LAW REFORM
COMMISSION
OF
NOVA SCOTIA

Enforcement of Civil Judgments: Exemption of Judgment Debtors' Income

Discussion Paper - February 2013

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Law Reform Commission of Nova Scotia
February 2013

The Law Reform Commission of Nova Scotia was established in 1991 by the Government of Nova Scotia under an *Act to Establish an Independent Law Reform Commission.*

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WHAT DO YOU THINK?

The Law Reform Commission is interested in what you think about the issues raised in this Discussion Paper on the enforcement of civil judgments.

This Discussion Paper does not represent the final views of the Commission. It is designed to encourage discussion and public participation in the work of the Commission. Your comments will assist us in preparing a Final Report for the Minister of Justice. The Final Report will contain recommendations on how the law should deal with this issue.

If you would like to comment on the Discussion Paper, you may:

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In order for us to fully consider your comments before we prepare our Final Report, please contact us by:

April 1, 2013

Please note that the Final Report will list the names of individuals and groups who make comments or submissions on this Discussion Paper. Unless comments are marked confidential, the Commission will assume respondents agree to the Commission quoting from or referring to comments given. Respondents should be aware that the Nova Scotia *Freedom of Information and Protection of Privacy Act* may require the Commission to release information, including personal information, contained in submissions.

CONTENTS

INTRODUCTION

This Discussion Paper considers the extent to which a judgment debtor's income ought to be exempt from seizure to satisfy a civil money judgment. We have organized the discussion around the following main issues:

1) what benchmark measure to use for determining a minimum threshold of income which is not subject to seizure;

2) how to apply the benchmark measure, including:

a. whether the minimum income threshold should be differentiated based on community size, or whether instead a single provincial figure is appropriate;

b. whether the minimum income threshold should take into account the debtor's household income;

c. how to account for the debtor's dependants;

d. whether to include certain tax benefits as income subject to seizure;

3) what deductions ought to be permitted in calculating an income exemption amount, in addition to the minimum income threshold (in particular, whether in addition to those legally required to be paid, such as CPP/EI, union dues and professional fees, a debtor ought to be able to deduct child care, child and spousal support, and/or medical expenses);

4) what proportion of the debtor's income should be subject to seizure; and,

5) how to protect exempt income once it is paid to the debtor.

This is the second Discussion Paper published in the furtherance of the Commission's project on the enforcement of civil judgments. The first Discussion Paper[1] proposed the adoption of comprehensive, modern legislation to replace the various statutes and rules of civil procedure which currently govern the enforcement of judgments in Nova Scotia. The proposed statute would be based on the Uniform Law Conference of Canada's *Uniform Civil Enforcement of Money Judgments Act*.[2]

[1] Law Reform Commission of Nova Scotia, Enforcement of Civil Judgments (Discussion Paper, December 2011), online: <http://www.lawreform.ns.ca/Downloads/Enforcement%20of%20Civil%20Judgments%20-%20Discussion%20Paper.pdf>.

[2] Uniform Law Conference of Canada, *Uniform Civil Enforcement of Money Judgments Act*, online: <http://www.ulcc.ca/en/uniform-acts-en-gb-1/84-civil-enforcement-of-money-judgments-act/1110-civil-enforcement-of-money-judgments-act> (the "*Uniform Act*").

The *Uniform Act* provides for a certain amount of the debtor's income to be exempt from seizure. In particular, in addition to a minimum threshold of income, 50% of the debtor's net income above the threshold would be left for the debtor. The exemption would apply to employment income, income under a contract for services making provision for periodic payments, under a retirement plan (except as exempt under other legislation), under an annuity, from a registered plan (deferred profit savings plan, an RRIF or an RRSP), and from the investment of personal injury damages attributable to loss of future income (see *Uniform Act*, at s 164).

The *Uniform Act* provides deductions for income tax, employment insurance, Canada Pension Plan contributions, compulsory union or professional fees, registered pension plan contributions, health, disability and life insurance premiums (see *Uniform Act*, at s 164). From the net amount of income, a minimum floor is to be prescribed by regulation, which is not subject to seizure. 50% of the amount above the minimum threshold is exempt from seizure (*Uniform Act*, at s 165(1)), subject to a maximum exempt income amount, also to be prescribed by regulation. There is a further exemption for 100% of income from a personal injury award for future medical care expenses, and investment income received on such an award (*Uniform Act*, s 165(2)).

We proposed that these provisions of the *Uniform Act* be adopted in place of Nova Scotia's current income exemption provision, which is in *Civil Procedure Rule* 79.08(3). Rule 79.08(3) exempts 85% of a debtor's *gross* income, subject to a minimum threshold of net income, below which no income may be seized. In making available 15% of gross income for seizure, Rule 79.08(3) makes no allowance for regular deductions, nor for amounts needed for necessities (the minimum floor). Only when the debtor's net income is at or less than 115% of the minimum floor are deductions accounted for at all, and only then is there any provision to protect a minimum amount for necessities. As we explained, the *Uniform Act*'s basic approach is preferable because it better accounts for the individual circumstances of the debtor. We further proposed that the minimum floor should be left to regulation, subject to annual, automatic adjustment for inflation, and scalable according to number of dependents.

We also proposed that exempt income, once paid into the debtor's bank account, should be explicitly protected from seizure. At that point the moneys are an asset of the debtor rather than income *per se*, but in most cases they will be required to meet basic living needs. The *Uniform Act* requires that such funds must be kept segregated and identifiable in order to remain exempt. We were concerned that many judgment debtors might lack the wherewithal to set up a second, segregated account. We proposed instead that the provisions of Nova Scotia's Rule 79.08(5) should apply in any new judgment enforcement statute. Rule 79.08(5) provides that a bank is liable for amounts paid to the Sheriff where a person in charge of the account is aware that the funds are exempt from seizure.

We received a number of public submissions on these proposals. In particular, we were strongly encouraged to say more about how to set the minimum income threshold, and what proportion of income should be subject to seizure. There was also a general consensus that the current rule protecting exempt income in the debtor's bank account is deficient, though there was no agreement on what should replace it. We review the public submissions on these points in greater detail below.

In the course of our broader project on judgment enforcement, we have undertaken significant further investigation and analysis on these issues in particular. We determined that our preliminary conclusions warranted publication in a second Discussion Paper, specific to the issue of an income exemption. Our proposals, presented here for discussion, are as follows:

1. A minimum income threshold should be set on the basis of Statistics Canada's before tax Low Income Cut Off (LICO), subject to annual automatic adjustment for inflation.

2. The resulting thresholds should regularly be checked against the Market Basket Measure (MBM) standard, to ensure that they afford judgment debtors the ability to purchase necessary goods and services.

3. Alternative methods and statistical measures of a minimally adequate income should be reviewed on a regular, systematic basis, to ensure that the minimum income threshold is on the soundest possible theoretical and empirical footing.

4. The minimum income threshold should be set on the basis of the LICO figures for Halifax Regional Municipality (HRM), and should be applicable province-wide rather than differentiated by community size.

5. A minimum income threshold amount should be based on a debtor's individual income as opposed to household income.

6. In addition to those deemed to be dependants under Rule 79.08 with reference to the *Income Tax Act*, spouses, registered domestic partners and common law partners should also be considered to be dependants for the purposes of the minimum income threshold.

7. Judgment enforcement legislation should provide that where a debtor has claimed a dependant, the court may reduce the minimum income threshold only to the extent that the dependant in question is receiving income.

8. A per dependant increase in the debtor's minimum income threshold should be based on the average difference in LICO figures for HRM as family size increases. This amount should be subject to annual, automatic adjustment for inflation, and regularly checked against the relevant MBM figures.

9. Tax credits for low income Nova Scotians (*e.g.*, HST credits and the Nova Scotia Affordable Living Tax Credit) should be exempt from seizure to enforce a judgment, and should not be considered income for purposes of calculating the debtor's income exemption.

10. New judgment enforcement legislation should permit deductions for child care expenses, medical expenses and child and spousal support payments, in addition to those deductions provided under the *Uniform Act*.

11. New judgment enforcement legislation should require the Sheriff to give effective notice to the debtor of permitted deductions, and provide an appropriate period of time for the

debtor to claim applicable deductions, before any enforcement action is taken against the debtor's income.

12. The Sheriff should be responsible to receive, examine and verify the debtor's claimed deductions, and advise the employer of the resulting net income upon which the calculation of seizable income may be made.

13. Questions for discussion:

    a. Should the legislation provide for a maximum amount of child care to be deducted? How should such a maximum amount be set?

    b. According to what standard or model should medical expense deductions be assessed?

14. A judgment debtor's income should be subject to seizure according to a graduated scale which increases the proportion to be seized (to a maximum of 50%) as the debtor's income, after deductions, incrementally exceeds the minimum income threshold.

15. Judgment enforcement legislation should exempt from seizure funds in the debtor's bank account, to the extent they are segregated and identifiable as being from an exempt source, or as exempt pursuant to the legislation's provisions for exempting a portion of the debtor's income.

16. An exemption should also apply to a minimum balance in the debtor's account, equivalent to the debtor's exempt income for a month. The amount so protected would include any segregated and identifiable funds as described in the previous proposal. The amount would be adjustable to account for irregular income.

17. Financial institutions holding funds payable to the debtor should be liable for any amounts paid to the Sheriff where the institution ought to have been aware that the funds in the account were exempt. Liability would apply (a) with regard to bank accounts that had only ever held exempt funds, and (b) where that fact ought to have been known to the institution, either because the institution had been expressly notified, or because the amounts were from an exempt source (i.e., statutory benefits) identifiable as such by the institution.

BACKGROUND: CIVIL PROCEDURE RULE 79.08(3)

Civil Procedure Rule 79.08(3) provides for an amount of income that is exempt from seizure to satisfy a judgment. Unless a judge orders otherwise, 15% of a debtor's gross wages may be seized. The Rule provides for a minimum floor of $330 net income per week for a judgment debtor without dependants and $450 net income per week for a judgment debtor with dependant(s) - net income below these amounts may not be seized. The minimum floor is a net figure arrived at "after deduction of amounts required by law to be deducted". In the case of *Di*

Benedetto v. Slaunwhite,[3] Palmeter C.J. Co. Ct. held that the phrase "required by law" included compulsory deductions such as pension and union due deductions as well as those tax, Canada Pension Plan ('CPP') and Employment Insurance ('EI') premiums required to be deducted by law.[4]

The income exemption has remained substantially the same since the introduction of the *1972 Civil Procedure Rules*. Rule 53.05 of the *1972 Civil Procedure Rules* provided that up to 15% of the judgment debtor's gross wages could be garnished, with a minimum income threshold below which the debtor's net income, after deductions, should not ordinarily fall. As with the current Rule 79.08(3), the rule exempted at least 85% of the debtor's gross employment income; however, the former rule provided for a minimum income threshold of $275 per week for a debtor without dependants, and $415 per week for a debtor supporting dependants, regardless of number.

New draft *Civil Procedure Rules* in 2008 provided an income exemption level equivalent to a minimum income threshold of exempt income, after tax, based on Statistics Canada's urban Low Income Cutoffs (the 'LICO') and scalable according to the number of dependants. The new rule would have seen the elimination of a percentage deduction above this minimum income threshold and would have allowed all of a debtor's income above the threshold to be seized.

The new Rule met with vociferous objection, on the basis that a sudden reduction of weekly take-home pay to LICO-based poverty levels would be far more severe and potentially debilitating than would be appropriate in the judgment recovery context. The typical escape valves for debtors - the court's stay of execution power and the bankruptcy system - were thought to be too complex for some debtors to necessarily take advantage of, and not necessarily available in all cases where the low income cutoff amounts were nonetheless inappropriate. As well, there was concern that verifying the actual number of dependants would complicate the sheriff's task in pursuing garnishment.

In arriving at the current Rule 79.08(3), the Court more or less restored the old Rule 53.05, with certain changes. In particular, the minimum income threshold was increased to account for inflation (to $330 per week for a debtor without dependants, and $450 per week for a debtor supporting any number of dependants).

In its first Discussion Paper, the Commission recommended adoption of the *Uniform Act*'s method of calculating an income exemption amount. The *Uniform Act*'s income exemption accounts for taxes and a range of other compulsory deductions and expenses, and further shields a minimum income threshold. The enforcement officer is authorized to seize 50% of the remaining income. By contrast, the current Rule 79.08 of the *Civil Procedure Rules* allows for seizure of 15% the debtor's *gross* wages. No taxes, deductions or minimum subsistence amounts are factored in, until garnishment begins to reduce the debtor's income below the minimum income threshold amount of $330 net wages per week for a single debtor and $450 net wages

[3] (1993), 119 NSR (2d) 366, 12 CPC (3d) 265.

[4] *Ibid* at 369.

per week for a debtor with dependants. We favoured the *Uniform Act*'s basic approach on the basis that it better accounted for the individual circumstances of the judgment debtor.

The difference between the two models is illustrated at Appendix II, which calculates exemption amounts for individuals and families in a variety of income brackets, under the current Rule 79.08, the *Uniform Act* exemption, and a proposed model, explained below, which takes a greater share as the debtor's net income increases. The *Uniform Act*'s exemption consistently leaves more money in low income debtors' hands than the current Rule 79.08, which in our view does not adequately fulfill the purposes of an income exemption. For example, Rule 79.08 leaves a family of four living just at the poverty line with only $94 a week to pay for any costs above the bare necessities.[5] This represents the loss of funds for school trips and basic recreation, as well as the inability to meet unexpected expenses such as car and household repairs or rises in heating costs.

JUDGEMENT DEBTS: THE NOVA SCOTIA SOCIAL AND ECONOMIC CONTEXT

A great deal of care is called for in the balancing of effective judgment creditor remedies, on one hand, and the debtor's interests in dignity and security on the other. This is so with regard to all aspects of judgment enforcement legislation and its administration, but especially in connection with the seizure of income on which the debtor may well depend for food, shelter, clothing and other necessities. Judgment debtors may be subject to pre-existing disadvantage and marginalization, which can be compounded by aggressive enforcement action against income.

This has important implications for values of social justice and equality. It is well established that single-mother headed households are more likely to live at the poverty line than other families in Canada. Single mothers are four times more likely to live in poverty than two-parent families.[6] As of 2001, the average income of single mother headed families living under the poverty line was $10,000 below Statistics Canada's LICO poverty line.[7] Aside from single-mother headed households, children, seniors, recent immigrants, off-reserve aboriginal persons and disabled persons are the groups most likely to comprise Canada's poor.[8] In Nova Scotia, African Nova Scotians are among the groups most vulnerable to living in poverty.[9] In fact, the incidence of poverty among visible minority groups is higher in Nova Scotia than it is in Canada, on average. While the 2006 Census showed that the poverty rate for self-described

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[5] Appendix II indicates that a family of four living at the poverty line, based on an indexed 2012 before tax LICO, after having paid for essentials such as food, rent, transportation and electricity, will find themselves with only approx $94/wk to pay for any other necessary goods and services.

[6] Colin Dodds & Ronald Colman, *Income Distribution in Nova Scotia* (Halifax: GPI Atlantic, 2001) at 40, online: <http://www.gpiatlantic.org/publications/abstracts/incdist-ab.htm>.

[7] *Ibid* at 41.

[8] Brian Murphy, Xuelin Zhang and Claude Dionne, *Low Income in Canada: a Multi-line and Multi-index Perspective* (Ottawa: Ministry of Industry, 2012) at 7.

[9] Nova Scotia, *Poverty Reduction Strategy* (Halifax: Province of Nova Scotia, 2009), online: <http://www.gov.ns.ca/coms/specials/poverty/documents/poverty_report_2009.pdf>.

visible minority Canadians overall in Canada was 22%,[10] the rate in Nova Scotia was 25%[11]. This is in contrast to the poverty rate among persons who did not self-identify as from a visible minority group, which was 9% in both Canada and Nova Scotia.[12]

In short, an income exemption regime that fails to ensure and protect a basic, adequate standard of living runs the risk of compounding situations of poverty that are closely connected with the marginalization of a number of identifiable, disadvantaged groups.

