under provincial legislation - RRSP (COEA s71.3(2)) but if RRSP is removed after (or 12 months before) debt due then it becomes garnishable - can't garnish CPP, EI contributions employer holds b/c not a debt due to employer - rent is not garnishable b/c conditional debt [unless overdue!] - lawyers trust accounts may be subject to garnishment (can't garnish retainer BUT if holding money for real estate sale then it could be garnished (Ahaus)) - joint bank accounts not garnishable (niedemayer) <ul style="list-style-type: none"> o can't garnish when joint ownership UNLESS judgment against both parties - line of credit (b/c not a debt due) - no wages pre-judgment (s3(4) COEA but can garnish post-judgment)
<p>Pre-judgment</p>	<p>S3(4) COEA: can't garnish wages before judgment</p> <p>S3(2)(a): if it is a debt due can garnish it as long as meet affidavit requirements in s3(2)(d)</p> <p>S5: can allege defects in affidavit or apply to have it set aside</p> <p>How do you set aside a pre-judgment garnishment order?</p> <ol style="list-style-type: none"> 1. Attack content of affidavit as not meeting requirements in s3(2)(d) [Sims and sons] <ol style="list-style-type: none"> a. Do not have to specify a claim for debt b. Can include claim for both liquidated and unliquidated claims but these need to be clearly separated AND can only get pre-judgment for the liquidated demand 2. Apply to have it set aside if "just in all circumstances" pursuant to s5(2) [Webster v Webster] <ol style="list-style-type: none"> a. Δ must show order is unnecessary, or an abusive process or creates undue hardship
<p>Post-judgment</p>	<p>S1: "debt or money accruing due" be payable within 7 days after affidavit sworn</p> <p>S3(2)(b): judgment creditor is entitled to enforce judgment through garnishment order as long as affidavit requirements in s3(2)(c) are met</p> <p>S3(5): can only garnish 30% of net income (see legis. For more details)</p>

	<p>S6(2): incl. wages and salaries of public servants</p> <p>S9: debt obligation must be owing at both the time the garnishment order is issued and when it is served (Dabrowski), a conditional obligation (like continuing disability) is not garnishable or attachable (Vater v Styles)</p> <ul style="list-style-type: none"> - Dabrowski: “essential time is the time when the garnishee order was issued, not the time it was served” [has to be issued when there actually is a debt that is due!] <p>Remedies for Judgment Debtor post-judgment garnishment</p> <ol style="list-style-type: none"> 1. Apply to have post-judgment order shifted into payments by installments if “just in all circumstances” pursuant to s5(1) and 5(2) [can’t be released from it b/c judgment entered but can set terms and payments of installments]
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Execution Proceedings

General Principles	<p>To execute have to have writ for seizure or sale and/or order for seizure/sale</p> <p>BIG problems with execution: expensive process, risk of low price at auction</p> <ul style="list-style-type: none"> - if do not have a writ of execution might decide it is faster to garnish (esp. if under “security for money” someone recently paid out an insurance policy) <p>Procedure for Obtaining and Executing a Writ</p> <ul style="list-style-type: none"> - SCCR 13-2(15) – can be obtained during the life of the order, procedure: (11)-(12), (16-22) - Small Claims Rule 11(11) – (13) execution order can be enforced by writ of seizure and sale but expires 12 months after being issued <p>S47 COEA: defn of exectuon incl. supreme court and small claims court writs of seizure and sale</p> <p>S60: once sheriff satisfies writ THEN any surplus paid to execution debtor</p>
Execution Against Land	<p>VERY COMPLICATED PROCESS s82-116</p> <p>3 different mandatory proceedings (make it costly & time consuming)</p> <p>Key considerations:</p> <ol style="list-style-type: none"> 1. Mortgages tend to rank ahead even if there is a forced sale of property SO unless creditor is the bank unlikely to receive much \$ 2. b/c so complicated might make sense to just register judgment against property to get proceeds from a sale if it ever happens rather than forcing a sale through an execution against land 3. Sheriff advertises property and effects sale (not universal to hire realtor) <ol style="list-style-type: none"> a. Sheriff can defer sale, unpredictable outcomes! <ol style="list-style-type: none"> i. S96(2) COEA: defer if home of debtor subject to conditions etc. court imposes! 4. LOTS OF EXEMPTIONS (look to that section – principal residence)
Execution Against Personal Property	
Goods, Chattels and Effects	<p>*can’t just take stuff, but car is in driveway so generally can seize b/c outside [if not exempt!]</p> <ul style="list-style-type: none"> - Can’t force entry [BPCP 122] - If enter can only take what have authorization to take [BPCP 120, 122]

