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Backgrounder

LRC 43—Report on Guarantees of Consumer Debts

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A creditor often seeks protection from a potential default by a debtor by demanding that a third party undertake to make good any default that might occur. This third party is called a guarantor; the agreement with the creditor is a guarantee. This report is concerned with the special considerations involved when an individual guarantees a consumer debt.

In consumer transactions, the guarantor frequently stands to gain nothing. Often, the guarantor is a relative or friend of the debtor. The guarantor's participation in the transaction is critical to its going ahead, but any real benefit from it is enjoyed only by the creditor and the debtor. Despite the absence of a real benefit to the guarantor, the law holds him or her to the bargain, even if the guarantee is of a large debt.

At the time of this report, there was legislation in existence at the federal and provincial levels that was favourable to the interests of guarantors in general. But this legislation tended to be aimed at specific, technical issues and it was not very well integrated. This report contains recommendations for reform of the law that are intended to achieve two goals. First, they consider the extent to which well-established notions of consumer protection should apply to guarantees. Second, they aim to rationalize the law, with a view to achieving simplicity, clarity, and consistency.

The report contains twelve chapters. These chapters include detailed analyses of the creation of consumer guarantees, disclosure requirements, the rights of the guarantor after default by the debtor, discharge of the guarantor, and liability on the contract of guarantee. The report sets out 54 recommendations for reform in these areas.

Further Developments

See *Consumer Protection Amendment Act, 1980*, S.B.C. 1980, c. 6, s. 3 (in part), now *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, s. 16.