

CONSOLIDATION OF CREDITORS RELIEF ACT
R.S.N.W.T. 1988,c.C-24

(Current to: March 11, 2013)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:
S.N.W.T. 1997,c.8

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:
S.N.W.T. 1998,c.34
In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:
S.Nu. 2010,c.4,s.14.
s.14 in force March 23, 2010
S.Nu. 2011,c.11,s.1
s.1 in force March 10, 2011
S.Nu. 2012,c.16,s.58
s.58 NIF

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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CREDITORS RELIEF ACT

INTERPRETATION

Definitions

1. In this Act,

"claimant" means a creditor referred to in section 20; (*demandeur*)

"Clerk" means the Clerk of the Nunavut Court of Justice appointed under the *Judicature Act*; (*greffier*)

"execution" includes a writ of fieri facias, and any subsequent writ for giving effect to it; (*saisie-exécution*)

"judge" means a judge of the Nunavut Court of Justice; (*juge*)

"Sheriff" means the Sheriff appointed under the *Judicature Act*; (*shérif*)

"subsisting execution" means an execution that is in force under this Act and that is in the hands of the Sheriff. (*saisie-exécution valide*)

S.Nu. 2010,c.4,s.14(2),(3).

EFFECT OF SEIZURE OR ATTACHMENT

Attachment on behalf of creditors

2. Except in the cases where it is otherwise specifically provided by this Act, all property seized or attached by virtue of

- (a) a writ of execution,
- (b) a writ of attachment,
- (c) a garnishee proceedings, or
- (d) a proceedings in the nature of equitable execution,

shall be deemed to have been attached on behalf of all creditors entitled by this Act to share in any money received by the Sheriff by reason of the seizure or attachment.

Maintenance Orders Enforcement Act

3. Where property is seized or attached by virtue of proceedings under the *Maintenance Orders Enforcement Act*, section 2 does not apply to an amount equal to the arrears of maintenance, not exceeding one year's maintenance at the current rate of maintenance.

Note: On a day to be fixed by order of the Commissioner, section 3 is repealed and the following is substituted:

Family Support Orders Enforcement Act

3. Where property is seized or attached by virtue of proceedings under the *Family Support Orders Enforcement Act*, section 2 does not apply to an amount equal to the arrears of support.

See S.Nu. 2012,c.16,s.58(2).

SEIZURE UNDER EXECUTION

Seizure under execution

4. (1) The Sheriff shall not proceed to make a seizure under a writ of execution until the Sheriff has been instructed to do so in writing by or on behalf of the execution creditor.

Security

(2) The Sheriff is not bound to make a seizure under a writ of execution until the Sheriff has been provided with the security that the Sheriff considers reasonably sufficient for indemnity in respect of

- (a) the fees, charges and expenses of the Sheriff; and
- (b) any claims for damages that might be incurred by the Sheriff in making the seizure and levy and anything done in relation to that.

Exception

(3) Despite subsection (2), no security is required where the Maintenance Enforcement Administrator instructs the Sheriff to make a seizure under a maintenance order filed with the Sheriff under the *Maintenance Orders Enforcement Act*.
S.Nu. 2010,c.4,s.14(3).

Note: On a day to be fixed by order of the Commissioner, subsection 4(3) is repealed and the following is substituted:

Exception

(3) Despite subsection (2), no bond of indemnity is required where the Family Support Manager instructs the Sheriff to make a seizure to enforce a support order filed with the Sheriff under the *Family Support Orders Enforcement Act*.

See S.Nu. 2012,c.16,s.58(3).

Seizure

5. (1) On the requisite instructions being given and any security required by the Sheriff for his or her indemnity being provided, the Sheriff shall
- (a) make a seizure of the exigible goods and chattels sufficient to satisfy all the subsisting executions then in the hands of the Sheriff against the judgment debtor;
 - (b) seize for the aggregate amount of all the subsisting executions then in the hands of the Sheriff; and
 - (c) give notice in writing of the seizure to all persons that at the time of the seizure have subsisting executions in the hands of the Sheriff, which must set out
 - (i) the names of all such persons, and
 - (ii) the aggregate amount for which the seizure is made.

