

# LAW REFORM COMMISSION OF BRITISH COLUMBIA

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## Backgrounder

### LRC 38—Report on the Replevin Act

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Generally whenever a person seeks a legal remedy they have to await the outcome of a formal adjudication by the court of their entitlement to that remedy. For example, an unsecured creditor cannot call for the seizure and sale of the debtor's property until the creditor has obtained a judgment for the money that is owed. One exception to the general rule exists with respect to claims to recover possession of personal property. Through a proceeding known as "replevin" a person who claims personal property that is in the possession of another may, in a summary way, obtain possession without a formal adjudication of the person's right thereto. In British Columbia this procedure was regulated by the *Replevin Act*.

The operation of the *Replevin Act* was a frequent source of complaint that spurred the Law Reform Commission of British Columbia into issuing a working paper on the Act. That paper addressed two basic issues. First, whether this remedy, or something comparable to it, should continue to be part of the law of British Columbia. Second, assuming a replevin-like remedy should continue to be available, what changes are desirable to make the procedure compatible with modern needs and conditions. These issues and the responses evoked following circulation of the working paper form the basis of this report.

The report is made up of a five relatively short chapters. The first chapter contains an introduction to the topic, a brief section on the historical background of replevin proceedings and an outline of the procedure under the Act.

Chapter two describes some the difficulties with the Act. The overarching conclusion is that the Act and the Rules are both archaic and obscure.

Chapter three examines whether or not the Act is necessary. It notes that proceedings under the *Replevin Act* are not the only remedy available to a person who claims property that is in the possession of another and compares and contrasts the action of replevin with an action framed in detinue under the Rules of Court. The chapter then goes on to summarize some of the arguments from the working paper both for retaining replevin and for its aboli-

tion. The report concludes that while in theory the remedy is anomalous, it retains a useful purpose, and should either be retained or replaced with a comparable remedy.

Chapter four sets out the conclusions on reform. The main proposal is for the *Replevin Act* to be repealed and replaced with a comparable remedy. The new remedy would not be a cause of action in its own right but rather a form of interim relief contained in the Rules of Court. It is recommended that Rule 46 of the Rules of Court, which already allows for the interim recovery of property, be amended to provide the appropriate vehicle for the new remedy.

A full list of the recommendations is set out in Chapter five.

### **Further Developments**

See *Attorney-General Statutes Amendment Act, 1982*, S.B.C. 1982, c. 46, ss. 3–6, 25, 37–41. (Now *Supreme Court Rules*, Rule 46.)