

Law Reform Notes

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Law Reform Notes is produced twice yearly in the Legislative Services Branch of the Office of the Attorney General, and is distributed to the legal profession in New Brunswick and the law reform community elsewhere. Its purpose is to provide brief information on some of the law reform projects currently under way in the Branch, and to ask for responses to, or information about, items that are still in their formative stages.

The Branch is grateful to everyone who has commented on items in earlier issues of *Law Reform Notes*; we encourage others to do the same. We also repeat our suggestion that, if any of our readers are involved either professionally or socially with groups who might be interested in items discussed in *Law Reform Notes*, they should let those groups know what the Branch is considering and suggest that they give us their comments. We are unable to distribute *Law Reform Notes* to everybody who might have an interest in its contents, for these are too wide-ranging. Nonetheless we would be pleased to receive comments from any source.

We emphasize that any opinions expressed in these *Notes* merely represent current thinking within the Legislative Services Branch on the various items mentioned. They should not be taken as representing positions that have been taken by either the Office of the Attorney General or the provincial government. Where the Department or the government has taken a position on a particular item, this will be apparent from the text.

A: UPDATE ON ITEMS IN PREVIOUS ISSUES

1. An Act to Amend the Quieting of Titles Act (c.11, 2000)

This Act came into force on June 1st, 2003. Amendments to Rule 70 of the Rules of Court were made at the same time.

The main purpose of the amendment is to introduce a new procedure under which specific title problems can be finally resolved by a court declaration, without the need for a full application for a certificate of title. A second purpose is to ensure that in those cases in which an application for a certificate of title is still made, a survey plan will normally be required.

2. Canadian Judgments Act (c. C-0.1, 2000) and An Act to Amend the Reciprocal Enforcement of Judgments Act (c. 32, 2000)

These two Acts have been proclaimed and will be coming into force on September 1, 2003. A General Regulation under the Canadian Judgments Act has also been made (N.B. Reg. 2003-18).

Together, these Acts establish a new system for the registration and enforcement of money judgments issued by the courts of other Canadian provinces and territories. The Canadian Judgments Act replaces the Reciprocal Enforcement of Judgments Act for this purpose.

This legislation should not be confused with the new *Interjurisdictional Support Orders Act* (c.I-12.05, 2002, not yet proclaimed). The *Canadian Judgments Act* is only concerned with lump sum monetary awards. It does not apply to orders for periodic payments.

The new system for money judgments is designed to bring New Brunswick's legislation more into line with the common law as it has existed throughout most of the rest of Canada since the Supreme Court of Canada's decision in *Morguard Investments Ltd. v de Savoye* [1990] 3 SCR 1077. The main premise of *Morguard* was that provinces should give "full faith and credit" (p.1102) to the judgments of sister provinces that are based on a "properly restrained jurisdiction" (p.1103).

Following this approach, the new system is essentially an administrative one. The judgment creditor submits the judgment to the Clerk of the Court for registration. The Clerk registers it and issues a New Brunswick judgment for the amount owing on the original judgment. The New Brunswick judgment can then be enforced in the same way as any other judgment of the New Brunswick courts. If there are challenges to the substance of the original judgment from the other province or to the procedures by which it was obtained, these must be taken up with the court that issued that judgment. The New Brunswick courts can stay enforcement procedures here while other challenges proceed elsewhere.

A special rule exists for default judgments. These can only be registered in New Brunswick if they meet the tests set out in section 5 of the Act.

Though the legislation is mostly concerned with the registration process for money judgments issued elsewhere in Canada, it can also be expected to affect the advice that solicitors will give about whether proceedings commenced in other provinces or territories should be defended. The provisions of s.5 on default judgments expand the categories of default judgments that, if obtained elsewhere, will be enforceable in New Brunswick.

The new legislation does not change the law relating to foreign judgments. The enforceability of foreign judgments is still dealt with by sections 2 and 5 of the *Foreign Judgments Act*.

3. Bulk Sales Act

In the last issue of these Notes we provided a full explanation of why we thought the *Bulk Sales Act* should be repealed. The responses that we received agreed. We have made that recommendation.

4. Criminal rate of interest

Another item on which we asked for input last time was the criminal rate of interest provision in s.347 of the *Criminal Code*. The Uniform Law Conference of Canada is considering whether this section and/or related provincial legislation should be revised to deal with difficulties that s.347 is sometimes causing in commercial transactions.

We received no responses on this item. We would still be interested in receiving comments before the Conference discusses the issue again at its meeting in August this year.

5. S. 44, Property Act

Our discussion last time of s.44 of the *Property Act*, the mortgagee's power of sale, produced a number of reactions. These ranged from brief comments on the proposals we had outlined, or on particular aspects such as the costs of public notices, to thorough discussions of the existing section and of the considerations that should underlie any legislative reform.

We have not yet reached any specific conclusions about how s.44 should be amended. We do, however, think that amendments are required and that the best way forward will probably involve a complete repeal of the existing section and the enactment of a new one in its place. We had earlier suggested that perhaps a very small "quick fix" that left most of the existing section intact might be an option. However, having considered the material that people submitted to us we feel that there is now so much uncertainty surrounding s.44 that the best thing is to go back to square one and start with a clean sheet.

We will be considering during the summer what that clean sheet should be. We would welcome further comments on the *PPSA*-based approach outlined in Law Reform Notes 17.

B. NEW ITEMS

6. Judgment enforcement legislation

Readers with a long memory will recall that the Office of the Attorney General has more than once attempted to develop comprehensive legislation reforming the law relating to the enforcement of judgments. The 1993 amendments to the *Creditors Relief Act* relating to registration of judgments under the *Personal Property Security Act* were a step in this direction, but what was intended to follow, a complete the overhaul of the law relating to judgment enforcement procedures, has not yet taken place.

We are now trying again, working with others in a project sponsored by the Uniform Law Conference of Canada. The general thrust of the present proposal is to use provincial PPSAs to provide a registration system and priority rules for judgments, and to combine in a single Act a comprehensive reform of all of the existing judgment enforcement mechanisms and exemptions.

We would welcome comments on issues relating to both the registration system and the enforcement mechanisms.

In relation to registration, New Brunswick now has more than eight years of experience of working with registration of judgments under the PPSA. What lessons have been learned? What problems must be fixed?

In relation to enforcement procedures and exemptions there have been few recent legislative amendments. What are the issues that a reform package must deal with?

The Uniform Law Conference will be considering this project in August, with an advanced working draft of much of the legislation prepared. Now would be a good time for our readers to let us know what they think the key issues for legislative reform are.

Responses to any of the above should be sent to the address at the head of this document, and marked for the attention of Tim Rattenbury. We would like to receive replies no later than August 8th 2003, if possible.

We also welcome suggestions for additional items that should be examined with a view to reform.