Release

- (2) Where
- (a) the Sheriff has made a seizure, and
 - (b) the execution creditor on whose instructions the seizure was made instructs the Sheriff to release or abandon the seizure at a time at which there are other subsisting executions against the debtor in the hands of the Sheriff,
- the Sheriff shall give notice in writing that he or she has been so instructed to all other persons on whose behalf the Sheriff then has subsisting executions.

Continuing seizure

- (3) If a person on receiving the notice referred to in subsection (2)
- (a) within 10 days after the day on which the notice is mailed gives the Sheriff instructions in writing to continue the seizure, and
 - (b) provides the Sheriff with the security required by the Sheriff for his or her indemnity,
- the Sheriff shall, in every respect as if that person had been the person who had originally instructed the Sheriff to make the seizure, continue the seizure and all proceedings under it to the extent of the aggregate of the sums payable under all the subsisting executions then in the hands of the Sheriff other than those in respect of which the Sheriff has been instructed not to seize, or not to continue seizure, or to discontinue, release or abandon seizure, as the case may be.

Time period before release or abandonment

- (4) The Sheriff, on receipt of the instructions referred to in subsection (2) to release or abandon the seizure, shall not release or abandon the seizure until the expiration of the 10 days referred to in paragraph (3)(a), unless the Sheriff is instructed in writing to do so by all persons who, at the time of the receipt of the instructions to release or abandon the seizure, had subsisting executions in the hands of the Sheriff.

Subsisting writs

(5) Where a seizure has been made under a writ of execution, any other creditor who has a subsisting execution in the hands of the Sheriff may, in writing, require the Sheriff to take any proceedings to enforce the executions in the hands of the Sheriff that can be lawfully taken by the Sheriff, and upon that, on provision being made for the fees and expenses and indemnity, if required, of the Sheriff, the Sheriff shall comply with that requirement.

Further seizure

(6) Where the Sheriff has made a seizure under a writ of execution and after the seizure receives any other writ of execution, on being instructed to do so and on being provided with any security required by the Sheriff for his or her indemnity, the Sheriff shall make any further or additional seizure that the Sheriff considers proper having regard to the amount of money owing under all the subsisting executions then in the hands of the Sheriff.

GARNISHEE PROCEEDINGS

Garnishee summons

6. (1) Where a garnisheeing creditor files with the Clerk a certificate of the Sheriff in the prescribed form certifying the total amount of the subsisting executions against the debtor in the hands of the Sheriff as at the day on which the garnishee summons is to be issued, the Clerk, at the request of the garnisheeing creditor, shall issue a garnishee summons

- (a) for the amount of the claim of the garnisheeing creditor; and
- (b) for the amount payable in respect of all the subsisting executions other than an execution for the amount of the claim of the garnisheeing creditor, together with costs.

Garnishee binds debts

(2) A garnishee summons served on the garnishee as and from the time of service binds each debt due or accruing due from the garnishee to the debtor or so much of the debt as is necessary to satisfy the amount set out in the summons together with the costs payable in respect of the summons under the Rules of the Nunavut Court of Justice.

Form of garnishee summons

(3) A garnishee summons issued under this section must be in the prescribed form or in the form set out in the Rules of the Nunavut Court of Justice.

S.Nu. 2010,c.4,s.14(3).

Money paid into court

7. Where money is paid into court under any garnishee proceedings, it shall be available for distribution by the Sheriff among the execution creditors of the debtor whose debt is garnisheered except where

- (a) the money paid into court is not liable to attachment;
- (b) the amount paid into court does not exceed the sum of \$50;

- (c) by virtue of an Act or rule of the Supreme Court, the money is required to be paid to the debtor as being exempt from attachment;
- (d) the garnishment proceedings were commenced under the *Maintenance Orders Enforcement Act*; or
- (e) it is otherwise ordered by the Supreme Court or judge.

Note: On a day to be fixed by order of the Commissioner, paragraph 7(d) is amended by striking out "*Maintenance Orders Enforcement Act*" and substituting "*Family Support Orders Enforcement Act*".

See S.Nu. 2012,c.16,s.58(4).

Payment to Sheriff of fund in court

8. Where there is in a court a fund belonging to an execution debtor or to which an execution debtor is entitled, the fund or a part of it sufficient to pay the subsisting executions in the hands of the Sheriff, on application of the Sheriff or any interested party, may be paid over to the Sheriff and the money shall be deemed to be money received by the Sheriff under execution within the meaning of this Act.

