

LAW REFORM COMMISSION OF BRITISH COLUMBIA

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Backgrounder

LRC 116—Report on Execution Against Securities

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The provisions of the *Court Order Enforcement Act* governing the seizure of shares and debt instruments are antiquated and no longer give judgment creditors an adequate remedy against these forms of property. They do not address newer methods of dealing with securities in financial markets. Furthermore, the reforms brought about by the enactment of the *Personal Property Security Act* in 1989 have increased the need to rationalize procedures for the enforcement of judgments.

The report examines the current law of execution against securities in British Columbia. There is a high level of uncertainty that surrounds some basic issues. It is unclear if interests short of ownership can be taken in execution, and it is also unclear what section of the *Court Order Enforcement Act* governs a seizure carried out by taking possession of share certificates. This creates ambiguity in relation to what extent the sheriff can dispose of shares. The current regime also allows seizure to occur without taking physical custody of the certificates, which creates pitfalls for innocent purchasers and lenders. Furthermore the language, scope, and practical effect of the legislation are all outdated.

A comprehensive framework for execution against securities to replace the relevant provisions of the *Court Order Enforcement Act* is recommended. The statutory definition of the term “security” would be expanded to take into account new kinds of interests traded on modern securities exchanges and markets. The Commission suggests two different methods of disposition for seized securities, depending on whether the securities are held on or off the market. For seizure in non-market settings physical possession of the certificates would be taken, and the sheriff would be able to dispose of them by public tender or private sale. For market securities the investment dealer would be given notice to prevent her from giving the judgment debtor access to the account. The investment dealer would then be directed to sell from the account until the judgment was satisfied, giving the proceeds to the sheriff. Providing the court with relevant procedural powers would allow interests such as shares to be sold to satisfy judgment debts, but would protect potentially prejudiced parties such as shareholders of closely held corporations.

Amendments to the *Court Order Enforcement Act* designed to provide a modern and comprehensive framework for execution against securities are recommended. Annotated draft legislation is included.

Further Developments

See *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78, ss. 64.1, 65.1