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Practice in Mortgage Remedies in Ontario (Fifth Edition)

Marriott and Dunn

Release No. 6, November 2026

Marriott and Dunn: Practice in Mortgage Remedies in Ontario, 5th Edition, provides the most comprehensive step-by-step review of the procedures governing foreclosure, judicial sale, and power of sale in Ontario. Fifteen chapters provide the busy practitioner with a ready reference to every aspect of the power of sale remedy with the most comprehensive case law review of the process in Ontario. The notice of sale itself, including parties to be served and the service requirements, sale without notice, the right to redeem, injunctive relief, the marketing process, the mortgagee's duties in conducting the sale, the registration process, accounting for the sale proceedings and costs receive chapter-by-chapter coverage.

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This release features updates to the case law and commentary in Chapters 6 Originating Process, Pleadings and Defences, 7 Judgments, Taking Accounts and References, 10 Taking Accounts on the Reference, 26 Notice of Sale, 38 Recovering the Deficiency, 42 Priorities—Generally, 44 Interest, 48 Residential Rental Premises, and Appendix WPJ, Words and Phrases.

HIGHLIGHTS

- **FORECLOSURE — TAKING ACCOUNTS ON THE REFERENCE — JUST ALLOWANCES — COSTS OF ENFORCING THE MORTGAGE —** The Court of Appeal for Ontario upheld an award of enforcement costs to the lender under a contractual indemnity provision requiring the borrowers to pay the lender's reasonable costs of enforcement. The Court deferred to the application judge's finding that the enforcement costs claimed were reasonable and emphasized that there was no basis to interfere with that assessment on appeal. In particular, the Court noted that the lender had been sent on a "wild goose chase" by the borrowers in its efforts to enforce the agreement. The decision confirms that, in assessing the reasonableness of enforcement costs, a court may consider the conduct of the mortgagor and whether that conduct unnecessarily increased the time, effort and expense required to realize upon the lender's security. The Court also upheld recovery of a third-party broker fee incurred in connection with enforcement where the fee fell within a broadly worded contractual provision permitting recovery of costs, charges and expenses reasonably incurred in administering or enforcing the loan agreement: *Redback Tours Inc. v. Canadian Equipment Finance & Leasing Inc.*, 2026 ONCA 555, 2026 CarswellOnt 12495 (Ont. C.A.).
- **GENERAL MATTERS — PRIORITIES — GENERALLY — CONSTRUCTION LIEN CLAIMANTS —** The Court of Appeal held that, for the purposes of the priority regime under s. 78(2) of the Construction Act, any deficiency in the statutory holdback must be calculated based on unpaid invoices, not the total value of invoices rendered. The Court found that where a contractor has been fully paid for particular services or materials and there are no subcontractor lien claimants asserting claims against the holdback, there is no remaining holdback deficiency in respect of those amounts because any lien relating to those invoices has been satisfied. The Court rejected the contractors' argument that they were entitled to a priority claim equal to 10% of all invoices rendered, holding that such an interpretation would effectively require the mortgagee to pay the same holdback twice: once when the owner paid the invoices in full without retaining the statutory holdback, and again through the priority claim. The Court held that this result would be commercially absurd and inconsistent with the purpose of the Construction Act, which seeks to balance the interests of contractors, subcontractors, owners, and mortgagees. In the absence of subcontractor lien claimants, the proper measure of the holdback deficiency is therefore 10% of the unpaid invoices only, consistent with the reasoning in *Dufferin Concrete Products v. Waterbrooke Development Ltd.*, 1992 CarswellOnt 881 (Ont. Gen. Div.) and the motion judge's decision: *KingSett Mortgage Corporation v. Mapleview Developments Ltd.*, 2026 ONCA 512, 2026 CarswellOnt 11558 (Ont. C.A.).