	<ul style="list-style-type: none"> - Can't use force to take something debtor refuses to release <p>S55: all tangible good, chattels and effects are liable to seizure and sale under a writ [unless exempt s70-79]</p> <ul style="list-style-type: none"> - s56: can't seize land through this process - s57: mineral interests subject to seizure and sale <p>S58: intangible property like money and securities for money can be seized (litigation around what is <i>other securities for money</i>) ← this adds to CL (didn't exist before)</p> <ul style="list-style-type: none"> - Mortil: computer can be seized but trade secrets couldn't b/c intellectual property, if purchased computer have to sign non-disclosure - Wira: intellectual property not seizable under CL but legislation can change this (it has changed it in Ontario where you can get intel. prop); in BC have to go to equitable receivership <p>S62: sheriff has to sell sufficient goods/chattels to satisfy judgment</p>
<p>Money and Securities for Money</p>	<p>S58: allows seizure of cheques, bills of exchange, money related instruments</p> <p>S62: sheriff not bound to sue party liable on cheque, promissory note, bond, other security etc.. unless execution creditor indemnifies them</p> <ul style="list-style-type: none"> - bonds can be seized and then held until maturity at which point judgment creditor can then sue to recover <ul style="list-style-type: none"> o sheriff cannot sell securities at a reduced rate before maturity <p>other security for money?</p> <ul style="list-style-type: none"> - insurance counts! <ul style="list-style-type: none"> o Life insurance If it is fully paid it is a security for money o Life insurance If premiums not full paid then not security for money o Fire insurance
<p>Shares</p> <p>COEA works with Securities Transfers Act</p>	<p>S63.1 COEA: meaning of securities in COEA same as STA</p> <p>S63.1(2) COEA: securities can be seized by sheriff following s47-51 STA</p> <p>S65.1(3): sheriff rights for share transfer are restricted by terms of security, issuer impositions or unanimous shareholder agreements</p> <ul style="list-style-type: none"> - s65.1(5): sheriff can apply to court for declaration share transfer restrictions were to defraud creditors etc. and get court order <p>S48 STA: Certificated Securities</p> <ul style="list-style-type: none"> - can seize physically (1); give notice to issuer (2); secured party (s50) - seizure by notice takes effect once reasonable opportunity for issuer to act on notice s63.1(3) COEA <p>S49 STA: Uncertificated Securities</p> <ul style="list-style-type: none"> - seize by sheriff giving notice to issuer (unless secured party holding uncertificated securities then s50) - seizure by notice takes effect once reasonable opportunity for issuer to act on notice s63.1(3) COEA <p>S50 STA: Securities Entitlements [MOST COMMON]</p> <ul style="list-style-type: none"> - 3 people!! - seize by sheriff serving notice on securities intermediary that maintains judgment debtors securities account - seizure by notice takes effect once reasonable opportunity for issuer to act on notice s63.1(3) COEA

