

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 53—Report on Distress for Rent

Date: November 1981

Distress is a legal term of art that describes a specific remedy for certain creditors. Some creditors are allowed to exercise this remedy of distress (to “distrain”) against the goods of their debtors. In British Columbia, distress most commonly occurs in connection with arrears of rent that a commercial tenant has failed to pay to a commercial landlord. Unlike most procedures used to enforce payment of a debt, distress is a self-help remedy. A creditor is not required to bring an application to court before distraining against a debtor’s goods. Distress is governed by an ancient body of law, consisting of court cases that stretch back to medieval England and statutes that were first enacted in the nineteenth century.

The focus of this report is on distress for rent, that is distress exercised by a landlord under a commercial lease. This report considers proposals to reform the law of distress by restating it in a new and modern statute, providing protection for the interests of tenants and third parties while still extending a remedy that meets the reasonable expectations of commercial landlords.

The report contains nine chapters. Chapter one is a brief introduction, which sets out the definition of distress and lists the legal sources of distress. These sources are: (1) the common law; (2) statute; and (3) agreement. Examples of statutory distress and distress by agreement are rare in British Columbia. The major example of common law distress is distress for rent. Chapter two discusses several statutes that regulate the procedure of distraining against goods. The main statute for the purposes of the report is the *Rent Distress Act*, but this chapter notes a number of other statutes that may be relevant in certain cases.

Chapter three lays out the reasons for reforming the *Rent Distress Act*. In brief, the Act is archaic in language and concept, its priority structure is irrational, and it provides inadequate protection of third party interests. Chapter four sets out other issues relating to distress for rent that require reform. These issues include the self-help nature of distress, which is anomalous in the area of enforcement of debts, and the complexity of the law governing distress, which is exacerbated by the large number of very old cases that hold sway over this area of the law.

Chapter five reviews the options for reform of the law. It assesses the advantages and disadvantages of three options: (1) rationalizing and restating the law of distress for rent; (2) abolishing distress for rent; and (3) contractual security for rent. Chapter six discusses responses to the working paper that preceded the report.

Chapter seven sets out a summary of the commission's conclusions. Chapter eight contains the main conclusion of the report, a draft of a new *Rent Distress Act*. The draft Act restates the law of distress for rent and modernizes its provisions. Chapter nine is a brief summary.

Further Developments

The report's recommendations have not been implemented by legislation.