Payment to Sheriff under garnishee proceedings

9. Except where it is otherwise specifically provided by this Act, or where it is otherwise ordered by a court or a judge, all money paid into court by virtue of a garnishee summons shall, without an order, be paid by the Clerk to the Sheriff

- (a) if the garnishee summons is based on a judgment, immediately after 10 days from service of the summons on the judgment debtor and on the garnishee or after a longer period that may be ordered by the Supreme Court or judge; or
- (b) if the garnishee summons is issued before judgment, immediately upon the plaintiff entering judgment against the defendant or at a later time that may be ordered by the Supreme Court or judge.

DISTRIBUTION OF MONEYS

Distribution

- 10.** (1) Where the Sheriff receives any money from the Clerk
- (a) if there are no subsisting executions against any of the persons entitled to the money, the Sheriff shall immediately in accordance with the Rules of the Nunavut Court of Justice pay out the money or the part of it for which the Sheriff has no subsisting execution either to the persons entitled by law to receive it or to their solicitors; or
 - (b) if there is a subsisting execution against the debtor or any of the persons entitled by law to receive the money, the Sheriff shall retain the money and shall distribute it as moneys levied under execution among the creditors of the debtor or the person entitled to receive the moneys, as the case may be.

Exception

(2) Despite paragraph (1)(b), where the Sheriff receives money from the Clerk and any person entitled to the money has a priority under section 18, the Sheriff shall pay the money, to the extent of that person's priority, to that person rather than to the creditors of that person.

Records to be kept by Sheriff

(3) Where the Sheriff receives money that is available for distribution among creditors, the Sheriff shall

- (a) make an entry of it in a book in his or her office setting out the date of the receipt of the money; and
 - (b) keep other records and make other entries that the Commissioner may require.
- S.Nu. 2010,c.4,s.14(3).

Time of distribution

11. (1) Except where it is otherwise specifically provided by this Act and subject to the other provisions of this Act relating to priorities, all money received by the Sheriff in respect of an execution shall be distributed immediately in accordance with the Rules of the Nunavut Court of Justice after

- (a) 14 days from the day on which the money is received; or
- (b) a longer period that a judge may order.

Distribution to creditors with subsisting executions

(2) The distribution of money referred to in subsection (1) shall be made among those creditors of the execution debtor who have subsisting executions in the hands of the Sheriff

- (a) within 14 days after the receipt of the money by the Sheriff; or
- (b) within a further period, not exceeding 14 days, that a judge may order where it appears to the judge that
 - (i) the money represents the proceeds of all the exigible goods of the debtor, or
 - (ii) there are no other goods available to creditors other than those who, within the period of 14 days referred to in paragraph (a), had subsisting executions in the hands of the Sheriff.

Payment of money

(3) The Sheriff may pay the money to an execution creditor or to the solicitor of an execution creditor where the Sheriff is disbursing money received in respect of an execution. S.Nu. 2010,c.4,s.14(3).

Costs

12. Where a creditor

- (a) commences and continues proceedings for the seizure, garnisheeing or attachment of any property that the creditor is deemed by this Act to have seized or attached on behalf of other creditors, or
- (b) instructs continuance of any proceedings referred to in paragraph (a) that have been abandoned by the creditor commencing them,

and the proceedings taken by the creditor directly result in payment of money to the Sheriff, the creditor is entitled to be paid out of the money his or her taxed costs subsequent to judgment, together with his or her costs of all proper and necessary steps or proceedings taken by the creditor for the realization of the money and the payment of it to the Sheriff, in priority to the claims of the other creditors of the execution debtor entitled by this Act to share in the money.

Distribution when amount insufficient for full payment

13. Where the amount received by the Sheriff in respect of an execution is not sufficient to pay in full the claims of the creditors and the executions with costs, the Sheriff shall apply the amount in priority of payment as follows:

- (a) the fees of the Sheriff;
- (b) where a creditor is entitled under this Act to priority for costs, the costs of that creditor;
- (c) the claim of a person who is entitled to be paid in preference to any other creditor;
- (d) the balance, if any, rateably among the execution creditors who are entitled to share in the amount under this Act.

Distribution of money paid without seizure or attachment

14. Where money is paid to the Sheriff in respect of an execution or attachment without a seizure having been made under it and

- (a) the amount is sufficient to pay the full amount payable under all executions in the hands of the Sheriff that are at the time of payment valid and subsisting, or
- (b) the Sheriff has at the time of payment no more than one execution in his or her hands that is then valid and subsisting,

the Sheriff shall deal with the money so paid having regard only to subsisting executions at the time of payment.