Provisions for the seizure of judgment debtors' income must be enacted and administered with a mind to the social and economic context that gives rise to judgment debts. In examining the issues addressed in this paper we learned that a large proportion of the execution orders issued in Nova Scotia are given on behalf of lending agencies to collect unpaid debt. For example, 242 out of 544 execution orders issued out of the Small Claims Court in 2011, or 44.5%, were issued on behalf of credit lending agencies.[13] For the Supreme Court, 648 out of 802 execution orders issued (excluding 609 issued in favour of the *Workers' Compensation Board*) or 80.8%, were issued on behalf of credit lending agencies.

Our firm impression is that judgment enforcement in this province is to a very large extent taken up with collecting on defaulted credit. The situation is reflective of a trend of overindebtedness that has been growing not only in Nova Scotia, but around the world. [14]

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[10] Canada, National Council of Welfare, *Poverty Profile: Special Edition, A Snapshot of Racialized Poverty in Canada*, online: (30 January 2012) <http://epe.lac-bac.gc.ca/100/205/301/ncw-cnb/2012-09-27/www.ncw.gc.ca/servlet/ncw_povertyprofile_specialedition_e.pdf>.

[11] *Ibid*, Statistical Tables, online: <http://epe.lac-bac.gc.ca/100/205/301/ncw-cnb/2012-09-27/www.ncw.gc.ca/l.3bd.2t.1ils_40-eng.jsp@lid=391.htm>.

[12] *Ibid*.

[13] We do not claim scientific accuracy here. These were judgment creditors identified as lenders by informal recognition; *e.g*., Canadian banks such as The Bank of Nova Scotia, Royal Bank of Canada, Bank of Montreal, TD Bank and Canadian Imperial Bank of Commerce; credit lending agencies and smaller banks and credit unions such as Wells Fargo, CapitalOne, Citibank, President's Choice Bank, Canadian Tire Financial Services, Laurentian Bank of Canada; financing corporations such as Customer First Financing, ORegan's National Leasing; and licensed pay day lenders such as NLN Atlantic Corp. Not every one of these judgments may arise from a credit transaction, of course. But on the other hand, these are only recognizable lenders; many other execution orders may arise from credit lending transactions.

[14] Kimberley Tran and Ronald Colman, "Financial Security and Debt in Atlantic Canada" (GPI Atlantic, September 2008), online: <http://www.gpiatlantic.org/pdf/livstand/finsec.pdf>. See also Iain Ramsay, "A Tale of Two Debtors: Responding to Over-Indebtedness in France and England – A Story from the *Trente Piteuses*" (Mar 2012) 75: 2 Mod. L. Rev. 212; A. Mechele Dickerson, "Consumer Over-Indebtedness: A U.S. Perspective" (2008)43 Texas Int. L. J. 135; Claudia Lima-Marques and Antonio Benjamin, "Consumer Overindebtedness in Brazil and the Need for New Consumer Bankruptcy Legislation" in Niemi et al. eds, *Consumer Credit, Debt and Bankrutpcy* (Oxford and Portland, Oregon: Hart Publishing, 2009) at 55; Johanna Niemi, "Overindebted Households and Law: Prevention and Rehabilitation in Europe" in Niemi et al. eds, *Consumer Credit, Debt and Bankrutpcy* (Oxford and Portland, Oregon: Hart Publishing, 2009) at 91.

Consumer overindebtedness is a social phenomenon - the result of social and economic processes - and not simply a matter of any given party being unable to meet contractual obligations to another:

> The main reasons for overindebtedness can be conceptualized in many ways: unemployment, business failures, personal problems, such as illness and divorces, or excessive consumption. These events do not turn consumers into overindebted debtors overnight. Rather, the process goes through several stages, and certain decisions made before the debtor is hopelessly indebted. The debtor's coping strategies are extremely important but the creditors' actions are also of equal importance. Lending practices often contribute to the process of overindebtedness. Also debt collection practices play a crucial role, either by allowing the debtor to make ends meet or by turning a situation that is difficult to cope with into an unmanageable one. A wide range of legal regulations contribute to this process.[15]

In Canada, consumer indebtedness has grown markedly since 1990.[16] One report indicates that "the indebtedness of Canadian households has grown six times faster than their revenues, and in 2009, their debts represented 145% of their revenues".[17]

Indications are that this trend is particularly acute in Nova Scotia. Statistics from the Office of the Superintendent of Bankruptcy reveal that in 2010 Nova Scotia had the highest insolvency rate and one of the highest bankruptcy rates in Canada.[18] In fact, over the past 2 decades Nova Scotia appears to have consistently had the highest or the second highest bankruptcy and insolvency rates in Canada, and the numbers are rising. In 1990 there were only 2.3/1000 persons that were insolvent or declared bankrupt. In 2000, 4.7 /1000 persons in Nova Scotia were insolvent with 0.8 /1000 persons making a proposal and 3.9 /1000 persons declaring bankruptcy. In 2010, 6.9/1000 persons in Nova Scotia were insolvent with 1.3 entering into a proposal and 5.6 declaring bankruptcy.[19]

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[15] Udo Reifner et al., "Consumer Overindebtedness and Consumer Law in the European Union" (Paper delivered to the Commission of the European Communities, Health and Consumer Protection Directorate-General, Erasmus University/Rotterdam School of Law, September 2003) at 15, online: <http://www.iaclaw.org/Research_papers/iff_OverindebtednessandConsumerLaw.pdf>.

Debt adjustment laws such as bankruptcy and insolvency laws as well as legal regulation such as consumer protection laws, regulations on interest rates, default interest collection fees and debt enforcement are some examples of legal regulation that can contribute to the social processes involved in consumer overindebtedness.

[16] Coalition des Associations de Consommateurs du Quebec, "Les offers de credit postale" (October 2010) at 7, online: < http://cacq.ca/spip.php?page=documents&id_document=25 >.

[17] *Ibid*, quoting Roger Sauvé, *"L'état actuel du budget de la famille canadienne, Rapport 2009,"* (Institut Vanier de la famille 2010), 3.

[18] Office of the Superintendent of Bankruptcy Canada, "Annual Consumer Insolvency Rates by Province and Economic Region" online: <https://www.ic.gc.ca/eic/site/bsf-osb.nsf/eng/br01820.html#two>.

[19] *Ibid*.

Consumer insolvency is on the rise even though real GDP per capita in Nova Scotia has steadily risen since 1990.[20] Further, income inequality has been growing in Nova Scotia over the past 20 years, with a greater percentage of GDP going to fewer members of the population.[21] While productivity in Nova Scotia has increased over the past 25 years by 16%, workers are 4% poorer than they were 25 years ago.[22]

This growing gap, combined with available credit at higher costs[23] means that more and more Nova Scotians are relying on credit and finding themselves without the means to repay. Since 2009 there has been a greater need for Canadians to access credit as a means to "bridge income loss from job loss, reduced hours of employment and small business failures".[24] Much of this credit, however, has come from easier to access credit sources such as credit cards, payday loan companies and merchandise finance company loans that are more expensive than bank or credit union loans.[25] Credit card debt is a leading cause of bankruptcies in Canada.[26]

In short, to the extent that enforcement proceedings are devoted to debt recovery from defaulted credit, they reinforce and extend the social process of overindebtedness. In the context of consumer debt, this is not simply a matter of providing effective relief to successful plaintiffs who have been legally wronged. The prevalence of enforcement proceedings on behalf of lenders, and the social problem of overindebtedness which it signifies, is a further reminder of the need for care in legislative reform of judgment enforcement law. We do not propose to solve, or even turn the tide against overindebtedness through the relatively insignificant device of an income exemption. Nor do we propose that a different regime should govern judgment enforcement on behalf of credit lenders. But we do insist that reform must be undertaken with due regard for the vulnerability of those who experience overindebtedness as judgment debtors, and appropriate care not to compound the broader social problems which consumer overindebtedness both reflects and produces.

[20] Real GDP per capita has increased in Nova Scotia from $22,600 in 1990 to $30,806 in 2009. Nova Scotia Department of Finance, "Annual Statistics: Economic Growth" online,: <http://www.gov.ns.ca/finance/statistics/economy/gdp_default.asp.>.

[21] Kyle Buott, Larry Haiven and Judy Haiven, *Labour Standards Reform in Nova Scotia: Reversing the War Against Workers* (Halifax: Canadian Centre for Policy Alternatives, February 2012) at 4, online: <http://www.policyalternatives.ca/publications/reports/labour-standards-reform-nova-scotia>.

[22] *Ibid* at 3.

[23] Janis Sarra, "At What Cost? Access to Consumer Credit in a Post-Financial Crisis Canada" (May 2011) Annual Review of Insolvency Law, accessed online: <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1934457>.

[24] *Ibid* at 1.

[25] *Ibid*.

[26] Tran and Colman, *supra* note 14 at 65.

PROPOSALS FOR EXEMPTING DEBTORS' INCOME FROM JUDGMENT ENFORCEMENT

Minimum Income Threshold

As Buckwold and Cuming observe, "the purpose of modern exemption law is not only to enable the judgment debtor and his or her family to maintain a subsistence standard of living, but to permit them to function as healthy, productive and contributing members of society."[27] A minimum threshold of income exempt from seizure should ensure that the debtor has sufficient funds to maintain an adequate standard of living. In particular, it should ensure that low-income debtors are not reduced to an unreasonable living situation, and further marginalized, by virtue of a judgment debt.

In this section we examine how to set the minimum floor. We first consider a number of models and statistical measures which may be used to fix a minimum threshold of income which ensures an adequate standard of living. We then address whether the minimum threshold should be differentiated according to the size of the community where the debtor resides, whether the threshold should take account of the debtor's household income, and whether and how to account for dependants.

Low Income Measurement Options

There are three main measurements of low income - or 'poverty lines' - used in Canadian statistics: the Low Income Cutoffs (LICO), Low Income Measurement (LIM) and Market Basket Measure (MBM).[28] The following sections assess each on the basis of their relative fairness, effectiveness and practicality as a measurement for determining a threshold amount, below which no income should be subject to seizure.

Low Income Cut Off (LICO)

The Low Income Cut Off (LICO) is an income threshold calculated by Statistics Canada which indicates the minimum level of income that an individual or family will need to afford a reasonable standard of living in Canada today.[29] Statistics Canada has been publishing the LICO since 1959. The agency describes the LICO as its "most established and widely recognized approach to estimating low income cut-offs."[30]

The LICO measurement indicates at what income level a family will be spending more of its income on necessities such as food, shelter, and clothing, than a large majority of Canadian

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[27] Tamara M. Buckwold & Ronald C.C. Cuming, *Final Report: Modernization Of Saskatchewan Money Judgment Enforcement Law* (Saskatoon: University of Saskatchewan, 2005) at 155.

[28] See *Low Income in Canada*, *supra* note 8.

[29] Dennis Raphael, *Poverty and Policy in Canada: Implications for Health and Quality of Life* (Toronto: Canadian Scholars Press, 2007) at 40; *Low Income in Canada*, *supra* note 8 at 87.

[30] *Low Income in Canada*, *supra* note 8 at 6.

families. The LICO begins with a basket of necessities consisting of food, shelter and clothing.[31] Based on data from its most recent Family Expenditure Survey in 1992,[32] Statistics Canada has calculated that an average Canadian family of the same size and similar geographic location spends 43% of its net income on these necessities.[33] Statistics Canada estimates that a family spending 20% of its income more than this can be said to be in 'straitened circumstances,'[34] unable to afford a reasonable standard of living relative to others in their area. The LICO is expressed as an income figure below which the average family will be spending more than 63% of its income on the most basic necessities.

Though it depends on research regarding general spending patterns, LICO is given as a general income figure - not a direct assessment of any given individual's or family's spending patterns. A family with an income above the cut off figure would not be considered low income according to LICO, even if that particular family happened to be spending more than 63% of its income on food, shelter and clothing.[35]

Two LICO measurements are published each year: one that provides a measurement of income before tax and one that provides a measurement of income after accounting for federal and provincial taxes (but no other taxes or deductions). The before tax LICO indicates a family's spending power according to gross income, including government transfers such as tax credits. The after tax measure takes into account not just government transfers, but deductions for income taxes as well.[36] While Statistics Canada advocates the use of an after-tax LICO[37] in order to get a clearer picture of one's disposable income after taxes, social policy organizations have advocated using the before tax LICO.

The principal disadvantage of using the after tax LICO measurement is that it only accounts for federal and provincial income taxes and does not account for sales and consumption taxes, which some say have a greater impact on low income than more affluent persons.[38] For this

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[31] This is in contrast to the MBM measurement which contains a wider basket of goods and deductions. See Table 1, below.

[32] This is a major survey conducted periodically by Statistics Canada to gather information on the expenditures, income, and other characteristics of families and individuals in Canada. See Statistics Canada, Labour Market and Income Data Guide, online: (2000) <www.statcan.gc.ca/pub/75f0010x/4060196-eng.htm>.

[33] Statistics Canada, *Low Income Lines, 2010 to 2011* (Ottawa: Minister of Industry, 2012) at 7, online: <http://www.statcan.gc.ca/pub/75f0002m/75f0002m2012002-eng.pdf>.

[34] Sylvie Michaud, Cathy Cotton and Kevin Bishop, *Exploration of Methodological Issues in the Development of the Market Basket Measure of Low Income for Human Resources Development Canada* (Ottawa: Minister of Industry, 2004).

[35] Philip Giles, *Low Income Measurement in Canada* (Ottawa: Ministry of Industry, 2004) at 11, online, <www.statcan.gc.ca/pub/75f0002m/75f0002m2004011-eng.pdf >.

[36] *Low Income Lines, supra* note 33 at 9.

[37] *Ibid*.

[38] See Canadian Council on Social Development, "What's Behind A Poverty Line?" online: (2001) <http://www.ccsd.ca/pr/lico00aj.htm>.

reason, social policy reformers have advocated the use of the before tax, rather than the after tax LICO so as to prevent an artificial deflation of income by failing to deduct all taxes in a final calculation.[39] Social policy experts warn that even though the after tax LICO is meant to reflect a person's disposable income after taxes, it is not a true portrait of "consumable income" because it does not reflect payroll, sales and consumption taxes.[40]

Statistics Canada's 1992 Family Expenditure Survey provided the base numbers upon which the LICO income figures were originally calculated. These have been updated each year since 1992 for inflation, according to the Consumer Price Index.[41] LICO numbers are differentiated according to family size and by community size in order to get a more realistic picture of income necessity.

LICO is a mixed consumption/equity basket. It takes account of the cost of food, shelter and clothing as an absolute value, but defines poverty-level income in a relative sense, in relation to the proportion of household income that a family with modest income will be required spend on these goods.[42] The LICO figures combine a consumption basket approach (ie., imagining a basket of goods and services that are the bare minimum to ensure an adequate standard of living) and an equity approach.[43]

This is important for our purposes, because an adequate standard of living is not a fixed quantity, but has much to do with a person's condition and place in society generally. It means having income,

> not only to cover basic human needs, but also enough money to ensure that you are able to live in a safe environment, have a social life in your local area, feel part of your community, carry out your duties/activities in the family and neighbourhood and meet the essential costs of transport.[44]

Calculating only what a family needs to survive takes no account of a family's quality of life relative to Nova Scotia society in general. A relative measure of low income gives some indication as to what an individual or family needs to be able to continue to participate as members of their community.

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[39] *Ibid*.

[40] *Ibid*.

