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 39—Report on the Attachment of Debts Act

Date: October 1978

Arguably one of the most important remedies available to a creditor seeking to obtain satisfaction of a judgment debt is garnishment, a remedy created and regulated (at the time this report was written) by the *Attachment of Debts Act*. This legislation provided a procedure whereby execution proceedings could be taken against the right of the debtor to receive a payment of money from a third party, known as a "garnishee." The Act was the subject of frequent complaints, which was one of the reasons that prompted The Law Reform Commission of British Columbia to select the subject as a project. The LRCBC undertook a thorough examination of the Act and concluded that it had a number of shortcomings. This report examines the findings of the LRCBC and makes a number of recommendations for reform.

The first chapter of the report sets out a brief history of the Act and clarifies the somewhat confusing terminology that has arisen. The term "garnishee" was taken from an archaic common-law remedy and was adopted as a term to identify the third party so as to avoid confusion with the "debtor" who was a party to the main action. This caused a number of associated terms to be used in this type of proceedings including "garnish," "garnishable," "garnishing," "garnishor," and the various tenses of the verb forms of the word.

Chapter two focuses on the procedure under the Act. It outlines the jurisdiction of the courts to hear an application, the basic procedure for commencing an application, the procedure for payment into court, and the procedure to obtain payment out of court to the creditor of money garnished.

The report then moves on in chapter three to outline the scope of the Act and, in particular, which debts are garnishable. The Act appears to confine the remedy it provides to debts that are "due or accruing due," but devotes no fewer than four sections to the exercise of defining the term "debts due." This results in ambiguity. The report attempts to clarify the issue by first examining each of the definitions and then reviewing Canadian and English case law to see whether they cast any light on the matter. The conclusion reached is that some financial obligations fall outside the Act and cannot be reached by garnishment. They fall into three categories:

1. debts subject to a condition other than, perhaps, the effluxion of time,
2. inchoate financial obligations that may ripen into a debt at some stage in the future (such as claims for unliquidated damages), and
3. debts that are not in existence in any form at the time of the garnishment but which come into existence later (such as future wages).

Chapter four looks at what limitations there are on the availability of the remedy. In general terms there are four limitations. First, as discussed above, there must be a garnishable debt. Second, the creditor must have a sufficient belief in the existence of the debt to swear an affidavit to that effect. This can often place a significant limitation on the availability of the remedy as a creditor may well suspect that a potential garnishee owes money to the debtor but that suspicion falls short of being able to confirm that belief under oath. Third, the garnishee must be within the jurisdiction of the court. Fourth, there must be some legal right or relationship which forms the basis of the proceedings. The chapter also considers other factors affecting availability of the remedy and certain exemptions under the Act.

Chapter five sets out the conclusions reached by the LRCBC and provides a number of recommendations aimed at improving the Act. A summary of the recommendations are contained in chapter six.

Further Developments

The recommendations have not been implemented. The *Attachment of Debts Act* has been repealed and incorporated within the *Court Order Enforcement Act*, R.S.B.C. 1996, c. 78.