Effect of delivery of execution

15. Where a writ of execution has been delivered to the Sheriff

- (a) the subsequent withdrawal or expiration of any other writ of execution on which the proceedings are founded,
- (b) any stay on the writ,

(c) the satisfaction of the claim of the plaintiff, or
 (d) the setting aside of the return of the writ,
 does not affect the proceedings under this Act.

Discontinuation of proceedings

16. No proceedings in consequence of which property has been attached by virtue of any writ of attachment, garnishee proceedings or proceedings in the nature of equitable execution shall be discontinued, withdrawn or settled as against a debtor except by leave of a judge, unless at the date of the discontinuance, withdrawal or settlement there are no subsisting executions against the debtor in the hands of the Sheriff.

PRIORITIES

Application

17. (1) This section applies only to wages and salary due or accruing due whether measured by time, job, price or otherwise.

Priority of wage and salary claims

(2) All persons who

- (a) are employed by an execution debtor at the time of or within one year before the seizure under execution in respect of which any money is realized by the Sheriff, and
- (b) before the expiration of the time fixed for the distribution of the money so realized, file in the office of the Sheriff their claims for wages or salary with the particulars of the claims proved by affidavit,

are, subject to subsection (1), entitled to be paid out of the money realized by the Sheriff the amounts mentioned in subsection (3).

Limit of priority

(3) The persons referred to in subsection (2) are entitled to be paid out of the money realized

- (a) the amount of wages or salary due to them respectively by the execution debtor, not exceeding wages or salary for six months, in priority to the claims of the other creditors of the execution debtor; and
- (b) a *pro rata* share with the other creditors in respect of the residue, if any, of their claims for wages and salary.

Priority of arrears of maintenance

18. (1) Despite section 17, arrears of maintenance in an amount not exceeding one year's maintenance at the current rate of maintenance

- (a) have priority over other judgment debts, and
- (b) rank equally with similar arrears under any other maintenance order,

regardless of when the enforcement process is issued or served.

Residue

(2) Where the arrears under a maintenance order exceed the amount referred to in subsection (1), the creditor under the maintenance order is entitled to a *pro rata* share with other creditors in any money realized for the residue of arrears.
S.Nu. 2010,c.4,s.14(3).

Note: On a day to be fixed by order of the Commissioner, section 18 is repealed and the following is substituted:

Priority of arrears of support

18. Despite section 17, and regardless of when the enforcement process is issued or served, arrears of support

- (a) have priority over other judgment debts; and
- (b) rank equally with similar arrears under any other support order.

See S.Nu. 2012,c.16,s.58(5).

Proceeds of sale of otherwise exempt articles

19. (1) Where

- (a) money received by the Sheriff represents the proceeds of the sale of an article under execution on a judgment rendered in an action for the price of the article, and
- (b) the article would otherwise be exempt from seizure under the *Exemptions Act*,

that money is not liable to distribution among other execution creditors but shall be applied on the execution under which it was levied.

Sufficient amount

(2) Where the amount of money referred to in subsection (1) exceeds the amount of the execution debt with costs, the balance in the hands of the Sheriff shall be paid over to the execution debtor.

Insufficient amount

(3) If the amount of money referred to in subsection (1) is less than the amount of the execution debt with costs, the execution creditor, to the extent of the deficiency, is entitled to share rateably with the other execution creditors in any other money received by the Sheriff under execution against the debtor.

PROOF OF CLAIM PROCEDURE

Proceedings

20. Where

- (a) the Sheriff has seized goods and chattels of a debtor under a writ of execution, or

- (b) a debtor allows an execution against his or her lands to remain unsatisfied for nine months after it has been placed in the hands of the Sheriff,

any other creditor of the debtor may take proceedings as set out in sections 21 to 27 in respect of debts that are due to him or her.

Affidavit of debt

21. (1) Where a creditor desires to make a claim against a debtor referred to in subsection 20,

- (a) the creditor,
- (b) one of the creditors in the case of a joint debt, or
- (c) a person cognizant of the facts and authorized by the creditor to do so,

must make an affidavit of claim in the prescribed form.