Equitable Execution	
General principles	<p>If unable to access through land or garnishment then might want to go to equitable remedy if there are special circumstances that make it challenging</p> <p><u>When can you get an equitable execution?</u></p> <ol style="list-style-type: none"> 1. Seeking to execute judgment against equitable interest 2. Special circumstances where usual remedies under COEA didn't work <ol style="list-style-type: none"> a. What are special circumstances? <ul style="list-style-type: none"> ▪ Legal impediment (i.e. intellectual property interests) ▪ > Mere Inconvenience (i.e. garnishment of accounts receivable, practical problem to try to garnish 200 accounts!)
Equitable Receivers	<p>Who are they? Receive and administer judgments for judgment creditor to make it easier (i.e. if lots of judgment debtors then equitable receiver appointed to manage so that judgment creditor doesn't have to try to garnish them all!)</p> <p>S39(1) Law and Equity Act: authority to appoint ER</p> <p>SCCR 10-2(1) allows to appoint unconditionally or with terms to enforce judgment; SCCR 13-2(5) court can appoint ER even if creditor doesn't apply</p> <p>Warren v Warren: family dispute case where equitable receiver granted</p>
Equitable Charging Orders	<p>Property judgment debtor has interest in that is charged in favour of another party and charging order allows new judgment creditor to access those excess funds in court [b/c s13(6) Crown Proceeding Act can't have garnishment or execution against govt]</p> <ul style="list-style-type: none"> - examples: on proceeds in trust account, money held that can't be garnished, excess money in court after first judgment creditors needs are met the second creditor can apply to get this money in the court <p>Canada (MNR) v Millar: \$ in court, charging order granted b/c no other way to access \$ since can't garnish the court</p>

Exemptions/Immunities

KEY EXEMPTIONS	<ol style="list-style-type: none"> 1. Case law: executing judgment against 2 debtors (i.e. spouses) allows amount of exemptions to double! 2. S71 COEA: Personal Property of Debtor [Clothing, Car, Furnishing etc] <ol style="list-style-type: none"> a. (a) Necessary clothing, (b) household furnishings, (c) one car, (d) tools to make a living, (e) medical/dental aids, (f) other [up to max in regulations p 141 – s2 COE Exemption Reg] <ol style="list-style-type: none"> i. (a) Up to \$4000 furnishings ii. (b) Up to \$5000 for car BUT (c) if family maintenance debt THEN only entitled to up to \$2000 car iii. (d) Up to \$10,000 for tools to make living 3. S71.1 COEA: Principal Residence <ol style="list-style-type: none"> a. Cannot force sale if equity doesn't exceed prescribed amount (in s3 COE Exemption Reg lists prescribed:) <ol style="list-style-type: none"> i. (a) \$12000 property exempt in CRD or GVRD ii. (b) \$9000 exempt outside these areas) b. Principal Residence undefined in legislation <ol style="list-style-type: none"> i. Thow (defn of principal residence) <ol style="list-style-type: none"> 1. Don't have to actual occupy it for it to be principal res. (but if not in it have to show absence temporary, have not abandoned home and have realistic expectation of returning) 2. Thow didn't prove PR c. s96(2) COEA: court may defer sale, subject to performance by JD of terms and conditions of payment, if it is home of JD 4. S71.3 COEA: RRSP <ol style="list-style-type: none"> a. BUT – can seize RRSP if: <ol style="list-style-type: none"> i. 71.3(3)(a): put in 12 months before or anytime after debt due!!! ii. 71.3(3)(c):family maintenance order iii. 71.3(3)(d): started action against RRSP before Nov 1 2008 iv. 71.3(4): transfer property from RRSP to another plan holder after death (a) 5. S72 COEA: Art <ol style="list-style-type: none"> a. Works of art or cultural exhibits for temporary viewing - S73-78 COEA: Procedure for debtor to select items to keep under personal exemptions (if dispute, appraiser appointed) 6. Garnishment Exemptions! [see section for others!] <ol style="list-style-type: none"> a. lawyers trust accounts may be subject to garnishment (can't garnish retainer BUT if holding real estate sale Ahaus) b. joint bank accounts not garnishable unless judgment against both parties (Niedemayer)
Provincial	<p>Insurance Act s65 – life insurance exempt if family [not if faculty of law!]</p> <p>Employment assistance Act s29 – income assistance, hardship assistance and supplements exempt [but can potentially be retained/deducted]</p>