[41] *Methodological Issues*, *supra* note 34 at 6.

[42] *Ibid*.

[43] Greg deGroot-Maggetti, *A Measure of Poverty in Canada: A guide to the debate about poverty lines* (Citizens for Public Justice, 2002) at 4, online: <action.web.ca/home/cpj/attach/A measure of poverty.pdf>.

[44] Dennis Raphael, *supra* note 29 at 36.

The LICO is used by both government agencies and social policy organizations to indicate the income needed to provide for a reasonable standard of living for individuals and families.[45] The measurement has been in widespread use by numerous organizations for many years, and continues to be used by organizations studying the effects of poverty.[46]

LICO figures are differentiated by community size, which Statistics Canada found to be a significant variable in determining poverty level income according to the average percentage of income spent on food, shelter and clothing. There are separate figures given for various family sizes.

The LICOs are subject to criticism, on the other hand, because they do not differentiate according to region - the figures are the same for a community of a given size, whether in British Columbia, Quebec or Nova Scotia. As well, the LICO baseline survey and calculations of average income level at which a household will have a minimally adequate standard of living have not been updated since 1992. The figures are only updated for inflation, and so do not track changes in the average percentage of income spent on necessities. For this reason LICO has been called a "de facto 'absolute' measure with regard to changes in real income."[47] While adjustment for inflation may keep pace with the cost of the basic items in the basket, it has not necessarily kept pace with how general spending patterns on these goods have evolved - that is, the percentage of income devoted to these basic expenses above which an average family will be considered to be experiencing real hardship, relative to the Canadian average. Statistics Canada has indicated that it will not be rebasing the LICO in the future. As a consequence, LICO figures will become less and less reliable as an indicator of poverty going forward.[48]

Low Income Measurement (LIM)

The Low Income Measurement (LIM) is another income threshold published by Statistics Canada. The LIM is given as a fixed percentage (50%) of median adjusted family income.[49] The

[45] See Dennis Raphael, *ibid* at 41; For example, Citizenship and Immigration Canada uses the LICO as a minimum income which persons must maintain in order to qualify to sponsor persons into the country: online, <http://www.cic.gc.ca/english/information/applications/guides/5196ETOC.asp>.

[46] See Dennis Raphael, *ibid* at 41: National Council of Welfare Campaign 2000, Canadian Council of Social Development, and even Citizenship and Immigration Canada use the LICO as a minimum income which persons must maintain in order to qualify to sponsor persons into the country. From Spyridoula Tsoukalas and Paul Roberts, *Legal Aid Eligibility and Coverage in Canada* (Ottawa: Canadian Council on Social Development, 2002) online: http://www.justice.gc.ca/eng/pi/rs/rep-rap/2003/rr03_la5-rr03_aj5/p3.html: "Both Gallup and EKOS have conducted polls that provide a guide to what the general public considers to be poverty. One finds that there is an extremely close correspondence between public opinion and the LICO, with both rising over time in line with average income or the standard of living."

[47] Richard Shillington and Michelle Lasota, *Existing Measures, Working Paper No. 2* (Infometrica Ltd., 2009) at 8, online, <http://metcalffoundation.com/wp-content/uploads/2011/05/fog-working-paper-02.pdf>.

[48] *Low Income in Canada*, *supra* note 8.

[49] Statistics Canada, *Low Income Measures (2007-2008)* online: <http://www.statcan.gc.ca/pub/75f0002m/2009002/s3-eng.htm>.

LIM is, "a purely relative measure of low income based on the estimates for families and individuals gathered from T1 files, i.e. administrative tax return data."[50]

Statistics Canada explains its LIM calculation as follows:

> First, each household's income is adjusted using Statistics Canada's equivalence scale. Then, we find the median income, i.e. the income where half the families have a higher adjusted income and the other half have a lower adjusted income. The LIM is then represented by half that median adjusted income. The LIM is defined on a national level, which means the line is the same in Ontario as in Prince Edward Island or British Columbia. Also, estimates are presented on the basis of the number of persons and are currently available for the 1997-2008 period.[51]

Because the LIM is a relative measure it is often used when doing international comparative work on poverty. However, the LIM is not an accurate threshold for the purposes of a low income cut off as it is a totally relative measure of poverty and is not designed to account for the actual conditions necessary for a family to have an acceptable standard of living. LIMs define poverty only according to a percentage of median national income. LIMs are not differentiated by the community size or province. In contrast, both the LICO and the MBM, discussed below, take account of geographic differences in cost of living, to some extent, and so provide a more sensitive measurement of income required to have an adequate standard of living.

Market Basket Measures (MBMs)

The final benchmark for measuring low income in widespread use in Canada is the Market Basket Measure ('MBM') developed by Human Resources Development Canada. The MBM threshold amount represents the cost of a 'basket' of essential goods and services. The MBM is meant to provide more of an absolute or concrete indication of living conditions than either the LICO or the LIM. The MBM was created by Human Resources Development Canada (now Human Resources and Skills Development Canada or "HRSDC") in order to address criticism of the LICO and LIM's more relative indicators of poverty.[52]

The MBM threshold imagines a basket of goods and services which a family must be able to afford, or else it will be considered to be living below the poverty line. These goods and services include food, shelter, clothing, footwear, transportation, personal care, household needs, furniture, basic telephone service, school supplies and modest levels of reading material,

[50] Andrew Sharp, *Living Standards: A Report of the Canadian Index of Wellbeing (CIW)*, online: (August 2011) Centre for the Study of Living Standards, at 36; Online: < https://uwaterloo.ca/canadian-index-wellbeing/sites/ca.canadian-index-wellbeing/files/uploads/files/CIW%20Living%20Standards%20 domain%20report%20Aug%202011.pdf>.

[51] *Ibid* at 48.

[52] Dennis Raphael, *supra* note 29 at 42.

recreation and entertainment.[53] The measure is given as an income figure, net of taxes and payroll deductions including CPP, EI, Registered Pension Plan, union and professional dues deductions, child/spousal support payments, work related child care expenses, out of pocket medical expenses and public health insurance premiums.[54] The cost of the basket of goods and services is assessed separately for each province and for different regions within the province.

The MBM "basket" and deductions are set out in the following table:

Table 1:[55]

Content of MBM Threshold	**Deductions**
A **nutritious diet** as described by the 1998 version of Health Canada's Nutritious Food Basket • The **basket of clothing** and footwear defined by the Social Planning Council of Winnipeg's 2000 Acceptable Living Level (A.L.L. 2000) clothing list • The **median rental** unit in each community size in each province and territory • Transportation, using **public transportation** when available in a region • **Other necessary goods** and services such as household goods.	• **Income tax,** that is, federal and provincial taxes on income, capital gains and RRSP withdrawals, after taking into account exemptions, deductions, nonrefundable tax credits, and the refundable Quebec abatement. • **CPP/QPP contributions** that are deducted from earnings due to paid employment. (*Receipts* from CPP/QPP are included in Total Income.) • **Employment Insurance (EI) contributions** that are deducted from earnings due to paid employment. (*Receipts* from EI are included in Total Income.) • **Registered Pension Plan (RPP) contributions** that are deducted from earnings due to paid employment. • **Union and professional dues** including union dues, fees associated with collective agreements, professional membership dues and liability or malpractice insurance premiums • **Child/spousal support payments** *paid* to a former spouse or partner, as covered by an agreement to pay a fixed amount on a regular basis. (*Receipts* from support payments are included in Total Income.) • **Work-related child care expenses** incurred for child care which enable the parent(s) or guardian(s) to work for pay. • **Out-of-pocket medical expenses** for medically recommended health care and equipment • **Public health insurance premiums** as required in some provinces.

[53] Michael Hatfield, Wendy Pyper, Burton Gustajtis, *First Comprehensive Review of the Market Basket Measure of Low Income, Final Report* (Gatineau: Human Resources and Skills Development Canada, 2010) at 1 [hereinafter, *First Comprehensive Review*].

[54] *Exploration of Methodological Issues*, supra note 34 at 8.

[55] *Ibid* at 8 and 29.

Relying on a method that estimates a basic level of income needed to purchase basic necessities, the MBM conceives of poverty as more of an absolute condition, rather than accommodating considerations of income equality or directly accounting for relative social deprivation. A goods and services measure like the MBM is a more intuitive and easier to understand concept of poverty than one that is based, to some extent, on a relative conception of minimally adequate income.

When the MBM was first developed some commentators cautioned that because decision-making authority for the contents of the goods and services 'basket' that comprise the MBM rests with HRSDC[56] the measure may be manipulated to suit political aims, as opposed to the lived reality of low income families.[57] Consultation with social policy agencies appeared to have quelled some of the initial skepticism, but the latest review of the MBM has once again met with skepticism, in particular, where calculations of shelter costs are concerned.[58]

Readjustment of the MBM is a substantial undertaking, and the figures are not revised, other than for inflation, on any regular basis. The first review of the MBM since its release in 2003 was completed and published by HRSDC in June 2010.[59] Since this review of the MBM was undertaken there has been criticism of both the methodology and the final calculations of some of the goods and services contained in the MBM basket.

For example, the MBM's estimate for the cost of shelter in Halifax for a family of four fell 26%, from $10,034 to $7,476 a year.[60] Clearly, this is not an accurate reflection of minimally reasonable shelter costs for a family of four living in Halifax. From Canada Mortgage Housing Corporation's (CMHC) 2011 *Rental Market Report*, the yearly price of a 2-bedroom apartment in Halifax is $11,000.[61] This discrepancy is troubling and reveals serious concerns going forward over the methodology used to choose and price the goods and services in the MBM basket.

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56 *Ibid* at 2.

57 See, for example, John Kolkman, "Issue Update: The Market Basket Measure – Rebased or Debased?" online: (Winter 2011) Edmonton Social Planning Council <http://www.edmontonsocialplanning.ca/content/view/1002/1002>.

58 Michael Goldberg, Seth Klein, Steve Kerstetter, "How to Destroy a Good Poverty Line", online: (20 February 2012) Canadian Centre for Policy Alternatives <http://www.policyalternatives.ca/publications/commentary/how-destroy-good-poverty-line>; see also, *ibid*.

59 See *First Comprehensive Review*, *supra* note 53.

60 *Ibid*.

61 CMHC reported that the average rents for a 2-bedroom apartment in Halifax in the fall of 2011 reached $925 /mo while the average cost of a 2-bedroom apartment in Truro cost only $751/mo; $686/ mo in Cape Breton; and $616/mo in New Glasgow. See Canada Mortgage Housing Corporation, *Rental Market Report: Halifax* (Fall 2011) at 5, online: <https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?lang=en&cat=79&itm=7&fr=1361295120671>. There is an indication in an footnote in Statistics Canada's newest release on low income lines that there is a review of shelter amounts currently being undertaken but there is no further information provided. See *Low Income Lines*, *supra* note 33 at 11.

Basic Needs Poverty Line

Another means by which to establish a minimum income threshold is to calculate the value of the minimum goods necessary to keep a family at subsistence levels. Such a basic necessities rate is given by the Fraser Institute's Basic Needs Poverty Line. The Basic Needs Poverty Line defines poverty not in terms of inequality but in terms of insufficiency.[62] To this end, the measure itemizes and costs basic necessities without which a family can be said to have reached an unacceptable level of deprivation.[63]

While the methodology is similar to calculating the MBM threshold amount, the basic needs included are far less extensive than those considered by the MBM measure. For example, the 2006 Basic Needs Poverty Line for a family of four was $22,852, before tax. The MBM for Halifax, by contrast, was $29,073 net of taxes, payroll deductions, child care, child and spousal support, medical expenses and health insurance premiums.

The philosophy behind the Basic Needs Line is that poverty is a condition of lacking the most basic needs - food, clothing, shelter, and household essentials.[64] Unsurprisingly, there are far fewer people living in poverty defined by the Basic Needs Line than by the LICO or MBM measures.[65] The Basic Needs Line is not intended to reflect a reasonable standard of living, or reflect considerations of social inclusion.

Social Assistance Rates

The Manitoba Law Reform Commission recommended using the province's social assistance rates to calculate minimum exemption amounts for the *Garnishment Act*.[66] The Commission considered that using social assistance rates would provide a ready-made figure, periodically recalculated in response to changing economic conditions, which is tailored to accommodate different family sizes. The Commission recognized, however, that as an incentive to debtors to work, exemption amounts should be set above social assistance rates. To this end, the Commission recommended a minimum income exemption of 120% of social assistance rates - a monthly exemption of $600 plus $100 for each dependant.[67]

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[62]Chris Sarlo, *Poverty in Canada 2006* (Vancouver: Fraser Institute, 2006) at 2, online: <http://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDAQFjAB&url=http%3A%2F%2Fwww.fraserinstitute.org%2FWorkArea%2FDownloadAsset.aspx%3Fid%3D3443&ei=iYljT9W1OIa20AHh8KicCA&usg=AFQjCNH0dHRx45LWtYcY_H4kbVTDmstdcA&sig2=oGlerfQcRyk3ITbfB_2WbQ>.

[63] *Ibid* at 1. These goods include food, shelter, clothing, health care, personal care, essential furnishings, transportation and communication, laundry, home insurance and miscellaneous).

[64] *Ibid*.

[65] *Ibid*.

[66] Manitoba Law Reform Commission, *Review of the Garnishment Act* (Winnipeg, Manitoba Law Reform Commission, 2006) at 23.

[67] *Ibid* at 22 to 23. Pursuant to Manitoba's Garnishment Act, CCSM c.G.20, s 5, a debtor is provided with an exemption rate of $250/mo or $350/mo with one or more dependants. Pursuant to the definition of "wages" at s 1 of the Act, this amount is net of deductions.

Social assistance rates are calculated well below measurements of low income provided by the LICO, LIM or MBM measurements.[68] These rates do not account for a reasonable standard of living, nor do they provide for the dignity, security and substantive equality of low income families.[69] They accommodate a certain degree of deprivation by design, in order to discourage dependency.

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[68]The following are Income Assistance Rates for Nova Scotia posted by the Nova Scotia Department of Community Services, online: <http://gov.ns.ca/coms/employment/income_assistance/BasicAssistance.html>:

Shelter Allowance

Family Size	*Rent or Own a Home*	*Boarding*
1	$300*	$223
2	$570	$242
3+	$620	$282

Personal Allowance

Shelter situation	*Adult*	*Dependant child age 18 to 20*	*Dependant child up to age 18*
Rent, own home, board	$238	$238	$133 *
In hospital 30 days or more	$105	$105	Not applicable
In a residential rehabilitation program	$81	$81	Not applicable

[69] See Stella Lord, "Fast Facts: Let's Make Poverty Reduction a Priority" online: (1 March 2011) Canadian Centre for Policy Alternatives http://www.policyalternatives.ca/publications/commentary/fast-facts-let%E2%80%99s-make-poverty-reduction-priority. Lord reports that:

> In Nova Scotia in 2009, the assistance provided to a single parent with one child was $3,969 below the poverty line using the MBM.
>
> A couple with two children would need $8,488 dollars to bridge the gap between assistance and the poverty line and a person with disabilities, $6,382. A single person considered 'employable' would have only $6,359 to live on when $15,579 is the amount considered the minimum required for an individual to meet their very basic needs.

Further, in a document compiled by the Halifax Inner City Initiative (HICI), a community initiative sponsored by the North End Council of Churches, participants in a study of low income in Halifax's North End were asked to comment on their experience on Income Assistance. The average income of a female recipient of income assistance in the North End of Halifax at the time of the report in 2003 was $4430/yr and $3360/yr for male recipients. Recipients commented that income assistance did not give them enough money each month to live on. They calculated that a living wage adequate to cover their expenses would be $9.60/hr (or closer to $18,000/yr in gross wages, ie., approaching the before tax LICO figure). See Halifax Inner City Initiative, at p 4 online: <http://tamarackcommunity.ca/downloads/vc/HAL_final_report.pdf>.