Service of affidavit and notice

(2) The claimant shall

- (a) serve on the debtor a duplicate of the affidavit of the claim and a notice in the prescribed form; and
- (b) send a copy of the notice to each creditor who has a subsisting execution or to his or her solicitor or agent.

Time

(3) Where the affidavit of claim and notice are to be served outside Nunavut, a judge by order may fix the time after which the next step may be taken by the claimant as provided in subsections (4) to (7) and in sections 22 to 27.

Filing of affidavit and notice

(4) The claimant must file a duplicate of the affidavit of claim and a copy of the notice with an affidavit of service of the affidavit of claim and notice in the prescribed form with the Clerk and the Sheriff.

Certificate of Sheriff

(5) Before or at the time of filing the affidavit of claim with the Clerk, there must be filed with the Clerk a certificate of the Sheriff or an affidavit showing

- (a) that such proceedings have been had against the debtor as entitle the claimant to proceed under this Act; and
- (b) the names of the creditors who have subsisting executions.

Address for service

(6) An execution debtor may provide the Sheriff with his or her address for service within Nunavut of all notices and other documents, and the Sheriff shall make an entry of the address in his or her books.

Service by debtor

(7) Where the notice referred to in paragraph 21(2)(a) that is served on a debtor

- (a) does not state a place, within five kilometers of the office of the Clerk, at which service may be made on the claimant, or
- (b) does not give the name and address of a solicitor within Nunavut who may be served on behalf of the claimant,

good and sufficient service of a notice, paper or document by the debtor may be made on the claimant by posting up the notice, paper or document in the office of the Clerk.

S.Nu. 2010,c.4,s.14(3).

Certificate of judgment where claim not contested

22. (1) Where a claim made under section 21 is not contested in the manner set out in sections 23 and 24, then, on the application of the claimant and on his or her filing proof of due service of the affidavit of claim and notice, the Clerk shall, after

- (a) 15 days from the date of service if it was made within Nunavut,
- (b) the time fixed by the order under subsection 21(3) if service was made outside Nunavut,
- (c) 20 days from the date of service if it was made in Canada and outside Nunavut and no order was made under subsection 21(3), or
- (d) 25 days from the date of service if it was made in the United States and no order was made under subsection 21(3),

issue and enter a certificate of judgment in the prescribed form for the amount of the claim and costs.

Contested claim

(2) Where a claim made under section 21 is contested and the dispute is determined wholly or partly in favour of the claimant, the Clerk shall make out and enter the certificate of judgment for the amount, including costs, allowed the claimant.

Claim partially contested

(3) Where a claim made under section 21 is disputed with regard to a part only, the claimant may elect by document in writing filed with the Clerk to abandon that part and upon that the Clerk shall make out and enter a certificate of judgment for the residue and costs.

Judgment

(4) Each certificate of judgment made out and entered pursuant to this section shall be deemed to be a judgment of the Supreme Court and is enforceable in any manner in which a judgment may be enforced. S.Nu. 2010,c.4,s.14(3)

Contesting claim

23. (1) A claim made under section 21 may be contested by the debtor or by a creditor of the debtor.

Affidavit of defence

(2) Where the debtor contests the claim, the debtor shall file with the Clerk an affidavit stating that the debtor has good defence to the claim or to a specified part of it on the merits, but a judge may dispense with the affidavit on terms or otherwise.

Filing of affidavit

- (3) The debtor must file the affidavit referred to in subsection (2)
- (a) within 15 days after service on the debtor of the affidavit of claim and the notice;
 - (b) within the time fixed by order of a judge; or
 - (c) within a further time that a judge may allow.

Affidavit of contesting creditor

(4) Where a creditor who has a subsisting execution contests the claim, the creditor must file with the Clerk an affidavit to the effect that the creditor has reason to believe that the debt claimed is not in fact and in good faith due from the debtor to the claimant, but a judge may dispense with the affidavit on terms or otherwise.

Notice of contested claim

(5) Notice that the claim is contested, whether by the debtor or by a creditor, together with a copy of the affidavit, if any, shall be served on the claimant within five days after the affidavit has been filed or after the order has been made by the judge if the affidavit is dispensed with.

Filing and notice

(6) The affidavit by a creditor may be filed and a certified copy of it delivered to the Sheriff at any time before the money claimed is distributed, and the Sheriff shall without delay give notice of the receipt of the certified copy to the claimant and all creditors of the debtor who then have subsisting executions.