	<p>Workers Compensation Act s15 – compensation exempt [unless money advanced for financial/social welfare assistance]</p> <p>Crown Proceeding Act s13(6) – can't have proceeding against govt</p> <p>Pension Benefits Standards s63 – pension exempt [BUT additional voluntary not exempt]</p>
Federal	<p>Canada Pension Plan s65 – pension exempt [BUT advance not exempt (2)]</p> <p>Old Age Security Act s36 – benefits exempt</p> <p>Crown Liability and Proceedings Act s29 – govt exempt from proceedings [BUT s30 if have judgment against Federal crown take it to Minister of Finance and they will pay directly out of consolidated revenue fund]</p> <p>Pension Benefits Standards s31 – provincial exemptions apply</p>
First Nations Land	<p>Indian Act s89 – on reserve land is exempt</p> <p>Indian Act s90 – some personal property deemed to be on reserve [need to do case by case analysis of asset to see if protected, not predictable for debtors or creditors – i.e. God's Lake bank account giving plain meaning and treated as not protected by s90; however, dissent says essential public services should be protected and artificial to say on/off reserve b/c some reserve unfairly don't have banks on reserve]</p>
Debts to Government	<p>Financial Admin Act - s83(1) demand letter, govt can garnish w/o judgment, no wage exemption or ability to set aside</p> <p>Motor vehicle Act s26 – refuse to provide driver's license</p> <p>Income Tax Act s224, 225.1 – if don't pay taxes send demand letter and person who owes X money pays it to Canada Revenue instead, must wait 90 days after the assessment paid</p>

Execution Priorities

Who gets to go first?!	<ol style="list-style-type: none"> 1. Execution creditor gets costs of getting the judgment (but not actual judgment) 2. WAGES: Employees of judgment debtors who didn't get paid can receive up to 3 months of arrears (s52 COEA, s36 CAA); [up to 6 months wages for ESA s87] ← most employees use remedies under ESA! 3. Taxes or Statutory Liens that go to Govt: i.e. Workers Compensation Act 4. Family maintenance orders (s28 FMEA) ← only gets priority over unsecured judgment debts 5. Execution Creditor gets judgment satisfied (or if more than one then share rateably per Creditors Assistance Act, incl. BC govt abandoned prerogative right by passing CAA s46 (no priorities for exec. creditors!) - Rutherford)
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<p>More than one judgment creditor?</p>	<p>s111 COEA: if more than one JC registered against land divide according to CAA</p> <p><u>Creditors Assistance Act!</u> [applies to execution proceedings only – not foreclosure or garnishment!]</p> <ul style="list-style-type: none"> - S3: sheriff distributes money to all execution creditors who have their writs or certificates at time of division (or within a month!) - S27: if not enough money to satisfy all claims then share rateably - S37: only sharing amongst established claimants - S38: if not enough \$ then sheriff can deliver money or send out a list for everyone to look at before sending the money - Does not apply to federal govt BUT does apply to BC govt (Rutherford)
<p>More than one registration against land?</p>	<p><u>Land Title Act s28</u> – money gets distributed in order of registration so if you register first you get paid out first, if not enough money based on amount of 1st creditor then might not be worth registering</p> <p><u>Hankin v Gill creates complications</u> because it doesn't discuss or acknowledge s28 Land Title Act & conflicts with LTA (if it followed LTA mortgage ahead of JC's)</p> <ul style="list-style-type: none"> - if judgments registered and one of the judgment creditors initiates execution proceedings under COEA then judgment creditors get priority over mortgage
<p>Family Maintenance Enforcement Act</p>	<p><u>S28 Family orders get priority over only all other judgment creditors</u> regardless of when enforcement registered!</p> <ul style="list-style-type: none"> - does not include arrears over one year before execution of family maintenance order (s28(2)) - if more than one maintenance order they rank equally regardless of when registered (s28(3))
<p>S52 workers compensation act</p>	<ul style="list-style-type: none"> - gives priority to amounts due to the workers compensation board [stat lien]
<p>S87(3) Employment Standards Act</p>	<ul style="list-style-type: none"> - unpaid salary and wages constitute a lien, charge and a secured debt and have priority over all other claims (incl. govt, secured interest etc), priority over mortgage pursuant to s87(5), there are some limits only money advanced under mortgage after certificate of judgment registered
<p>Continuing Garnishment Orders</p>	<p><u>FMEA s18</u> can get continuing garnishment order</p> <ul style="list-style-type: none"> - apply to court and it can remain in force for 12 months <p><u>Employment Standards Act s89</u> can get continuing garnishment order</p> <ul style="list-style-type: none"> - can do a demand and this continues until it is satisfied or cancelled (could be longer than 12 months!)