Minimum Wage

The U.S. Federal *Consumer Credit Protection Act* provides a maximum level of income that may be seized in the event of a garnishment of wages.[70] Weekly garnishments may not exceed the lesser of 25% of an employee's disposable earnings[71] or 30 times the federal hourly minimum wage.[72] Some individual states also peg their income exemptions to a multiplication of their respective minimum wages. Illinois, for example, provides an exemption rate of 45 times the minimum wage amount, giving the debtor an exemption equal to a full week's pay at minimum wage.[73]

Nova Scotia's minimum wage is currently set to reflect what some social policy organizations have dubbed a "living wage"[74] - that is, a wage that is capable of providing for a reasonable standard of living. Using a 'living wage' approach provides an accessible and efficient means of determining a minimum income threshold which affords a reasonable standard of living.

There is no guarantee, however, that the Nova Scotia minimum wage will continue to reflect a reasonable standard of living. There is no certainty that minimum wage amounts will be recalculated to adjust for inflation, or that they will not be adjusted up or down for reasons other than ensuring a living wage in current economic conditions. Furthermore, the calculation does not differentiate according to family or community size and therefore does not provide as finely-tuned an account of income needed to ensure a reasonable standard of living.

Other Jurisdictions

Approaches to the minimum income threshold vary widely throughout Canada. Wages are not subject to garnishment at all in New Brunswick. In Ontario, there is no minimum income threshold amount.[75] In Alberta, 50% of net income above a minimum income exemption is subject to seizure. The minimum floor is \$800 per month, plus \$200 per dependant to a maximum of \$2400.[76] Prince Edward Island's *General Regulations* under the *Garnishee Act* provide a detailed scheme of exemptions based upon an itemized list of basic needs. Basic needs

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[70] U.S. Department of Labour, "Fact Sheet #30: The Federal Wage Garnishment Law, Consumer Credit Protection Act's Title 3 (CCPA) online: (2009) U.S. Wage and Hour Division <www.dol.gov/whd/regs/compliance/whdfs30.pdf>.

[71] Disposable earnings means the amount left after legally required deductions are made. See *ibid* at 2.

[72] *Ibid*.

[73] Illinois Code of Civil Procedure (735 ILCS 5/12 - 803).

[74] As of April 1, 2012, Nova Scotia's minimum wage is set at \$10.15/hr: Nova Scotia, Labour and Advanced Education, "Minimum Wage Increasing to \$10.15 on April 1st" online: (25 January 2012) <http://www.gov.ns.ca/news/details.asp?id=20120125001>; John Jacobs, " Making the Minimum Wage a Living Wage in Nova Scotia" online: (2007) Canadian Centre for Policy Alternatives <http://www.policyalternatives.ca/publications/commentary/making-minimum-wage-living-wage-nova-scotia>.

[75] *Wages Act*, RSO 1990, c W.1, s 7(2), providing an exemption of 80% of net wages.

[76] See *Civil Enforcement Act*, RSA 2000, c. C-15, s 39(2).

such as food, clothing, shelter, fuel and utilities, and health care services are itemized and costed to provide an exemption amount. It is not clear how often or how regularly the market basket is updated.[77]

No province explicitly ties its minimum income threshold to a low income threshold such as LICO, LIM, MBM or the Basic Needs Line.

The most recently enacted wage garnishment rules, pursuant to Saskatchewan's *Enforcement of Money Judgments Act*,[78] provide for a minimum threshold amount approaching the LICO and MBM amounts: $1500 plus $300 for each dependant, per month.[79] Similarly, Nunavut's *Exemptions Regulations*[80] provide for an income exemption of $1500 per month plus an additional $300 per month per dependant.

Appendix III summarizes the income exemption provisions under judgment enforcement legislation for each jurisdiction in Canada.

LICO or MBM?

We consider that the serious candidates for setting a minimum income threshold are the LICO and the MBM. Both are updated annually, both are in widespread use and widely accessible, both account for family size and both reflect geographic differences in cost of living. Both aim to determine a level of income which provides a reasonably adequate standard of living, as opposed to mere subsistence.

Both the LICO and MBM measures are subject to concerns about their reliability going forward. The LICO will no longer be rebased, but only indexed to inflation, and so will become unreliable as a relative measure of minimally necessary income. The MBM, on the other hand, has been criticized as subject to potential political manipulation, and already demonstrates a certain unreliability in estimating the costs of necessary goods and services.

The particular benefits of the LICO measurement are its accessibility, its widespread use, and the fact that it reflects a relative conception of poverty as a matter of social inequality. On the other hand, the MBM is a straightforward costing of necessary goods and services, without which a family would find itself in an unreasonable living situation.

Indeed, it makes sense to us that a minimum income threshold calculation should be informed by both measures. We propose that for the time being, before tax LICO figures should be the reference point for setting a minimum income threshold. But it will be necessary going forward to compare the resulting exemption figure with the MBM. A minimum income threshold should not fall below the MBM's minimally necessary basket of goods and services.

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[77] *General Regulations*, PEI Reg EC 382/72, s 3.

[78] SS 2010, c E-9.22 at s 95(2).

[79] See *Enforcement of Money Judgments Regulations*, RRS c E-9.22 Reg 1, s 23(7)(b).

[80] Nu Reg 006-2006, s 2(2)(a).

The amounts provided by the different measurements of low income for an individual in Halifax in 2010 (the most recent figures provided for MBM) are as follows:[81]

Low Income Measurement for Individual for 2010 in Halifax	**Income Amount**
LICO (before tax)	$19,496[82]
LICO (after tax)	$15,865
MBM	$16,151.50

The most recent numbers for the LICO are those available for 2011: $20,065[83] before tax and $16,328 after tax for an individual in a community the size of Halifax. The amounts provided by the before tax LICO and the most recent 2010 MBM threshold are very close. The before tax LICO at least allows an individual to afford the goods and services priced by the MBM.

We propose that for the time being, the before tax LICO figures should be the basis for a minimum income threshold level, below which no income should be seized. The LICO remains the best of the available options for ensuring an adequate standard of living.

The before tax LICO for an individual in a community the size of Halifax in the year 2011 (the most recent year available) was $20,065. This roughly equals a monthly net income of $1410, after federal and provincial income tax, EI and CPP deductions. Therefore, accounting for a conservative amount of inflation, under our proposed legislation the minimum income threshold for an individual would currently be set at $1430/month.[84] This figure happens to correspond to the current income exemption level under Rule 79.08(3) of the *Civil Procedure Rules* ($330/wk).

What is more important, however, is to emphasize the principles that ought to govern the selection of a standard. The LICO may well be eclipsed by other, better standards in the future. At a minimum the figure should be aimed at providing a reasonable standard of living in terms of necessary goods and services, with due regard for social equality and inclusion, without which the debtor's marginalization may be compounded. Ideally the baseline should be updated

[81] See Statistics Canada, *Low Income Lines, 2010 to 2011* (Ottawa: Minister of Industry, 2012), online:<http://www.statcan.gc.ca/pub/75f0002m/75f0002m2012002-eng.pdf>.

[82] After federal and provincial income tax, EI and CPP deductions, the net figure is $16,515.72.

[83] After federal and provincial tax, EI and CPP deductions, the net figure is $16,919.76.

[84] At the time of writing, Statistics Canada had not yet published LICO figures for 2012. We refer to the figure of $1430/mo (and $330/wk) throughout this paper as the "indexed 2012 LICO", acknowledging that the LICO for 2012 for an individual in a community of the size of HRM, once published, may differ from the figure we have used.

regularly, and the measure should be in widespread use and therefore subject to constant independent scrutiny and review. [85]

Proposal for discussion:

> **A minimum income threshold should be set on the basis of Statistics Canada's before tax Low Income Cut Off, subject to annual automatic adjustment for inflation.**
>
> **The resulting thresholds should regularly be checked against the MBM to ensure that they afford judgment debtors the ability to purchase necessary goods and services.**
>
> **Alternative methods and statistical measures of a minimally adequate income should be reviewed on a regular, systematic basis, to ensure that the minimum income threshold is on the soundest possible footing.**

Differentiating a Minimum Income Threshold According to Community Size

This section considers whether the minimum income threshold can or should be differentiated according to the size of the community in which the debtor resides. Both MBM and LICO differentiate their income figures on the basis of community size.

Having different minimum income thresholds for different community sizes would introduce a fair bit of complexity to the system. The question is whether a single figure can be offered for the whole of Nova Scotia which represents an adequate standard of living, regardless of community size. We conclude that it can.

The before tax LICO amounts vary considerably according to community size. For example, the most recent before tax LICO numbers available from Statistics Canada, for an individual and a family of four, are as follows:

[85] For example, researchers are projecting that food prices across Canada may increase as much as 3.5% overall in 2013. These projections see meat costs rising as much as 6.5%; the cost of eggs rising by as much as 5%; and grains rising up to 2.7% in 2013. Such drastic rises in food prices must be considered in making annual adjustments to the low income threshold. Low income families with tighter budgeting margins will be the least likely to absorb rising costs of food prices. See Sylvain Charlebois et al., *Food Price Index 2013* (Guelph: University of Guelph, December 2012) at 6, online: <www.uoguelph.ca/cpa/Food-Index-2013.pdf>.

Table 2[86]

	Rural Area	Less than 30,000	30,000 to 99, 999	100,000 to 499,999	500,000 and over
1 person	16,038	18,246	19,941	20,065	23,298

	Rural Area	Less than 30,000	30,000 to 99, 999	100,000 to 499,999	500,000 and over
4 persons	29,802	33,905	37,053	37,283	43,292

Lower LICO figures for smaller urban and rural areas than for larger urban areas reflect the fact that absolute costs for food, clothing and shelter are, according to national statistics, lower in these areas. A quick review of the difference in cost of food and shelter between Halifax and smaller, more rural centers reveals that the difference occurs in Nova Scotia as well; however, this difference is much smaller, and certainly does not support the wide variation in the LICO figures.

For instance, a 2010 report from the Nova Scotia Food Security Network and Mount Saint Vincent University on the cost and affordability of a nutritious diet in Nova Scotia reported that the cost of a nutritious food basket was higher in rural areas than in urban areas in Nova Scotia.[87] The report provided actual costs of a nutritious food basket for each district health authority. The following are numbers reproduced from that report as to the average monthly cost of a basic nutritious diet for a reference family of four in each of the district health authorities:[88]

Table 3

South Shore	South West Nova	Anna-polis Valley	Col-chester East Hants	Cumber-land	Pictou County	Guys-borough Anti-gonish	Cape Breton	Halifax
$798.71	$757.58	$799.36	$737.40	$799.93	$799.93	$766.32	$781.52	$753.33

The report observes that, “A basic nutritious food basket purchased in grocery stores located in rural areas costs an average of $25.77 more each month compared with the same basket purchased in urban areas in Nova Scotia. This statistically significant difference is consistent with our findings from 2002 to 2008.”[89]

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[86] See *Low Income Lines, 2010 to 2011*, *supra* note 81.

[87] Nova Scotia Participatory Food Costing Project, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (Halifax, Mount Saint Vincent University, 2011) at 9, online: <http://www.foodsecurityresearchcentre.ca/storage/docs/food-costing/Food%20Final%202010_Food%20Final.pdf>.

[88] *Ibid* at 8.

[89] *Ibid* at 9.

The difference in cost of living between LICO figures for urban and rural areas also does not take into consideration transportation costs. While a family of four in Halifax, for example, may spend $242/mo or $2904/yr on bus passes for the family, a family of four in rural Nova Scotia is practically required to bear the cost of an automobile. A 2009 study indicates that the average cost of operating a private vehicle can be $462.31/mo, or $5547.72/yr.[90]

There are substantial differences, on the other hand, between shelter costs inside and outside Halifax. A rental housing market report released by Canada Mortgage and Housing Corporation indicates that average rents for a 2-bedroom apartment in Halifax in the fall of 2011 reached $925 /mo while the average cost of a 2-bedroom apartment in Truro cost only $751/mo; $686/mo in Cape Breton; and $616/mo in New Glasgow.[91]

While these differences are substantial as between Halifax and outside areas, they represent a cost savings of approximately $2800/yr for renting an apartment outside of HRM (ie., given that the average cost of rent as indicated by rents above are about $684/mo). However, taking into consideration that food on average costs approximately $309.24 more a year for a family outside of Halifax, and the fact that these same families will most likely have to operate their own private vehicle, the savings in shelter costs outside of Halifax may be entirely taken up by food and transportation costs.

The MBM calculation accounts for differences between provinces in cost of living, and also for transportation costs. When actual regional cost of living differences and costs of transportation are taken into account, the difference in rural-urban cost of living is not as dramatic as the numbers provided by LICO. For example, MBM numbers for a reference family of four in Nova Scotia for 2010 provide the following low income lines:[92]

[90] This information came from the Nova Scotia Participatory Food Costing Project, *ibid* at 13, online: http://www.foodsecurityresearchcentre.ca/storage/docs/foodcosting/Food%20Final%202010_Food%20Final.pdf> from information derived the Canadian Survey of Household Spending 2009. Recent data on driving costs from the Canadian Automobile Association indicate that the average driving cost (18,000km/yr) when insurance, license and registration, depreciation and car financing is taken into consideration, is $6439.72/yr. While this is the cost of driving a brand new Civic LX with a finance expense of $824.28 (ie., 7.5% interest) and a depreciation cost of $3024/yr, even if one does not account for this cost, the cost of driving in Canada is still over $2000/yr on average without yet taking fuel, maintenance and repairs and depreciation costs (on a used car) into account. Canadian Automobile Association, *Driving Costs: 2012 Edition* at 5, online: http://caa.ca/docs/eng/CAA_Driving_Costs_English.pdf.

[91] Canada Mortgage Housing Corporation, *Rental Market Report: Halifax* (Fall 2011) at 5, online: <https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?lang=en&cat=79&itm=7&fr=1361295120671>.

[92] See *Low Income Lines*, 2010 to 2011, *supra* note 81.

Table 4

Community Size	Threshold
Rural	31,826
Population under 30,000	33,887
Population 30,000 to 99,999	31,238
Halifax	32,303
Cape Breton	30,808

According to the MBM methodology, then, there is only a $477/yr or $39.75/wk difference in the cost of a minimally reasonable standard of living between Halifax and rural areas with populations under 10,000. Interestingly, areas such as Truro and New Glasgow that have populations above 10,000, but under 30,000 have the highest costs of living – higher than even Halifax. Cape Breton, on the other hand, has the lowest cost of living outside of Sydney.

Notwithstanding the advantage of using the LICO figure –a figure that is sensitive to inequality, rather than simply a minimum cost of living analysis – it does not take account of cost of living differences which may be distinct to Nova Scotia. For this reason, it is useful to compare the LICO figures with the relevant MBM thresholds. While the LICO method accounts for the fact that there may be a greater level of inequality in income in a center the size of Halifax, the small difference in actual cost of living for families living outside Halifax does not support the significantly lower LICO figures for smaller size communities.

We conclude that the small degree of variation in cost of living of living between the different counties in Nova Scotia does not require the added administrative complexity of a minimum income threshold differentiated by community size. We propose that the threshold should be set on the basis of the applicable LICO figures for HRM, and be applicable to all areas in Nova Scotia.

Proposal for discussion:

> **The minimum income threshold should be set on the basis of the LICO figures for HRM, and should be applicable province-wide rather than differentiated by community size.**

Household or Individual Income

The minimum income threshold may be applied to the debtor's individual income. Alternatively, the debtor's household income - that is, the income produced by all members of the debtor's household - may be considered.

