

Publisher's Note

2018 — Release 6

Previous release was 2018-5

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Robinson

British Columbia Debtor-Creditor Law and Precedents

This work is an authoritative review of the law and procedures for enforcing monetary judgments and orders in British Columbia. This valuable resource covers the procedural rules in the B.C. Supreme Court, the B.C. Small Claims Court and the Federal Court of Canada, accompanied with useful precedents. The topics included are pre-judgment proceedings, garnishment, execution against real and personal property, enforcement and fraudulent conveyances and preferences.

HIGHLIGHTS:

Writ of Execution — Sale by Sheriff (Court Bailiff) — Due Diligence Required of and Title obtained by Purchaser — A review of the case law and an analysis of the statutory history of s. 107 of the *Court Order Enforcement Act*, which deems a conveyance to purchaser by the sheriff (court bailiff) to be valid, and whether or not it applies to a conveyance to a purchaser following a sale conducted by a sheriff (court bailiff) pursuant to a writ of execution: See the discussion in Paras. 5.15.300-350.

Excessive Seizure — Potential Liability of Sheriff and Execution Creditor — A new heading has been added to Chapter 5 on Excessive Seizure pursuant to a writ of

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execution and the potential remedies that an execution debtor may have against the sheriff (court bailiff) and the execution creditor. See the discussion in Paras. 5.19.000-201.

Wrongful Seizure of Goods that did not Belong to the Execution Debtor — Potential Liability of Sheriff and Execution Creditor — A new heading has been added to Chapter 5 on the seizure of goods and chattels, pursuant to a writ of execution, where the seized property did not belong to the execution debtor. The issues, which are considered, include interpleader relief, and potential claims for redress by the execution debtor against the sheriff (court bailiff), the purchaser and the execution creditor. See the discussion in Paras. 5.20.000-331.

Order/Judgment upon which writ of execution was issued is overturned on Appeal — Claims to Redress by Execution Debtor — A new heading has been added to Chapter 5 that considers claims for redress by an execution debtor who has successfully set aside or appealed the order/judgment under which a writ of execution had been issued where proceeds of the execution have been remitted to the execution creditor. See the discussion of *Westbank Band of Indians v. Tomat*, 1992 CarswellBC 1129, (*sub nom.* Derrickson v. Tomat) 44 C.P.R. (3d) 210, 94 D.L.R. (4th) 453, 16 B.C.A.C. 83, 28 W.A.C. 83 (C.A.), additional reasons 1992 CarswellBC 760, (*sub nom.* and *Brown v. Giscome Contracting Ltd.*, 2016 BCPC 226, 2016 CarswellBC 2154 in Paras. 5.21.000-333.4.

Solicitor's Lien — Prerequisite for granting of a Charge under s. 79 of the Legal Profession Act — Lawyer will not be Paid unless Charge is Granted — Evidence that an established relationship, which a lawyer and client once enjoyed, has been ruptured as demonstrated by an action commenced by the client against the lawyer for professional negligence together with fact that the outstanding account of the lawyer was over five years old led the court, in *625536 B.C. Ltd. v. The Owners, Strata Plan LMS 4385*, 2018 BCSC 1659, 2018 CarswellBC 2551, to find that this prerequisite had been satisfied. See the discussion in Para. 15.3.643.