Fraudulent Conveyances/Preferences

<p>Fraudulent Conveyance Act</p>	<p>*important for unsecured creditors</p> <p>s1: a disposition of property (real or personal) by writing or otherwise made to delay, hinder, defraud creditors is void and of no effect ← π must prove</p> <p>s2: exempts disposition of property where good consideration, good faith & person receiving the property didn't have knowledge of collusion or fraud ← Δ must prove</p> <p><u>Key issues:</u></p> <ol style="list-style-type: none"> 1. Has there been "disposition of property" <ol style="list-style-type: none"> a. Property being transferred counts as disposition (as long as it is not exempt property) b. S28(4) of Interpretation act: disposition same as dispose [BROAD] <ol style="list-style-type: none"> i. S29: "dispose" means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release, and agree to do any of those things 2. Is there "intent to delay" <ol style="list-style-type: none"> a. Do not need to have dishonest intent (Abkahan) b. What factors help to infer intent to defraud creditors (Abkahan, CL badges of fraud) <ol style="list-style-type: none"> i. No consideration ii. Failure to register transaction (secrecy about transaction) iii. Continue to use property after transfer iv. Transfer to friend/relative v. Transfer property on same day receive notice of action vi. Conveyance effectively defeats creditors c. Can be situations where transferred with good consideration and if so then have to show intent to delay, hinder (collusion) on both seller and buyer aka intent to give and intent to get! 3. Does this person have standing to bring a claim <ol style="list-style-type: none"> a. Can include future creditors (brought up in Abkahan) b. **cannot use this act to try and access exempt property
<p>Lawyer's Responsibility</p> <p>Code of Professional Conduct Rule 3.2-7 and 3.2-8 (client=organization)</p>	<p>3.2-7: "must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud"</p> <p>What things should put you on notice that it could be fraudulent?</p> <ul style="list-style-type: none"> - seeks to put \$\$\$\$ in trust account without requiring substantial legal services - need to make reasonable inquiries and make a record of all of those inquiries to protect yourself!
<p>Fraudulent Preferences</p>	<p>CL: nothing to prevent debtor preferring to pay one creditor over another</p> <p>Legislation: if debtor insolvent, allows creditor to attack disposition of property if it has the effect of favouring one creditor over another</p> <p><u>What do you need for a fraudulent preference? (s3)</u></p> <ul style="list-style-type: none"> - disposition of property in favour of creditor - debtor is in insolvent circumstances, unable to pay debts in full or has to know they are on the eve of bankruptcy <ul style="list-style-type: none"> o unclear what "eve of bankruptcy" means

- [how to determine insolvent circumstances](#) (2 test must be met!)
 - **legal test:** π has to show that if all debtors debts were to come due at once on the “books” the value of assets would not be able to meet the obligations of the liabilities
 - **business test:** cannot pay debts as they become due
- [debtor intends to create a preference](#)
 - Ash, intent b/c
 - No consideration
 - Joint tenancy so no need to transfer title to spouse
 - [S4/5 do not have to prove intent](#) (it is deemed!) if:
 - 4(a) [proceeding to set aside](#) disposition of property is brought within [60 days of registration/disposition](#)
 - 4(b) debtor [makes an assignment](#) for benefit of creditors [60 days after disposition](#)
 - 5(a) s4 is preferred if debt [reduced disproportionately compared to other unsecured creditors](#) regardless of voluntariness or pressure
 - 5(b) s4 is preferred if debt [reduced disproportionately compared to other unsecured creditors](#) regardless of whether creditor pressured or knew they were being preferred
 - [no intent if doctrine of pressure:](#) no voluntariness of debtor
 - creditor [intended to be given preference \(s3\(b\)\)](#) [intent to get!]
 - preferred creditor knew insolvent or it was such that a reasonable business person ought to have known