The calculation of surplus income provided in the *Bankruptcy and Insolvency Act* [*BIA*],[93] for example, takes account of household income. Pursuant to s. 68(3) of the *BIA*, a portion of the bankrupt's income is deemed to be 'surplus,' and recovered by the estate for the benefit of creditors.[94] Surplus income is defined as:

> [T]he portion of a bankrupt individual's income that exceeds that which is necessary to enable a bankrupt individual to maintain a reasonable standard of living, having regard to the applicable [Superintendent's Standards].

The Superintendent's Surplus Income Directive uses the before tax LICO measurements to establish an amount of income above which a bankrupt's income will be determined to be surplus.[95] Any income above the before-tax LICO amount for that year, net of deductions, is considered to be surplus income and 50% of this income must be paid to the bankrupt's estate, except for bankrupts whose surplus income is less than $200 per month.[96]

This is similar to the *Uniform Act*'s method of determining what portion of a judgment debtor's income should be available for seizure, except that a bankrupt's monthly income is determined with reference to the income of the bankrupt's household.[97] A bankrupt's household includes any person who either benefits from or contributes to the income or expenses of the household and is not limited to spousal relationships.[98] The surplus income amount is arrived at after the entire household income is taken into account. The percentage of income contributed by the debtor to the overall household income is then deducted from household income to determine what amount is to be paid to the estate.

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[93] See s 68(1) of the *Bankruptcy and Insolvency Act*, RSC, 1985, c B-3.

[94] *Ibid*.

[95] Directive No. 11R2-2011, *Surplus Income* [hereinafter, Surplus Income Directive], at Appendix A. App A states:

> The Superintendent's Standards ("S") are derived from the Low Income Cutoffs (LICO) released by Statistics Canada. The Superintendent uses the before-tax LICO for urban areas with 500,000 people and over. The 2011 standards are updated by adding to the 2009 LICO, the 2010 Consumer Price Index (CPI) (1.84%) plus a 2.1% adjustment reflecting the 2011 CPI expectation.

[96] *Ibid*, s 5(7). Deductions include minimum statutory remittances (income tax, pension and employment insurance deductions) and other mandatory deductions paid (in the case of a salaried employee) or business expenses and deductions as permitted by the *Income Tax Act* or similar provincial legislation, minimum statutory remittances and installment tax payments made (in the case of a person who is self employed); child and/or support payments; child care expenses; expenses associated with a medical condition; court-imposed fines or penalties that are in the process of being paid; expenses permitted by the *Income Tax Act* (or similar provincial legislation) that are a condition of employment; any other debt where a stay of proceedings has been lifted by the Court, and a recourse authorized; and interest paid on debts that are not dischargeable in bankruptcy under paragraph 178(1)(g) of the *Act*. See ss 5(2) and 5(3).

[97] *Ibid*, s 3.

[98] *Ibid*, s 4.

Calculating an individual debtor's surplus income available to creditors based upon the percentage of household income he or she contributes is a complicated methodology. Among other things, it requires disclosure of the income of other members of the debtor's household.

Furthermore, while a household income measurement will in many cases give a more accurate indication of a debtor's actual ability to pay, it also assumes quite a lot – in particular, that all members of the household share income openly and equally. In fact, one in five Canadians say that they have experienced some form of emotional or financial abuse in their current or previous relationship,[99] and 25% of women and 12% of men who reported emotional or financial abuse declared that they were denied knowledge about or access to family income.[100] A woman subject to financial abuse in the home, for example, may be totally dependent upon her own income even though her overall household income appears far higher. Garnishing her income at the higher amount may compound an already volatile situation, and may make her more vulnerable to abuse.

For the sake of administrative simplicity and in recognition that in some households not all members of the household share equally in household income, we propose the use of a minimum income threshold figure applicable only to individual, as opposed to household income.

Proposal for discussion:

> **A minimum income threshold amount should be based on a debtor's individual income as opposed to household income.**

Dependants

Who Should Qualify as a Dependant?

As we indicated in the first Discussion Paper, the minimum threshold should be scaled according to the number of dependants that rely upon a debtor for support. The LICO and MBM thresholds are given for individuals and for households of two, three, and so on. Having recommended basing an income exemption amount on an individual debtor's income alone, however, we must consider how to take account of the extra expense of the debtor's dependants, on an individual rather than a household basis. The low income measurement figures based on household income cannot be used directly for this purpose; instead, a per dependant figure must be provided.

First, who should qualify as a dependant for the purposes of a minimum income threshold? Rule 79.08(3)(a) provides that a dependant for the purposes of the rule is a dependant as defined by

[99] Statistics Canada, *Family Violence in Canada: A Statistical Profile* (Ottawa: Minister of Industry, 2011) at 5, online: <http://www.statcan.gc.ca/pub/85-224-x/85-224-x2010000-eng.pdf>.

[100] *Ibid* at 14.

the *Income Tax Act*.[101] The *Income Tax Act* provides that a dependant is “a person who at any time in the year is dependent on the individual for support and is the child or grandchild of the individual or of the individual’s spouse or common-law partner”[102] or “the parent, grandparent, brother, sister, uncle, aunt, niece or nephew, if resident in Canada at any time in the year, of the individual or of the individual’s spouse or common-law partner”[103] that is under the age of 18 or is dependent financially because of a mental or physical disability.[104] Common law partners and married spouses are not included in the definition of dependant under the *Income Tax Act*, which provides for them separately.

Supporting a spouse financially affects a debtor’s standard of living. If an income exemption is to provide for a reasonable standard of living, it must take into consideration the financial consequences of a debtor providing for a spouse or common law partner. For this reason, we propose that a spouse, registered domestic partner or common law partner[105] should also be considered to be a dependant for purposes of a minimum income threshold.

Other jurisdictions, such as Alberta, provide that a dependant for the purposes of an exemption includes “the spouse or adult interdependant partner of the enforcement debtor”.[106] Similarly, Saskatchewan, Newfoundland and Labrador, Northwest Territories and Quebec expressly provide an additional income exemption amount for a debtor’s spouse.[107]

The civil enforcement legislation in Alberta,[108] Northwest Territories,[109] and Nunavut[110] further provide that on application, the court may reduce the debtor’s income exemption where a debtor’s dependant is receiving an income. We do not propose so broad a variation power, which

[101] RSC 1985, c 1 (5th Supp.).

[102] *Income Tax Act*, s 118(6)(a).

[103] *Income Tax Act*, s 118(6)(b).

[104] This does not include a child for whom the debtor is obligated to pay child support; instead this amount will be taken into consideration by allowing the debtor to deduct child support payments, as will be discussed in the following sections.

[105] Common law partner should have the same meaning as that in the *Maintenance and Custody Act*, RSNS 1989, c 160, s 2(aa): "common-law partner" of an individual means another individual who has cohabited with the individual in a conjugal relationship for a period of at least two years”.

[106] See *Civil Enforcement Regulation*, Alberta (AReg. 276/95), s 36(a)(i). An adult is an “Adult Interdependant Partner” pursuant to the *Adult Interdependant Relationships Act*, SA 2002, c A-4.5 at s 3 where, “the person has lived with the other person in a relationship of interdependence for a continuous period of not less than 3 years, or of some permanence, if there is a child of the relationship by birth or adoption, or the person has entered into an adult interdependant partner agreement.”

[107] *Enforcement of Money Judgments Act*, SS 2010, c 9.22, s 84; *Judgment Enforcement Regulations*, 1999, NLR 102/99, s 49(1)(a); *Exemptions Act*, SNWT 2010, c 4, s 1; *Code of Civil Procedure*, RSQ, c C-25, art 553(11)(a).

[108] *Civil Enforcement Regulations*, AR 276/95, s 39(4)(d).

[109] *Exemptions Act*, SNWT 2010, c 4, s 7(5).

[110] *Exemptions Act*, RSNWT (Nu) 1988, c E-9, s 9(4).

would risk basing the income exemption in effect on a household income model. Rather, we propose that where a debtor has claimed a dependant, the court may reduce the minimum income threshold claimed in respect of that dependant only to the extent that the dependant in question is receiving income.

Proposal for discussion:

> **In addition to those deemed to be dependants under Rule 79.08 with reference to the *Income Tax Act*, spouses, registered domestic partners and common law partners should also be considered to be dependants for the purposes of the minimum income threshold.**
>
> **Judgment enforcement legislation should provide that where a debtor has claimed a dependant, the court may reduce the minimum income threshold only to the extent that the dependant in question is receiving income.**

Calculating a 'Per Dependant' Amount

How should a minimum income threshold account for dependants? According to the 2011 before tax LICO figures, a household in a community the size of Halifax will bear roughly an extra $5505.76/yr, or $105.88/wk before taxes for each extra person, in order to live at a reasonably minimal standard of living.

Table 5: Before Tax LICO by Family Size in a Community with a Population of 100,000 to 499,999 for 2011[111]

Household size	**100,000 to 499,999**
1 person	20,065
2 persons	24,978
3 persons	30,707
4 persons	37,283
5 persons	42,285
6 persons	47,692
7 or more persons	53,097

Similarly, the latest 2010 MBM figures for Halifax indicate that for every additional person, the household requires an additional $5383.83 per year (ie., when differences between 1,2,3 and 4

[111] See *Low Income Lines, 2010 to 2011*, *supra* note 81.

person households are calculated and averaged). This amount equals $448.65/mo or $103.5/wk.[112]

We propose that a per dependant allowance for the debtor's minimum income threshold should be based on the average difference in LICO figures as family size increases. This too should be subject to annual, automatic adjustment for inflation, and regularly checked against the relevant MBM figures. For example, if new judgment enforcement legislation were to come into effect today, the per dependant allowance would be approximately $105 in gross income per week.

Proposal for discussion:

> **A per dependant increase in the debtor's minimum income threshold should be based on the average difference in LICO figures for HRM as family size increases. This amount should be subject to annual, automatic adjustment for inflation, and regularly checked against the relevant MBM figures.**

Low Income Tax Credits

In addition to employment wages and other forms of income payments that the *Uniform Act* regards as income for purposes of the income exemption,[113] the debtor may also receive tax credits for low income persons - in particular the Harmonized Sales Tax (HST) credit, and the Nova Scotia Affordable Living Tax Credit (NSALTC). These are statutory benefits paid to Nova Scotians with low and modest incomes[114] to offset the disproportionate burden of sales taxes on their incomes. Given the public policy purposes for these benefits, we propose that they should be excluded from seizure and not counted as income for purposes of the income exemption.

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[112] The reason for using the MBM here as opposed to the after tax LICO is that according to LICO's after tax numbers for 2011 for a community the size of Halifax (see Appendix I), the average difference in income per dependant is $373.49/mo or $86.19/wk. This is below what the MBM indicates a family will need for basic necessities and is therefore not appropriate.

[113] See *Uniform Act*, *supra* note 2, section 164. The definition of "income" includes money or other personal property payable as employment remuneration, under a contract for personal services, from any non-exempt pension plan, under an annuity, from a registered savings plan, as income on personal injury damages for loss of future income, and any source prescribed by regulation.

[114] For an individual, the HST credit is payable below net income of approximately $42,000, and the NSALTC is payable below net income of approximately $35,000. For a family of four (two children), the HST credit is payable below a family net income of approximately $50,000, and the NSALTC is payable below a family net income of approximately $37,500. The amount of the benefit varies, decreasing as net income rises.

We have shown these benefits as income in Appendix II, in order to illustrate their effect on household income under various income exemption models. In keeping with our proposal, we have excluded them from the calculation of amounts seized under each model.

Proposal for discussion:

> **Tax credits for low income Nova Scotians (*e.g.*, HST credits and the Nova Scotia Affordable Living Tax Credit) should be exempt from seizure to enforce a judgment, and should not be considered income for purposes of calculating the debtor's income exemption.**

Personal Deductions

Child and spousal support payments, union dues, professional license fees, child care expenses and medical expenses, along with other such expenses, may significantly affect a person's actual standard of life. Failure to account for such deductions will disproportionately disadvantage certain debtors - especially single parents and persons with disabilities.

Currently, in practice, child or spousal support payments are permitted as a deduction only when they are withheld at source through the Nova Scotia Maintenance Enforcement Program, but not otherwise. The income garnishment system accounts for income deducted at source by the employer - such as MEP - but not voluntary payment directly by the payor. For those debtors whose income is close to or below the current minimum income threshold, then,[115] there is an incentive to have payments registered and enforced by MEP, so that they can take advantage of the deduction.

The *Uniform Act* provides for the following deductions: income tax, employment insurance, Canada Pension Plan contributions, compulsory union or professional fees, registered pension plan contributions, health, disability and life insurance premiums.[116] Only amounts net of these expenses (plus the minimum income threshold) are available for 50% seizure. These are more or less the same deductions permitted under the current rules for calculating the minimum income threshold, which is based on net income.[117] In the Nova Scotia case of *Di Benedetto v. Slauenwhite*,[118] Palmeter C.J.Co.Ct. held that compulsory deductions such as pension contributions and union dues must be deducted in order to determine the minimum floor under the *Civil Procedure Rules*.

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[115] Because only when garnishment at 15% of gross income may reduce a debtor's income below the minimum income threshold does net income, and therefore at source deductions, become relevant.

[116] Law Reform Commission of Nova Scotia, *supra* note 1 at 25.

[117] Note that these deductions are not accounted for in calculating the debtor's income subject to 15% garnishment, which is on the basis of gross income. It is only when garnishment begins to bump up against the minimum reserve threshold that deductions are accounted for.

[118] (1993), 119 NSR (2d) 366, 12 CPC (3d) 265.

Under the *BIA* calculation of surplus income, on the other hand, the following deductions are allowed, on top of the deductions provided for in the *Uniform Act*:

- Child support payments;
- Spousal support payments;
- Child care expenses;
- Expenses associated with a medical condition.[119]

As discussed above, accounting for these expenses is critical for ensuring that low income debtors are able to maintain a reasonable standard of living. Full time child care expenses in Nova Scotia can cost on average between $488 to $565/month depending on income and the age of the child.[120] In terms of child support for non-custodial parents, a debtor earning a salary equivalent to the LICO for a community the size of Halifax ($1672 gross income per month) can expect to pay $140/mo for one child; $287/mo for two children; $383/mo for three children, and so on.[121] Such non-discretionary expenses can reach into the hundreds of dollars, and have a significant effect on the debtor's actual standard of living.

Consider the situation of a family of four in Halifax, with two full-time wage earners making a gross income of $51,000 per year (see Appendix II). With a monthly net income of approximately $3549/mo, the family will have approximately $1216.23/mo after necessities such as food, shelter, transportation and electricity are paid for. This amount will be left to pay for expenses such as childcare, school supplies, phone, clothing and footwear, personal care and household cleaning supplies, and recreation.[122] As indicated above, the family can expect to pay between $488 to $565/mo for each child for full-time child care in Nova Scotia. The family will experience disproportionate hardship in any case, but the burden will be extreme if the family's income is subject to seizure pursuant to a judgment, without accounting for child care costs. The same will be true for medical expenses and child and spousal support payments that are not enforced by MEP.

[119] *Surplus Income Directive*, *supra* note 95 at s 5(3).

[120] In 2005, the CBC reported that the average cost of full-time day care for Nova Scotia was: $565/mo for an infant; $490/mo for a toddler; and $488/mo for a preschooler. Available online: (2005) CBC http://www.cbc.ca/news/background/daycare/daycarecosts.html. The Nova Scotia Participatory Food Costing Project has reported that the average cost of after school childcare per day in Nova Scotia is $12/per day. The minimum wage family receives a partial subsidy for childcare costs, resulting in costs of approximately $175.37/ mo per child. See Nova Scotia Participatory Food Costing Project, *supra* note 87 at 13.

[121] To a maximum of $408 for 6+ children. See Federal Child Support Guidelines (SOR/97-175).