Service

(7) The notice referred to in subsection (5) must have endorsed on it a statement of a place within five kilometers of the office of the Clerk at which service may be made, or the address of a solicitor within Nunavut who may be served, and in default of that service of a notice, paper or document may be made by filing it in the office of the Clerk.

Alternate mode of service

(8) Where the address given for service is that of a solicitor and it is not within five kilometers of the office of the Clerk, service may be made on the solicitor by sending papers by registered mail to the solicitor at the address given. S.Nu. 2010,c.4,s.14(3).

Hearing of contested claim

24. (1) A judge may, on notice being given to those persons that the judge considers proper, proceed to hear and determine in a summary manner the application of a claimant whose claim is contested and for that purpose may

- (a) receive evidence either orally or by affidavit or both, as the judge considers fit;
- (b) make an order
 - (i) allowing the claim and determining the amount of the claim, or
 - (ii) disallowing the claim; and
- (c) make an order as to the payment of costs that the judge thinks proper in the circumstances.

Abandonment of claim

(2) A claimant who has received notice that the claim is contested and does not apply to a judge to hear and determine the contest within 10 days after the receipt of the notice or within a further time that a judge may fix by order either before or after the expiration of 10 days shall be deemed to have abandoned his or her claim.

Intervention by creditor

(3) On the application of a creditor, a judge by order may give leave to that creditor to intervene in a contest on the claim if it appears to the judge that a contest on that claim is not being carried on in good faith by any other creditor.

Effect of expiry of writ of execution pending distribution

25. Despite the expiration of a writ of execution before the termination of 14 days after the date of entry of the receipt by the Sheriff of any money available for distribution among creditors under this Act, the writ so far as it relates to any money so received remains in force until the money has been distributed. S.Nu. 2010,c.4,s.14(3).

Levy by Sheriff

26. Where a claim is contested by a creditor after the writ of execution based on the certificate of judgment has been placed in the hands of the Sheriff, unless the judge otherwise orders, the Sheriff shall

- (a) levy as if the claim had not been contested;
- (b) retain in the bank the amount that would be apportionable to the claim if valid until the determination of the contest; and
- (c) distribute the residue of the money made from the levy among those entitled as soon after the expiration of the period of 14 days as is practicable.

Determination of question in dispute

27. A judge may

- (a) determine a question in dispute in a summary manner; or
- (b) direct an action to be brought or an issue to be tried in any court for the determination of a question in dispute, and make an order relating to the costs of the proceedings that the judge considers just.

RECORDS OF CLERK AND SHERIFF

Recording certificates of judgment

28. (1) The Clerk, on issuing a certificate of judgment, shall make an entry of it in an appropriate book with the following particulars:

- (a) the name and address of the claimant and of the debtor;
- (b) the date of the entry;
- (c) the amount of the debt exclusive of costs;
- (d) the amount of costs;
- (e) if the proceedings have been set aside, that fact and the reason for it.

Index

(2) The Clerk shall index the entries referred to in subsection (1) alphabetically in a book under the names of the debtors.

Original papers lost

(3) Where the original papers are lost or destroyed, an entry made under this section shall be deemed to be an entry of final judgment and a copy certified by the Clerk is conclusive proof of that.

Payments

29. (1) Where

- (a) an execution creditor
 - (i) receives a payment of money on account of an execution debt,
 - (ii) receives anything by way of satisfaction, either wholly or in part, of an execution debt, or
 - (iii) enters into an agreement by which proceedings under a writ of execution are to be stayed or suspended, or
- (b) an order is made staying the execution,

the execution creditor shall immediately after that deliver to the Sheriff a notice in writing setting out each payment, satisfaction or agreement, or certified copy of the staying order, as the case may be.

Entry respecting notice

(2) The Sheriff, on the receipt of a notice delivered to the Sheriff under subsection (1), shall enter in the book referred to in subsection 28(1) a memorandum of the notice together with the date of its receipt and shall keep the notice on file.

Life of writ of execution

30. Subject to this Act and to the Rules of the Nunavut Court of Justice, every writ of execution issued pursuant to a judgment or order, whether awarded or made before, on or after March 14, 1980, shall remain in force while that judgment or order remains in force. S.Nu. 2010,c.4,s.14(3).

