

LAW REFORM COMMISSION OF BRITISH COLUMBIA

c/o British Columbia Law Institute
1822 East Mall, University of British Columbia
Vancouver, British Columbia V6T 1Z1
Voice: (604) 822 0142 Fax: (604) 822 0144 E-mail: bcli@bcli.org
Website: www.bcli.org

Backgrounder

LRC 37—Report on the Absconding Debtors Act and Bail Act: Two Obsolete Acts

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This short report examined two statutes in the sphere of debtor–creditor relationships, the *Absconding Debtors Act* and the *Bail Act*, both of which had been tentatively identified by the Law Reform Commission of British Columbia as being obsolete and unnecessary enactments. Both Acts were, to a certain extent, interrelated and appropriate for consideration in a single report.

The first chapter looks at the *Absconding Debtors Act*, which provided a remedy against property that a debtor, who had already absconded, had left behind in the province. The remedy, which was essentially a prejudgment remedy against land and goods, took the form of a writ of attachment that tied up the debtor’s property pending a disposition in the action. The report highlighted a number of factors that led to the conclusion that the repeal of the Act was appropriate.

The second chapter addresses the *Bail Act*. Prior to the introduction of procedural reforms in British Columbia in the 19th century, a principle of law existed which stated that there could be no proceedings against an absent defendant. This principle led the law to seek ways to aid a claimant in compelling the defendant to appear. One practice that developed was to issue a writ of *capias ad respondendum*. The effect of such a writ was to direct a sheriff to arrest the defendant who would then secure his release by giving security in the form of civil bail, both for his appearance in the action and for any resulting judgment.

The *Bail Act* was introduced to simplify the mechanics of entering and perfecting bail, but, as a result of the procedural reforms in the 19th century, the Act gradually became redundant. The report concluded therefore that the Act was obsolete and should be repealed.

Further Developments

See *Attorney-General Statutes Amendment Act, 1978*, S.B.C 1978, c. 11, ss. 1, 2.