

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 33—Report on the Statute of Frauds

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Introduced originally by the English Parliament in 1677 after they became aware of defects in the law of evidence which assisted the perpetration of fraud, the *Statute of Frauds* was received into British Columbia law in 1858 and provided (with limited exceptions) that

1. all agreements concerning interests in land
2. all creations, assignments, or surrenders of interests in land
3. all assignments or surrenders of interests in any property held in trust
4. all guarantees and indemnities and
5. all misrepresentations of character, credit, conduct, ability, trade, or dealings made by a person to enable another person to obtain credit, money, or goods

must be evidenced in writing, and, in most cases, signed by the person against whom it is sought to enforce the transaction at issue.

Despite the limited number of categories to which the statute applied, it gave rise to an inordinate amount of litigation and commentary that revealed a very large degree of inconsistency and uncertainty in its application. Three major issues, however, frequently arose in the litigation: (1) whether a specific transaction came within the terms of the statute; (2) whether there was significant evidence in writing for a court to enforce the agreement; and (3) whether there was alternative relief available to a person seeking to enforce an otherwise valid transaction.

This report examines the complex body of law that grew up around the statute and attempts to evaluate the arguments and criticism that it generated. The report is divided into four chapters. The first chapter sets out the existing law in Canada in general, and British Columbia in particular, with regard to each of the transactions on which formal requirements of writing were imposed by the statute. In doing so, the chapter pays particular attention to the three major issues mentioned above.

Chapter two contains an evaluation of the law. It begins by setting out the more important criticisms and disadvantages of the writing formalities required by the *Statute of Frauds*, and then describes the benefits and advantages that the commission perceives such formalities to produce. This is followed by an evaluation of the arguments, and conclusions as to the most appropriate reconciliation of the competing policies reflected in the arguments.

In chapter three the commission sets out and explains their recommendations for change. In broad terms, the commission concludes that while some of the original reasons for the enactment of the statute are no longer persuasive, in respect of certain transactions there do exist sound social policies that are sought to be advanced by it, and that its more harsh and inequitable results can be avoided by appropriate changes. A recommendation is therefore made to repeal the *Statute of Frauds* and replace it with new legislation that would embody these sound policies and provide mechanisms for the avoidance of inequity.

Chapter four contains a summary of the recommendations made in the report.

### **Further Developments**

See *Law Reform Amendment Act, 1985*, S.B.C 1985, c. 10, ss. 7, 8 (now *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 59).