[To argue isn't a fraudulent preference](#)

- not a disposition of property
- not insolvent
- no intent
- **s6 defences**
 - protects transactions where creditor may have been preferred but other creditors have not been prejudiced
 - (1) disposition of property and payments of money [if reasonable value to the consideration or payment made](#) in ordinary business to [innocent people](#)
 - (4) debtor can take back security from creditor as long as [estate is not reduced](#)
 - (5) debtor can give security to creditor if creditor provides money in advance and [believes in good faith that debtor will remain solvent](#)

Consumer Bankruptcy and Insolvency

<p>General Principles</p>	<p>Options [Bankruptcy and Insolvency Act]</p> <ol style="list-style-type: none"> 1. <i>Creditor(s) petition consumer to go bankrupt s43(1)</i> <ol style="list-style-type: none"> a. Debtor has to be insolvent within meaning of s2 b. Creditor has to be owed at least \$1000 & committed an act of bankruptcy within last 6 months <ol style="list-style-type: none"> i. S42 Acts of bankruptcy: <ol style="list-style-type: none"> 1. (j) unable to meet liabilities generally as they become due 2. (i) fraudulent conveyance or fraudulent preference 2. <i>Assignment/Declaration of Bankruptcy s49</i> <ol style="list-style-type: none"> a. Most common b. at least \$1000 in debt c. unable to make viable proposal d. unable to meet debts as they become due 3. <i>Proposal to Restructure debt s66.11 – s66.44</i> <ol style="list-style-type: none"> a. S66.11 Can make consumer proposal IF debt does not exceed \$250,000 [exclude mortgage], <i>if creditor accepts then you avoid bankruptcy</i> b. Involves creditor accepting partial payments of debt over longer period of time [but within 5 years s66.12(5)!] c. if you have enough income this usually results in creditor getting more than they would under bankruptcy so they tend to accept AND avoids stigma and loss of surplus income for debtor 4. <i>**if you are a lawyer</i> <ol style="list-style-type: none"> a. there are law society implications for lawyers under financial responsibility <ol style="list-style-type: none"> i. Rule 1 insolvent lawyer: responding to petition of bankruptcy, made an assignment, made proposal or consolidation order (can't do CO in BC) ii. If meet defn of insolvent lawyer have to report to Executive Director (3-45(2) Law Society Rules) <ol style="list-style-type: none"> 1. Conduct unbecoming a lawyer if: (3-45(3)) <ol style="list-style-type: none"> a. Willful neglect of creditors b. Financial irresponsibility c. Personal extravagance d. Don't discharge within reasonable time 2. Insolvent lawyer can't operate trust account unless permission or second signatory approved (3-45(4)) 3. Insolvent lawyer must resign directorships in corporations (3-45(5)) iii. Can refer to discipline committee where might impose more sanctions 5. <i>All exemptions still apply & some extra exemptions!</i> <ol style="list-style-type: none"> a. S67(1)(b.3) BIA: RRSPs exempt if b. S67(1): property held in trust, already exempt under prov leg. c. S67(b.1): GST tax refunds d. S67(b.3) RRSP e. 68(2): total income does not include any amounts rcvd by bankrupt btwn date of bankruptcy and date of discharge as a gift, legacy, inheritance or windfall
<p>Competing Purposes</p> <p>**process allows for creditors to be in control</p>	<p>Rehabilitation: honest but unfortunate debtor, complies with regime and gets fresh start</p> <p>Realization: inexpensive and efficient way for debtor to turn over assets to trustee</p> <p>Distribution: trustee distributes in fair and orderly way</p> <p>Investigation: investigate affairs, financial situation and reverse improper pre-bankruptcy actions</p> <p>Reorganization: structured in a way so there are options to avoid bankruptcy</p>