Failure to make return by creditor

31. Where a creditor fails to make a return that the creditor is required to make pursuant to this Act and by reason of the failure

- (a) the Sheriff makes an excessive or wrongful levy, or
- (b) a creditor makes an excessive or wrongful attachment,

the creditor is liable for any damages occasioned as a result of that and no action is maintainable against the Sheriff in respect of that.

DISTRIBUTION WHERE MONEY INSUFFICIENT

Statement where money insufficient

32. (1) Where, at the time fixed by this Act for distribution, the money realized is insufficient to pay all claims in full, the Sheriff shall immediately prepare, for examination by the debtor and the creditors of the debtor, a statement setting out the creditors entitled to share in the distribution with the amount due to each for principal, interest and costs.

Arrangement of statement

(2) The statement referred to in subsection (1) must be arranged to show the amount payable to each creditor and the total amount to be distributed.

Copy of statement

(3) The Sheriff shall deliver or send by registered mail a copy of the statement referred to in subsection (1) to the debtor and to each creditor or his solicitor.

Distribution where no objection

33. (1) If no objection is made under subsection (3) within 10 days after all the copies of the statement referred to in subsection 32(1) have been delivered or mailed or within a further time that a judge may allow, the statement shall be deemed to be final and conclusive as between all persons and the Sheriff, and the Sheriff shall make distribution without delay pursuant to the statement.

Distribution after objection

(2) Where objection is made under subsection (3), the Sheriff shall without delay distribute rateably so much of the money realized and among such persons as will not interfere with the effect of the objection if it should be allowed.

Notice of objection

(3) A person affected by the proposed scheme of distribution may contest it by giving, within the time mentioned in subsection (1), a notice in writing to the Sheriff stating his or her objection to the scheme and the grounds of the objection.

Application for order re objection

(4) The objection shall be deemed to be abandoned unless the person contesting the scheme of distribution applies within 10 days after giving notice under subsection (3) to a judge for an order adjudicating on the matter in dispute.

Appointment for hearing

(5) The person contesting the scheme of distribution within the time mentioned in subsection (4) shall obtain from a judge an appointment for hearing and determining the matter in dispute.

Service of appointment and notice

(6) The person contesting the scheme of distribution shall serve a copy of the appointment and a notice of the objection in the prescribed form, stating the grounds of the objection,

- (a) on the debtor, unless that person himself or herself is the debtor;
- (b) on the creditors or such of them as the judge may direct; and
- (c) on the Sheriff.

Determination

(7) The judge may

- (a) determine a question in dispute in a summary manner, or
- (b) direct an action to be brought or an issue to be tried for the determination of a question in dispute,

and may make an order relating to the costs of the proceedings that the judge considers just.

Distribution

(8) If a creditor is held to be not entitled or to be entitled to only part of his or her claim,

- (a) the money retained pending the determination of the dispute, or
- (b) the portion of the money retained pending the determination of the dispute to which the creditor has failed to establish his or her claim,

as the case may be, shall be distributed among the creditors who would have been entitled to it, and in the same manner as it would have been distributed had the claim in respect of it not been made.

Appointment of costs

34. Where several creditors are interested in a contested claim, either for or against it, the judge shall

- (a) give directions for saving the expense of an unnecessary number of parties and trials and of unnecessary proceedings that the judge considers just; and
- (b) direct by whom and in what proportions any costs incurred in the contest or in any proceedings under it shall be paid and whether any and what costs shall be paid out of the money levied.

Rights of creditors in interpleader proceedings

35. Where proceedings are taken by the Sheriff for relief under any provisions relating to interpleader, only those creditors

(a) who are parties to the proceedings, and
(b) who agree to contribute *pro rata* to the expense of contesting an adverse claim, in proportion to the amount of their executions, are entitled to share in any benefit that might be derived from contesting the claim so far as is necessary to satisfy their executions.

Undertaking interpleader proceedings

36. The Nunavut Court of Justice or judge may direct that one creditor is to undertake the interpleader proceedings on behalf of all creditors interested. S.Nu. 2010,c.4,s.14(3).

Costs of interpleader proceedings

37. The costs of interpleader proceedings as between solicitor and client is a first charge on the moneys or goods that are found by the proceedings to be available to satisfy the executions or certificates.