[122] The expenses for necessaries are derived from Appendix II: $804.33/mo for food; $925/mo for rent; $244/mo for transportation; and $161.67/mo for electricity. It should be noted that these expenses are fairly conservative. This amount assumes a family of four will be living in a two-bedroom apartment in Halifax and will have access to public transportation.

Proposal for discussion:

> **New judgment enforcement legislation should permit deductions for child care expenses, medical expenses and child and spousal support payments, in addition to those deductions provided under the *Uniform Act*.**

Administration of Deductions

The deductions currently permitted under Rule 79.08(3) are those which an employer can typically verify from information at hand - *e.g.*, deductions at source, and the existence of one or more dependants as claimed for tax purposes. Allowing deductions for child care, child and spousal maintenance, and medical expenses raises the issue of how such deductions ought to be claimed, and by whom they should be verified. This is not necessarily a matter for legislation, but at a practical level it of course has implications for the effective and efficient administration of justice.

The chief difficulty of accounting for such expenses is the administrative burden of providing the opportunity for the debtor to claim them, verifying the debtor's claim, and factoring them into the calculation of net seizable income.

Currently in Nova Scotia, the Sheriff sends a blank worksheet to be filled out by the employer, which provides a calculation of income to be withheld and paid to the Sheriff. Deductions for income tax, CPP and EI are provided for in calculating a net income figure below which no income is seizable, as are deductions required by law, such as union dues, mandatory pension contributions, and health insurance. There is also space to include "Other" deductions, which in practice is taken to include spousal or child support payments being garnished at source through the Maintenance Enforcement Program ('MEP'), garnishment orders made by the Canada Revenue Agency, and so forth.

The form is returned to the Sheriff, and the employer begins to withhold amounts from the employee's pay. The Sheriff will examine the form for obvious errors, but is otherwise not involved in calculating amounts for garnishment. The Sheriff reports occasional instances in which employers have asked for clarification of certain matters - such as what is a permitted 'Other' deduction - but generally there is little direct contact with employers.

It is our view that, as between the Sheriff[123] and an employer, the Sheriff is the more appropriate official to receive claims and verify child care costs, child and spousal support, and special medical expenses. The Sheriff should be required to provide clear and effective notice to the debtor of allowable deductions, and receive the debtor's claims, along with supporting

[123] We refer throughout this Paper to the Sheriff, acknowledging that under new legislation, certain judgment enforcement actions - including seizure of income and verification of claimed deductions - may be delegated to authorized enforcement officers under the supervision of the Sheriff.

documentation. The Sheriff would advise the employer of the net amount of income after such deductions, leaving the employer to calculate the amount to be withheld and paid to the Sheriff, as is currently the case.

The Sheriff's responsibilities under new legislation would therefore include the review and verification of allowable deductions. We do not consider that such oversight would be unduly onerous, given the important interests and principles at stake. Child care expenses may be fairly straightforward in most cases, particularly if the legislation provides for a maximum amount claimable, per child, as it might reasonably do. Similarly, child and spousal support should be a relatively straightforward figure to ascertain and verify.

Medical expenses may present a more difficult challenge. Questions arise, for example, as to whether dental services, birth control, a personal care worker, or foods for a medically-restricted diet constitute a medical or health expense. This is a degree of discretion not typically exercised by the Sheriff, and the legislation and attendant policies and procedures would have to be very clear. The Canada Revenue Agency, for example, publishes quite detailed information about medical expenses that a person may claim under the *Income Tax Act*.[124] Regardless, the burden of developing and administering such deductions has to be balanced against the risk of putting debtors and their dependants who suffer from medical conditions at a disadvantage, and potentially at risk of poverty, as the result of a judgment debt.

Proposals for discussion:

> **New judgment enforcement legislation should require the Sheriff to give effective notice to the debtor of permitted deductions, and provide an appropriate period of time for the debtor to claim applicable deductions, before any enforcement action is taken against the debtor's income.**
>
> **The Sheriff should be responsible to receive, examine and verify the debtor's claimed deductions, and advise the employer of the resulting net income upon which the calculation of seizable income may be made.**

Questions for discussion:

> **Should the legislation provide for a maximum amount of child care to be deducted? How should such maximum amount be set?**
>
> **According to what standard or model should medical expense deductions be assessed?**

[124] See Canada Revenue Agency, IT519R2-CONSOLID, *Medical Expense and Disability Tax Credits and Attendant Care Expense Deduction*, online: http://www.cra-arc.gc.ca/E/pub/tp/it519r2-consolid/README.html.

Percentage of Income Subject to Seizure

How much of the debtor's 'disposable' income, above the minimum income threshold and net of permitted deductions, should the debtor be required to forfeit, by virtue of being liable for a judgment debt?

As indicated in Appendix III, there is no uniform figure or approach across Canadian jurisdictions. The options include a straightforward percentage of gross income,[125] a percentage of net income,[126] and a percentage of net income above a minimum income threshold.[127] New Brunswick does not permit garnishment of the debtor's income at all.

In response to our first Discussion Paper, we were also encouraged to consider a graduated proportion, which would vary depending on the debtor's income.[128] The greater the income of the debtor, the greater the proportion of net income that is subject to seizure. One version of such a graduated scale is used in Scotland.[129]

For purposes of this analysis we have considered in Appendix II the effect of a graduated scale that would increase the seizure rate by 10%, for every 10% of extra income above the minimum income threshold (as provided by a before tax LICO) up to a maximum of 50% (ie., once the debtor is earning 41% above the minimum income threshold). This is a simple, easy to apply method that recognizes the usefulness of a progressive system of deduction based upon income.

Appendix II illustrates that for a family living just above the poverty line, a graduated deduction could make a substantial difference to the family's quality of life.[130] For example, for a family of four in Halifax the cost of basic expenses such as phone, clothing and footwear, personal care, and household cleaning supplies (and not accounting for medical expenses, insurance costs and recreational costs) has been estimated at $296.34/mo.[131] With seizure of 50% of net income above the minimum income threshold, a family of four in Halifax living only 10% above the threshold would only be left with $147.25/wk to cover all other expenses, ie., emergency or unanticipated expenses such as rises in heating or food costs, car or home repairs, insurance

[125] *E.g.*, 15% in Nova Scotia.

[126] *E.g.*, 30% in Manitoba and British Columbia.

[127] *E.g.*, 50% in Alberta.

[128] Professor D.A.Rollie Thompson, Correspondence, 1 Mar 2012.

[129] See the Schedule of *The Diligence against Earnings (Variation) (No.2) (Scotland) Regulations 2009*, made pursuant to the *Debtors (Scotland) Act 1987*, 1987 c 18.

[130] The difference between the *Uniform Act*'s formula and the Graduated Scale in the second illustration at Appendix II.

[131] In 2010, the Nova Scotia Participatory Food Costing Project has estimated the following costs: $29.60 for telephone; $159.79 for clothing and footwear; $94.54 for personal care expenses; and $24.23 for household cleaning supplies, per month, for a family of four in Nova Scotia. This amount has been adjusted to account for inflation to 2012. See Nova Scotia Participatory Food Costing Project, *supra* note 87 at 12.

costs and any costs associated with children's schooling, social activities or basic recreation costs for the family. Scaling the percentage to be seized would afford that family an additional $113.20 per month to cover such expenses.

The figures at Appendix II represent a conservative estimate of costs – for example, assuming a family of four living in a 2-bedroom apartment. A family which is not able to save on shelter and transportation in this manner will find the $147.25/wk in disposable income has quickly disappeared. Living so close to the poverty line leaves a family vulnerable: it means there will be no savings and no ability to cover the "unexpected" expenses such as rising costs of heating, or food, or unanticipated car and household repairs. Effective judgment enforcement necessarily results in some hardship for the debtor, but the system should not compound economic vulnerability of this sort. A graduated scale is another way to ensure that low income debtors are not further marginalized and/or thrown onto social assistance.

A scaled model would be somewhat more complex to administer, but not much. Whether or not a scaled model is used, the income exemption we propose will depend first of all on verifying net income, claimable deductions, and dependants. Only after this baseline is established, and the minimum income threshold accounted for, is the percentage deduction to be applied. The extra complexity of a scaled model arises in determining which percentage to apply in any given case, but this can be provided to employers in the form of a chart, with pre-established ranges of net weekly income to which the scaled percentages would apply. For the sake of illustration, using a minimum income threshold of $330/wk for an individual and an additional $100/wk for each dependant , the chart would appear as follows:

Table 7

Individual

$330/wk (net) and under	- no deduction
$331-363/wk	- deduct 10% above base of $330 and deductions
$364-396/wk	- deduct 20% above base of $330 and deductions
$397-429/wk	- deduct 30% above base of $330 and deductions
$430-462/wk	- deduct 40% above base of $330 and deductions
$463 and up/wk	- deduct 50% above base of $330 and deductions

Individual with One Dependant:

$430/wk (net) and under	- no deduction
$431-473/wk	- deduct 10% above base of $430 and deductions
$474-516/wk	- deduct 20% above base of $430 and deductions
$517-559/wk	- deduct 30% above base of $430 and deductions
$560-602/wk	- deduct 40% above base of $430 and deductions
$603 and up/wk	- deduct 50% above base of $430 and deductions

Individual with Two Dependants:

$530/wk (net) and under	- no deduction

$531-583/wk	- deduct 10% above base of $530 and deductions
$584-636/wk	- deduct 20% above base of $530 and deductions
$637-689/wk	- deduct 30% above base of $530 and deductions
$690-742/wk	- deduct 40% above base of $530 and deductions
$743 and up/wk	- deduct 50% above base of $530 and deductions

Individual with Three Dependants:

$630/wk (net) and under	- no deduction
$631-693/wk	- deduct 10% above base of $630 and deductions
$694-756/wk	- deduct 20% above base of $630 and deductions
$757-819/wk	- deduct 30% above base of $630 and deductions
$820-882/wk	- deduct 40% above base of $630 and deductions
$883 and up/wk	- deduct 50% above base of $630 and deductions

Individual with Four Dependants:

$762/wk (net) and under	- no deduction
$763-838/wk	- deduct 10% above base of $730 and deductions
$839-914/wk	- deduct 20% above base of $730 and deductions
$915-991/wk	- deduct 30% above base of $730 and deductions
$992-1067/wk	- deduct 40% above base of $730 and deductions
$1068 and up/wk	- deduct 50% above base of $730 and deductions

Individual with Five Dependants:

$830/wk (net) and under	- no deduction
$831-913/wk	- deduct 10% above base of $830 and deductions
$914-996/wk	- deduct 20% above base of $830 and deductions
$997-1079/wk	- deduct 30% above base of $830 and deductions
$1132-1162/wk	- deduct 40% above base of $830 and deductions
$1163 and up/wk	- deduct 50% above base of $830 and deductions

Once established, the chart would be subject to annual, automatic indexing for inflation.

In summary, a scaled model better protects a reasonable standard of living for debtors earning close to poverty-level incomes. It helps to ensure that a judgment debt will not compound situations of financial marginalization, vulnerability and desperation. The model recognizes that those debtors that can pay more should pay more - up to half of their ‘disposable’ income. As the above table indicates, the administration of a graduated scale of deductions should not be overly complex.

Setting the precise scale - in terms of the increments by which the proportionate deduction is increased and upon which thresholds of income it does so - is a matter for social policy, and to a certain extent outside our capacity. We have described how a graduated scale might be practically implemented, without necessarily suggesting any particular numbers. We propose a scale based on 10% increments for the sake of illustration, but readily acknowledge that other approaches may be preferable.

Proposal for discussion:

> **A judgment debtor's income should be subject to seizure according to a graduated scale which increases the proportion to be seized (to a maximum of 50%) as the debtor's income, after deductions, incrementally exceeds the minimum income threshold.**

Exempt Income in the Debtor's Bank Account

Extending an income exemption to moneys once paid into a bank deposit account owed to the debtor raises very difficult issues. At that point, the exempt income may be mingled with non-exempt moneys, and the debtor may have spent exempt and non-exempt funds alike from the account. An income exemption cannot simply apply to the debtor's bank account *per se*.

Rather, some express provision is necessary to bridge the gap, so that exempt income in the debtor's bank account is not seized, but that non-exempt funds may be. The provision should apply to the exempt portion of a debtor's employment and other income, as well as funds from an exempt source such as statutory social benefits, pensions, etc..[132] The provision must be carefully drawn, however, so that non-exempt moneys are available to satisfy the judgment.

Section 165(3) of the *Uniform Act* provides, "If a judgment debtor receives income that is exempt income, it remains as exempt income as long as it remains segregated from and identifiable or traceable in relation to other funds of the judgment debtor."

This was at one time considered the position in English common law: see *Woods v Royal Bank of Scotland*, 1913 SLT (Sh Ct) at 499, where workers compensation payments were held to continue to be exempt as long as they were identifiable and not intermingled. Absent these conditions the general view is that the funds lose their protected character once paid; see Scottish Law Commission, *Report on Diligence on the Dependence and Admiralty Arrestments* (No. 164, 1998) at para 9.110. Though Canadian authority is scarce, the tendency is against the extension of the exemption once the unseizable funds are converted to some other asset: see generally *Poulin c. Serge Morency & Associés Inc.*, [1999] 3 SCR 351 at paras 35-39; *Re Lewer*, 2010 NSSC 98.

[132] *E.g.*, *Workers Compensation Act*, SNS 1994-95, c 10, s 77 (1): "Except with the approval of the Board, no person shall assign, seize, charge, attach or otherwise encumber or transfer any compensation payable pursuant to this Part."; *Pension Benefits Act*, RSNS 1989, c 340, s 71 (1): "Money payable under a pension plan is exempt from execution, seizure or attachment."; *Employment Support and Income Assistance Act*, SNS 2000, c 27, s 9: "Assistance provided pursuant to this Act is not assignable and is not subject to seizure or garnishment except as may be required in order to recover an overpayment."

The current Nova Scotia *Civil Procedure Rule* 79.08(5) provides:

> A deposit-taking corporation must not pay to the sheriff any part of a balance owing to a judgment debtor that, to the knowledge of a person in charge of the account, came from either of the following sources at any time, and the deposit-taking corporation remains liable to the judgment debtor for an amount paid in violation of this Rule:
>
> (a) a portion of wages that are exempt under Rule 79.08(3);
>
> (b) income, such as income assistance or a Canada Pension Plan payment, that is exempt from execution under legislation.

In our first Discussion Paper we proposed that the provisions of Rule 79.08(5) ought to apply, rather than the *Uniform Act*'s requirement that moneys remain segregated in order to be exempt from seizure. We did so on the basis that the debtor, who may not have the wherewithal to open a second account for solely exempt funds, should not be under the onus to do so in order that a statutory exemption for income will continue to apply to the funds in question. We asked whether an objective standard of knowledge was preferable, such that the bank would be liable if it *ought* to have known that funds were exempt, rather than Rule 79.08(5)'s requirement of actual knowledge.

Those who commented on the proposal to retain the substance of Rule 79.08(5) were not in favour. The debtor's bank would not normally know whether income was being seized directly from the employer, and therefore whether any part of a payroll deposit was exempt. The bank would be in no position to calculate the exempt amount for itself, taking account of dependants, at-source deductions, and deductable expenses. It would have to be up to the Sheriff to ascertain and verify this information and advise the bank of the amount to be paid from each deposit, for a debtor whose income was not being garnished at source. In that case, as most of the commenters agreed, the primary duty should be on the Sheriff to ensure that only non-exempt funds are seized from the debtor's account.

As well, commenters raised the issue of mingled funds. Both the amount that is exempt on a percentage calculation, and that which is from an exempt source (such as statutory benefits), may be mingled in an account with non-exempt funds. In this case, as the funds are spent and replenished from time to time, the bank would not be able to determine what portion of the account remains exempt.

