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DEBT LITIGATION

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Debt Litigation is a comprehensive work dealing with default and summary judgments relating to debtor-creditor law and practice. It includes annotations and commentary on topics such as the fiduciary duties of solicitors, including negligence and conflict of interest, spoliation of evidence and e-discovery and conventional mortgages and guarantees.

What's New in this Update

The author has added new commentary and case law regarding evidence, defences, solicitors, lender liability, settlement, enforcement, fraudulent conveyances and bankruptcy. The index has also been updated in this release. Notable cases are summarized overleaf.

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Highlights

- The receipt of shares or warrants in connection with a loan agreement does not come within the genre created by the definition “fee, fine, penalty, commission or other similar charge or expense” in s. 347 of the *Criminal Code* and the section is not thereby engaged: *Cirius Messaging Inc. v Epstein Enterprises Inc.*, 2018 BCSC 1859 (B.C. S.C.) [Defences 6:140.40.10].
- A mortgage provision that the balance is payable “without deduction or abatement” does not automatically foreclose the issue of set-off arising from bad faith or fraud: *Daly Square Inc. v. 1786097 Ontario Inc. and Camille Mikhael* (2018), 298 A.C.W.S. (3d) 634 (Ont. S.C.J.) [Defences 6:170.10].
- Where the garnishment of a judgment debtor’s bank account effectively garnishes child support and the Canada Child Benefit, the innocent child suffers and a stay of garnishment will be ordered pending the mother’s commencing employment: *Campbell v. Wentzell* (2018), 295 A.C.W.S. (3d) 579 (Ont. S.C.J.) [Enforcement 10:40.120].
- Dissipation, as a factor in granting a *Mareva* injunction, may be balanced by the existence of a defendant’s exigible assets within and outside the jurisdiction: *Kepis & Pobe Financial Group Inc. v. Timis Corporation* (2018), 298 A.C.W.S. (3d) 615 (B.C. C.A.) [Fraudulent Conveyances 11:190.50.20, 11:190.80, 11:190.100.40].
- Where a contemnor swears that he or she dissipated assets despite clear knowledge of a *Mareva* order, striking his or her defence may be found more appropriate than incarceration: *Han v. Ham* (2018), 291 A.C.W.S. (3d) 741 (Ont. S.C.J.) [Fraudulent Conveyances 11:190.90].
- A bankrupt may not avoid payment of surplus income by paying his or her spouse’s debts: *Orenchuk (Re)* (2018), 299 A.C.W.S. (3d) 20 (Sask. Q.B.) [Bankruptcy 12:110].