GENERAL

Sharing of money realized

38. Where money is realized under an execution, the money shall be deemed, for the purposes of the Sheriff's return and all other purposes, to be realized under all the executions entitled to share the benefit of the execution.

Memorandum of amount of execution

39. The Sheriff, on payment being made to the person entitled on any writ of execution, shall endorse on the writ a memorandum of the amount paid, but the Sheriff shall not, except

- (a) on the request of the party who issued the writ, or
- (b) by direction of the Nunavut Court of Justice or judge,

return the writ until it has been fully satisfied or unless it has expired by the passage of time, in which case the Sheriff shall make a formal return of the amount paid on the writ. S.Nu. 2010,c.4,s.14(3).

Compelling payment

40. The same proceedings may be taken to compel payment by the Sheriff of money payable in respect of an execution or other claim as may be had to compel the return by the Sheriff of a writ of execution.

Order to levy

41. (1) A judge may direct the Sheriff to levy for an amount sufficient to cover a claim, or part of a claim, that is in dispute.

Where no sufficient property

(2) Where it appears to a judge that it is improbable that the debtor has other sufficient property, the judge may direct the Sheriff to retain in his or her hands during the contesting of a claim the share of money in his or her hands that, if the claim is sustained, will be apportionable to the claim or part of the claim.

Authority of Sheriff

(3) An order to levy under this section confers on the Sheriff the same authority as the Sheriff has under an execution.

Application for directions by Sheriff or Clerk

42. The Sheriff or Clerk may, whenever a question arises with regard to the performance of any duty or the exercise of any function imposed or conferred on the Sheriff by this Act, apply to a judge for direction and on such application, the judge may

- (a) after the notice has been given to such parties that the judge thinks proper, and
- (b) after hearing the evidence, either orally or by affidavit, that the judge thinks proper,

make an order giving those directions not inconsistent with this Act that the judge considers proper and convenient, and no action or proceeding lies against the Sheriff or Clerk for anything done pursuant to or in conformity with any direction so given.

S.N.W.T. 1997,c.8,s.7.

Appeal

43. Where any party contesting a claim or matter on which a judge has rendered or made a final judgment or order is dissatisfied with it and the contest involves a sum greater than \$200, the party may appeal from the judgment or order.

Decision binding

44. The decision of the Nunavut Court of Justice on an appeal binds the debtor and all the creditors of the debtor unless it appears that the decision was obtained by fraud or collusion. S.Nu. 2010,c.4,s.14(3).

Service of notice

45. (1) Unless this Act contains express provision to the contrary, a notice required to be served on a person pursuant to this Act may be served by sending it by registered mail in a duly prepaid letter addressed to that person at his or her last known post office address.

Proof of service

(2) A notice referred to in subsection (1) shall be deemed to have been duly served on proof being made by affidavit stating

- (a) that the notice was sent by registered mail in a prepaid letter addressed to the person to be served at his or her last known post office address;
- (b) the date and place of mailing of the registered letter; and
- (c) the date at which the registered letter would, in the ordinary course of mail, reach its destination.

Date of service

(3) The date mentioned in paragraph (2)(c) shall be deemed to be the date of service of the notice.

Deposit of receipts

46. The Sheriff shall deposit all money received by the Sheriff in respect of an execution or other proceeding under this Act in the manner that the Commissioner may direct.

Judicature Act and Rules of the Nunavut Court of Justice

47. The *Judicature Act* and the Rules of the Nunavut Court of Justice apply to proceedings under this Act except where inconsistent with this Act or the regulations. S.Nu. 2010,c.4,s.14(3).

48. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.6.

Defect of form

49. (1) No proceeding under this Act is void for any defect of form, and the Rules of the Nunavut Court of Justice relating to, amending or otherwise curing irregularities or defects apply to all proceedings under this Act.

Proceedings wrongfully taken

(2) Proceedings wrongfully taken under this Act may be set aside by a judge with or without costs as the judge thinks fit. S.Nu. 2010,c.4,s.14(3).

Regulations and rules

50. The Commissioner, on the recommendation of the Minister, may make regulations

- (a) and rules relating to the procedure to be followed and the forms to be used in any proceeding under this Act;
- (b) prescribing a tariff of the fees payable to the Clerk or to the Sheriff in respect of any proceeding under this Act; and
- (c) prescribing the form of the certificates, affidavits and notices that by this Act are to be prescribed.