We also heard that Rule 79.08(5) is inadequate to the extent that it relies on the knowledge of a person at the bank - when in fact no person may have actual knowledge of the sources from which an account's funds are derived. In that case the entire contents of an account may be delivered to the Sheriff, with no liability on the bank or anyone else.

It was suggested that that the bank ought to be liable to the debtor when *any* funds from exempt government sources are delivered to the Sheriff, regardless of actual or objective knowledge.[133] The imposition of strict liability was urged on the basis of the following factors:

[133] Vincent Calderhead, Correspondence, 24 Feb 2012.

- the severity of the consequences for the low-income debtor and their family;
- the fact that funds being electronically deposited from garnishee-exempt government sources are typically easily identified from bank records;
- the comparatively low number of enforcement orders that would be served on any particular bank branch;
- as between the debtor and the deposit-taking institution, the comparative resources available to establish, at the time of seizure, that funds on deposit are exempt; and
- conversely, which party is better situated to bear the burden of having to make the determinations.

The suggestion encounters at least the difficulty of how to deal with mingled funds. If the debtor's only income is from exempt sources, then the account may be assumed to be entirely exempt. If the debtor's account mingles exempt and non-exempt funds, however, then there is no way to determine which of the funds, or what proportion, are or ought to be exempt. Unless the debtor is required to maintain exempt funds separately, some sort of proportional deeming feature, with a certain defined 'look back' period would be needed to deal with accounts containing both exempt and non-exempt funds.

Other Jurisdictions

There is no consistent approach among other jurisdictions. Newfoundland & Labrador's provision is similar to the *Uniform Act*'s in requiring that exempt income be maintained in a separate account in order to remain exempt once in the debtor's hands:

(1) Where an income exemption certificate under this Part is in effect and a debtor receives property or money

(a) from a retirement fund;

(b) as income other than from a retirement fund; or

(c) under section 144,

unless intermingled with funds or property, other than funds or property referred to in this subsection, the property or the money and a deposit account into which it is paid are exempt.

...

(3) For the purpose of subsection (1), the debtor

(a) may claim the exemption with respect to only one deposit account which shall be referred to as the "income account;

(b) shall advise the sheriff which deposit account is the income account; and

> (c) shall provide the information with respect to the income account that the sheriff reasonably requires.[134]

There is at least one other option, and that is to assign an exemption to a certain portion of the existing funds in a debtor's account. Saskatchewan's modernized enforcement legislation, the *Enforcement of Money Judgments Act*, provides an exemption as follows:

> if money or an account has been seized, the portion that, combined with income of the judgment debtor that is exempt pursuant to section 95 or 96, is required to maintain the judgment debtor and his or her dependants for a period of one month following the date of seizure, up to the prescribed amount.[135]

This is the only provision in the *Act* that explicitly addresses the extent to which funds in the debtor's bank account may be exempt.

Regulations under the Saskatchewan *Act*, recently brought into force, define both the percentage of the debtor's income that is exempt from seizure (70% of gross income) and the minimum exempt income threshold ($1500 per month, plus $300 per month, per dependant).[136]

The new Regulations also provide that the maximum "prescribed amount" that may be retained under s 93(1)(m) is $15oo per month, plus $300 per month, per dependant.[137] As noted, this is also the prescribed monthly minimum threshold of income - i.e., the minimum income threshold - below which no income may be garnished from an employer.

The section is only intended to cover the situation of a debtor whose regular income is below the minimum income threshold. In that case the debtor is entitled to retain sufficient funds in the account to make up the difference - that is the purpose of s 93(1)(m). In other words, if a debtor's monthly income is less than the monthly subsistence minimum, but the debtor has funds in a bank account that will make up the difference, the debtor may keep those funds (but no more) even though they would not otherwise be exempt.

The underlying expectation is that a debtor's exempt income will remain exempt, even though it is paid into a bank account. Therefore the provision is not intended to address or to affect the exemption applicable to funds in the account which were exempt as they were paid as income - those should remain exempt from seizure, regardless of whether they exceed the monthly minimum. There is no provision in the Saskatchewan *Act* that directly extends the exemption to

[134] *Judgment Enforcement Act*, SNL 1996, c J-1.1, s 143.

[135] *Enforcement of Money Judgments Act*, SS 2010, c E-9.22, s 93(1)(m).

[136] *Enforcement of Money Judgments Regulations*, RRS c E-9.22 Reg 1, s 23(7).

[137] *Ibid*, s 23(5).

funds in the debtor's account, however.[138]

The Scottish Executive considered the issue of protecting exempt funds, once in the debtor's bank account, in a 2002 consultation paper on enforcement of civil obligations.[139] The paper reviewed a number of options for such protection, including (a) the protection of a minimum balance, (b) protection of funds based on their source (*e.g.*, social benefits and the exempt portion of wages), and (c) exempting bank accounts entirely, in cases where exempt income was deposited into them.

The paper noted practical difficulties with all of these approaches. The chief difficulty with the exempt minimum balance was a question of timing; i.e., how to ensure that the minimum amount is set in accordance with the debtor's pay period. As the paper noted, an exempt monthly amount would offer insufficient protection for someone who receives income less frequently - *e.g*., quarterly, such as with certain grants, or for a self-employed person whose income is irregular. If the account was seized the day after receipt of the quarterly instalment, or an irregular contract payment, removal of all but the deemed monthly exemption could work a hardship.[140]

The main difficulty with protecting bank balances according to source is exactly the one noted above: how to determine what portion of an account may be from exempt sources, if those funds are mixed with non-exempt funds and then spent from time to time. There is also the issue of the extent to which savings deriving from past earnings should be protected. The paper considered that the only workable way to protect exempt income on a 'sources' basis would be to provide for segregated bank accounts.[141]

Finally, the Scottish paper considered whether to entirely prohibit seizure of a bank account if the funds were - to any extent - from exempt sources (i.e., employment income garnished at source, or statutory benefits). The paper considered that such an approach would be inequitable, to the extent that debtors who were not garnished at source would have no protection. As well, of course, the protection would be unfair to the plaintiff, since a bank

[138] This in mind, the section can be read to a different effect. If exempt income is held to lose its exempt character once it is no longer income but an asset of the debtor, or because it has been mingled with other non-exempt funds, then the section appears to provide that the debtor's bank account is protected only to the extent that the funds in it, along with the debtor's exempt income for the month, will not exceed the minimum monthly exemption ($1500 plus $300 per dependant). On this interpretation, the Sheriff may seize those funds in an account which are not necessary in order for the debtor to have the minimum exemption at hand for a month. If the debtor's exempt income for the month will equal or exceed the minimum exemption, then all of the funds in the account may be seized even though they may have been exempt as they were paid as income. The debtor would still be entitled to the full amount of his or her exempt income as it is paid, but would not have additional savings to fall back on.

[139] *Enforcement of Civil Obligations in Scotland – A Consultation Document* (The Scottish Executive 2002) at 119-122.

[140] *Ibid*, at paras 5.238-5.239.

[141] *Ibid*, at paras 5.247-5.248.

account may hold much greater assets than funds derived from exempt income.[142]

Ultimately, the Scottish Parliament decided to protect a minimum balance, in an amount equal to the minimum monthly minimum income threshold.[143]

In its 2010 Report on *Personal Debt Management and Debt Enforcement*, the Law Reform Commission of Ireland considered the above models, and similarly recommended that there should be protection for a minimum exempt amount. It echoed the Scottish Executive and Scottish Law Commission as to the complexity and ultimate unworkability of other models.[144] The Irish Commission did not specify the minimum amount to be left in the debtor's account, but recommended that it be consistent with the monthly income exemption in respect of seizing employment income.[145] In effect, the Sheriff would be bound never to seize more than the amount of the debtor's monthly income exemption - a percentage of the debtor's income. This differs from the Scottish approach, which shields only the minimum income threshold - a fixed number. In practice, the actual amount left to the debtor under the Irish proposal would be variable - depending on the debtor's actual exempt monthly income. In Nova Scotia, this would be the amount calculated as exempt pursuant to the Commission's proposed approach - i.e., a scalable percentage (from 100% down to 50%) of net monthly income after deducting necessary expenses, over and above the LICO-derived minimum income threshold. In effect, the monthly income exemption would roll over, month by month, such that only amounts saved, in excess of the debtor's monthly exempt take-home pay, would be subject to seizure from the debtor's bank account.

The Irish Commission did not separately recommend that exempt statutory benefits, once paid into the debtor's bank account, should be exempt from execution. Like the Scottish Executive, the Commission expressly rejected an approach that would attempt to exempt funds in a bank account according to source.[146] But putting two and two together, under the Irish proposal statutory benefits, if exempt from seizure at source, would form part of the exempt income to which the debtor is entitled on a monthly basis. Therefore, in principle the amount to be left in the debtor's bank account at the time of seizure would include an amount equivalent to a debtor's monthly exempt statutory benefits.

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[142] *Ibid*, at paras 5.249-5.250.

[143] See section 206 of the *Bankruptcy and Diligence etc. (Scotland) Act 2007*, inserting a new s 73F into the *Debtors (Scotland) Act 1987*.

[144] Law Reform Commission (Ireland), *Personal Debt Management and Debt Enforcement* (No 100, 2010) at paras 5.50-5.51.

[145] *Ibid*, at para 5.53. The Commission did not recommend a level or formula for determining exempt income, considering that the issue was beyond its capacity as a law reform agency; see para 5.95. The Commission offered general guidance as to how the legislature ought to decide the level of protected income.

[146] *Ibid*, at para 5.51. And, the Irish Commission did not expressly recommend that statutory benefits should be exempt as paid at source, considering that the question raised policy concerns beyond its capacity as a law reform agency; see para 5.98. But the Commission appeared to lean strongly in favour of that option; see para 5.99.

Discussion & Proposals

We consider that new judgment enforcement legislation should incorporate both the segregated account and minimum balance models. That is, judgment enforcement legislation should first of all protect exempt funds, once in the debtor's bank account, to the extent they are segregated and identifiable. An account which has only ever held exempt statutory benefits and/or exempt earnings (i.e., wages garnished at source) would be fully protected. Educational materials should make this option clear to debtors.

To the extent that the debtor is not in a position to rely on that protection, however, the *Act* may also make provision for retention of a minimum balance. In cases where no such segregated account is identifiable, the Sheriff would be bound to leave in the debtor's account an amount equal to the debtor's monthly exemption (including exempt employment income and statutory benefits). The Sheriff would have discretion to adjust the exemption as appropriate in cases of irregular income.

Finally, we favour imposing liability on financial institutions not to pay funds to the Sheriff where the institution ought to be aware that the funds are exempt. In light of what we have said about the limits of carrying forward an income exemption to funds in a bank account, however, this would be a modest protection. It would apply where an account had only ever contained exempt income, separately identifiable as such, and that fact was known to the institution by reason of having been expressly brought to the bank's attention, or because the source was clearly identifiable as such (i.e., statutory benefits). Practically speaking, it would protect against overzealous or otherwise mistaken enforcement action by the Sheriff, who would remain primarily responsible not to seize exempt funds.[147]

[147] See *Uniform Act*, s 161(1): "(1) An enforcement officer must not seize an item of a judgment debtor's property if the enforcement officer believes on the basis of information known to the enforcement officer at the time of the enforcement proceeding that the item of property is exempt property."

Proposals for discussion:

Judgment enforcement legislation should exempt from seizure funds in the debtor's bank account, to the extent they are segregated and identifiable as being from an exempt source, or as exempt pursuant to the legislation's provisions for exempting a portion of the debtor's income.

An exemption should also apply to a minimum balance in the debtor's account, equivalent to the debtor's exempt income for a month. The amount so protected would include any segregated and identifiable funds as described in the previous proposal. The amount would be adjustable to account for irregular income.

Financial institutions holding funds payable to the debtor should be liable for any amounts paid to the Sheriff where the institution ought to have been aware that the funds in the account were exempt. Liability would apply (a) with regard to bank accounts that had only ever held exempt funds, and (b) where that fact ought to have been known to the institution, either because the institution had been expressly notified of the fact, or because the amounts were from an exempt source (i.e., statutory benefits) identifiable as such by the institution.

APPENDIX I – CURRENT LICO, LIM AND MBM FIGURES

Before tax LICOs for 2011 by town and family size:[148]

	Rural Area	Less than 30,000	30,000 to 99, 999	100,000 to 499,999	500,000 and over
1 person	16,038	18,246	19,941	20,065	23,298
2 persons	19,966	22,714	24,824	24,978	29,004
3 persons	24,545	27,924	30,517	30,707	35,657
4 persons	29,802	33,905	37,053	37,283	43,292
5 persons	33,800	38,454	42,025	42,285	49102
6 persons	38,122	43,370	47,398	47,692	55,378
7 or more persons	42,443	48,285	52,770	53,097	61,656

After tax LICOs for 2011 by town and family size:[149]

	Rural Area	Less than 30,000	30,000 to 99, 999	100,000 to 499,999	500,000 and over
1 person	12,629	14,454	16,124	16,328	19,307
2 persons	15,371	17,592	19,625	19,872	23,498
3 persons	19,141	21,905	24,437	24,745	29,260
4 persons	23,879	27,329	30,487	30,871	36,504
5 persons	27,192	31,120	34,717	35,154	41,567
6 persons	30,156	34,513	38,502	38,986	46,099
7 or more persons	33,121	37,906	42,286	42,819	50,631

2010 after-tax LIM for household of four persons[150]

Year	After Tax Income
2010	38,322

[148] This was the most recent LICO figure provided by Statistics Canada at the time of writing. See *Low Income Lines, 2010 to 2011*, *supra* note 81.

[149] This was the most recent LICO figure provided by Statistics Canada at the time of writing. See *Low Income Lines, 2010 to 2011*, *supra* note 81.

[150] *Ibid*.

2010 MBM Thresholds for a family of two adults and two children in Nova Scotia (always after tax)[151]

Community	**Thresholds**
Rural	31,826
Population under 30,000	33,887
Population 30,000 to 99,999	31,238
Halifax	32,303
Cape Breton	30,808

[151] *Ibid*.