<p>What happens in Bankruptcy</p>	<ul style="list-style-type: none"> - poor credit for 6 years - if salary exceeds "reasonable living expenses" as calculated by Superintendent goes to trustee for distribution amongst creditors - can't be executor of an estate while bankrupt - can't be a member of senate <p>Duties of Bankrupt (s158)</p> <ul style="list-style-type: none"> - (a)/(a.1) must deliver credit cards, property and personal records to trustee - (f) must disclose past property disposal (for consideration: 1 year, no consideration: 5 years) - (n.1) must inform of material change in financial situation (i.e. win lottery, inherit) - must attend 2 financial counseling sessions provided by the trustee [criticism of content and scope] - have to disclose bankrupt status to anyone who wants to go into business with you or to anyone lending you more than \$1000
<p>Surplus Income Directive!</p>	<p>Look at directive (S2, S3 and appendix A to determine amount)</p> <p>S5(3) Directive allows to subtract monthly non-discretionary expenses from monthly income:</p> <ul style="list-style-type: none"> - (a) child support payments - (b) spousal support payments - (c) child care expenses - (d) medical condition expenses - (e) court-imposed fines in the process of being paid - (f) expenses permitted by Income Tax Act that are condition of employment - (g) any other debt where SOP lifted by court and recourse authorized - (h) interest on debts not dischargeable in bankruptcy (i.e. student loan) <p>Ex. 1 parent and 1 child</p> <ul style="list-style-type: none"> - 2800 monthly income after deductions - standard is 2497 - $2800 - 2497 = 303$ - 303 is surplus income, because it is over \$200, bankrupt needs to pay 50% of 303 - SO surplus income to be paid is \$151.50 <p>Ex. Two parents and 1 child (with one of the parents bankrupt)</p> <ul style="list-style-type: none"> - \$5000 Total family income after deductions <ul style="list-style-type: none"> o $5000 - \text{child care expenses of } \\$600 = \\$4400$ - standard is 3070 - $4400 - 3070 = 1330$ - 1330 is surplus because it is over \$200 BUT because only one of the parents bankrupt need to find proportion to pay
<p>Discharge</p>	<p>Once discharged all provable claims are no longer owing (other than exceptions) [s178 BIA]</p> <p>If 1st time bankrupt: eligible for automatic discharge after 9 months [as long as creditors don't object] [s168.1 BIA]</p> <p>If paying surplus income: won't be discharged for 21 months [these people should make proposals if possible!]</p> <p>If multiple bankrupt: at least 24 months before discharge OR if paying surplus income then 3 years</p>

	<p>S173 ← if any of these facts apply then court can't order an absolute discharge if the absolute discharge has been contested</p> <ul style="list-style-type: none"> - Wilkshire (Re) <ul style="list-style-type: none"> o Conditional discharge b/c honest and unfortunate debtor, health and welfare of family o S173(1)(j): had previously made a proposal and continued to trade (bought a car) that couldn't afford after found out insolvent BUT discharge warranted
<p>Debts that are not discharged by bankruptcy or proposal [s178(1)]</p>	<ul style="list-style-type: none"> - S178(1)(a) Court imposed fines - S178(1)(a.1) Damage awards for intentionally inflicted assault or sexual assault - S178(1)(b)&(c) Support obligations - S178(1)(d)&(e) Debt owed by reason of fraud - S178(1)(g) Student loans <p style="text-align: center;">[commonality (other than student loans) is morally reprehensible]</p>
<p>Student Loans</p>	<p>S178(1)(g): not discharge in bankruptcy</p> <p>S66.28(2.1): not discharged after consumer proposal</p> <ul style="list-style-type: none"> - exception: consumer proposal explicitly provides debt in s178(1) is released and creditor agrees <p>Philips (re)</p> <ul style="list-style-type: none"> - applied for relief under s178(1.1) because of hardship - discharge in order to facilitate rehabilitation (she has health issues and acted in good faith) <p>Abdo (Re)</p> <ul style="list-style-type: none"> - private loans - court gives absolute discharge b/c health situation is significant and private bank shouldn't have given him \$ and shouldn't ask court to reverse it (don't have the obligation to provide like the government)