APPENDIX II - INCOME EXEMPTION MODELS IN PRACTICE: INDIVIDUAL AND FAMILY OF FOUR IN HALIFAX (10% NET WAGE INCREMENTS)

Individual in Halifax (Minimum Income Threshold = $1430 net income per month)[i]

	Monthly Income = minimum income threshold	**Monthly Income = Minimum income threshold plus 10%**	**Monthly Income = Minimum income threshold plus 20%**	**Monthly Income = Minimum income threshold plus 30%**	**Monthly Income = Minimum income threshold plus 40%**	**Monthly Income = Minimum income threshold plus 50%**
Net Income **HST + NSALTC (exempt)[ii]**	1430 (~1700 gross) 43.33+21.25=64.58	1573 (~1900 gross) 43.33+21.25=64.58	1716 (~2100 gross) 43.33+21.25=64.58	1859 (~2300 gross) 43.33+21.25=64.58	2002 (~2500 gross) 43.33+21.25=64.58	2145 (~2700 gross) 43.33+21.25=64.58
Rule 79.08 (15% of gross wages, subject to floor of 330/wk net wages)	No income seized **1494.58** remaining for debtor	143 subject to seizure **1494.58** remaining for debtor	286 subject to seizure **1494.58** remaining for debtor	345 subject to seizure **1578.58** remaining for debtor	375 subject to seizure **1691.58** remaining for debtor	405 subject to seizure **1804.58** remaining for debtor
***Uniform Act* (50% of net income above minimum income threshold)**	No income seized **1494.58** remaining for debtor	71.50 subject to seizure **1566.08** remaining for debtor	143 subject to seizure **1637.58** remaining for debtor	214.50 subject to seizure **1709.08** remaining for debtor	286 subject to seizure **1780.58** remaining for debtor	357.50 subject to seizure **1852.08** remaining for debtor
Graduated scale[iii] (varying % 0f net income above minimum income threshold)	No income seized **1494.58** remaining for debtor	14.30 subject to seizure (10%) **1623.28** remaining for debtor	57.20 subject to seizure (20%) **1723.38** remaining for debtor	128.70 subject to seizure (30%) **1794.88** remaining for debtor	228.80 subject to seizure (40%) **1837.78** remaining for debtor	357.50 subject to seizure (50%) **1852.08** remaining for debtor
Food, Shelter, Transportation & Electricity[iv]	1057.67	1057.67	1057.67	1057.67	1057.67	1057.67
Remainder[v]	Rule 79.08: 436.91 or 100.83/wk *Uniform Act*: 436.91 or 100.83/wk Graduated Scale: 436.91 or 100.83/wk	Rule 79.08: 436.91 or 100.83/wk *Uniform Act*: 508.41 or 117.33/wk Graduated Scale: 565.61 or 130.53/wk	Rule 79.08: 436.91 or 100.83/wk *Uniform Act*: 579.91 or 133.83/wk Graduated Scale: 671.71 or 155.01/wk	Rule 79.08: 520.91 or 120.21/wk *Uniform Act*: 651.41 or 150.33/wk Graduated Scale: 737.21 or 170.13/wk	Rule 79.08: 633.91 or 146.29/wk *Uniform Act*: 722.91 or 166.83/wk Graduated Scale: 780.11 or 180.03/wk	Rule 79.08: 746.91 or 172.36/wk *Uniform Act*: 794.41 or 183.33/wk Graduated Scale: 794.41 or 183.33/wk

Notes:

i. The before tax LICO for an individual in a community the size of Halifax in the year 2011 was $20,065. This roughly corresponds to a monthly net income of $1410/mo, after federal and provincial income tax, EI and CPP deductions. Therefore, accounting for a conservative amount of inflation, under our proposed legislation the minimum income threshold for an individual would currently be set at $1430/month.

ii. Additional income attributable to the Harmonized Sales Tax (HST) credit, and the Nova Scotia Affordable Living Tax Credit (NSALTC). As discussed above (see page 34), we propose that the HST rebate and NSALTC, which are available only to low and modest income Nova Scotians, should be exempt from seizure and not included as income for purposes of calculating the income exemption.

iii. The graduated scale model as proposed in this Discussion Paper. Increases the proportion to be seized by 10% for every 10% increase in the debtor's income over the minimum threshold.

iv. Food cost of $225.46/mo, representing the averaged (male, female between 31-50 yrs) monthly price of a nutritious food basket from 2010, indexed to inflation to represent 2012 costs for an individual; see Nova Scotia Food Security Network, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (May 2011) at 6, online: <http://www.foodsecurityresearchcentre.ca/publications/>.

Shelter cost of $670/mo, representing the average cost of a bachelor apartment in Halifax; see Canada Mortgage and Housing Corporation, "Rental Market Report" (Fall 2011), online: <https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?cat=79&itm=7&lang=en&fr=1361299622015>.

Transportation cost of $70/mo, based on the cost of a monthly transit pass for Halifax public transit. The cost will be higher for individuals in rural areas who require a car.

Electricity cost of $92.21/mo, representing the average rate posted by Nova Scotia power for an individual; see Nova Scotia Food Security Network, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (May 2011) at 6, online: <http://www.foodsecurityresearchcentre.ca/publications/>.

v. Remainder for debtor (after basic necessities food, shelter, transportation, electricity) for additional rent, heating and transportation costs, insurance, school supplies and other school-related costs, personal hygiene, household cleaning products, clothing, footwear, telephone, television, recreation, etc.

Family of Four in Halifax (Minimum Income Threshold = $2730 net income per month)[i]

	Monthly Income = minimum income threshold	Monthly Income = Minimum income threshold plus 10%	Monthly Income = Minimum income threshold plus 20%	Monthly Income = Minimum income threshold plus 30%	Monthly Income = Minimum income threshold plus 40%	Monthly Income = Minimum income threshold plus 50%
Net Income **CCTB + HST + NSALTC (exempt)[ii]**	2730 (~3000 gross) 424.71+66.17+19.75= 510.63	3003 (~3400 gross) 361.92+57.20+6.10= 425.22	3276 (~3850 gross) 299.13+43.55+0= 342.68	3549 (~4250 gross) 236.34+29.90+0= 266.24	3822 (~4750 gross) 223.64+16.25+0= 239.89	4095 (~5150 gross) 212.72+2.60+0= 215.32
Rule 79.08 (15% of gross wages, subject to floor of 450/wk net wages)	480 subject to seizure **2760.63** remaining for debtor	540 subject to seizure **2888.22** remaining for debtor	615 subject to seizure **3003.68** remaining for debtor	690 subject to seizure **3125.24** remaining for debtor	765 subject to seizure **2770.55** remaining for debtor	840 subject to seizure **3470.32** remaining for debtor
***Uniform Act* (50% of net income above minimum income threshold)**	0 subject to seizure **3240.63** remaining for debtor	136.50 subject to seizure **3291.72** remaining for debtor	273 subject to seizure **3345.68** remaining for debtor	409.50 subject to seizure **3405.74** remaining for debtor	546 subject to seizure **3515.89** remaining for debtor	682.50 subject to seizure **3627.82** remaining for debtor
Graduated scale[iii] (varying % 0f net income above minimum income threshold)	0 subject to seizure **3240.63** remaining for debtor	27.30 subject to seizure (10%) **3400.92** remaining for debtor	109.20 subject to seizure (20%) **3509.48** remaining for debtor	245.70 subject to seizure (30%) **3569.54** remaining for debtor	436.80 subject to seizure (40%) **3625.09** remaining for debtor	682.50 subject to seizure (50%) **3627.82** remaining for debtor
Food, Shelter, Transportation & Electricity[iv]	2353.31	2353.31	2353.31	2353.31	2353.31	2353.31
Remainder[v]	Rule 79.08: 407.32 (94/wk) *Uniform Act*: 887.32 (204.77/wk) Graduated Scale: 887.32 (204.77/wk)	Rule 79.08: 534.91 (123.44/wk) *Uniform Act*: 934.41 (216.56/wk) Graduated Scale: 1047.61 (241.76/wk)	Rule 79.08: 650.37 (150.09/wk) *Uniform Act*: 992.37 (229/wk) Graduated Scale: 1156.17 (266.81/wk)	Rule 79.08: 771.93 (178.14/wk) *Uniform Act*: 1052.43 (242.87/wk) Graduated Scale: 1216.23 (280.67/wk)	Rule 79.08: 943.58 (217.75/wk) *Uniform Act*: 1162.58 (268.29/wk) Graduated Scale: 1271.78 (293.49/wk)	Rule 79.08: 1117.07 (257.77/wk) *Uniform Act*: 1274.51 (294.12/wk) Graduated Scale: 1274.51 (294.12/wk)

Notes:

i. The before tax LICO for an individual in a community the size of Halifax in the year 2011 was $20,065. This roughly corresponds to a monthly net income of $1410/mo, after federal and provincial income tax, EI and CPP deductions. Therefore, accounting for a conservative amount of inflation, under our proposed legislation the minimum income threshold for an individual would currently be set at $1430/month. As illustrated in this chart, the threshold accounts for the debtor’s three dependants (assuming a non-earning spouse) at $100 per dependant, per week, or $1300 for all three dependants per month.

ii. Income attributable to Canada Child Tax Benefit (CCTB), Harmonized Sales Tax (HST) credit, and the Nova Scotia Affordable Living Tax Credit (NSALTC). Families with children under the age of six years may also receive the Universal Child Care Benefit (UCCB), not accounted for here. The CCTB and UCCB are exempt from seizure; see *Income Tax Act*, RSC 1985, c 1 (5th Supp.), s 122.61(4); *Universal Child Care Benefit Act*, SC 2006, c 4, s 5. As discussed above (see page 34), we propose that the HST rebate and NSALTC, which are available only to low and modest income Nova Scotians, should be exempt from seizure and not included as income for purposes of calculating the income exemption.

iii. The graduated scale model as proposed in this Discussion Paper. Increases the proportion to be seized by 10% for every 10% increase in the debtor's income over the minimum threshold.

iv. Food cost of $225.46/mo, representing the average cost of a nutritious food basket for a reference household of four in Nova Scotia, indexed to inflation for 2012; see Nova Scotia Food Security Network, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (May 2011) at 6, online: <http://www.foodsecurityresearchcentre.ca/publications/>.

Shelter cost of $670/mo, representing the average cost of a 2 bedroom apartment in Halifax; see Canada Mortgage and Housing Corporation, “Rental Market Report” (Fall 2011), online: <https://www03.cmhc-schl.gc.ca/catalog/productDetail.cfm?cat=79&itm=7&lang=en&fr=1361299622015>.

Transportation cost of $462.31/mo, based on the average cost of operating a private vehicle; see Nova Scotia Food Security Network, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (May 2011) at 6, online: <http://www.foodsecurityresearchcentre.ca/publications/>.

Electricity cost of $161.67/mo, representing the average rate posted by Nova Scotia power for a family of four; see Nova Scotia Food Security Network, *Can Nova Scotians Afford to Eat Healthy?: Report on 2010 Participatory Food Costing* (May 2011) at 6, online: <http://www.foodsecurityresearchcentre.ca/publications/>.

v. Remainder for the family (after basic necessities of food, shelter, transportation, electricity) for additional rent, heating and transportation costs, insurance, school supplies and other school-related costs, personal hygiene, household cleaning products, clothing, footwear, telephone, television, recreation, etc.

APPENDIX III- COMPARISON OF INCOME EXEMPTION PROVISIONS IN CANADIAN LEGISLATION

Jurisdiction	Minimum income threshold	Percentage exempt	Variation
Alberta *Civil Enforcement Act*, RSA 2000, c C-15; *Civil Enforcement Regulation*, Alta Reg 276/95.	Minimum earnings exemption of $800 per month, plus $200 per dependant; maximum exemption of $2,400 per month, plus $200 per dependant (s 39(2) of Regulation).	50% of net income above minimum (s 81(1) of *Act*)	Court may vary the minimum or maximum exemption on application (s 39(3)of *Act*).
British Columbia *Court Order Enforcement Act*, RSBC 1996, c 78	Exemption must not be less than $100 per month for a person without dependants, and $200 per month, for a person with one or more dependants (s 3(5)). For shorter periods, a proportion of those amounts will be used (s 3(5)). Wages under the Act do not include employer's deductions made further to statute (s 1).	70% of net wages due are exempt (s 3(5)).	Court may increase or reduce the exemption on application (s 4(1)). An order may not increase the exemption to more than 90% of wages due or to make wages less than $100 per month for a person without dependants or less than $200 per month for a person with one or more dependants (s 4(4)).

Jurisdiction	**Minimum income threshold**	**Percentage exempt**	**Variation**
Manitoba *Garnishment Act*, CCSM c G.20	$250 per month or $350 per month for a person with one or more dependants (s 5). For wages seized further to a maintenance order, the exemption is $250 per month (s 7). “Wages” do not include employer deductions (s 1).	70% of net wages exempt (s 5).	Court may increase or decrease the exemption on application (s 8(2)). An order may not increase the exemption to more than 90% of wages or reduce the wages to an amount less than the exemption to which the employee would otherwise be entitled under the Act (s 8(5)).
New Brunswick *Garnishee Act*, RSNB 1973, c G-2	Not applicable: Wages due to the judgment debtor for “personal labour and services on a hiring” are exempt from garnishment (s 31).	Not applicable	Not applicable
Newfoundland & Labrador *Judgment Enforcement Act*, SNL 1996, c J-1.1; *Judgment Enforcement Regulations*, 1999, NLR 102/99	$649 per month, for a person without spouse or dependants; for a person supporting one or more dependants, $963 per month, plus $47 for each dependant in excess of one; $1,019 for a married person supporting a spouse; $1,059 for a married person supporting a spouse and one dependant; $1,059 for a married person supporting a spouse and more than one dependant, plus $47 for each dependant in excess of one (s 49 of Regulations). Income amounts are net of deductions.	Not applicable	Court or sheriff may vary exemption amount (s 140 of *Act*).

Jurisdiction	Minimum income threshold	Percentage exempt	Variation
Northwest Territories *Exemptions Act*, SNWT 2010, c 4; *Exemptions Regulations*, NWTR-051-2010	$1000 per month, plus $250 dependant (s 2 of *Regulations*).	70% of net wages (s 7(2) of *Act*)	Supreme Court may reduce an exemption (s 7(5) of *Act*) Court may vary the minimum amount (s 2 of *Regulations*)
Nunavut *Exemptions Act*, RSNWT 1988,c E-9; *Exemptions Regulations*, Nu Reg 006-2006	$1500 per month plus $300 per dependant (s 2(2)(a) of Regulations)	70% of the debtor's net pay per month to a maximum of $3500/mo plus $300/mo per dependant (s 2(2)(b) of Regulations)	Court may reduce exemption where the spouse or dependant of a debtor is receiving remuneration (s 9(4) of *Act*).
Ontario *Wages Act*, RSO 1990, c W 1		80% of net wages exempt (s 7(2)). "Wages" excludes amounts which an employer is required by law to deduct (s 7(1)).	On motion, a judge may order an increase or decrease in the exemption (s 7(4-5)).

Jurisdiction	Minimum income threshold	Percentage exempt	Variation
Prince Edward Island *Garnishee Act*, RSPEI 1988, c G-2; *General Regulations*, PEI Reg EC 382/72	For food, $30 for each person over 12 years of age, up to two persons; $25 for each additional person over 12 years of age; $20 for each child under 12 years of age; plus a "reasonable allowance" for a special diet required by the judgment debtor or a dependant. For clothing, $15 for the head of the household, and $10 for each additional person. For household and personal items, a maximum of $15 for each family unit ($6 for the first person over 12 years of age; $4 for the second person over 12 years of age; $2 for any person who is under 18 years of age and who is not in receipt of an allowance; $2 for each additional person over 18 years of age). Allowances for living accommodations, fuel and utilities, and health care services (s 3 of Reg).	Not applicable	

Jurisdiction	Minimum income threshold	Percentage exempt	Variation
Quebec *Code of Civil Procedure*, RSQ, c C-25	$180 per week, plus $30 per week for each dependant in excess of two (consort, child, or relative); $120 in all other cases (Art 553(11)). Employer contributions to pension, insurance or social welfare funds are not included in calculating salaries and wages.	70% of gross wages over the base amount (Art 553 (11)).	
Saskatchewan Enforcement of Money Judgments Act, SS 2010, c 9.22; Enforcement of Money Judgments Regulations, RRS c E-9.22 Reg 1	$1500 per month plus $300 for each dependant (s 23(7)(b) of Regulations)	70% of employment remuneration of judgment debtor (s 23(7)(a) of Regulations).	Debtor may apply to court to increase employment remuneration exemption to account for special circumstances of the judgment debtor or his or her dependants (s 95(3)of *Act*). A creditor or sheriff may apply to decrease the employment remuneration exemption to account for property received by or available to judgment debtor that is not employment remuneration. (s 95(4) of *Act*).

Jurisdiction	Minimum income threshold	Percentage exempt	Variation
Garnishee Act, RSY 2002, c 100	$600 per month for a debtor without dependants; $1,000 per month for a debtor supporting at least one dependant; and additional $150 for the fourth dependant and for each additional dependant for the fourth one is provided in the case of a debtor supporting at least four dependants (s 22(1)). Any part of wages which an employer is required to deduct by statute is not included in calculating the exemption amount (s 23).	70% of net wages (s 22(1)).	Creditor able to apply for reduction, and debtor able to apply for increase, of the exemption (s 22(2-3)).